



STRADDLING FISH STOCKS IN THE NORTHWEST ATLANTIC

**A Report of the Standing Senate Committee
on Fisheries and Oceans**

**Second Session
Thirty-Seventh Parliament**

June 2003

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of the Standing Senate Committee
on Fisheries and Oceans**

Chair
The Honourable Gerald J. Comeau

Deputy Chair
The Honourable Joan Cook

Second Session
Thirty-Seventh Parliament

June 2003

MEMBERSHIP

The Honourable Senator Gerald J. Comeau, *Chair*

The Honourable Senator Joan Cook, *Deputy Chair*

and

The Honourable Senators: Adams

Baker

*Carstairs, P.C. (or Robichaud, P.C.)

Cochrane

Hubley

Johnson

*Lynch-Staunton (or Kinsella)

Mahovlich

Meighen

Phalen

Watt

**Ex Officio Members*

The following Senators also served on the Committee during its study: The Honourable Senators Prud'homme, Rompkey and Spivak.

ORDER OF REFERENCE

Extract from the *Journals of the Senate*, Wednesday, November 6, 2002

The Honourable Senator Comeau moved, seconded by the Honourable Senator Beaudoin:

- That the Standing Senate Committee on Fisheries be authorized to examine and report upon the matters relating to oceans and fisheries;
- That the documents and evidence received by the Committee during its consideration of these same matters in the First Session of the Thirty-seventh Parliament be referred to the Committee;
- That the Committee table its final report no later than June 30, 2003; and
- That, notwithstanding usual practice, the Committee be permitted to deposit its final report with the Clerk of the Senate if the Senate is not then sitting, and that the report be deemed to have been tabled in the Chamber.

After debate, with leave of the Senate and pursuant to Rule 30, the motion was modified to read as follows:

- That the Senate Standing Committee on Fisheries be authorized to examine and report from time to time upon the matters relating to straddling stocks and to fish habitat;
- That the documents and evidence received by the Committee during its consideration of these same matters in the First Session of the Thirty-seventh Parliament be referred to the Committee; and
- That the Committee table its final report no later than December 31, 2003.

After debate, the question being put on the motion, as modified, it was adopted.

Paul Bélisle

Clerk of the Senate

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ACRONYMS

CFPA – Coastal Fisheries Protection Act

COSEWIC – Committee on the Status of Endangered Wildlife in Canada

DFAIT – Department of Foreign Affairs and International Trade

DFO – Department of Fisheries and Oceans

EEZ – Exclusive Economic Zone

EU – European Union

FAO – United Nations Food and Agriculture Organization

ICJ – International Court of Justice

ICNAF – International Commission for the Northwest Atlantic Fisheries

LOS Convention – 1982 United Nations Convention on the Law of the Sea

NAFO – Northwest Atlantic Fisheries Organization

NGO – Non-Governmental Organization

RFMO – Regional Fisheries Management Organization

STACTIC – Standing Committee on International Control

TAC – Total Allowable Catch

UNCED – United Nations Conference on Environment and Development

UNCLOS – United Nations Conference on the Law of the Sea

UNFA – 1995 United Nations Agreement on Straddling Fish Stocks and Highly
Migratory Fish Stocks, or United Nations Fish Stocks Agreement

CHAIR'S FOREWORD

The current situation is not acceptable. – Robert Thibault, Minister of Fisheries and Oceans, Government of Canada, “Report on the Roundtable Forum on Improving the Management of Straddling Fish Stocks,” News Release, 10 April 2003

The topic of custodial management is in the public discourse and in the media “from morning till night.” – Mike Samson, Deputy Minister of Fisheries and Aquaculture, Government of Newfoundland and Labrador, Comments included in Report of the Roundtable Forum on Improving the Management of Straddling Stocks, 21 March 2003

A 200-mile limit ... over fisheries is perfectly adequate for most of the world. It is not adequate for the Grand Bank of Newfoundland. – Dr. Art May, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, Proceedings of the Standing Senate Committee on Fisheries and Oceans (hereafter referred to as “Committee Proceedings”), 25 February 2003

The Contracting Parties (to NAFO) are there for one purpose: to gain access to fish resources. – Mike Samson, Deputy Minister of Fisheries and Aquaculture, Government of Newfoundland and Labrador, Committee Proceedings, 25 March 2003

The bottom line is that during the watch of the Canadian Government one of the great fisheries of the world has been all but destroyed. – Gus Etchegary, Fisheries Crisis Alliance, “Notes for Presentation to the Senate Fisheries Committee,” 3 December 2002

I am aware that the Chairman of your Committee considers your role an educational one as much as a decision-making one. Perhaps I am being arrogant even in commenting on that, but I applaud it. – Dr. Alan Beesley, Committee Proceedings, 11 May 1999

Five centuries ago, the fishing ports of northern Europe were rife with stories of fish off Canada's Atlantic Coast so abundant that they impeded the progress of ships and could be caught by simply lowering a basket over the side. Last year marked the 25th anniversary of Canada's unilateral extension of fisheries jurisdiction to 200 miles. It was also the 20th anniversary of the 1982 UN Convention on the Law of the Sea (the “LOS Convention”), and the 10th anniversary of moratoria on fishing a number of commercially important and drastically depleted stocks of Atlantic groundfish – one of the greatest ecological catastrophes of the 20th century. These days, Canadians are told that it may take a very long time – years, maybe decades – before those stocks are able to recover, if ever.

The situation appears no different across the Atlantic Ocean in Europe, where a similar implosion of stocks may be happening in the North Sea fishery. There, in October 2002, an international scientific advisory commission recommended that all fisheries targeting cod in the

North Sea, Irish Sea and waters west of Scotland should be closed. Trawlers belonging to the EU were reportedly banned from fishing cod and flatfish in the Baltic Sea in April 2003.

In fact, the world over, the oceans are being exploited as never before. In its most recent (2002) study on the *State of World Fisheries and Aquaculture*, the United Nations Food and Agriculture Organization (FAO) warned that nearly half (47%) of the world's marine stocks or species groups are fully exploited, with no reasonable expectations for further expansion. Another 28% are either over-exploited or depleted. Some stocks have been so severely run down they may never rebound. More recently, a study published in *Nature* showed that the biomass of large predatory fish to be only about 10% of pre-industrial fishing levels.

Some of the factors contributing to this worrisome state of affairs include: an enormous growth in the size and capacity of fishing fleets; poor selectivity of fishing gear and large bycatches that are dumped or discarded; the destruction of critical fish habitats; land-based pollution; and illegal, unregulated and unreported fishing activity, both within areas under national jurisdiction, where about 90% of the world's fishing activity takes place, and on the high seas where the challenge is to ensure that regional fisheries management bodies, such as the Northwest Atlantic Fisheries Organization (NAFO), are working to protect and conserve the resource.

In Canada, the issue of foreign overfishing is one of immense political and economic significance, especially to people in Newfoundland and Labrador. The subject stirs up strong emotions on the East Coast, and understandably so: for generations, fishing has been the economic and social foundation of the region. Also, the issue is not new to Canadians. In fact, ever since the 1950s, when the factory freezer trawlers of many nations first appeared off our coast, the matter has been a thorn in the side of successive fisheries ministers.

Although foreign fishing off Canada's East Coast declined in the wake of Canada's declaration of a 200-mile exclusive fishing zone in 1977, it nonetheless persisted in the outer reaches of the Canadian continental shelf beyond the arbitrary 200-mile boundary line. In 1979, NAFO was created "to contribute through consultation and cooperation to the optimum utilization, rational management and conservation of the fisheries resources" of the Northwest Atlantic Ocean. NAFO was mandated to: take into account scientific advice; achieve the "optimum utilization ... of the fishery resources"; "seek to ensure consistency" with management measures of the coastal states; and "give special consideration" to members "whose coastal communities are primarily dependent on fishing." What followed during the mid-1980s to early 1990s is well documented. The facts are indisputable: between 1985 and 1992, over 50 objections were lodged by the EU using the NAFO

Convention's Objection Procedure. Between 1984 and 1990, a cumulative groundfish quota of 214,000 tonnes resulted in a cumulative reported EU catch of well over 800,000 tonnes. The Canadian estimate put it at over 900,000 tonnes.

The foreign overfishing issue arises essentially from the fact that there are two different management systems for the same, biologically unified fish stocks: one regime inside Canada's 200-mile limit and the other beyond 200 miles where the legal principle of freedom of fishing on the high seas prevails, where there is a tradition of flag state primacy, and where fishing pressure threatens the stocks' existence. While conservation decisions are now more generally accepted by NAFO members, the number of fisheries violations in NAFO's Regulatory Area since 1995 has increased substantially. Destructive fishing appears to be on the rise again. To make matters even worse, we heard that state authorities are not following up on those infractions. In Newfoundland and Labrador, the province most directly affected, the level of frustration is such that extending Canada's role in fisheries management beyond 200 miles is now widely viewed as the only option left for dealing with NAFO's serious shortcomings.

Some progress was made as a result of NAFO's September 2002 annual meeting. NAFO will now be analysing compliance, a function that Canada alone had performed in the past. On matters of control and enforcement, the terms of reference of NAFO's Standing Committee on International Control (STACTIC) were strengthened as a result of NAFO's September 2002 meeting. STACTIC, which reports to NAFO's Fisheries Commission, was asked to review the effectiveness of NAFO's inspection, surveillance and enforcement measures that might lead to NAFO taking some form of action in September 2003.

The goal of effective conservation and resource management in fisheries on the high seas is embodied in the principles set out in the 1982 LOS Convention and in the 1995 United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks (the "UN Fish Stocks Agreement" or "UNFA") – two international treaties that Canada had a significant role in shaping. The relatively newer, but as yet untried, UNFA elaborates considerably on the earlier LOS Convention, especially on the duties it places on states to cooperate in the management of straddling fish stocks on the high seas.

The obvious challenge for the future is to rebuild stocks and ensure that harvesting is held to sustainable levels. UNFA may have significant implications for the future functioning of NAFO. As UNFA takes effect, it may help change NAFO, which is in need of major transformation

because, from a fisheries conservation standpoint, the organization has amply demonstrated its dysfunction over the years.

A great deal of scepticism was expressed at our hearings about the importance of fisheries among the federal government's foreign policy priorities. Many voiced their outrage and profound disillusionment with what they described as the federal government's disinterest in dealing with the foreign fishing issue. Committee members even heard that, at one time, foreign allocations inside the Canadian zone were used as bargaining chips in the pursuit of other international or domestic objectives.

The status quo is clearly unacceptable. Committee members believed this to be an opportune time to review the matter of the straddling fish stocks in the Northwest Atlantic, and NAFO's performance in managing them.

Late in our study, the Marine and Environmental Law Programme of Dalhousie Law School, in cooperation with the International Oceans Institute of Canada, was in the process of finalizing a report on possible options for resolving the straddling fish stocks issue. Prepared for the Fisheries Council of Canada and written by Douglas M. Johnston, Aldo Chircop and Hugh R. Williamson, the document is a sequel to a 1990 study for the FCC by the Oceans Institute of Canada.

Our order of reference is to "examine and report from time to time upon matters relating to the straddling stocks and fish habitat." The Committee is aware of the media's recent interest in the concept of artificial reefs as a possible means to help rebuild fish stocks. This subject will be addressed in our upcoming study on fish habitat.

Lastly, the Committee acknowledges the expert assistance it received from: Claude Emery, the Library of Parliament Research Analyst assigned to the Committee; Richard Maurel, our Clerk; and Alana Blouin, his assistant.

Gerald J. Comeau,

Chair of the Standing Senate Committee on Fisheries and Oceans

INTRODUCTION

Whether or not actual species extinction will occur is uncertain, but there is no doubt that “commercial extinction” can and does occur in marine species. – Dr. Art May, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, Brief submitted to the Committee, 25 February 2003

Non-compliance is a problem because it is impeding, according to the (NAFO) Scientific Council, the recovery of some stocks that are of great importance to a number of Contracting Parties and, in particular, Canada. – David Bevan, Director General, Resource Management, DFO and Chair of the Standing Committee on International Control of NAFO, Committee Proceedings, 5 February 2003

How long can they continue to fish and operate with low catch rates and small size fish? I suppose the answer is until such time as the European Union stops the subsidy. – Alastair O’Rielly, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, Committee Proceedings, 25 February 2003

NAFO will not work unless it is modernized. It will never get any better, probably worse in fact, unless a serious and successful effort is made to modernize it. – Dr. Douglas Johnston, Marine and Environmental Programme, Dalhousie University, Committee Proceedings, 29 April 2003

The fact is, unless the Government of Canada decides to take a strong position with these governments that are subsidizing the kind of fishing effort going on, we will get absolutely nowhere. – Gus Etchegary, Fisheries Crisis Alliance, Committee Proceedings, 3 December 2002

Years ago, when I worked for the Department of Fisheries and Oceans, I asked a senior enforcement official if Canada had ever boarded and searched a foreign vessel and found that they had honestly reported their catch. He thought for a minute and said, “No. Not one.” – Dr. George Rose, Professor and Senior Chair of Fisheries Conservation, Memorial University, Committee Proceedings, 6 May 2003

Calling the collapse of Atlantic groundfish this country’s largest single layoff does not begin to describe the visceral nature of the devastation for the fishermen and hundreds of their communities. Tens of thousands of Atlantic Canadians in hundreds of communities still feel the impact. Billions of dollars in public funds were spent on a series of costly adjustment programs in the region. Meanwhile, the population of Newfoundland and Labrador decreased by 8% (or by about 46,000 people) since 1992-1993, with many young people from rural areas having to leave home to seek work elsewhere in Canada. During this period, net interprovincial migration totalled 77,491 persons.⁽¹⁾

⁽¹⁾ Government of Newfoundland and Labrador, Newfoundland and Labrador Statistics Agency, 2001 Census Data and Information, <http://www.nfstats.gov.nf.ca/Statistics/Census2001/Default.asp>.

Some of the many reasons given for the decimation include: voracious seals; overfishing; wasteful practices such as dumping and discarding; changes to the ecosystem (natural and fishing-induced); and environmental factors such as unusually cold water temperature. Theories abound, and the finger of blame is pointed in many directions. Other than saying that “a number of factors” may have worked simultaneously (or in turn) to adversely affect fish growth, reproduction and survival, no consensus exists on why stocks show no sign of recovery despite a decade of heated debate and severe conservation measures.⁽²⁾ In Canadian waters, Atlantic cod and halibut, American plaice, haddock, silver hake, and golden redfish are among dozens of species listed as “high priority candidates” deemed by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) to be at some risk of extinction.

With respect to the “straddling fish stocks” – fish that swim inside and outside Canada’s 200-mile limit, it cannot be denied that the amount of overfishing that took place during the mid-1980s and early 1990s outside Canada’s zone on the outer edges of the Grand Banks exacted a dreadful toll. The destruction in fact began decades earlier when Canada’s exclusive fishing zone was less than 200 miles. For example, in 1968, when the boundary line was nine miles, an incredible 900,000 tonnes of northern cod was fished – 810,000 tonnes of which were taken by foreign vessels. Only vestiges of what was once the Northwest Atlantic’s largest groundfish resource now remain: the total weight of the spawning stock (not the catch) is estimated to be less than 40,000 tonnes. When “mercilessly overfished, fish stocks do become commercially extinct.”⁽³⁾

In our hearings, it was suggested that NAFO is a better organization today than it was a decade ago. While it may be true that NAFO members no longer resort to making wholesale objections to the Total Allowable Catches and conservation measures set, and that the magnitude of the overfishing problem may be less now than in previous years, the difference in behaviour may have more to do with the fact that there are simply too few fish left. In offshore areas, northern cod is so severely depleted that foreign fleets no longer bother to target the legendary stock outside 200

⁽²⁾ At a recent gathering held on 17-26 February 2003 to assess the state of northern, Gulf and eastern Scotian Shelf cod, DFO scientists and fisheries managers, fishing industry representatives, and scientists from Canada, the United States, Iceland and the United Kingdom looked at more than 40 possible reasons. According to DFO, they settled on four likely factors: unusually harsh environmental conditions; poor fish growth and survival; low reproduction rates; and high mortality due to fishing. DFO, “Why the Cod Stocks Haven’t Recovered,” Backgrounder, April 2003, p. 1.

⁽³⁾ Standing Senate Committee on Fisheries, *Report on the Atlantic Commercial Inshore Fishery*, June 1993, p. ii.

miles,⁽⁴⁾ and foreign fishing is probably not a significant factor impeding stock recovery.⁽⁵⁾ If circumstances were different (*i.e.*, if stocks were more plentiful), Committee members are not convinced that NAFO would be better able or more inclined to meet its mandate of “rational management and conservation” of fisheries resources.

From what we heard, NAFO is failing to adequately fulfil its role in the areas of reporting, compliance and enforcement: vessels have fished for bycatches and species under moratoria (*e.g.*, American plaice, cod, and redfish); catches of shrimp have been misreported; juvenile fish have been caught by small mesh gear and liners; some NAFO members have not submitted observer reports on a regular basis; there have been discrepancies between observer reports and dockside inspections; and many NAFO members have not responded to clear incidents of non-compliance. In addition, NAFO is not adequately protecting turbot, the largest remaining straddling groundfish stock in the Northwest Atlantic, when it sets the total catch level in excess of what science recommends. The evidence suggests that for many of its members, NAFO is not much more than a means to gain access to fishery resources – a system for allocating quotas. Some witnesses indicated that most NAFO members do not have a sufficient economic stake in the fishery to invest in the expensive business of high seas fisheries management and conservation.

Canada, for its part, has a disproportionately large economic stake in conserving the straddling fish stocks adjacent to its territory. This explains why Canada has always abided by the conservation measures, and never once invoked NAFO’s Objection Procedure to opt out of a conservation measure or unilaterally set a quota for itself. Canada is also the major financial contributor to NAFO, but wields very little influence within the organization. In fact, it may have even less leverage now than previously because it can no longer offer access to surplus stocks inside the 200-mile limit in return for the cooperation of other NAFO members, as it did in the past. This is because there are virtually no surplus stocks left.

An important economic benefit is being forfeited by NAFO’s inability to bring about a recovery of the stocks under its jurisdiction. The value of the straddling fish stocks to the provincial economy of Newfoundland and Labrador should not be underestimated: if rebuilt to mid-1980s levels (not even historic highs), the amount of additional fish produced (60,000 tonnes) is estimated

(⁴) Mike Samson, Deputy Minister of Fisheries and Aquaculture, Government of Newfoundland and Labrador, *Committee Proceedings*, 25 March 2003.

(⁵) Alastair O’Rielly, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, *Committee Proceedings*, 25 February 2003.

to be enough to sustain, on a year-round basis, six processing plants in Newfoundland and Labrador. One can only speculate about the length of time the rebuilding process will take, but what is more certain is that fishing effort, catch rates, and the small size of fish that are caught by the foreign fleet point to an activity that is not sustainable.

It was brought to our attention that in Europe, the area that accounts for the majority of NAFO-member countries, years of disregard for scientific advice and conservation appear to have resulted in a very depleted resource in the Northeast Atlantic. By the late 1980s, it was obvious that fish stocks were declining; but, because decisions to reduce catches would have been politically difficult, quotas were set at higher levels than recommended by science. Reform was continually put off. In our discussions, the fisheries sector there was described as heavily subsidized and hopelessly overcapitalised – a situation having dire consequences on this side of the Atlantic Ocean. The following quotations illustrate the comments made on this theme:

The reality is that it is very hard to get people's attention when ... the cod stocks in the North Sea are decimated, and the British fishers do not want to see any Spanish fishers in the North Sea. The Spanish have to go somewhere. It is easier to send them to the Grand Banks than to keep them in European waters. These are the realities of the situation. – Dr. Art May, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, *Committee Proceedings*, 25 February 2003

Some might ask: How can the Spanish do it? I do not know whether honourable Senators are aware of this, but the Spanish received a half-a-billion euros from Brussels in 2001 to subsidize their fishing fleet on the Grand Banks of Newfoundland. That is why they are able to continue to fish. ... If you go to a Spanish or Portuguese family restaurant on a Sunday, you will get a plate about this size, and on top are these small American plaice that come from the Grand Banks, about four to six inches. They are small, undersized fish. ... (The Icelanders) have found it difficult to put an Icelandic crew on their vessels, because they cannot get enough fish to pay the crew. What do they do? They flag the vessel in Estonia, Latvia or Lithuania where they are paying \$65 a week salary. It then becomes a different proposition.”– Gus Etchegary, Fisheries Crisis Alliance, *Committee Proceedings*, 3 December 2002

Some people wonder how they do it. They have these expensive boats and catch juvenile fish that cannot be worth very much. How do they afford to do that? Our Canadian fisheries cannot economically fish those stocks. ... Their countries heavily subsidize those fleets. – Dr. George Rose, Professor and Senior Chair of Fisheries Conservation, Memorial University, *Committee Proceedings*, 6 May 2003

If the resource cannot generate enough cash flow to legally keep the fleet solvent, the fleet will try to find a way to increase that cash flow to the point where they can break even or make some money. That might require them to push the envelope. –

David Bevan, Director General, Resource Management, DFO and Chair of the Standing Committee on International Control of NAFO, *Committee Proceedings*, 5 February 2003

In effect, it may be said that Europe has been “exporting” its problem of excessive fishing capacity to the Nose and Tail of the Grand Banks.

Last year, the European Commission suspended fishing for cod in certain areas of the North Sea to halt species depletion. In the Northeast Atlantic, 40 of 60 commercial stocks are believed to be heavily overfished. Witnesses stressed that while the EU had been engaged in a review of its Common Fisheries Policy (CFP), changing the status quo would likely meet opposition from countries with large, vocal and politically powerful fishing industries such as Spain, Portugal, France, Italy, and Greece – an unofficial lobby known as “les Amis de la Pêche,” or “the Friends of Fishing.” Others mentioned that some governments in Europe had announced programs to modernize and construct new distant water vessels.

In June 2002, after meeting his counterparts in Spain and Portugal and the Fisheries Commissioner of the EU, the Minister of Fisheries and Oceans reported that the EU was “prepared to use tough measures to bring fishing capacity in line with available resources,” and that even though there was some resistance to the reform proposals, there was “recognition that significant structural changes, including major reductions in fleet capacity,” were required.⁽⁶⁾ However, since then, the situation in Europe is far from clear. A number of questions may be raised. Will changes to the EU Common Fisheries Policy lead to structural changes to Europe’s distant water fishing fleet? Will resource depletion in European waters lead to increased fishing activity in the Northwest Atlantic? As NAFO-member countries line up for membership in the EU, will they bow to the preferences of the Union? Will newer members of the EU share Canada’s conservation concerns? Will the EU finally ratify the 1995 United Nations Fish Stocks Agreement?⁽⁷⁾

⁽⁶⁾ DFO, “Thibault Presses European Ministers to Address Overfishing,” News Release, 27 June 2002.

⁽⁷⁾ Under the Treaty of Accession to the Economic Community, the Iberian fleet was prevented access to certain European fisheries (*e.g.*, in the North Sea, the waters off Ireland and the United Kingdom) until 1 January 2003. When Spain joined the European Community in 1986, it had by far the largest fishing fleet within Europe, and one of the largest in the world.

THE NORTHWEST ATLANTIC FISHERIES ORGANIZATION

A. ICNAF: NAFO's Predecessor

By 1965 there were over 600 trawlers and factory vessels with 45,000 fishermen fishing off our coastline. The cumulative catch year after year (reported, non-reported, bycatch and discards) was huge and thus began the destruction of one of the world's great sources of protein. – Gus Etchegary, Fisheries Crisis Alliance, "Notes for Presentation to the Senate Fisheries Committee," 3 December 2002

Canadians have felt the effects of high seas and distant water fleets fishing extensively off our coasts since the 1950s. ... The Grand Bank was essentially rediscovered, and a virtual armada of vessels from around the world came to take advantage of the fish stocks there. – Earl Wiseman, Director General, International Affairs Directorate, Fisheries Management, DFO, Committee Proceedings, 13 May 1999

ICNAF was incapable of preventing rapid expansion in the offshore fisheries and rapid decline in the stocks. – Dr. Art May, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, Brief submitted to the Committee, 25 February 2003

Unlike the Pacific Coast, the width of continental shelf on the Atlantic Coast is a dominant physical feature of the region's marine zone (Map 1). Historically, the region yields much of the commercial fish harvest in North America because this area of shallow water is typically higher in nutrients, and fish habitat is more productive than in deep ocean.

Producing seafood is Canada's oldest industry. It was the cod fishery that drew the first Europeans – Portuguese, French, Spanish, Basque and English fishermen – to eastern Canada. Before Columbus "officially" discovered the continent, fishermen are believed to have come ashore regularly, building stages on which to dry and salt their catches for transport across the ocean. The fishery later figured prominently in the colonization of the Atlantic region, and for generations was the sole reason for the existence of many coastal communities. Even when settlers arrived for other reasons, many of them soon turned to fishing in conjunction with their other occupations.

At the turn of the 20th century, most maritime states had proclaimed territorial seas of three miles – a distance based on the range a cannon could fire. After World War II, a number of countries converted their shipyards from constructing naval ships to building fishing vessels of all sizes. Major changes in technology also occurred when large trawlers began fishing the dense overwintering and spawning aggregations of fish in offshore waters. The Grand Banks became an international fishing ground as fishermen from more than two dozen countries came in search of fish. The cumulative catch was huge: by 1968, total catches were about 2½ times the level of the

1950s. That year, an incredible 900,000 tonnes of northern cod was fished – 810,000 tonnes of which were caught by foreign fleets.⁽⁸⁾ For the century prior to 1960, catches had generally been less than 300,000 tonnes. Between 1962 and 1977, the stock's spawning biomass plummeted from 1.6 million tonnes to 100,000 tonnes (Graph 1).

Graph 1: Northern Cod Spawning Biomass, 1962-1992*
Age 7 & Over



Source: Fisheries Crisis Alliance, 3 December 2002.

* The Task Group on Newfoundland Inshore Fisheries (the Alverson Task Force) was formed in November 1987 to provide an independent analysis of the factors contributing to the decline of the inshore fisheries.

The first attempt to bring some order to the offshore fishery on the Canadian continental shelf came with the establishment of the International Commission for the Northwest Atlantic Fisheries (ICNAF) in 1949. Eleven fishing nations signed the ICNAF Convention that year; by 1979, when ICNAF was dissolved, its membership had grown to 18 members. ICNAF's functions involved both research and conservation, each member state had one vote, and decisions were taken by a two-thirds majority. Panels established on the basis of sub-areas within the ICNAF area were given the responsibility of monitoring the groundfish fishery by collecting catch and scientific data, and making recommendations to the Commission. However, it soon became apparent that regulatory controls and enforcement measures were not effective in curbing over-exploitation. Beginning in the 1950s, the fishery became less economically viable year by year.

In the early 1960s, ICNAF's management controls included minimum mesh sizes in order to limit the capture of small fish. It was not until 1970 that ICNAF began to implement the concept of an annual Total Allowable Catch (TAC) for certain stocks. In 1971, the Convention was amended to permit the assignment of a quota to individual member countries. By 1974, ICNAF was applying

⁽⁸⁾ Mike Samson, Deputy Minister of Fisheries and Aquaculture, Government of Newfoundland and Labrador, *Committee Proceedings*, 25 March 2003.

closed areas and closed seasons, gear and vessel size restrictions, and minimum fish size limits throughout the Convention Area. These measures, however, proved insufficient in the face of the massive overfishing during the 1960s and 1970s, which can be compared to the clear-cutting of a forest. ICNAF failed to conserve the resource, for a number of reasons. The catch statistics reported were often incomplete, particularly with respect to incidental catches and discards. The collection of biological data was inadequate, and scientific advice was based on the status of a given stock two years earlier than the year in which the TAC was being applied, though fish populations had declined further in the meantime. Moreover, there was no collective will to conserve the resource and only voluntary compliance with the rules set. Countries that lodged a formal objection were, under a 1964 Protocol to the Convention, free to disregard the conservation measures adopted by the Commission.⁽⁹⁾

The situation reached a low point in the mid-1970s, when severe resource declines threatened the survival of the Canadian groundfish industry. At that time, developments at the Third United Nations Conference on the Law of the Sea (UNCLOS III) suggested that an expansion of coastal state jurisdiction over fisheries out to 200 nautical miles⁽¹⁰⁾ was inevitable. Member countries of ICNAF, believing that such an expansion was imminent, and anxious not to be on the wrong side of Canada when bilateral discussions began for access to surplus stocks within the 200-mile zone, agreed with Canada's proposal of direct controls on the fishing effort (limitations on the number of fishing days) and a more conservative mathematical formula used in setting quotas (the F0.1 level of fishing mortality).

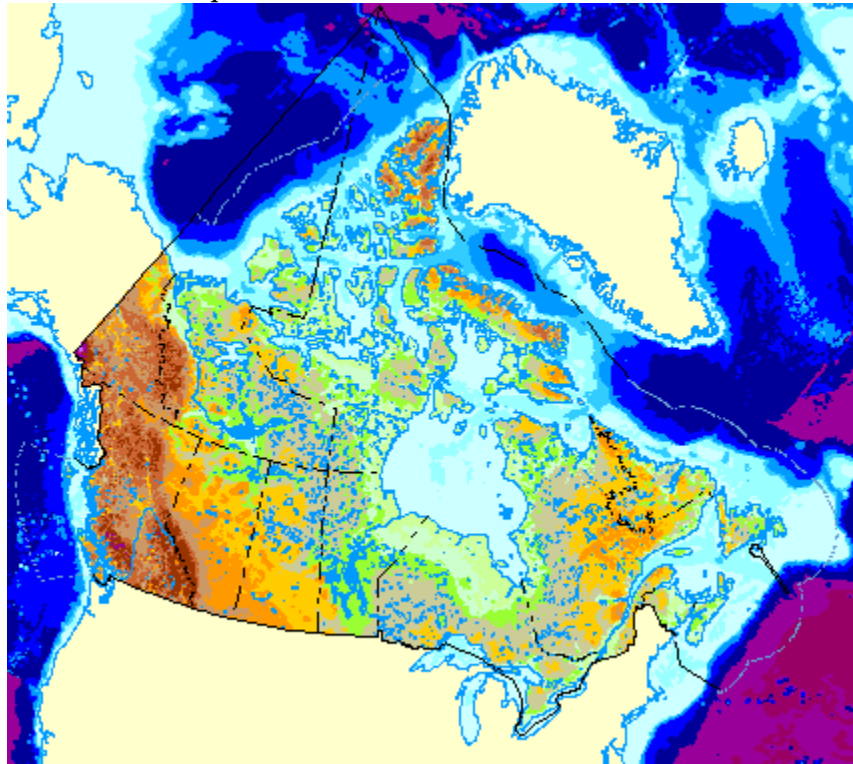
In 1964, Canada passed the *Territorial Sea and Fisheries Zone Act*, which established a nine-mile fishing zone outside what was then a three-nautical-mile territorial sea. Under pressure from the Canadian fishing industry and provincial governments on the East Coast, Canada extended its territorial sea to 12 miles in 1970. The Gulf of St. Lawrence and Bay of Fundy area was declared to be within Canada's exclusive jurisdiction in 1971. ICNAF was dissolved following Canada's unilateral declaration of a 200-mile exclusive fishing zone from the previous 12 miles, in 1977. This was expected to improve the management of fish stocks and displace the distant water fleet by additional Canadian fishing effort. A wave of optimism swept the Canadian industry, which hoped to benefit from a

⁽⁹⁾ Oceans Institute of Canada, *Managing Fishery Resources Beyond 200 Miles: Canada's Options to Protect Northwest Atlantic Straddling Stocks*, Report prepared for the Fisheries Council of Canada, January 2000.

⁽¹⁰⁾ "Nautical miles" are slightly longer than regular miles. References to "miles" in this document are to be taken as nautical miles.

vastly increased share of a properly managed stock. In the wake of the extension of the 200-mile limit, landings in Newfoundland and Labrador reportedly doubled for the period between 1974 and 1979. While the foreign effort declined, it persisted nonetheless in the outer regions of the continental shelf just outside the 200-mile boundary line.

Map 1 – Outline of Canada’s Continental Shelf



Source: Government of Canada, *The Atlas of Canada*,
<http://atlas.gc.ca/site/english/maps/reference/national/reliefinteractive>.

B. NAFO and the Straddling Fish Stocks

The problem outside 200 miles is well defined and does not need more science to be defined more precisely. – Dr. Art May, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, Committee Proceedings, 25 February 2003

The problem we are facing in outside 200 ... is primarily an enforcement issue and having the regulatory and jurisdictional authority to deal with it. – Alastair O’Rielly, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, Committee Proceedings, 25 February 2003

The literature on these organizations is quite clear and unambiguous. They are decentralized to a fault. – Dr. Douglas Johnston, Marine and Environmental Programme, Dalhousie University, Committee Proceedings, 29 April 2003

NAFO tries to operate by consensus. We try to find resolutions, set TACs and set sharing arrangements that represent the consensus around the table. In the absence of consensus, we revert to voting, and then it is simply majority rule. – Patrick Chamut, Assistant Deputy Minister, Fisheries Management, DFO, Committee Proceedings, 26 November 2002

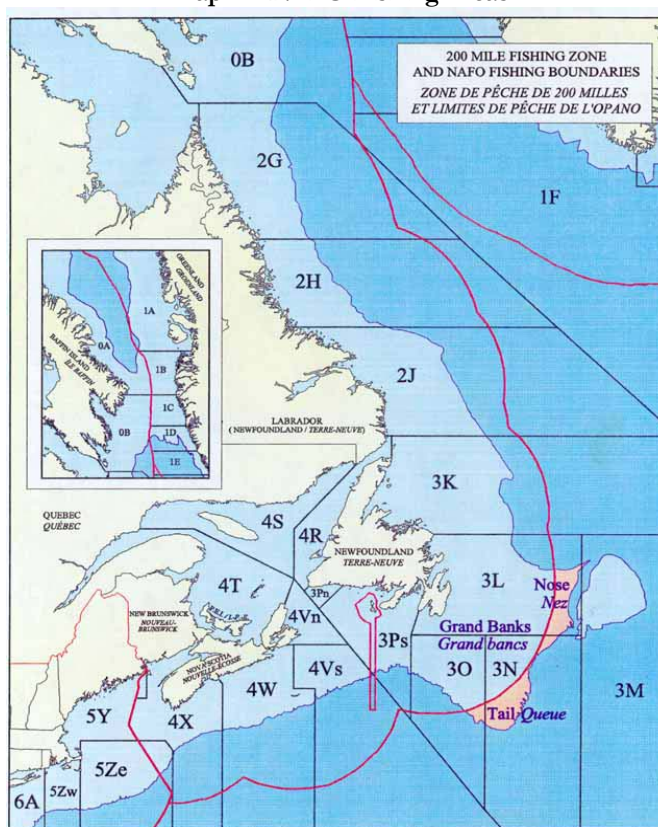
Can (the NAFO Convention) be amended? Yes, it is legally possible to do so. Whether on a practical level it is possible to do so, there is often reluctance among Contracting Parties to undertake an exercise that can take a fair amount of time and effort of that degree. – Allison Saunders, Oceans Law Section, DFO, Committee Proceedings, 11 December 2002

When Canada unilaterally extended jurisdiction over fisheries in 1977 and created a 200-mile exclusive fishing zone, three areas of the Atlantic Continental Shelf remained largely beyond Canadian control: the northeastern portion of the Grand Banks (NAFO division 3L or the “Nose of the Bank”), the southeastern portion (division 3NO or the “Tail of the Bank”), and the outcropping of the shelf east of the Bank (division 3M or the “Flemish Cap”). (The waters off Canada’s East Coast are divided into a set of zones defined by an alphanumeric code – see Map 2.) Approximately 10% of the shelf lies beyond Canadian jurisdiction.

Several species and stocks of groundfish are found inside and outside the 200-mile limit or cross it during their seasonal migrations. When outside, the so-called “straddling fish stocks” are subject to harvest by foreign vessels. Over the years, Canadian fishers have faced more restrictive conservation-oriented measures (e.g., minimum fish sizes, mesh sizes) inside the Canadian zone when compared to those outside the zone. Excessive fishing of the straddling fish stocks outside the 200 miles undermines Canadian conservation measures inside Canada’s zone.

As the successor of ICNAF, since 1 January 1979, the Northwest Atlantic Fisheries Organization (NAFO) has been the regulatory agency responsible for fisheries conservation and management of most stocks beyond Canada’s Atlantic 200-mile limit. The membership of NAFO was initially 13, and there are now 17 “Contracting Parties” (Table 1); the EU, with 15 countries, is recognized as a single entity in the NAFO Convention. The “Convention Area” coincides with the former ICNAF Area, and includes waters falling under the jurisdiction of Canada, Denmark (Greenland), France (St. Pierre and Miquelon) and the United States. The “Regulatory Area,” however, includes only that part of the Convention Area that lies beyond 200 miles.

Map 2 – NAFO Fishing Areas



Source: DFO.

Table 1: The NAFO Contracting Parties and the Date When They Became Members

Bulgaria	6 June 1979
Canada	30 November 1978
Cuba	22 December 1978
Denmark (Faroe Islands and Greenland)	30 May 1979
Estonia	31 August 1992
European Union (EU)	28 December 1978
France (Saint Pierre et Miquelon)	14 August 1996
Iceland	29 December 1978
Japan	4 January 1980
Republic of Korea	21 December 1993
Latvia	28 August 1992
Lithuania	18 August 1992
Norway	28 December 1978
Poland	6 November 1979
Russian Federation	27 December 1978 (as USSR) 1 January 1992 (as Russia)
Ukraine	30 August 1999
United States of America	29 November 1995

Source: DFO, http://www.ncr.dfo.ca/intfish-intpeche/fact-info/fact-info1_e.htm; David Bevan, Chair of the Standing Committee on International Control of NAFO, *Committee Proceedings*, 5 February 2003.

NAFO was created “to contribute through consultation and cooperation to the optimum utilization, rational management and conservation of the fishery resources” of the Northwest Atlantic Ocean. NAFO headquarters are located in Dartmouth, Nova Scotia.⁽¹¹⁾

The General Council, whose Chairman is president of the Organization, supervises internal administrative and financial affairs, and coordinates external relations. The Scientific Council provides a forum for consultation and cooperation with respect to the study, appraisal and exchange of scientific information, promotes scientific research, supervises the compilation and maintenance of statistics and records, publishes and disseminates reports, and provides scientific advice. A Secretariat provides the services necessary to the exercise of the duties and functions of the Organization, such as receiving information from vessels in the NAFO Regulatory Area and providing that information to the Contracting Parties. The Fisheries Commission, which meets once a year in September, is the fisheries management body in NAFO. Its functions include:

- Reviewing information and scientific data received from the Scientific Council;
- Establishing agreed Total Allowable Catches and quota allocations to Contracting parties;
- Establishing conservation measures (*e.g.*, minimum mesh and fish sizes, bycatch rules, the marking of boats and gears, reporting requirements);
- Implementing a Scheme of Joint International Inspection and Surveillance (*i.e.*, conducts surveillance, coordinates inspections, monitoring and control measures including observers, satellite tracking devices, and dockside inspections); and
- Enforcing compliance against non-Contracting party vessels.

Both the Scientific Council and the Fisheries Commission also have a number of Standing Committees. One of these is the Standing Committee on International Control (STACTIC). Established by the Commission to deal with matters of control and enforcement, STACTIC: reviews the results of national and international control measures; reviews reports of inspections and violations; promotes exchanges and cooperative efforts of inspectors in international inspection; and reports to the Fisheries Commission. On behalf of the Fisheries Commission, STACTIC administers the Scheme for Joint International Inspection and Surveillance, which forms the basis of third-party inspections at sea. In addition, STACTIC has working groups dealing with specific

⁽¹¹⁾ NAFO’s structure and programs can be viewed at <http://www.nafo.ca/>.

issues (*e.g.*, the Working Group on the Pilot Project on Observers, Satellite Tracking and Electronic Reporting). The majority of NAFO Contracting Parties were said to participate in STACTIC.

Decisions are taken by majority vote, with each Commission member having one vote. In NAFO, there are no binding dispute settlement procedures, and consensus decision-making is the norm. Unlike other regional fisheries management organizations, NAFO has an international regime for boarding and inspection of fishing vessels outside the 200-mile limit. Both Canada and the EU carry out inspections. Observers are also required to be on all boats, and satellite monitoring systems track the location and performance of the various vessels. According to DFO:

- Canada boards and inspects an average of 160 foreign vessels each year in international waters;
- Canada conducts 350 annual inspections of foreign boats at Canadian ports (which must be equipped with a satellite monitoring device);
- Vessels must call in their location every six hours to NAFO headquarters, which in turn forwards this information to DFO.⁽¹²⁾

The straddling fish stocks within the Regulatory Area and for which Total Allowable Catches and national allocations are established by NAFO include cod (3NO), redfish (3LN+1F), American plaice (3LNO), yellowtail flounder (3LNO), witch flounder (3NO), capelin (3NO), turbot (also known as Greenland halibut; 3LMNO), shrimp (3L), and squid (3+4) (Table 2). NAFO also manages so-called “discrete stocks” of cod, redfish, shrimp and American plaice on the Flemish Cap (3M) that do not straddle the 200-mile limit. Of the six straddling groundfish stocks managed by NAFO, four are under moratoria, including 3NO cod – a stock having the fastest growth rate of any cod stock in the Northwest Atlantic. The straddling fish stocks that have been of importance to Canada are: American plaice (3LNO), witch flounder (3NO), yellowtail flounder (3LNO), cod (3NO), redfish (3LN), and turbot (3LMNO). The Regulatory Area covers approximately 30,000 square miles.

National quotas are based mainly on historical fishing patterns, with most of the allocations being held by Canada and countries of the EU. Canada paid about 43% (or \$521,305) of the cost of NAFO in 2001. At \$212,312, the second-largest contributor was the United States, a country with only a very small share of available quotas. It is up to the individual Contracting Parties to do what

⁽¹²⁾ Robert Thibault, Minister of Fisheries and Oceans, “Preparing for NAFO,” Fact Sheet, http://www.dfo-mpo.gc.ca/intfish-intpeche/fact-info_e.htm.

they wish with their quota allotments. Witnesses told us that Canada is the country most involved in scientific research and enforcement.

Because only a fraction of the northern cod stock complex (2J3KL) is believed to be usually present outside the 200-mile limit, less than 5% on average throughout the year, Canada manages the entire stock. A moratorium on directed fishing for northern cod outside 200 miles was put in place in 1986. Prior to shutting down the fishery inside the Canadian zone in 1992, the northern cod fishery was the single most important fishery on Canada's East Coast; it represented 46% of total available cod quotas and 21% of all groundfish quotas.⁽¹³⁾ Northern cod spawns during the months of January to April, then migrates from Labrador's Hamilton Inlet Bank to the Nose of the Grand Banks outside the 200-mile boundary, where it can be easily fished by foreign fleets. Foreign fishing was "a significant factor in the demise of the stock."⁽¹⁴⁾ The fish has essentially disappeared from offshore portions of its range, and was recently designated as "endangered" by COSEWIC.⁽¹⁵⁾

Between 1992 and 2000, total catches (reported) of groundfish in the NAFO Regulatory Area declined from 153,365 tonnes to 91,315 tonnes – a downward trend that is expected to continue. In 2000, about half of the total reported groundfish catch (or 46,282 tonnes) was comprised of unregulated species (*e.g.*, skate, hake, and grenadier) for which NAFO does not set TAC or compliance rules, but which nonetheless make a large contribution to vessel earnings. Catches of (3LM) shrimp rose from about 30,000 tonnes in 1993 to 54,700 tonnes in 2000.

Table 2: NAFO Regulated Stocks, 2003

Straddling fish stocks (TAC in tonnes)	Discrete fish stocks (TAC in tonnes)
3NO cod (0)	3M cod (0)
3LN redfish and SA 2 and 1F and 3K redfish (7,500)	3M redfish (5,000)
3LNO American plaice (0)	3M American plaice (0)
3LNO yellowtail flounder (14,500)	3M shrimp (effort regulation since 1997)
3NO Witch flounder (0)	
3NO capelin (0)	
3LMNO Greenland halibut/turbot (42,000)	
3+4 squid (34,000)	
3L shrimp (13,000)	

Source: NAFO, STACTIC Committee, Brief submitted to the Standing Senate Committee on Fisheries and Oceans, 5 February 2003.

⁽¹³⁾ DFO, "Northern Cod," Background, February 1992.

⁽¹⁴⁾ Alastair O'Rielly, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, *Committee Proceedings*, 25 February 2003.

⁽¹⁵⁾ According to COSEWIC status category definitions.

C. NAFO and Abuse of the Objection Procedure in the Mid-1980s to Early 1990s

The Objection Procedure ... is a loophole big enough to drive a factory trawler through. – Dr. Alan Beesley, Committee Proceedings, 11 May 1999

The Objection Procedure ... makes a complete farce of the process of the Commission Members accepting the Scientific Committee stock assessment(s) and the subsequent allocation of quotas to Member Nations. – Gus Etchegary, Fisheries Crisis Alliance, Brief submitted to the Committee, 3 December 2002

For 25 years, the EU has adopted a crass, uncaring, environmentally devastating policy in respect of the area outside 200 miles in the Canadian Atlantic. – Dr. Art May, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, Committee Proceedings, 25 February 2003

With no additional allocations available in its own overfished waters, and limited prospects elsewhere, the EU began pressing for a more liberal management scheme and substantially higher quotas in the NAFO regulatory area, under pressure from Spain and Portugal, their governments and their fishery industries. – Dr. Donald Barry, Department of Political Science, University of Calgary, Committee Proceedings, 11 May 1999

My view is that incremental adjustments in the way in which NAFO operates will not be sufficient. – Dr. Douglas Johnston, Marine and Environmental Programme, Dalhousie University, Committee Proceedings, 29 April 2003

By most accounts, NAFO worked smoothly until the impending entry of Spain and Portugal into the European Economic Community (now the EU, and hereafter referred to as such). Management and conservation efforts directed at stocks outside the 200-mile limit initially produced positive results, and, while there were occasional disputes, these were usually settled amicably as part of the established NAFO framework. In fact, until the September 1985 NAFO Annual Meeting, the EU had agreed to all NAFO decisions on TACs and quotas. Objections by other Contracting Parties were also infrequent. This changed radically in 1985, when the EU argued for the first time that TACs should be set well above previous levels. The EU bowed to pressure to find fishing grounds outside its own waters for Spain and Portugal because expansion in 1986 created new pressures on existing fisheries arrangements as a result of the following factors: a doubling of the total number of EU fishermen; a 75% increase in overall fishing capacity; a 45% rise in production for human consumption; and a similar increase in fish consumption in the enlarged Community.

Until the late 1980s, Spain's traditional cod fleet had fished in the region. Thereafter, the Spanish factory freezer trawler fleet arrived in the NAFO Regulatory Area after having been expelled from the waters off Namibia. During this period, the EU argued that NAFO measures were

unnecessarily conservative and ignored its socio-economic problems. At the 1988 Annual Meeting of NAFO, for example, the head of the European delegation criticized the Canadian DFO for “creating a heaven for fish and a hell for European fishing populations.”⁽¹⁶⁾ By the early 1990s, the European fleet was primarily comprised of Spanish and Portuguese vessels.

During the 1980s, the EU proposed that TACs be based on F_{max} , the level of fishing mortality that corresponds to the Maximum Sustainable Yield (MSY) and that had failed to protect stocks in the Northwest Atlantic during the first few years of ICNAF’s existence, rather than the more conservation-oriented $F_{0.1}$ adopted by NAFO and Canada. Canada defended its stand on maintaining the $F_{0.1}$ strategy, listing the following advantages: higher and more stable catch rates; a larger number of spawners; and the fact that generally larger fish allow higher-value products and lower processing costs. However, beginning in 1986, the EU, which did not get any support for its position from other NAFO members, launched wholesale objections to most NAFO decisions, thus opting out of those decisions.

Under the NAFO Convention’s “Objection Procedure” (a carryover from the ICNAF Convention), proposals adopted by the Fisheries Commission are transmitted to all Contracting Parties and become binding measures on all who do not file an objection (Article XII). Any Commission member that presents an objection to a proposal (*e.g.*, a quota) within 60 days of the date of the transmittal specified in the notification of the proposal is not bound by the measure. There is no limitation on the number of objections that can be made or on the type of proposal to which an objection may relate.

Beginning in 1986, the EU systematically set its quotas higher than those set for it by NAFO, and many times higher than its traditional shares. Overruns of several hundred per cent were common (Graph 2). In some cases, the EU’s catch exceeded not only its assigned quota, but also the entire NAFO quota. In 1986, for instance, NAFO allocated 14,750 tonnes of 3NO cod to members of the EU. After filing an objection and setting a 26,400-tonne autonomous quota, the Community proceeded to catch 30,470 tonnes (the reported catch). Similarly, in 1986, the EU objected to its quota of zero for 3LN redfish, and then caught 23,388 tonnes. Between 1985 and 1992, some 53 objections were reportedly lodged.⁽¹⁷⁾ Between 1984 and 1990, with total cumulative

⁽¹⁶⁾ Karl M. Sullivan, “Conflict in Management of a Northwest Atlantic Transboundary Cod Stock,” *Marine Policy*, April 1989, p. 126.

⁽¹⁷⁾ Dr. Alan Beesley, *Committee Proceedings*, 6 May 1999.

quotas of 214,000 tonnes, the EU reported cumulative groundfish catches of 836,000 tonnes, while Canadian estimates put the actual catch at closer to 911,100 tonnes.⁽¹⁸⁾

European catches of Canadian-managed northern cod greatly contributed to that stock's decimation. Between 1980 and 1986, close to a million tonnes of the fish were pulled from the waters outside 200 miles.⁽¹⁹⁾ In 1986, when a NAFO moratorium was placed on fishing the stock outside Canada's 200-mile limit, the EU argued that, as a sovereign body, it was entitled to fish in international waters in accordance with the LOS Convention; that a moratorium for northern cod (in 3L, on the Nose of the Grand Banks) could not be justified since a fishery on the same stock was being conducted inside the Canadian zone; and that Community vessels had fished in the area for hundreds of years. Between 1986 and 1991, despite being allocated a zero quota of northern cod, the EU opted out and set unilateral quotas at levels far excess of what its fleet could even catch. Only when the stock collapsed did the EU respect for the first time, in September 1992, a ban for 1993 on fishing outside 200 miles. Ten years later, the biomass (the total weight of the stock) is only a tiny fraction what it was historically.⁽²⁰⁾

In 1988, the NAFO General Council adopted a resolution calling on all Contracting Parties to avoid excessive or inappropriate use of the Objection Procedure. In 1989, the Council adopted another resolution calling on all Contracting Parties to comply with the NAFO management framework and its conservation decisions and maintain the traditional spirit of cooperation and mutual understanding in the organization. With the exception of the EU, all NAFO members voted in favour of both resolutions, but they had little effect.

In the late 1980s, the Canadian government took a number of measures to try to deal with the overfishing problem. In NAFO, Canada tried to amend the organization's Objection Procedure and improve its weak enforcement capability, but without much success. In 1989, a three-pronged strategy aimed at persuading the EU to take a more cooperative approach was launched. The approach consisted of: diplomatic overtures to the EU and its member states; a public-relations campaign aimed at the European public; and a legal initiative designed to fill the gaps in the LOS

⁽¹⁸⁾ Robert Thibault, Minister of Fisheries and Oceans, "Preparing for NAFO," Fact Sheet, http://www.dfo-mpo.gc.ca/intfish-intpeche/fact-info_e.htm.

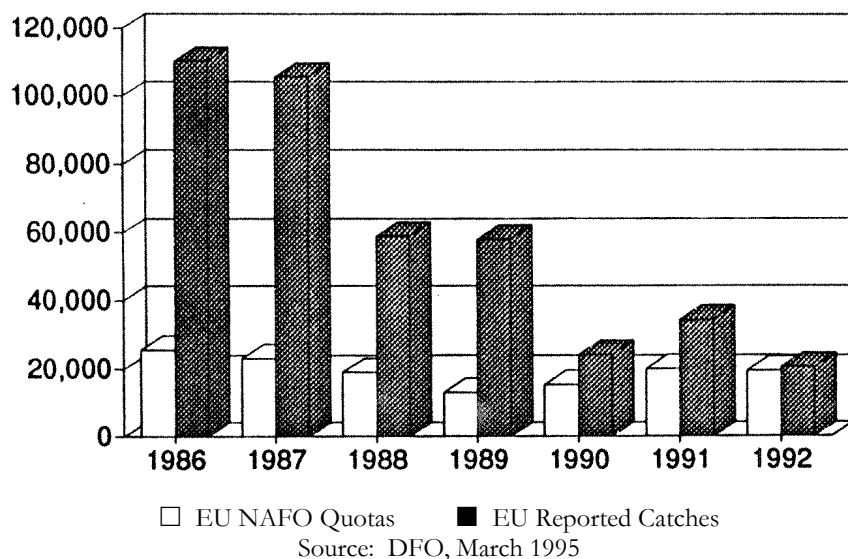
⁽¹⁹⁾ Gus Etchegary, Fisheries Crisis Alliance, Personal communication, 4 March 2003.

⁽²⁰⁾ Fisheries Resource Conservation Council, *2003/2004 Conservation Requirements for 2J3KL Cod Stocks*, Report to the Minister of Fisheries and Oceans, March 2003.

Convention. The legal initiative had little immediate effect, but did eventually lead to the 1995 United Nations Fish Stocks Agreement.

By 1992, it had become obvious to all NAFO members that stocks were being seriously depleted. At the NAFO annual meeting in September, they decided to reduce TACs and quotas, which did not meet with any EU objections. Further reductions and moratoria were agreed to in 1993, and at a special meeting held in February 1994. That year, in June, Canada's Fisheries Resource Conservation Council and the NAFO Scientific Council voiced their grave concerns about the state of the stocks. In addition to unsustainable catch rates, there was evidence that vessels were seriously misreporting their catches. Between 1992 and 1994, at-sea boardings by Canadian fishery officers acting in their roles as NAFO inspectors detected 133 violations.⁽²¹⁾ In 1994, 49 citations were issued by Canada to EU vessels, compared to 26 in the previous year.⁽²²⁾

Graph 2: Overfishing by the EU, 1986-1992



Another major Canadian concern during this period was a large increase in unregulated fishing by non-NAFO and flag-of-convenience vessels, many of which were believed at the time to be owned and operated by interests in Portugal and Spain. From 1986 to 1990, non-NAFO vessels operating without quotas were estimated to have caught more than 165,000 tonnes of cod, flounder

⁽²¹⁾ Robert Thibault, Minister of Fisheries and Oceans, "Preparing for NAFO," Fact Sheet, http://www.dfo-mpo.gc.ca/intfish-intpeche/fact-info_e.htm.

⁽²²⁾ International Court of Justice, *Fisheries Jurisdiction Case (Spain v. Canada)*, Counter-Memorial of Canada (Jurisdiction), February 1996, http://www.icj-cij.org/icjwww/idocket/iec/iecpleadings/P248_47120.

and redfish. By 1991, the catch was estimated to be about 47,300 tonnes. Catch and effort data are difficult to obtain because these vessels were not required to report their catch to NAFO.

By 1995, turbot had become the only commercially viable straddling stock of significant size in the Northwest Atlantic.

D. NAFO and the Canada-EU Dispute Over Turbot in 1995

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." – Brian Tobin, quoted in Clyde H. Farnsworth, "When They Talk About Fish, the Mellow Canadians Bellon," The New York Times, 31 March 1995, p. A11

Was my line a little over the top? Perhaps. But we had set out to protect the dwindling fish stocks on the Grand Banks for future generations, and we were called pirates, hooligans and liars for doing so. We had to get the message across powerfully, and displaying the net at that time and in that fashion did the job. – Brian Tobin, All In Good Time, Penguin Books, 2002, p. 132

(The) Minister of Fisheries and Oceans, today said that the Northwest Atlantic Fisheries Organization (NAFO) has adopted "the toughest set of control and enforcement measures of any fisheries management organization in the world." – DFO, "Tobin Welcomes Tough Fisheries Enforcement Measures," News Release, 15 September 1995

Subsequent to 1995, things did change and improve considerably (in the) relationship between the Scientific Council and the Fisheries Commission. – David Bevan, Director General, Resource Management, DFO, and Chair of the Standing Committee on International Control of NAFO, Committee Proceedings, 5 February 2003

On 10 May 1994, Canada's Parliament passed Bill C-29, which amended the *Coastal Fisheries Protection Act* (CFPA) to provide the Canadian government with the legal authority to make regulations for the conservation of the straddling fish stocks both within the 200-mile limit and in the adjacent "high seas" beyond 200 miles. The legislation and its regulations provided for the use of force, if necessary, to arrest vessels that were violating NAFO conservation measures.

The late Senator William Petten, who sponsored Bill C-29 in the Senate, indicated that the government's intention was to use the legislation sparingly, with the first target being stateless vessels in the NAFO Regulatory Area.⁽²³⁾ When the bill was introduced, the federal government

⁽²³⁾ In October 2000, the Premier of Newfoundland and Labrador officially named the province's Fisheries and Aquaculture building in St. John's after the late Senator William J. Petten, a former Deputy Chair of the Senate Fisheries Committee, who had been instrumental in the passing of Bill C-29. Government of Newfoundland and Labrador, "Provincial Fisheries Building Named After the Late Senator Petten," News Release, 6 October 2000.

exempted the measure from the jurisdiction of the International Court of Justice (ICJ) in The Hague.⁽²⁴⁾ Initially, regulations targeted flag-of-convenience and stateless vessels, a major problem at the time. After the departure of those vessels, Canada turned its attention to other categories of boats, including those flying the colours of countries belonging to the EU. Matters came to a head in September 1994 when Canada proposed that NAFO manage turbot (also known as Greenland halibut) – the largest remaining straddling groundfish stock in the region and one that Spanish vessels were increasingly targeting because of the rapid decline in other fisheries. Spain's catches had soared from 13 tonnes in 1989 to over 40,000 tonnes by 1994. In contrast, the Canadian catch (within the 200-mile limit) had steadily dropped over the late 1980s and early 1990s because of more stringent fishery conservation and management measures in the Canadian fishery.

In February 1995, NAFO allocated 16,300 tonnes of turbot to Canada (or 60.37% of the 27,000-tonne TAC), an amount that reflected Canada's traditional share of the stock. The EU received 3,400 tonnes (12.58%), with the remainder being divided mainly between Russia and Japan. Unhappy with its allocation, Europe's Fisheries Council agreed to invoke NAFO's objection procedure and set, on 1 March 1995, an autonomous quota of 18,630 tonnes. This quota represented 69% of the TAC, or six times the amount of fish allotted by NAFO. Soon after, on 3 March, Canada's regulations were amended to make Spanish and Portuguese vessels subject to the *Coastal Fisheries Protection Act*.

The final straw for Canada was the EU's rejection of Prime Minister Chrétien's proposal for a 60-day moratorium on fishing. On 9 March 1995, Canadian authorities boarded and seized the Spanish fishing vessel *Estai*, which had been fishing outside the 200-mile limit. The arrest sparked what has since become known as the "turbot war" – the worst diplomatic dispute in the history of Canada-EU relations. On 26 March, the warps of the Spanish fishing vessel *Pescamaro Uno* were cut by the Canadian Coast Guard after the Spanish fleet refused to withdraw from the NAFO Regulatory Area while bilateral negotiations on fish quotas were being conducted by Spain and Canada.

Shortly after the *Estai's* seizure, Canada and the EU agreed to settle the dispute by adopting new control and enforcement measures in the NAFO Regulatory Area. The April 1995 Canada-EU

⁽²⁴⁾ Canada's reservation was narrow and pertained only to actions that Canada would take in the NAFO Regulatory Area. The ICJ subsequently decided it did not have jurisdiction to try a case brought before it by Spain on 28 March 1995. Earl Wiseman, Director General, International Affairs Directorate, Fisheries Management, DFO, *Committee Proceedings*, 13 May 1999.

Control and Enforcement Agreement provided for: independent, full-time observers on board vessels at all times; satellite tracking; verification of gear and catch records; penalties to deter violations; new minimum fish size limits; and improved dockside monitoring. Under the Agreement, the EU was allowed to catch 5,013 tonnes of turbot until the end of the year. On 1 May, Spain and Portugal were removed from Canada's list of states whose vessels were subject to the provisions of the *CFPA*. At its annual meeting in September, NAFO adopted new fisheries control measures based on the April 1995 Canada-EU Agreement, and turbot quotas were also set in line with the Agreement. As a result, Canada's share of the Total Allowable Catch was reduced from 60% to 37%.

By all accounts, Bill C-29 was purported to be successful in keeping non-NAFO and stateless vessels off the Nose and Tail of the Grand Banks. The number of fishing violations in the Regulatory Area dropped from 25 in 1994 to only one in 1995. Another outcome was the important improvements made to NAFO's operation (*e.g.*, 100% observer coverage of vessels, 100% dockside monitoring, minimum mesh sizes for groundfish, a minimum fish size for turbot). With a few notable exceptions, NAFO's Fisheries Commission more closely followed the advice of its Scientific Council.⁽²⁵⁾ Some witnesses asserted that the turbulent events of 1995 had successfully exposed the gaps in the LOS Convention, and had contributed to the successful conclusion of UNFA a few months later. While most agreed that the 1995 "turbot war" was a good example of Canada taking decisive action on a fisheries matter, one witness qualified his remarks by saying:

The reverberations from that bullet have long since been spent. It no longer has any great value to us. It served a purpose at the time. It definitely caused a reduction in the number of violations and in the fishing effort, but events in the past two or three years have dramatically reverted to what they were for the most part prior to 1995. — Alastair O'Rielly, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, *Committee Proceedings*, 25 February 2003

E. Non-Compliance in NAFO Since 1995

In the post-1995 arrangements with NAFO, we are seeing that overfishing is substantially less. The problem we are currently dealing with is not of the same magnitude as existed in the mid 1980s and early 1990s. — Patrick Chamut, Assistant Deputy Minister, Fisheries Management, DFO, Committee Proceedings, 26 November 2002

⁽²⁵⁾ David Bevan, Chair of the Standing Committee on International Control of NAFO, *Committee Proceedings*, 5 February 2003.

(Compliance) slipped compared to the latter half of the 1990s, but it is better still than it was earlier. – David Bevan, Director General, Resource Management, DFO, and Chair of the Standing Committee on International Control of NAFO, Committee Proceedings, 5 February 2003

There is a great deal of evidence to show that very small turbot are being caught and discarded. As a matter of fact, they have nicknamed the turbot, “postage stamps.” Those turbot are so small that they stick on the deck and the crew have a heck of [a] job picking them off to dispose of them. – Gus Etchegary, Fisheries Crisis Alliance, Committee Proceedings, 3 December 2002

We would like to have a more rigorous regime regarding observers, particularly with respect to the notion that observer reports must be filed on a regular basis. – Robert Hage, Director General, Legal Affairs Bureau, DFO, Committee Proceedings, 11 December 2002

The 1995 Agreement reached between Canada and the EU considerably improved fisheries enforcement in the NAFO Regulatory Area, as seen by a drop in violations from an annual average of about 45 before 1995, to only one in 1995. However, since that time, the trend has been one of increasing non-compliance. In 2001, there were 26 violations. According to DFO, non-compliance with NAFO rules includes:

- directed or intentional fishing for species under moratoria;
- exceeding quotas;
- misreporting catches, by area and species;
- improper use of fishing gear (*e.g.*, mesh sizes);
- fishing in areas closed to fishing;
- failure to maintain independent and impartial fisheries observers; and
- interference with NAFO inspectors, observers or evidence.

In January 2002, at a NAFO meeting in Helsingor, Denmark, Canadian officials detailed Canada’s concerns over non-compliance and the apparent unwillingness of NAFO members to control the activities of their fishing fleets. Canada also submitted proposals to address the problems of excessive bycatches of species under moratoria, misreporting, and exceeding quotas. Some requests were accepted (*e.g.*, increasing mesh size in the directed skate fishery, implementing daily reporting of shrimp catches in 3L); others were rejected (*e.g.*, a restriction on the depth of the turbot fishery, which would have helped ensure that fishing vessels are not using it as an opportunity

to target other species). NAFO agreed to establish a process to review and assess compliance on an annual basis, but also increased the Total Allowable Catch for turbot by 10% above the catch level recommended by the Scientific Council. Committee members were very concerned to hear that some NAFO members had asked for a reduction of observer coverage in the Regulatory Area.

In fisheries, compliance was said to be composed of two things: detection through fisheries observers;⁽²⁶⁾ and deterrence because of the likely consequences of being found to be breaking the rules. On detection, it was explained that NAFO has the means to detect violations; but that since about 1999, the deterrence aspect of having observers on-board fishing vessels had deteriorated. Deterrence is especially problematic because it is up to the flag state (the states in which vessels are registered) to decide whether or not to prosecute and punish a violator – hardly an ironclad process. Indeed, federal officials described the “follow-up” by flag states as ineffective and inadequate. Because deterrence is poor, compliance is by no means assured.⁽²⁷⁾ On this, we learned that: in many cases, observer reports cannot be used as evidence in a court of law because they are made available well after a vessel has landed; there is the idea inherent in the NAFO regime “that one does not visit upon the transgressions of one vessel those same penalties upon all vessels in a fleet”;⁽²⁸⁾ and “the European Union does not use observer data to follow up with legal charges.”⁽²⁹⁾

The foregoing is especially worrisome because of the growth of fishing activity in NAFO’s Regulatory Area. While the level of fishing effort on the outer edges of the Grand Banks dropped from 26,000 fishing days to 6,000 fishing days after 1995, this had grown to 10,000 fishing days by 2001. Foreign vessels harvested approximately 10,000 tonnes of species under NAFO moratoria in 2000. In 2001, the amount was 8,000 tonnes.⁽³⁰⁾

(26) Canada employs Canadian observers, as do some other countries such as Norway. Observers on EU vessels are European nationals who may or may not be nationals of the flag state vessels they are assigned to. The observers monitor fishing operations and the compilation of catch data, and collect biological information. While observers are expected to be independent and objective, we were told that they are sometimes listed as crew members. In addition, observers cannot be expected to be awake “24/7” to view everything that happens on a vessel.

(27) Patrick Chamut, Assistant Deputy Minister, Fisheries Management, DFO, *Committee Proceedings*, 26 November 2002.

(28) Allison Saunders, Oceans Law Section, DFAIT, *Committee Proceedings*, 11 December 2002.

(29) David Bevan, Director General, Resource Management, DFO, and Chair of the Standing Committee on International Control of NAFO, *Committee Proceedings*, 5 February 2003.

(30) Alastair O’Rielly, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, *Committee Proceedings*, 25 February 2003.

F. NAFO's September 2002 Annual Meeting

Did we meet all of our objectives at NAFO? No, we did not. However, the overall outcome met the majority of the objectives we had set for the meeting. – Patrick Chamut, Assistant Deputy Minister, Fisheries Management, DFO, Committee Proceedings, 26 November 2002

There will be a more transparent process. We will be able to bring to the public and to the Fisheries Commission, through the NAFO reports, the compliance performance of the various Contracting Parties ... – David Bevan, Director General, Resource Management, DFO, and Chair of the Standing Committee on International Control of NAFO, Committee Proceedings, 5 February 2003

Given the way that (the turbot) stock is being managed, it probably will not last. It is primarily a fishery on juvenile fish. More is caught every year than is contained in the spawning biomass. The quota is set way above the scientific recommendations, which are likely too high. We have another disaster in the making. Mark my words; we will see the result of that very shortly. – Dr. George Rose, Professor and Senior Chair of Fisheries Conservation, Memorial University, Committee Proceedings, 6 May 2003

At NAFO's 24th annual meeting held in Santiago de Compostela, Spain, in September 2002, Canada sought to make the organization more effective. Canada's position followed consultations with industry representatives and provincial and territorial officials, who were part of the Canadian delegation led by Patrick Chamut, DFO's Assistant Deputy Minister of Fisheries Management. In attendance were representatives of the fish harvesting and processing sectors of Newfoundland and Labrador, Nova Scotia, and Nunavut. Canada's main objectives were to:

- advocate that the Total Allowable Catches be in line with the advice of the NAFO Scientific Council (which was made public in June 2002);
- seek measures to protect and help rebuild stocks under moratoria;
- ensure more effective compliance; and
- seek to maintain effective surveillance, monitoring and deterrence measures.⁽³¹⁾

The Canadian delegation provided an update of the presentation it gave in January 2002 (in Denmark), which showed that there were serious compliance deficiencies in the Regulatory Area. The meeting ended with Canada expressing disappointment over the Total Allowable Catch for turbot, the largest groundfish stock that now remains in the Regulatory Area. This year's fishing

⁽³¹⁾ DFO, "Canada to Focus on Compliance," News Release, 12 September 2002.

level was set at 42,000 tonnes, well above the 36,000-tonne level recommended by NAFO's Scientific Council. In 2002, the quota was 44,000 tonnes, or 10% above the recommended level.

TACs for other NAFO stocks, with the exception of turbot, were consistent with the advice given by the Scientific Council,⁽³²⁾ and moratoria on fishing species requiring protection were maintained for 2003.⁽³³⁾ On a proposal made by Iceland that would have reduced the level of observer coverage, the Commons Fisheries Committee observed in March 2003 that "the majority of NAFO contracting parties do not fully support the 100% observer scheme because of the cost, which many of them would prefer to avoid,"⁽³⁴⁾ and warned there was no guarantee that 100% observer coverage would be maintained beyond 2003.

One positive outcome of NAFO's September 2002 meeting was that the terms of reference of STACTIC were considerably strengthened. The Fisheries Commission asked that Committee to review and evaluate the effectiveness of conservation and enforcement measures in the Regulatory Area, the reports on inspection and surveillance carried out by NAFO Contracting Parties, and the subsequent follow-up by NAFO flag states on infringement reports submitted to them. According to the Chair of STACTIC (Mr. David Bevan, DFO's Director General of Resource Management), the review is comprehensive with a view to making compliance transparent, and would allow NAFO's Fisheries Commission to take corrective action in September 2003. The review is to consider the practical problems of international measures of control, and recommendations are to be submitted to the Fisheries Commission.⁽³⁵⁾ An annual report on compliance for the preceding calendar year will also be produced and submitted in September 2003.

At its June 2003 meeting, STACTIC will be dealing with a number of matters, including: the improvement of technical measures to help deter the use of bycatch limits to justify directed fisheries for stocks currently under moratoria (e.g., a simpler method of calculating bycatches, and a

⁽³²⁾ Yellowtail flounder – a stock believed to be rebuilding – was the only species for which the TAC increased; it went from 13,000 tonnes to 14,500 tonnes, with Canada receiving 97.5% of the allowable catch. The stock had been under moratorium between 1993 and 1996. NAFO also agreed to conduct a stock assessment of 3O redfish in 2003, which could eventually lead to a catch limit for the stock. A new TAC of 7,500 tonnes was set for oceanic redfish. (SA2 and Divisions 1F and 3K).

⁽³³⁾ DFO, "Canada Makes Progress on Compliance Issues at NAFO," News Release, 20 September 2002.

⁽³⁴⁾ House of Commons Standing Committee on Fisheries and Oceans, *Custodial Management Outside Canada's 200-Mile Limit*, March 2003.

⁽³⁵⁾ STACTIC meets annually in the context of the annual NAFO meeting in September, and also usually in June. Working groups of STACTIC include: a Working Group on the Pilot Project on Observers, Satellite Tracking and Electronic Reporting; a Technical Working Group on the Implementation of Facilities for the Pilot Project; and a Working Group on the Overhaul of NAFO Conservation and Enforcement Measures.

better definition of “directed fishing”); and the development of a pilot observer program involving real-time transmission of data on daily catches and vessel location, which would help speed up and improve the effectiveness of inspections. The more timely submission of observer reports would help to increase transparency, allow more meaningful analysis of compliance, and enable better follow-up action by flag states at port, at least in theory.

THE INTERNATIONAL LEGAL FRAMEWORK

The Fisheries Commission and STACTIC can only change the conservation and enforcement measures of NAFO or the procedures for inspection. The actual dealing with non-compliance still rests with the Contracting Party. – David Bevan, Director General, Resource Management, DFO, and Chair of the Standing Committee on International Control of NAFO, Committee Proceedings, 5 February 2003

The only ones who can control vessels outside 200 miles are the countries whose flags are flying on those vessels. The experience on the Nose and Tail of the Grand Banks is that those countries have little or no interest in controlling any activities of their fleets. – Mike Samson, Deputy Minister of Fisheries and Aquaculture, Government of Newfoundland and Labrador, Committee Proceedings, 25 March 2003

NAFO as an international organization does not have any authority over enforcement and compliance of the flag state. – Dr. Douglas Johnston, Marine and Environmental Programme, Dalhousie University, Committee Proceedings, 29 April 2003

If we want to be successful in managing these stocks, we cannot do it alone. We need international cooperation ... – Patrick Chamut, Assistant Deputy Minister, Fisheries Management, DFO, Committee Proceedings, 26 November 2002

The compliance and enforcement problem faced by Canada on the Nose and Tail of the Grand Banks beyond 200 miles is one that has to do with sovereignty in international waters, where the tradition of flag state primacy prevails in international law.

It was explained to us that NAFO allows Canadian fisheries inspectors to board and inspect a vessel suspected of contravening NAFO rules, remain on board until the inspector from the flag state arrives, and stay on board (with the permission of the flag state) until the vessel arrives at dockside for inspection. In some cases, we heard about Canadian inspectors staying on board as vessels made their way back across the Atlantic Ocean to Europe. However, while NAFO may have the means to detect violations, compliance by foreign fleets is by no means assured because enforcement depends entirely on the individual flag state and its courts to take action.

A. The 1982 United Nations Convention on the Law of the Sea (LOS Convention)

The December 1982 Montego Bay signing was one of the proudest moments for Canada in world diplomacy. – Clyde Sanger, author, Committee Proceedings, 11 May 1999

I should like to lay to rest at the outset the mythology ... that asserts that the Law of the Sea Convention somehow did not notice straddling stocks. Believe me, we fought long and hard for very tough provisions. What we got was considered enough, because we thought it would be in everyone's

interest to cooperate to preserve the stocks that everyone needed. – Dr. Alan Beesley, Committee Proceedings, 11 May 1999

I was the scientific adviser to the Canadian delegation to the preparatory committee for the Law of the Sea. Ten years later in 1982, I was privileged to accompany Ambassador Beesley and Minister DeBané to Jamaica to sign the Convention on the Law of the Sea. ... I was the first chairman of the Northwest Atlantic Fisheries Organization. I should be looking back over 30 years with a sense of great pride in the accomplishments that have arisen from all of that. – Dr. Art May, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, Committee Proceedings, 25 February 2003

Under the UN Law of the Sea, ... there is a requirement that states cooperate if they are fishing on straddling stocks. They do not have carte blanche to do whatever they want. – Patrick Chamut, Assistant Deputy Minister, Fisheries Management, DFO, Committee Proceedings, 26 November 2002

After nine years of negotiation, the Third United Nations Conference on the Law of the Sea (UNCLOS III) adopted the text of a LOS Convention in 1982. When the LOS Convention was opened for signature on 10 December 1982, in Montego Bay, Jamaica, a record number of states (119) lined up to sign on. The LOS Convention came into force on 16 November 1994.

Often referred to as “the Constitution of the Oceans,” the LOS Convention consists of 320 articles and nine annexes governing such matters as rights of navigation (civil and naval), the protection of coasts and the marine environment, rights over living and non-living resources, and marine scientific research. The LOS Convention sets out a legal classification system for ocean space and establishes the limits of the various maritime zones (the 12-mile territorial sea, the 200-mile exclusive economic zone (EEZ), and the outer edge of the continental margin).⁽³⁶⁾ In addition, it establishes a regime for mining the deep seabed beyond the limits of national jurisdiction. Some of its provisions, including the 200-mile EEZ, are considered customary international law and binding even on states that have not ratified the LOS Convention, including Canada. The LOS Convention has 142 parties and applies to 70% of the earth’s surface.

Canada’s role in negotiating the LOS Convention has been described as “the greatest diplomatic achievement of Canada since Lester Pearson’s diplomacy in the Middle East in 1956 and 1957.”⁽³⁷⁾ Dr. Alan Beesley – a renowned Canadian diplomat, lawyer and expert in international law – not only headed Canada’s delegation during negotiations from 1967 to 1982, he also chaired the LOS drafting committee. While Canada was very much at the forefront of negotiations leading to

⁽³⁶⁾ States have more rights and exercise greater jurisdiction closer to their land territory.

⁽³⁷⁾ DFAIT, “Canadians in the World,” <http://www.dfaity-maeci.gc.ca/ciw-cdm/Beesley-en.asp>.

the LOS Convention and signed it on 10 December 1982, many Canadians may be surprised to learn that Canada – one of the world’s major maritime countries – has yet to ratify the LOS Convention.⁽³⁸⁾ In fact, with the exception of Canada, the United States and Denmark, all major western states are legal parties to it. Denmark, the last EU member that has not ratified the LOS Convention, is expected to do so by June 2003. (See Appendix 1 – The United Nations LOS Convention: Chronological List of Ratifications, Accessions and Successions.)

The LOS Convention affirms the sovereign rights of coastal states to exploit, conserve and manage all living and non-living resources in the Exclusive Economic Zone, or EEZ (Article 56), which may extend out to 200 nautical miles from the territorial sea (Article 57). Coastal states have sovereign rights over natural resources in their EEZs, as well as certain jurisdictional rights (*e.g.*, over marine scientific research, and the protection of the marine environment). However, states, other than coastal states, enjoy certain freedoms in the EEZ, notably freedoms of navigation and overflight by aircraft. Where a continental shelf extends beyond 200 miles (as in the case of Canada’s East Coast), coastal states have rights over the seabed and subsoil beyond the EEZ, and have jurisdiction over sedentary species of fish. However, coastal states do not have rights to fish above the shelf in these areas; these are the “common heritage of mankind,” as the United Nations puts it.

In our discussions, it was explained that:

- A coastal state has sovereign rights over the fish in the water column and sedentary species out to 200 miles;
- A coastal state with a continental shelf extending beyond 200 miles has sovereign rights over the sedentary species on the extended continental shelf but not in the water column above it; and
- On the high seas – the area beyond the EEZ – no state has sovereignty or jurisdiction and there is freedom of fishing (*i.e.*, no state may subject any area of the high seas to its sovereignty).⁽³⁹⁾

⁽³⁸⁾ The “signature” of an international agreement is a means for a state to express a political intention to assume the obligations of a binding agreement. Such agreements are usually open for signature only for a limited time. While signatories to an agreement are not legally bound by its provisions, they have a duty not to act in a way that defeats its object and purpose. “Ratification” is the step by which signatories assume legally binding obligations. If a state that has not signed a treaty wishes to become a legal party to it, it then “accedes” to the treaty. “Succession” occurs when one state is replaced by another in the responsibility for the international relations of territory in question.

⁽³⁹⁾ Robert Hage, Director of the Legal Bureau, DFAIT, *Brief submitted to the Committee*, 11 December 2002. The oceans have for centuries been subject to the “freedom-of-the-seas” doctrine, which essentially limits national rights and jurisdiction over the oceans to a narrow belt of sea surrounding a nation’s coastline.

However, the LOS Convention qualifies this centuries-old doctrine of “freedom of fishing on the high seas.” For example, there is a duty of states to adopt measures for the conservation of the living resources of the high seas with respect to their nationals (Article 117). States are to cooperate with each other in the conservation and management of living resources in the areas of the high seas (Article 118). There, in order to conserve the living resources, states are to take measures based on the best scientific evidence available, and consider the effects on species associated with targeted species (Article 119). Parties to the LOS Convention are to assume their obligations in good faith (Article 300).

Article 63 of the LOS Convention specifically addresses straddling fish stocks. Subsection 2 requires that the coastal state and countries fishing in the adjacent area “seek, either directly or through appropriate sub-regional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.” However, Article 63 does not specify the nature or scope of the arrangements to be negotiated, nor does it discuss the functions of regional fisheries management organizations (RFMOs), such as NAFO. No specific time limits are set wherein agreement must be sought. The LOS Convention “relied on the good faith of the signatories, and eventually the parties, in a whole series of provisions laying down legally binding obligations to set up a cooperative arrangement whereby straddling stocks would be managed.”⁽⁴⁰⁾

Canada and a few other nations did attempt to include a more complete text on straddling fish stocks. For example, they sought, in 1982, an amendment to Article 63(2) that would have created a tribunal with jurisdiction to determine management measures in the adjacent area. That proposal failed because of resistance by distant water fishing nations, and the proposal was dropped in order to avoid a collapse of the overall agreement. In the period leading up to the LOS Convention, “a multitude of interests were in play” and “all kinds of tradeoffs were being made.” At the time, a 200-mile Exclusive Economic Zone was seen by many countries as an enormous “resource grab.” Canada was unable to obtain the support necessary to establish a boundary line that enclosed the fishing grounds on the Grand Banks, a boundary that made more sense from a biological standpoint.⁽⁴¹⁾

With the advent of 200-mile limits, the distant water fishing fleets of many countries were displaced from a number of traditional fishing grounds around the world. In exchange for their

⁽⁴⁰⁾ Dr. Alan Beesley, *Committee Proceedings*, 6 May 1999.

⁽⁴¹⁾ Dr. Art May, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, *Brief to the Committee*, 25 February 2003.

cooperation and support of Canadian management initiatives in the NAFO Regulatory Area, Canada entered into a series of bilateral fisheries agreements with NAFO countries that stipulated conditions allowing them inside the Canadian zone to take surplus fish. This was done within the framework of the LOS Convention.⁽⁴²⁾ Also, in June 1986, Canada adopted a policy of denying port privileges and access to Canadian stocks to vessels from states that did not cooperate with Canada and NAFO on conservation. However, by 1992, foreign allocations represented only a very small percentage of the total amount of groundfish allocated by DFO inside the 200-mile limit.

It is noteworthy that a major development over the last decade has been the growth in the number of other international agreements in fisheries. Chief among them is the 1995 United Nations Fish Stocks Agreement.

B. The 1995 United Nations Fish Stocks Agreement (UNFA)

This new UN convention gives Canada the means to end foreign overfishing permanently. – Brian Tobin, Minister of Fisheries and Oceans, “Tobin Foresees Permanent End to Foreign Overfishing when New UN Convention Implemented,” News Release, 4 August 1995

UNFA is the culmination of the efforts of many Canadians who have worked hard to achieve a significant objective that Canada has long strived for. It is a breakthrough in international law and a significant deterrent to overfishing on the high seas. – Earl Wiseman, Director General, International Affairs Directorate, Fisheries Management, DFO, Committee Proceedings, 6 May 1999

(UNFA) provides a mandatory and binding dispute settlement procedure, which is important in terms of dealing with situations where there is a lack of agreement among parties on the best way to proceed.” – Patrick Chamut, Assistant Deputy Minister, Fisheries Management, DFO, Committee Proceedings, 26 November 2002

We have been waiting a long time for EU ratification of UNFA. – Robert Hage, Director General, DFAIT, Legal Affairs Bureau, Committee Proceedings, 11 December 2002

There is the convention on straddling stocks that Canada has ratified but the EU has not. That is another item we should be picking up to see how we might advance the issue there. – Dr. Art May, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, Committee Proceedings, 25 February 2003

⁽⁴²⁾ Article 62 grants coastal states wide latitude in determining whether and under what conditions foreign fishing may take place inside 200-mile EEZs. Only if a state does not have the capacity to harvest the entire allowable catch is there an obligation to allow foreign access to the surplus. This obligation is, however, watered down by a coastal state's discretion in weighing a number of factors added by Article 62(3), such as the economic importance of living resources to a coastal state's economy.

(UNFA) would certainly go a long way towards dealing with the proper conservation and protection of our resources. – Earle McCurdy, President, Fish, Food and Allied Workers Union, Proceedings of the House of Commons Standing Committee on Fisheries and Oceans, 16 March 2002

In 1992, the Earth Summit held in Rio de Janeiro (the United Nations Conference on Environment and Development, or UNCED) was the first major international gathering to address issues related to “sustainable development” at the global level. The Summit placed a great deal of emphasis on oceans and marine resources and, although Agenda 21 (a plan for achieving sustainable development in the 21st century) was adopted, Summit negotiators concluded that the issues of marine pollution and straddling stock fisheries needed further international agreements.

Subsequent negotiations on the question of straddling fish stocks led to the 1995 United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks, also known as the United Nations Fish Stocks Agreement, or UNFA. At the time, UNFA was hailed by Canada’s Minister of Fisheries and Oceans “as a permanent, practical, and enforceable means to end high seas overfishing.” UNFA was ratified by Canada in August 1999; it came into force on 11 December 2001 (after receiving the 30 required ratifications) and currently has 34 parties, many of which are located in the Pacific (see Appendix 2 – The United Nations Fish Stocks Agreement: Chronological List of Ratifications, Accessions and Successions). While the EU has signed the treaty, it has yet to ratify the document.

Consisting of 50 articles and two annexes,⁽⁴³⁾ UNFA is widely recognized as the most significant development in international fisheries law since the LOS Convention. It breaks new ground on compliance and enforcement, and elaborates on the LOS Convention. Indeed, the full title of UNFA underlines its relationship with the LOS Convention: *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 Fish Stocks*.

UNFA provides much of what Canada has sought for more than 20 years to protect the straddling fish stocks. This should come as no surprise: it was a Canadian initiative that led to its development. While other similar types of international or global instruments exist (Table 3), UNFA is most notable for its binding dispute settlement provisions, the stronger duties it places on flag states to control their fishing vessels, and for permitting, under specified circumstances, the

⁽⁴³⁾ The full text of UNFA and the 1982 LOS Convention are available via the Web site of the United Nations Division for Ocean Affairs and the Law of the Sea (DOALOS) at: <http://www.un.org/Depts/los>.

boarding and inspection of fishing vessels on the high seas by states other than flag states.⁽⁴⁴⁾ As a framework agreement for the world's straddling and highly migratory fish stocks, UNFA emphasizes the use of RFMOs and sets out a number of important conservation obligations.⁽⁴⁵⁾ There is an enforcement and dispute settlement mechanism that binds states that are legal parties to it.

In the course of our discussions, Committee members were reminded that several regional RFMOs have arisen around the globe to govern ocean fisheries. Some, like NAFO, are long-established, while others were said to be relatively new or not to have yet commenced operations. The testimony of witnesses strongly suggests that UNFA closes the gaps in the international legal framework that have been problematic not only for Canada's fisheries on the East Coast, but also for fisheries in other parts of the world.⁽⁴⁶⁾

Table 3 – Selected International Instruments Related to Fisheries

Title	Binding/ Non-binding	Date Adopted	Canadian Signature, Ratification or Accession	Entry Into Force/ Number of Parties
1982 UN Convention on the Law of the Sea (LOS)	Binding	10 December 1982	Signed: 10 December 1982	16 November 1994/ 142 parties
1995 UN Fish Stocks Agreement (UNFA)*	Binding	4 August 1995	Signed: 4 December 1995 Ratified: 3 August 1999	11 December 2001/ 34 parties
1993 FAO Compliance Agreement**	Binding	24 November 1993	Acceded: 20 May 1994	Not yet in force
1995 FAO Code of Conduct for Responsible Fisheries	Non-binding	31 October 1995	Canada joined in the consensus adoption of the document	There are no entry into force procedures

⁽⁴⁴⁾ For example, the 1993 FAO Compliance Agreement stipulates some duties of flag states vis-à-vis their fishing vessels, provides for an information exchange between states and calls for international cooperation. However, its provisions are said to be not as detailed or strong as those in UNFA. The 1995 Code of Conduct for Responsible Fisheries is a non-binding set of guidelines covering topics from fishing operations to aquaculture to post-harvest practices. The 2001 International Plan of Action on Illegal, Unreported and Unregulated Fishing is also non-binding and best viewed as a “toolbox” of measures. The Plan lists the responsibilities of flag states, of port states, of regional fisheries management organizations and of market states, and is in large part a compilation of responsibilities previously captured in other documents. There are few published studies that focus on compliance with these fisheries instruments.

⁽⁴⁵⁾ For a list of regional fisheries bodies, see <http://www.fao.org/fi/body/rfb/index.htm>.

⁽⁴⁶⁾ For example, in the southwest Atlantic on Argentina's Patagonian shelf (hake and squid); on the Challenger plateau in the high seas off New Zealand (orange roughy); in the South Pacific (tuna, dolphin, and shark); in the east-central and southeast Pacific off Chile and Peru (blue whiting and jack mackerel); in the “Doughnut Hole” in the Central Bering Sea and in the “Peanut Hole” in the centre of the Sea of Okhotsk off Russia's Pacific coast (pollock); in the Barents Sea “Loop Hole” off the coast of Norway (cod); and in the “Doughnut Holes” of the Northeast Atlantic (herring and salmon). See DFO, “The International Consensus on Conservation of Fish Stocks,” Background, March 1995.

Title	Binding/ Non-binding	Date Adopted	Canadian Signature, Ratification or Accession	Entry Into Force/ Number of Parties
1982 UN Convention on the Law of the Sea (LOS)	Binding	10 December 1982	Signed: 10 December 1982	16 November 1994/ 142 parties
FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA on IUU)	Non-binding	23 June 2001	Canada placed reservations on portions of the document relating to boarding and inspection and the use of trade measures	There are no entry into force procedures
Northwest Atlantic Fisheries Organization (NAFO)	Binding	24 October 1978	Signed: 24 October 1978 Ratified: 30 November 1978	1 January 1979/ 18 parties (17 as of 31 December 2002)
International Convention for the Conservation of Atlantic Tunas (ICCAT)	Binding	14 May 1966	Acceded: 20 August 1968	21 March 1969/ 34 parties
Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC)	Binding	5 September 2000	Signed: 2 August 2001	Not yet in force

Source: DFAIT, *Brief to the Standing Senate Committee on Fisheries and Oceans*, 11 December 2002

* *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 Fish Stocks*

** *Agreement to promote Compliance With International Conservation and Management Measures by Fishing Vessels on the High Seas*

UNFA obliges states fishing on the high seas and coastal states to cooperate and adhere to 12 general principles for the conservation and management of straddling fish stocks and highly migratory fish stocks (Article 5). It requires them to:

- Adopt measures to ensure long-term sustainability and promote optimal use;
- Ensure that measures are based on the best scientific evidence available;
- Apply the “precautionary approach” to the establishment of fishing levels (as prescribed in Article 6);
- Assess impacts of fishing and other human activities and environmental factors on stocks belonging to the same ecosystem;
- Adopt an “ecosystem approach” with a view to maintaining and restoring fish populations;

- Minimize pollution, waste, discards, catches by lost or abandoned gear, catches of non-target species and endangered species, through the use of selective, environmentally safe and cost-effective fishing gear and techniques;
- Protect biodiversity in the marine environment;
- Take measures to prevent or eliminate overfishing and excess fishing capacity;
- Take into account the interests of artisanal and subsistence fishers;
- Collect and share, in a timely manner, complete and accurate data concerning fishing activities (e.g., vessel position, catch of target and non-target species, and fishing effort);
- Promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and
- Implement and enforce conservation and management measures through effective monitoring, control and surveillance.

In brief, UNFA:

- Provides for a new high seas enforcement regime in the areas covered by RFMOs such as NAFO;
- Provides for the peaceful settlement of disputes between member countries through a compulsory, binding dispute settlement mechanism – a major improvement in the resolution of international fisheries disputes;
- Calls for “compatibility” of conservation and management measures for straddling and highly migratory fish stocks both inside and outside 200-mile zones. States fishing on the high seas and coastal states have a duty to cooperate for the purpose of achieving compatible measures (Article 7);
- Includes the concept of “real interest in the fisheries” as a condition that states (parties) must fulfil before they can participate in a regional fisheries management mechanism (Article 8(3));
- Does not permit states to authorise the use of their flag to vessels fishing on the high seas unless they are able to effectively exercise responsibility over them (Article 18);
- Obliges the flag state to ensure that its vessels are complying with regional conservation and management measures (Article 19);
- Gives a state that is party to the Agreement and a member of a relevant regional fishery body the right to board and inspect fishing vessels of another party so as to ensure compliance

with conservation and management measures, even when the flag state is not a member of the regional fishery body (Article 21);

- Strengthens arrangements for the sharing of information and cooperation on scientific research (Article 14); and
- Requires transparency in the activities of regional fisheries bodies, such as NAFO. Article 12 requires that NGOs be given the opportunity to participate in them in accordance with their procedures, “which shall not be unduly restrictive.”⁽⁴⁷⁾

Because UNFA focuses on straddling fish stocks adjacent to EEZs and does not directly apply to all fish in international waters, another agreement, the 1995 FAO Code of Conduct for Responsible Fisheries, while voluntary, complements UNFA. Another notable feature of UNFA is Article 45, which allows a state that is a party to it to propose amendments and request that a conference be convened. This may take place if half the parties agree.

⁽⁴⁷⁾ See Jackie Alder, Gail Lugten, Robert Kay and Bridget Ferriss, “Compliance with International Fisheries Instruments,” *Sea Around Us: North Atlantic*, Fisheries Centre, University of British Columbia, p. 67, <http://saup.fisheries.ubc.ca/report/impactpolicy/alder.pdf>.

DISCUSSION

Despite at least 25 years of NAFO involvement, we have truly failed to develop and to implement an adequate conservation resource management regime for waters outside the 200-mile limit. – Alastair O’Rielly, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, Committee Proceedings, 25 February 2003

NAFO has existed for 24, 25 years, and the stocks outside 200 miles have been decimated. There can be no argument about that. – Dr. Art May, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, Committee Proceedings, 25 February 2003

Everything we ever achieved in NAFO was achieved by offering carrots. Nothing was ever achieved on the point of being a conservation measure. It was achieved because we offered them extra turbot, redfish or some other species. We have now run out of carrots. – Fred Woodman, Chair of the Fisheries Resource Conservation Council, Committee Proceedings, 6 May 2003

Much of the language in (UNFA) spells out heavier responsibilities devolving on the flag states than you could detect by reading the language of the NAFO convention. We are in a period of transition. – Dr. Douglas Johnston, Marine and Environmental Programme, Dalhousie University, 29 April 2003

NAFO was created “to contribute through consultation and cooperation to the optimum utilization, rational management and conservation of the fishery resources of the Convention Area” of the Northwest Atlantic Ocean. The deplorable practices of the 1980s and early 1990s by certain NAFO members are amply documented. On the situation since 1995, the evidence placed before us clearly shows that NAFO still does not adequately fulfil its role: non-compliance is on the increase; flag states seldom follow up and take action against their vessels found to have contravened NAFO rules; and NAFO does not always adopt the scientific advice of its Scientific Council when setting catch limits outside the 200-mile zone – in itself an arbitrary geopolitical boundary that does not take into account the distribution and migration of the fishery resource on the Grand Banks.

A. NAFO

While NAFO is far from perfect, we believe it is better to work with that organization than not have an international fisheries management regime at all. – Patrick Chamut, Assistant Deputy Minister, Fisheries Management, DFO, Committee Proceedings, 26 November 2002

NAFO is not the same organization as it was in the early 1990s or the 1980s. It is a better organization now. – Robert Hage, Director General, Legal Affairs Bureau, DFO, Committee Proceedings, 11 December 2002

No matter how bad things are, it is probably better to be in (NAFO) than to have nothing. – Dr. Art May, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, Committee Proceedings, 25 February 2003

First, we should not abandon NAFO. Anyone who says that Canada should get out of NAFO, does not make any sense. At least NAFO is a forum by which we are able to speak to people in the fishing industry. – Gus Etchegary, Fisheries Crisis Alliance, Committee Proceedings, 3 December 2002

I can understand that the frustration level must be incredibly high now in Newfoundland. It may be my personal bias, but I think that the best way into this is by seeing the problem as international as well as national, and staying with NAFO. – Dr. Douglas Johnston, Marine and Environmental Programme, Dalhousie University, Committee Proceedings, 29 April 2003

There have been calls for Canada to withdraw from NAFO,⁽⁴⁸⁾ an option usually made in conjunction with another proposal: the establishment of a new “Canadian custodial management” regime outside the 200-mile limit (discussed in the next section). The two are typically linked because, with nothing else to replace NAFO, simply leaving would be self-defeating, and the consequences unacceptable. Indeed, witnesses strongly opposed the option for a number of reasons. For example, the problem of non-compliance would more widespread because there would be less enforcement. Canada would no longer benefit from information obtained from the observer program, the inspections and surveillance scheme, and vessel monitoring. There would no longer be an international forum for discussion of issues with the other countries. The remaining countries would be unlikely to offset Canada’s large financial contributions to NAFO’s budget, which could lead to the dismantling of NAFO and an unregulated fishery.

The very strong consensus in our deliberations was that it is much better for Canada to have an imperfect, internationally agreed upon regime, such as NAFO, than no regime at all.

Some witnesses brought up the fact that several new regional RFMOs have arisen around the globe in response to the problem of high seas overfishing, all of which had experienced problems similar to NAFO’s. DFO officials suggested that, with its Scheme of Joint International Inspection and Surveillance, NAFO is actually “one of the more highly regulated regional fisheries

⁽⁴⁸⁾ For example, the House of Commons Committee on Fisheries and Oceans recently recommended “that the Government of Canada inform NAFO and its Contracting Parties that Canada will proceed with the implementation of custodial management on the Nose and Tail of the Grand Banks and on the Flemish Cap, and will withdraw from NAFO no later than 31 December 2004, in accordance with Article XXIV of the NAFO Convention.” Recommendation 2, House of Commons Standing Committee on Fisheries and Oceans, *Custodial Management Outside Canada’s 200-Mile Limit*, Report 2, 25 March 2003. The 2003 report reiterated the recommendations made in an earlier one tabled in June 2002 on *Foreign Overfishing: Its Impacts and Solutions, Conservation on the Nose and Tail of the Grand Banks and the Flemish Cap*.

management organizations in the world,” especially since 1995.⁽⁴⁹⁾ DFO urged Committee members not to abandon regional fishing bodies as a management tool.⁽⁵⁰⁾ The position of the Government of Newfoundland and Labrador on the matter is that if NAFO were to begin to genuinely fulfil its mandate, this would be quite acceptable to the Province.⁽⁵¹⁾

A great deal of debate arose over how to update, improve or modernize NAFO’s principles, structure and procedures. The Objection Procedure, which is the major flaw in NAFO’s Convention, could be modified or removed altogether.⁽⁵²⁾ As previously mentioned, any member of the Fisheries Commission who presents an objection to a NAFO proposal within the required time limit is not bound by the measure, and there is no limitation on the number of objections that can be made or on the type of proposal to which an objection may relate. While no longer being abused, the Objection Procedure may, however, lead to a situation where quotas are arrived at by consensus to avoid a formal vote – a less than ideal way to set quotas, from a fisheries conservation standpoint. While used less often now than in the past, the Objection Procedure was said to have been used recently, mostly by former members of the Soviet Union, the Baltic states, Iceland and Denmark.⁽⁵³⁾

NAFO shares a number of similar characteristics with other RFMOs throughout the world. Members receive scientific advice regarding the fish stocks, determine a TAC and allocate it among themselves, set regulatory measures, such as gear sizes and time and area closures, and contribute financially to the organization’s operating budget.⁽⁵⁴⁾ Decisions can be taken either by consensus or a combination of majority decision with recourse to an objection procedure. More importantly, their effectiveness depends on the willingness of the major members to invest resources. Unlike the

⁽⁴⁹⁾ Patrick Chamut, Assistant Deputy Minister, Fisheries Management, DFO, *Committee Proceedings*, 26 November 2002.

⁽⁵⁰⁾ Robert Hage, Director General, Legal Affairs Bureau, DFAIT, *Committee Proceedings*, 11 December 2002.

⁽⁵¹⁾ Mike Samson, Deputy Minister of Fisheries and Aquaculture, Government of Newfoundland and Labrador, Comments included in the *Report on the Roundtable Forum on Improving the Management of Straddling Stocks*, 20 February 2003, The Marine Institute, Memorial University, St. John’s, Newfoundland and Labrador, 21 March 2003.

⁽⁵²⁾ At NAFO’s annual meeting in September 1992, Canada tabled a proposal to establish criteria for the use of the Objection Procedure and to subject objections to a third-party review to assess their validity. Discussion of this proposal was postponed indefinitely.

⁽⁵³⁾ Dr. Douglas Johnston, Marine and Environmental Programme, Dalhousie University, *Committee Proceedings*, 29 April 2003.

⁽⁵⁴⁾ Some RFMOs, like NAFO, are regionally oriented; others deal with specific species (*e.g.*, the International Commission for the Conservation of Atlantic Tunas, or ICCAT).

agencies of the United Nations, the secretariats running the various RFMOs were described to Committee members as weak and having essentially no authority. With respect to NAFO, one suggestion was for impartial, professional staff to be brought from the UN Food and Agriculture Organization or other global organizations.

Other proposals to improve NAFO include: according the Scientific Council greater influence in decision-making; giving countries with a greater economic and conservation interest in NAFO a greater say in decision-making (*e.g.*, with a system of weighted voting); incorporating the precautionary and ecosystem approaches (enunciated in UNFA) into the NAFO Convention; adopting a “ships of shame policy” (publishing a list of rogue ships, banning them from the Regulatory Area); harmonizing the sanctions regime; adopting a dispute settlement system; and even perhaps delegating fisheries enforcement to a new NAFO agency (an option that would entail some costs). We heard that a proposal to establish a marine protected area in the Regulatory Area was rejected when put to a vote in January 2002. Article 12 of UNFA specifically calls on regional fisheries bodies, such as NAFO, to conduct business in a transparent fashion. A number of submissions suggested there was an opportunity for the federal government to work with environmental NGOs, such as the World Wildlife Fund (WWF), an internationally based and reputable organization, which has decided to make oceans and marine conservation issues its area of focus over the next decade. One witness put it this way:

It might be the time in this age of transparency to suggest that it would be helpful to Canada to encourage NAFO to open up its sessions to the public, NGOs and other people of interest. In this age of environmental concern, here is a case where two constituencies that are not normally bedfellows have different reasons for wanting to cooperate with each other because the environmental NGOs, if they were observers of NAFO meetings, might be willing to use their considerable expertise in using the media for their own purposes. That would also serve the interests of the Canadian fishing industry that admits to not being very successful in using international media for their purposes. For somewhat different reasons, they both have a cause to be effective in the use of media to expose NAFO to the light of day, as it were. – Dr. Douglas Johnston, Marine and Environmental Programme, Dalhousie University, *Committee Proceedings*, 29 April 2003

Reforming the operation of NAFO will depend on whether there is sufficient political will on the part of its members to effect change.⁽⁵⁵⁾ From what we heard, coalition-building and getting

⁽⁵⁵⁾ Any NAFO Contracting Party may propose an amendment to the Convention, but a three-fourths majority of the votes of all members is needed for its adoption (Article XXI of the NAFO Convention).

the required political will may not be easy. However, NAFO's ethos may be beginning to change, as seen by the Fisheries Commission's decision to strengthen STACTIC's terms of reference in September 2002. NAFO will now be analysing the compliance record of its members, whereas in the past Canada had performed this function. As well, an annual report on compliance will be submitted to the Commission in September 2003, which could result in future actions.

B. Custodial Management Beyond 200 Miles

Custodial management would take us years to accomplish, and establishing control and authority over a disputed area could take even longer. –Robert Thibault, Minister of Fisheries and Oceans, Preparing for NAFO, Minister's Column, No. 2, September 2002

Attempts to renegotiate the 200-mile limit are not, in our view, feasible within a reasonable time frame. – Patrick Chamut, Assistant Deputy Minister, Fisheries Management, DFO, Committee Proceedings, 26 November 2002

The best way of ensuring that fish stocks come back again is not by unilateral extension of jurisdiction. – Robert Hage, Director General, Legal Affairs Bureau, DFO, Committee Proceedings, 11 December 2002

One way or another, Canada has got to stop compromising and taking this – I am sorry to say it – wimpish attitude in the international negotiations that take place year after year, and start to take a position. – Gus Etchegary, Fisheries Crisis Alliance, Committee Proceedings, 3 December 2002

Canadians, especially people in Newfoundland and Labrador, are angered and profoundly disillusioned by NAFO's long-standing failure to take corrective action on its myriad problems. So far, Canada has addressed non-compliance in the NAFO Regulatory Area by closing its ports to countries whose vessels have seriously breached NAFO's conservation and control measures, and announcing a new approach of denying port access to rogue vessels active in the NAFO Regulatory Area. The view of many was that such measures have no real consequences for most of the foreign fleet. They all agreed that something must be done to better recognize Canada's special interest and responsibilities, as a coastal state, in the fisheries adjacent to its Atlantic coastline.

One proposal that receives much publicity, and which is undoubtedly popular in Newfoundland and Labrador, is for Canada to assume guardianship, stewardship, trusteeship, or "custodial management" over the straddling fish stocks, outside the 200-mile limit. In June 2002, the House of Commons Committee on Fisheries and Oceans called for the establishment of such management on the Nose and Tail of the Grand Banks and the Flemish Cap (along with Canada's withdrawal from NAFO). In March 2003, a report of a Newfoundland and Labrador All-Party

Committee on the 2J3KL and 3Pn4RS Cod Fisheries recommended that a Canadian-based fisheries management regime be adopted to protect the straddling fish stocks on the Nose and Tail of the Grand Banks.⁽⁵⁶⁾ In March 2003, the Commons Committee released a second report on the issue of foreign overfishing⁽⁵⁷⁾ that reiterated the recommendations it had made in June 2002.⁽⁵⁸⁾

Custodial management or the extension of Canadian fisheries jurisdiction, in one form or another, beyond 200 miles on the high seas, is not an entirely new idea. The Government of Newfoundland and Labrador, the Fisheries Council of Canada, the Northern Cod Review (Harris) Panel and others have in the past recommended this course of action, including this Committee, in 1989, when it offered the Government of Canada the following advice:

Foreign overfishing of stocks that straddle the 200-mile limit can no longer be tolerated and requires a much firmer response by the Government of Canada. Although there are few countries in the world which have continental shelves wider than 200-miles and an extension of Canadian fisheries jurisdiction would likely meet objections from certain members of the international community, especially those now benefiting from overfishing, the Committee nevertheless recommends:

(6) That the federal government step up sanctions beyond port closures and the curtailment of preferential access to surplus stocks within the 200-mile limit to bring pressure on those countries who overfish the so-called straddling stocks. The Prime Minister, the Secretary of State for External Affairs, and the Minister of Fisheries and Oceans should develop a strategy to establish full functional fisheries jurisdiction over the whole Continental Shelf. – Standing Senate Committee on Fisheries, Recommendation 6, *The Marketing of Fish in Canada: Report on the East Coast Fisheries*, December 1989, p. 66.

The reason for Canadian action outside 200 miles has always been the preservation of Canada's interests, and those of the international community, in conserving the straddling fish stocks. It has never been a means to enable Canada to claim a sole right to harvest fish on the high seas (*i.e.*, to grab “a bigger piece of the pie”). As proposed by the Commons Committee in June 2002, custodial management would involve Canada's asserting control of fishing activity out to the limits of the continental shelf: “Canada would conduct the science, set the TACs, and implement and administer a conservation-based management system that would include monitoring and

⁽⁵⁶⁾ The 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*, A Position Statement, 17 March 2003.

⁽⁵⁷⁾ House of Commons Standing Committee on Fisheries and Oceans, *Custodial Management Outside Canada's 200-Mile Limit*, March 2003.

⁽⁵⁸⁾ 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.

enforcement.”⁽⁵⁹⁾ By the term “custodial management,” the Committee “did not intend that Canada should claim sovereignty over or exclusive rights to the resources.”⁽⁶⁰⁾

The federal government’s response to that Committee was that its notion of custodial management amounted to an extension of Canada’s fisheries jurisdiction by another name. The Minister of Fisheries and Oceans wrote: “There seems to be the view that “custodial management” may be more palatable to the international community than extension of fisheries jurisdiction. This is an erroneous view.”⁽⁶¹⁾ The government warned that the proposal went well beyond what is accepted in international law and would: receive very little support outside Canada; be vigorously opposed by other nations (particularly distant water fishing states); and potentially lead to confrontation – all potential difficulties the Commons Committee considered in its report.

We heard the same arguments from federal officials: unilateral activity would be fraught with difficulty. It was also pointed out that DFO’s regulatory and scientific research responsibilities would expand considerably – in geographical terms, by an additional 160 to 200 nautical miles if Canada also “took custody” of the stocks on the Flemish Cap. DFO, however, has experienced deep cutbacks since the federal government’s Program Review in 1995.

While also expressing the strong view that Canada should consider a custodial management framework, the Government of Newfoundland and Labrador’s proposal differs from that of the Commons Committee: it does not preclude a role for NAFO in any new regime. As proposed by the Province, custodial management is more of a shift or “redefinition of the roles and responsibilities of Canada as the coastal state, and NAFO as the regional fisheries organization.”⁽⁶²⁾ The operational role of NAFO would be modified to provide Canada with enhanced responsibilities for specific stocks that are of most interest to Canada.

The Province’s proposal is that Canada, as the coastal State, will assume responsibility for: management of straddling fish stocks, TACs, and conservation measures; and that it will enforce the consistent application of measures inside and outside 200M, including monitoring and surveillance. However it was also proposed that Canada would respect the historical shares of other nations. Under this

⁽⁵⁹⁾ *Id.*

⁽⁶⁰⁾ House of Commons Standing Committee on Fisheries and Oceans, *Custodial Management Outside Canada’s 200-Mile Limit*, March 2003.

⁽⁶¹⁾ *Government Response to the Standing Committee on Fisheries and Oceans’ Tenth Report on Foreign Overfishing: Its Impacts and Solutions*, 8 November 2002.

⁽⁶²⁾ Mike Samson, Deputy Minister of Fisheries and Aquaculture, Government of Newfoundland and Labrador, *Committee Proceedings*, 25 March 2003.

proposal all that is required is shifting some responsibilities to the coastal State. NAFO would retain responsibility for the Scientific Council, stock assessments, coordination of research and the provision of advice. It would also continue to deal with access and allocation issues and to manage stocks in the NAFO Regulatory Area, as well as developing and levying sanctions.⁽⁶³⁾

Committee members agree with witnesses who believed that having a central authority (a custodian or trustee) to manage the fisheries on behalf of all participants would lead to more effective fisheries management. However, it must be acknowledged that, without the consent of the participants, any action to impose a new system would amount to a unilateral action. One cannot escape that logic.⁽⁶⁴⁾ Those favouring bold action by Canada reminded Committee members of the actions taken by Iceland before the adoption of the LOS Convention, when that country began to enforce its jurisdiction over fisheries beyond its territorial sea into the high seas. Although challenged in the International Court of Justice, Iceland's action eventually led to the idea of coastal states having resource ownership and management rights and responsibilities for areas beyond territorial seas, a notion that was later incorporated in the LOS Convention. International maritime law was also described as constantly evolving through the combination of international conventions, such as the LOS Convention, and state practice. Canada's unilateral declaration of a 200-mile fishing zone in January 1977 was given as an example:

We unilaterally extended fisheries jurisdiction before on January 1, 1977. What is the difference? To answer the rhetorical question, the difference is simply that we had a series of bilateral agreements already in place by 1977, which accepted our impending unilateral declaration, and we had an evolving Law of the Sea so that we could anticipate a Convention which would provide for the 200-mile limit, and which actually was concluded 5 years later. – Dr. Art May, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, Brief submitted to the Committee, 25 February 2003.

At the time, Canada's lead was quickly followed by the United States (on 1 March 1977) and a number of other countries.

Some witnesses argued that, in certain circumstances, unilateral action is not only an appropriate option, it may be the only course of action available. In this regard, the

⁽⁶³⁾ *Report on the Roundtable Forum on Improving the Management of Straddling Stocks*, 20 February 2003, The Marine Institute, Memorial University, St. John's, Newfoundland and Labrador, 21 March 2003.

⁽⁶⁴⁾ Dr. Art May, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, *Committee Proceedings*, 25 February 2003.

much-publicized seizure of the Spanish fishing trawler *Estai* in 1995 was given as recent example and precedent. So was Canada's unilateral declaration of a 200-mile fishing zone in 1977. Others, however, pointed to Canada's long tradition of respecting multilateral solutions, and warned that if it were to act unilaterally on the high seas, Canada would be renouncing a firmly established and fundamental tenet of international law.

The evidence presented to us suggests that the objectives of custodial management can best be achieved within the existing international legal framework. In this regard, UNFA is especially important.

C. UNFA

In the view of Newfoundland and Labrador, you would need a significant change in international law to permit Canadian vessels, for example, to enforce fisheries regulations outside 200 miles. – Mike Samson, Deputy Minister of Fisheries and Aquaculture, Government of Newfoundland and Labrador, Committee Proceedings, 25 March 2003

There has been a call for “new tools” to address this rapidly developing crisis in the world’s fisheries; however in his view the problem is that we are not using the legal and management tools that we already have. – Summary of comments made by Professor Gudmundur Eiriksson, UN University of Peace, Costa Rica, Report on the Roundtable Forum on Improving the Management of Straddling Stocks, 21 March 2003

(UNFA) is something of which Canada can be very proud. We took the initiative to get this conference on the UN agenda through the Rio conference. We have achieved a fairly detailed convention that contains dispute settlement provisions. – Robert Hage, Director General, Legal Affairs Bureau, DFO, Committee Proceedings, 11 December 2002

In effect, (custodial management) would put in place a comparable resource management regime for all straddling stocks. – Alastair O’Rielly, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, Committee Proceedings, 25 February 2003

Unfortunately, within NAFO, there are only five parties that have ratified (UNFA) and that are subject to that agreement. – Patrick Chamut, Assistant Deputy Minister, Fisheries Management, DFO, Committee Proceedings, 26 November 2002

I think (UNFA) is a good agreement, especially the part that steals from the Law of the Sea Convention. I have no desire to see (UNFA) changed. ... It stands on its own two legs even though its parentage is clearly the Law of the Sea Convention. I have no hesitation. After all, I helped invent it. – Dr. Alan Beesley, Committee Proceedings, 11 May 1999

In the negotiations leading up to the LOS Convention, Canada was unsuccessful in its efforts to give coastal states jurisdiction or special recognition over straddling fish stocks. This led

to subsequent efforts to negotiate the 1995 United Nations Fish Stocks Agreement (“UNFA”), which Canada ratified in August 1999. With its 50 Articles dealing specifically with straddling and highly migratory fish, UNFA elaborates considerably on the LOS Convention by including: guiding principles meant to assure sustainable fishing (notably the precautionary approach and the ecosystem approach); new measures to promote international cooperation and transparent decision-making; tougher fisheries enforcement; and dispute resolution procedures.

Essentially, the objective of custodial management is to achieve compatible fisheries conservation and management systems inside and outside the 200 miles. According to the House of Commons Committee on Fisheries and Oceans, for example, the “essential purpose of custodial management” is to establish a regime that would provide “comparable standards of conservation and enforcement for all transboundary stocks, inside and outside the 200-mile limit.”⁽⁶⁵⁾ The Government of Newfoundland and Labrador defines the term as “the management by the adjacent coastal state of designated fish stocks which straddle the 200-mile Exclusive Economic Zone for the purpose of applying consistent and conservation-based measures.”⁽⁶⁶⁾

Article 7(2) of UNFA requires that “conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety.” UNFA also provides a list of criteria for defining compatibility. Distant water fishing nations and coastal states are obliged to cooperate, within a reasonable time period, directly or through RFMOs, which play a critical role because UNFA can be implemented only through them. In UNFA, part of the duty to cooperate includes the key notion of “compatible” management measures for fish stocks that straddle 200-mile EEZs.

Although there already exists in NAFO, since 1995, a management and control regime that allows Canada to board and investigate the vessels of NAFO members, UNFA gives coastal states like Canada considerably more clout to ensure that the rules are being respected. In international law, vessels are generally considered to be the responsibility of the flag state (the state in which the vessel is registered). On compliance and enforcement, UNFA breaks new ground by giving non-flag states the right to take enforcement action (Part VI of UNFA covers flag state responsibilities,

⁽⁶⁵⁾ 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.

⁽⁶⁶⁾ *Report on the Roundtable Forum on Improving the Management of Straddling Stocks*, 20 February 2003, The Marine Institute, Memorial University, St. John’s, Newfoundland and Labrador, 21 March 2003.

international and regional cooperation, basic procedures for boarding and inspection, and measures by port states). For example, UNFA allows a coastal state such as Canada to board and inspect vessels on the high seas and, under certain circumstances, bring them to port if the flag state is unwilling to investigate or otherwise respond to breaches of the rules of an RFMO, such as NAFO. If a serious infringement is found, the flag state must be notified and has up to three days in which to respond and fulfil its obligations under Article 19 to investigate fully, determine whether an offence has been committed, and act on applying the necessary administrative or judicial means to sanction the vessel.⁽⁶⁷⁾

Another important feature of UNFA is its compulsory and binding dispute settlement procedures. Many of NAFO's problems stem from its Objection Procedure and the absence of a mechanism to resolve conflicts and disputes. One witness informed us that past efforts to have a dispute settlement procedure adopted by NAFO had met with "very strong resistance," the concern being that it would "in some way, bind parties and cause them to lose some of their sovereignty around the table."⁽⁶⁸⁾ Under UNFA, if a party believes that another party is acting in a way that is inconsistent with treaty obligations, the former may take the matter to a third-party dispute settlement panel or tribunal, and the other party must participate. Because the tribunals are authorized to demand corrective action, they are potentially a strong deterrent of illegal activity. Strong deterrence, in turn, would lead to more effective fisheries enforcement. Interestingly, the legal remedies in UNFA are based on provisions contained in Part XV of the LOS Convention.

As previously mentioned, the hope was expressed that UNFA, when fully implemented, will result in a much more transparent fisheries regime. In this regard, there is an opportunity for Canada to seek the involvement of environmental NGOs that have shown an interest in marine and fisheries issues.

Canada ratified UNFA in August 1999, and applies its provisions to other parties to UNFA, including countries that belong to NAFO (Iceland, Norway, the Russian Federation, and the United States of America). The treaty, however, does not affect vessels of NAFO members that are not legal parties, notably the EU, which is the most important NAFO member next to Canada, and which has signed but not ratified UNFA. In 1999, in the Committee's deliberations on Bill C-27 (that amended federal legislation to implement UNFA), federal officials hoped the treaty would be

⁽⁶⁷⁾ Robert Hage, Director General, Legal Affairs Bureau, DFAIT, *Committee Proceedings*, 11 December 2002.

⁽⁶⁸⁾ Patrick Chamut, Assistant Deputy Minister, Fisheries Management, DFO, *Committee Proceedings*, 26 November 2002.

ratified “sooner rather than later.”⁽⁶⁹⁾ It may be said that the EU’s ratification of UNFA has proceeded at a glacial pace, and that the treaty has so far had little practical effect on NAFO because the EU has not been a legal party to UNFA. However, in our hearings, we learned that the Union was publicly committed to ratification, and that it had announced its intention to ratify *en bloc* (i.e., to deposit instruments of ratification for the EU and all member states simultaneously). With one exception, Ireland, the EU now appears ready to ratify UNFA by June 2003. In the case of Ireland, DFO informed us on 16 April 2003 that passage of legislation to ratify UNFA was a priority for the Irish government.⁽⁷⁰⁾

D. The LOS Convention

Canada’s interests are best served when it is an international partner, rather than becoming an international pariah. – Robert Thibault, Minister of Fisheries and Oceans, “Government Responds to Standing Committee Report on Foreign Overfishing,” News Release, 8 November 2002

The fishery provisions of the Law of the Sea convention are vague, eclectic, thin and no longer represent the new approach to international fishery management. – Dr. Douglas Johnston, Marine and Environmental Programme, Dalhousie University, 29 April 2003

We are out in front all the time in developing international law, especially environmental law, but when we have succeeded, we do not follow it. I do not understand that. Worse still, I do not understand why no one except the Senate takes an interest in saying that it is not right. – Dr. Alan Beesley, Committee Proceedings, 11 May 1999

The Russian Federation has made a submission (to the UN Commission on the Limits of the Continental Shelf) ... concerning the Arctic, which is of interest to us. – Robert Hage, Director General, Legal Affairs Bureau, DFO, Committee Proceedings, 11 December 2002

Here we are, Honourable Senators, not having ratified the Law of the Sea. ... Perhaps a committee of the Senate should investigate this matter and nudge the Government of Canada to do the right thing. – Senator George Baker, Debates of the Senate, 10 December 2002

The Law of the Sea, I would suggest, some 21 years after the last convention was signed, is ready to be amended. It could be amended in various ways ... – Dr. Art May, member of the

⁽⁶⁹⁾ Earl Wiseman, Director General, International Affairs Directorate, Fisheries Management, DFO, *Committee Proceedings*, 13 May 1999. The Treaty of Rome provides the Commission of the EU with certain powers and authorities, such as responsibility for international fisheries management and for the administration of the Common Fisheries Policy, which governs fishing by EU states. The European Commission has exclusive competence to negotiate and conclude fisheries agreements with third parties, and represent the EU on international fisheries bodies, including NAFO. Undertakings are normally approved by the Fisheries Council, which is composed of the fisheries ministers of the member states. While policy is made at the EU level, implementation and enforcement are left to the member states.

⁽⁷⁰⁾ Robert Hage, Director General, Legal Affairs Bureau, DFAIT, Letter to the Chair, 16 April 2003.

The LOS Convention, which came into force in November 1994, was first opened for signature in December 1982. That year, Canada signed the text, but subsequently did not ratify the treaty. While often stating its intention to ratify the 20-year-old LOS Convention, the federal government has yet to follow through. In this regard, Canada and the United States are the world's two remaining hold-outs.

For Canada, this situation is profoundly ironic: Canada is a coastal state with the longest coastline in the world (nearly 244,000 kilometres, including the shoreline of 52,455 islands), the largest archipelago (in the Canadian Arctic), and the second-largest continental shelf (3.7 million square kilometres). Its marine environment covers an area of approximately five million square kilometres, equivalent to 53% of Canada's land area. The irony does not end there: Canada was a major driving force behind the LOS Convention. As a signatory in 1982, Canada expressed its political intention to assume the LOS Convention's obligations. Canada now has a duty not to act in a way that defeats the LOS Convention's object and purpose, but is not legally bound by its provisions. Ratification would be the next step by which Canada would assume legally binding obligations.

There are two main reasons for Canada's lengthy delay in ratification. First, there were concerns about the deep seabed mining portions of the LOS Convention, which were finally addressed in July 1994 with the adoption of an Agreement relating to the implementation of Part XI of the LOS Convention.

Initially (Canada) held back, out of deference to the Americans. We did not have anything against the seabed mining provision. We actually wrote into legally binding language Henry Kissinger's proposal for the joint-venture approach. ... It was for that reason that we held back; but Canada did not say, "Thank God that is settled. Let's ratify." – Dr. Alan Beesley, *Committee Proceedings*, 11 May 1999.

The 1994 Agreement relating to Part XI of the LOS Convention led to an increase in the number of ratifications (and accessions). After receiving the required 60 ratifications, the LOS Convention entered into force on 16 November 1994, which resulted in the addition of further new parties to the LOS Convention. However, by then, the matter of seabed mining overlapped with the straddling fish stocks issue, the second reason why Canada delayed ratification. Canada argued that those fish needed special recognition and protection in a separate UN treaty; this was to become the

1995 UN Fish Stocks Agreement, which came into force on 11 December 2001 (after receiving the required 30 ratifications).

Canada's non-ratification of the LOS Convention carries a number of clear disadvantages. Besides making it awkward for Canada to pursue strategies under UNFA (a subsidiary treaty to the main treaty of the LOS Convention), Canada would be hard-pressed to have its concerns or suggestions heard when the LOS Convention is opened for review and amendment in December 2004.

A number of areas were mentioned where the LOS Convention could be improved. For example, the treaty could be amended to better recognize the special interests that coastal states such as Canada have in the straddling fish stocks, or to help strengthen the role that RFMOs such as NAFO have in managing and conserving those fish. It could be amended to include "groundfish" within the definition of species that are now within the continental shelf jurisdiction of coastal states, and incorporate the principles enunciated in UNFA. Stocks being fished on a continental shelf outside 200 miles that are not regulated by RFMOs could be afforded better legal recognition, especially if an ecosystem approach is to be adopted in fisheries management. In NAFO's Regulatory Area, about half of the total catch of groundfish in 2000 consisted of unregulated species.

In addition, Canada would have 10 years in which to establish the outer limits of its juridical continental shelf beyond 200 miles⁽⁷¹⁾ and file a claim to the 21-member Commission on the Limits of the Continental Shelf (CLCS), which considers such requests. Article 76 of the LOS Convention provides a complex formula for determining the legal definition of a state's continental shelf beyond 200 miles. Under Article 77, coastal states exercise sovereign rights over the continental shelf for the purpose of exploration and exploitation of the natural resources there – both living resources ("sedentary species, that is to say, organisms which at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil") and non-living resources (*e.g.*, mineral) that are located on or beneath the ocean floor of the shelf. With its massive coastline along three oceans, Canada would benefit from submitting a claim to the outer edge of the continental shelf. There also exists the possibility that Canada and its neighbouring countries could have overlapping claims. The Russian Federation, which ratified the

⁽⁷¹⁾ By establishing the foot of the continental slope, by meeting the requirements stated for the thickness of sedimentary rocks, by satisfying geo-morphological requirements and by meeting distance and depth criteria, or by any combination of these methods.

LOS Convention in March 1997, was the first country to make a submission to the CLCS, staking a claim in the high Arctic on 20 December 2001.

At stake, on a global basis, is the extension of about 15 million square kilometres of continental shelf, or about 5% of the world's total sea floor. Some countries, such as New Zealand, may be able to expand their marine territories by as much as 50%. Off the coasts of the United States, the added marine territory may hold as much as \$1.3 trillion in resources.⁽⁷²⁾

⁽⁷²⁾ David Malakoff, "Nations Look For an Edge in Claiming Continental Shelves," *Science*, Vol. 298, 6 December 2002, pp. 1877-1878.

CONCLUSION AND RECOMMENDATIONS

We should remember that NAFO is a child of the 1970s. Much has changed in the field of international fisheries and international law since then. – Dr. Douglas Johnston, Marine and Environmental Programme, Dalhousie University, Committee Proceedings, 29 April 2003

Now, in the year 2003, we realize we created the legal framework, and we said, “Okay, pass it over here to regional fisheries organizations.” We never gave them the power to actually skate down the ice and score the goal. – Patrick McGuinness, Vice-President, Fisheries Council of Canada, Committee Proceedings, 29 April 2003

We should be pressing at the highest levels of diplomacy and the highest levels of government of our counterparts in the European Community because what is happening is irrational and unconscionable. For some of the most developed countries of the world, it should be embarrassing. – Dr. Art May, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, Committee Proceedings, 25 February 2003

We have a major problem here. At its heart, the problem is biological and ecological, but is treated as purely political... – Dr. George Rose, Professor and Senior Chair of Fisheries Conservation, Memorial University, Committee Proceedings, 6 May 2003

What we want, as an industry, is a comprehensive conservation regime that works outside the 200-mile limit; a regime that provides at least the same level of standard that we experience within Canada's 200-mile limit. – Alastair O’Rielly, member of the Newfoundland Provincial Advisory Council on Foreign Overfishing, Committee Proceedings, 25 February 2003

The FRCC is at a loss to understand why there is such a lack of support for conservation measures when these species are at all-time low levels. Therefore, the FRCC considers that conservation of the fisheries and this ecosystem will not be achievable without an effective management approach consistent with Canadian fisheries jurisdiction. – Fred Woodman, Chair, Fisheries Resource Conservation Council, Letter to the Minister of Fisheries and Oceans, 27 July 2001

The world’s oceans are being exploited as never before. According to the Food and Agriculture Organization, nearly half of the world’s marine stocks are fully exploited, and another 28% are either over-exploited or depleted.⁽⁷³⁾ In fact, they may be in far worse shape than anyone had previously realized. According to a study published in November 2001, fish catches may have actually declined since the late 1980s, rather than increased as previously reported by the FAO, mainly because of incorrect reporting by China.⁽⁷⁴⁾ At the current rate, by 2015, world fish stocks

⁽⁷³⁾ United Nations Food and Agriculture Organization (FAO), *The State of World Fisheries and Aquaculture 2002*, http://www.fao.org/sof/sofia/index_en.htm.

⁽⁷⁴⁾ Reg Watson and Daniel Pauly, “Systematic Distortions in World Fisheries,” *Nature*, Volume 414, 29 November 2001, pp. 473-566.

will have fallen by half.⁽⁷⁵⁾ Globally, the trend has been one of “fishing down the food web”; having removed the larger fish (predator species) at the top of various food chains, fisheries are moving down the food chain, targeting ever smaller fish and invertebrates, and simplifying marine ecosystems.⁽⁷⁶⁾

A study published in the journal *Nature* on 15 May 2003 suggested, among other things, that: worldwide, the biomass of large predatory fish populations is now only 10% of pre-industrial fishing levels; industrialized fisheries typically reduce the biomass of fish communities by 80% within 15 years; there is little empirical information available from the open oceans; and local extinctions can go unnoticed even in closely monitored systems such as the Northwest Atlantic.⁽⁷⁷⁾

It is now beginning to be more widely understood that fisheries, while renewable, are not infinite or inexhaustible as was once imagined. The need for international cooperation is also being more loudly articulated. At the World Summit on Sustainable Development in Johannesburg in 2002, world leaders committed themselves to “maintaining or restoring stocks with the aim of achieving these goals for depleted stocks on an urgent basis and where possible no later than 2015.”

In the Northwest Atlantic, the testimony suggests that non-compliance with NAFO’s rules is not only impeding the recovery and growth of the region’s straddling fish stocks, but may also be threatening their very existence.

Since 1945, some 30 sub-regional and regional RFMOs and arrangements have been established throughout the world.⁽⁷⁸⁾ Over the last decade, new codes and guidelines for high seas fishing have emerged, and these will likely provide the impetus for change in NAFO. In fact, the Committee heard that the LOS community of international lawyers is coming around to the view that the days of “freedom of fishing on the high seas” are numbered.⁽⁷⁹⁾ Of the new international instruments in fisheries, UNFA is foremost for a number of reasons: its comprehensiveness; the

⁽⁷⁵⁾ International Centre for Trade and Sustainable Development, “New Study Reveals Significant Decline In Fish Catches,” <http://www.ictsd.org/>.

⁽⁷⁶⁾ Daniel Pauly and Jay Maclean, *In a Perfect Ocean: The State of Fisheries and Ecosystems in the North Atlantic Ocean*, Island Press, 2003, p. 52.

⁽⁷⁷⁾ Ransom A. Myers and Boris Worm, “Rapid Worldwide Depletion of Predatory Fish Communities,” *Nature*, Vol. 423, 15 May 2003, pp. 280-283.

⁽⁷⁸⁾ United Nations Food and Agriculture Organization, *The State of World Fisheries and Aquaculture 2002*.

⁽⁷⁹⁾ For an interesting discussion, see Dr. Douglas Johnston, Marine and Environmental Programme, Dalhousie University, *Committee Proceedings*, 29 April 2003.

duties it places on states to cooperate in managing the world's straddling fish stocks; and the fact that its main implementation mechanism is the world's RFMOs.

The Committee also learned that NAFO belongs to a family of organizations that share common problems: they have not been provided sufficient resources for the task at hand; they are decentralized to a fault; and they have little authority to function effectively. It has been said many times over the years that NAFO "lacks teeth." In fact, it may be said that NAFO lacked the structure and mandate to function effectively in the first place, and that "it is a child of the 70s," as one expert witness put it. It is in the long-term interests of all the parties concerned, including the straddling fish stocks, that NAFO be modernized.

Although Canada ratified UNFA in 1999, other NAFO-member countries, notably those belonging to the EU, have yet to follow.⁽⁸⁰⁾ On this point, we heard that the EU intends to ratify UNFA *en bloc* (i.e., with all member countries doing so simultaneously). DFO expects the EU to be in a position to ratify by June 2003, "if all goes well."

As of 1 May 2003, 142 countries had ratified the 20-year old LOS Convention. The last five nations to ratify were Kiribati (24 February 2003), Tuvalu (9 December 2002), Qatar (9 December 2002), Armenia (9 December 2002), and Hungary (5 February 2002). Although Canada borders three oceans and has the world's longest coastline and the largest archipelago (in the Canadian Arctic), our country does not figure on that list of states because it chose not to ratify until an effective high seas enforcement regime for the straddling fish stocks could be put in place. UNFA, which Canada had a very prominent role in developing, provides the framework for such a regime. The view was expressed in our hearings that it is now time for Canada to re-establish itself as a leader in fisheries and LOS matters generally, and to ratify the LOS Convention.

Canada should be in a position to suggest amendments or additions to the LOS Convention when it is opened for review in December 2004, under Articles 312, 313 and 314. For example, the management and conservation role of RFMOs (such as NAFO) could be strengthened in the LOS Convention. The LOS Convention could also be amended to better protect fish species and stocks in high seas ecosystems that do not straddle EEZs, do not migrate over long distances, and are not managed by RFMOs. (The Committee heard that about half of the total groundfish catch in the NAFO Regulatory Area in 2000 consisted of unregulated species.) In addition, as a major maritime

⁽⁸⁰⁾ The countries belonging to NAFO and that have not ratified UNFA include (in alphabetical order, as of 10 May 2003): Bulgaria, Cuba, Denmark (Faroe Islands and Greenland), Estonia, the EU, France (St. Pierre and Miquelon), Japan, the Republic of Korea, Latvia, Lithuania, and Poland.

nation, Canada has other oceans-related interests besides fisheries. However, only parties to the LOS Convention can participate in its institutions, such as the Commission on the Outer Limits of the Continental Shelf and the International Tribunal on the Law of the Sea.

Canada should begin to advance the notion in the international community, along with other like-minded maritime countries, that, because coastal states have a special interest in fish stocks adjacent to their 200-mile EEZs, they should therefore have an enhanced role in the RFMOs that manage them. As one witness suggested,⁽⁸¹⁾ this idea could be first tried out at an upcoming international conference⁽⁸²⁾ on the management of high seas fisheries. In addition, Canada could propose that the secretariats of the world's RFMOs should, in future, meet to devise common global strategies.⁽⁸³⁾ The federal government should begin the process of coalition-building with other countries, such as coastal states belonging to NAFO and whose Exclusive Economic Zones are within NAFO's "Convention Area," namely Denmark (for Greenland), France (for St. Pierre and Miquelon), and the United States.

Recommendations

1. The Committee recommends that the Government of Canada express its displeasure to the governments of NAFO countries whose vessels are not complying with NAFO's rules and that do not take prompt enforcement action on infringements in the Regulatory Area. In the course of Canada's regular and ongoing bilateral relations with countries that belong to NAFO, federal Ministers, parliamentarians, and officials of the Department of Foreign Affairs and International Trade should raise the subject of non-compliance in NAFO at every opportunity.
2. The Committee recommends that the Government of Canada redouble its diplomatic efforts to encourage NAFO countries to ratify or accede to the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFA), if they have not yet done so.
3. The Committee recommends that, on an annual basis, the Department of Foreign Affairs and International Trade and the Department of Fisheries and Oceans jointly report to Parliament on the record of individual NAFO countries in meeting their flag state responsibilities and obligations in the Regulatory Area. The report should include the voting record of individual NAFO Contracting Parties on matters that are of special concern or interest to Canadians.

⁽⁸¹⁾ Dr. Douglas Johnston, Marine Environmental Programme, Dalhousie University, *Committee Proceedings*, 29 April 2003.

⁽⁸²⁾ To be held on 1-5 December 2003 (in Queenstown, New Zealand) and hosted by the UN Food and Agriculture Organization and the fisheries departments of New Zealand and Australia, "Deep Sea 2003" will be exploring issues surrounding the "Governance and Management of Deep Sea Fisheries." The conference will provide a forum to discuss issues relating to present and future needs for science, conservation, and governance and management of continental slopes and deep-sea areas. See <http://www.deepsea.govt.nz/programme/index.asp>.

⁽⁸³⁾ Dr. Douglas Johnston, Marine and Environmental Programme, Dalhousie University, *Committee Proceedings*, 29 April 2003.

4. The Committee recommends that the Government of Canada continue to apply the *Coastal Fisheries Protection Act* and the Regulations pursuant to the Act against non-NAFO and stateless vessels that fish in the Regulatory Area. In times of environmental emergency, the Government of Canada should take whatever means it deems necessary to protect the straddling fish stocks.
5. The Committee recommends that the Government of Canada and the Province of Newfoundland and Labrador – the province most directly affected by foreign overfishing – jointly develop a strategic, targeted public information campaign to: help expose prohibited and unsustainable fishing practices; put pressure on non-compliant NAFO countries; and increase public understanding of overfishing issues. In this regard, both levels of government should actively and jointly seek alliances with environmental NGOs that are based both in Canada and abroad, that have scientific expertise, and that have shown an interest in marine conservation and fisheries management issues.
6. The Committee recommends that, as Canada is a major coastal state and given the magnitude of the problems and issues identified in this report, the Government of Canada immediately begin to organize an international conference to focus on ways to strengthen the role and operation of the world's Regional Fisheries Management Organizations. This international gathering should take place in Newfoundland and Labrador. The permanent staff of the various RFMOs, including that of NAFO, should be invited to participate, as well as representatives of fishing organizations, environmental NGOs, government officials, parliamentarians, academics and other experts.
7. The Committee recommends that, given the precarious state of the world's fishery resource and the special interest that coastal states have in fish stocks adjacent to their 200-mile EEZs, the Government of Canada, in pursuing its foreign policy objectives in the area of sustainable development, forcefully begin to advance the notion in international forums that coastal states should be accorded a greater say in decision-making and an enhanced role in administering the Regional Fisheries Management Organizations to which they belong. Compatibility of management and conservation measures for straddling fish stocks, both inside and outside 200-mile EEZs should be the major objective sought by Canada.
8. The Committee recommends that the Government of Canada accord a higher priority to the study of oceanic ecosystems, and to the exchange of information on this subject with other countries.
9. The Committee recommends that the Government of Canada move to ratify the 1982 United Nations LOS Convention, as soon as the European Union ratifies the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks.

APPENDIX 1

LOS Convention: Ratifications, Accessions and Successions

142.	Kiribati (24 February 2003)
141.	Tuvalu (9 December 2002)
140.	Qatar (9 December 2002)
139.	Armenia (9 December 2002)
138.	Hungary (5 February 2002)
137.	Madagascar (22 August 2001)
136.	Bangladesh (27 July 2001)
135.	Serbia and Montenegro (12 March 2001)
134.	Luxembourg (5 October 2000)
133.	Maldives (7 September 2000)
132.	Nicaragua (3 May 2000)
131.	Vanuatu (10 August 1999)
130.	Ukraine (26 July 1999)
129.	Poland (13 November 1998)
128.	Belgium (13 November 1998)
127.	Nepal (2 November 1998)
126.	Suriname (9 July 1998)
125.	Lao People's Democratic Republic (5 June 1998)
124.	European Community (1 April 1998)
123.	Gabon (11 March 1998)
122.	South Africa (23 December 1997)
121.	Portugal (3 November 1997)
120.	Benin (16 October 1997)
119.	Chile (25 August 1997)
118.	United Kingdom of Great Britain and Northern Ireland (25 July 1997)
117.	Equatorial Guinea (21 July 1997)
116.	Solomon Islands (23 June 1997)
115.	Mozambique (13 March 1997)
114.	Russian Federation (12 March 1997)
113.	Pakistan (26 February 1997)
112.	Guatemala (11 February 1997)
111.	Spain (15 January 1997)
110.	Papua New Guinea (14 January 1997)
109.	Romania (17 December 1996)
108.	Brunei Darussalam (5 November 1996)
107.	Malaysia (14 October 1996)
106.	Palau (30 September 1996)
105.	Mongolia (13 August 1996)
104.	Haiti (31 July 1996)
103.	New Zealand (19 July 1996)
102.	Mauritania (17 July 1996)
101.	Panama (1 July 1996)
100.	Netherlands (28 June 1996)
99.	Sweden (25 June 1996)
98.	Norway (24 June 1996)
97.	Ireland (21 June 1996)

96.	Finland (21 June 1996)
95.	Czech Republic (21 June 1996)
94.	Japan (20 June 1996)
93.	Algeria (11 June 1996)
92.	People's Republic of China (7 June 1996)
91.	Myanmar (21 May 1996)
90.	Bulgaria (15 May 1996)
89.	Slovakia (8 May 1996)
88.	Saudi Arabia (24 April 1996)
87.	France (11 April 1996)
86.	Georgia (21 March 1996)
85.	Monaco (20 March 1996)
84.	Republic of Korea (29 January 1996)
83.	Nauru (23 January 1996)
82.	Argentina (1 December 1995)
81.	Jordan (27 November 1995)
80.	Samoa (14 August 1995)
79.	Tonga (2 August 1995)
78.	Greece (21 July 1995)
77.	Austria (14 July 1995)
76.	India (29 June 1995)
75.	Slovenia (16 June 1995)
74.	Bolivia (28 April 1995)
73.	Croatia (5 April 1995)
72.	Cook Islands (15 February 1995)
71.	Italy (13 January 1995)
70.	Lebanon (5 January 1995)
69.	Sierra Leone (12 December 1994)
68.	Singapore (17 November 1994)
67.	Mauritius (4 November 1994)
66.	Germany (14 October 1994)
65.	Australia (5 October 1994)
64.	The former Yugoslav Republic of Macedonia (19 August 1994)
63.	Viet Nam (25 July 1994)
62.	Sri Lanka (19 July 1994)
61.	Comoros (21 June 1994)
60.	Bosnia and Herzegovina (12 January 1994)
59.	Guyana (16 November 1993)
58.	Barbados (12 October 1993)
57.	Honduras (5 October 1993)
56.	Saint Vincent and the Grenadines (1 October 1993)
55.	Malta (20 May 1993)
54.	Zimbabwe (24 February 1993)
53.	Saint Kitts and Nevis (7 January 1993)
52.	Uruguay (10 December 1992)
51.	Costa Rica (21 September 1992)
50.	Dominica (24 October 1991)
49.	Djibouti (8 October 1991)
48.	Seychelles (16 September 1991)

47.	Marshall Islands (9 August 1991)
46.	Federated States of Micronesia (29 April 1991)
45.	Grenada (25 April 1991)
44.	Angola (5 December 1990)
43.	Uganda (9 November 1990)
42.	Botswana (2 May 1990)
41.	Oman (17 August 1989)
40.	Somalia (24 July 1989)
39.	Kenya (2 March 1989)
38.	Democratic Republic of the Congo (17 February 1989)
37.	Antigua and Barbuda (2 February 1989)
36.	Brazil (22 December 1988)
35.	Cyprus (12 December 1988)
34.	Sao Tome and Principe (3 November 1987)
33.	Cape Verde (10 August 1987)
32.	Yemen (21 July 1987)
31.	Paraguay (26 September 1986)
30.	Guinea-Bissau (25 August 1986)
29.	Nigeria (14 August 1986)
28.	Kuwait (2 May 1986)
27.	Trinidad and Tobago (25 April 1986)
26.	Indonesia (3 February 1986)
25.	Cameroon (19 November 1985)
24.	United Republic of Tanzania (30 September 1985)
23.	Guinea (6 September 1985)
22.	Iraq (30 July 1985)
21.	Mali (16 July 1985)
20.	Iceland (21 June 1985)
19.	Bahrain (30 May 1985)
18.	Tunisia (24 April 1985)
17.	Togo (16 April 1985)
16.	Saint Lucia (27 March 1985)
15.	Sudan (23 January 1985)
14.	Senegal (25 October 1984)
13.	Cuba (15 August 1984)
12.	Gambia (22 May 1984)
11.	Philippines (8 May 1984)
10.	Côte d'Ivoire (26 March 1984)
9.	Egypt (26 August 1983)
8.	Belize (13 August 1983)
7.	Bahamas (29 July 1983)
6.	Ghana (7 June 1983)
5.	Namibia (18 April 1983)
4.	Jamaica (21 March 1983)
3.	Mexico (18 March 1983)
2.	Zambia (7 March 1983)
1.	Fiji (10 December 1982)

Source: United Nations, Oceans and the Law of the Sea, Division for Oceans Affairs and the Law of the Sea, last updated 11 April 2003, http://www.un.org/Depts/los/convention_agreements/convention_agreements.htm.

APPENDIX 2

UNFA: Ratifications, Accessions and Successions

34.	Marshall Islands (19 March 2003)
33.	Ukraine (27 February 2003)
32.	Cyprus (25 September 2002)
31.	United Kingdom (Pitcairn, Henderson, Ducie and Oeno Islands, Falkland Islands, South Georgia and South Sandwich Islands, Bermuda, Turks and Caicos Islands, British Indian Ocean Territory, British Virgin Islands and Anguilla (10 December 2001)
30.	Malta (11 November 2001)
29.	Costa Rica (18 June 2001)
28.	New Zealand (18 April 2001)
27.	Barbados (22 September 2000)
26.	Brazil (8 March 2000)
25.	Australia (23 December 1999)
24.	Uruguay (10 September 1999)
23.	Canada (3 August 1999)
22.	Monaco (9 June 1999)
21.	Papua New Guinea (4 June 1999)
20.	Cook Islands (1 April 1999)
19.	Maldives (30 December 1998)
18.	Islamic Republic of Iran (17 April 1998)
17.	Namibia (8 April 1998)
16.	Seychelles (20 March 1998)
15.	Russian Federation (4 August 1997)
14.	Federated States of Micronesia (23 May 1997)
13.	Mauritius (25 March 1997)
12.	Iceland (14 February 1997)
11.	Solomon Islands (13 February 1997)
10.	Senegal (30 January 1997)
9.	Bahamas (16 January 1997)
8.	Nauru (10 January 1997)
7.	Norway (30 December 1996)
6.	Fiji (12 December 1996)
5.	Samoa (25 October 1996)
4.	Sri Lanka (24 October 1996)
3.	United States of America (21 August 1996)
2.	Saint Lucia (9 August 1996)
1.	Tonga (31 July 1996)

Source: United Nations, Oceans and the Law of the Sea, Division for Oceans Affairs and the Law of the Sea, last updated 11 April 2003, http://www.un.org/Depts/los/convention_agreements/convention_agreements.htm.

APPENDIX 3

Straddling Fish Stocks in the Northwest Atlantic: A Chronology

1940s and 1950s

- In 1945, U.S. President Harry S. Truman unilaterally extends United States jurisdiction over all natural resources on that country's continental shelf. Mexico and other Latin American countries follow with similar proclamations.
- In 1946, Argentina claims control of its continental shelf (which extends beyond 200 miles) and the sea above it. Hoping to control the depletion of fish stocks in their adjacent seas and to limit the activities of distant-water fishing fleets, Chile and Peru assert sovereign rights over a 200-mile zone in 1947.
- In 1948, Iceland declares conservation zones beyond its three-mile limit out to the continental shelf.
- On 8 February 1949, the International Commission for the Northwest Atlantic Fisheries (ICNAF) is established to undertake research on and manage the Northwest Atlantic fishery. On 31 March, the *Newfoundland Act, 1949* and the Terms of Union of Newfoundland With Canada bring Newfoundland and Labrador into Confederation as the 10th province.
- Ecuador extends its jurisdiction to 200 miles in 1950. Iceland extends its territorial sea from three to four miles in 1952.
- In March 1954, the *Fairtry* – a converted Antarctic whaling vessel and the first of a generation of factory freezer stern trawlers – is launched from a shipyard in Scotland and dispatched to the Grand Banks.
- In 1958, the United Nations convenes the first of three conferences on the Law of the Sea in Geneva. The United Nations Conference on the Law of the Sea (UNCLOS I) produces conventions dealing with: the territorial sea and the contiguous zone, the high seas, fishing and conservation of the living resources of the high seas, and the continental shelf. That year, Iceland declares a 12-mile territorial sea.

1960s and 1970s

- The Second United Nations Conference on the Law of the Sea (UNCLOS II) is convened in 1960, but fails to produce an agreement on the breadth of the territorial sea and on fishing zones.
- Canada extends its territorial sea from three to 12 miles in 1964. The Gulf of St. Lawrence and Bay of Fundy are declared to be within Canada's exclusive jurisdiction in 1971.
- In response to voyages of the American super tanker *Manhattan* through the Northwest Passage, Canada extends its jurisdiction in Arctic waters to 100 miles in 1971.
- In 1972, Iceland adopts a 50-mile limit; the so-called "cod wars" ensue between that country and Britain.
- On 3 December 1973, the Third United Nations Conference on the Law of the Sea (UNCLOS III) opens. Like its two predecessors, the Conference attempts to introduce some order into the extension of claims of maritime states to ocean resources. The first substantive meeting is held in June 1974 after five years of preparation by the UN Seabed Committee. Canada takes a leading role in all areas of negotiations (limits to national jurisdiction, fisheries management, pollution control, scientific research, and seabed mining).

- In 1975, Canada's Fisheries Minister closes ports to Soviet fishing boats. Canada pursues bilateral agreements with other nations to pave the way for a 200-mile declaration, and offers access to fish in return for compliance with the 200-mile limit.
- In 1976, Iceland adopts a 200-mile limit. Canada's Fisheries Minister announces that Canada will unilaterally extend jurisdiction to 200 miles on 1 January 1977. The federal government releases its *Policy for Canada's Commercial Fisheries*, which lays the ground rules for fishery management in anticipation of extended jurisdiction.
- On 1 January 1977, Canada unilaterally declares fisheries jurisdiction to 200 miles. The declaration creates two boundary disputes – one with the United States in the Georges Bank/Gulf of Maine area (resolved by reference to the International Court of Justice (ICJ) in The Hague in 1984) and one with France, which claims a 200-mile economic zone around the islands of St. Pierre and Miquelon off the southern coast of Newfoundland and Labrador (resolved by a decision of a court of arbitration in 1992). In 1977, Canada implements the first Groundfish Management Plan.
- On 1 January 1979, the Northwest Atlantic Fisheries Organization (NAFO) formally comes into existence to manage those portions of the Grand Banks fishing grounds outside Canada's 200-mile zone. Quotas are voluntary to the extent that members can circumvent them by launching an objection through an appeal process. Ten stocks are initially brought under NAFO management, seven of which straddle the 200-mile limit. ICNAF expires on 31 December 1979.

10 December 1982

The LOS Convention is opened for signature at Montego Bay, Jamaica. A record number of 119 countries sign the LOS Convention that day. Canadian Alan Beesley, who chaired the LOS Convention's drafting committee, signs for Canada.

25 January 1983

The Council of Ministers of the European Economic Community (EEC) approves a new common fisheries policy based on a community system for the conservation of resources, a common organization of the fishery market, and a common external policy.

September 1985

At the seventh annual meeting of NAFO, the EEC challenges Canada's exclusive management of northern cod in the NAFO Convention Area, and argues that Total Allowable Catches should be set above previous levels. The NAFO Fisheries Commission adopts a moratorium for 1986 on (3L) cod fishing by NAFO Contracting Parties.

1987

A federal/provincial task force on foreign overfishing reports to Canada's First Ministers. In accordance with their instructions, Canada focuses the attention of other NAFO members on the overfishing problem and the implications of the EEC's refusal to comply with NAFO conservation decisions. The Fisheries Council of Canada releases *Foreign Overfishing: A Strategy for Canada*.

September 1988

The NAFO General Council adopts Resolution 4/88 calling on all Contracting Parties to avoid excessive or inappropriate use of the objection procedure.

September 1989

The NAFO General Council passes Resolution 1/89 calling for compliance with the NAFO management framework and decisions.

October 1989

Alan Beesley, an internationally known authority on the Law of the Sea, is appointed Ambassador for Marine Conservation. That year, the Government of Canada begins high-level diplomatic efforts and a public information campaign in Europe.

December 1989

The Standing Senate Committee on Fisheries recommends in *The Marketing of Fish in Canada* that Canada step up sanctions beyond port closures and the curtailment of preferential access to surplus stocks of fish within the 200-mile limit to bring pressure on those countries that overfish the straddling fish stocks. The Committee recommends that the Prime Minister, the Secretary of State for External Affairs, and the Minister of Fisheries and Oceans develop a strategy to establish full Canadian fisheries jurisdiction over the whole continental shelf.

23 March 1990

The Fisheries Council of Canada (FCC) releases *Managing Fisheries Beyond 200 Miles: Canada's Options to Protect Northwest Atlantic Straddling Stocks*. Prepared by the Oceans Institute of Canada, the study focuses on the need for more stringent conservation of transboundary stocks and proposes policy options for Canada, including functional fisheries management for these stocks.

30 March 1990

The federal government releases the Final Report of the Northern Cod Review Panel (chaired by Dr. Leslie Harris). The *Independent Review of the State of Northern Cod* recommends that Canada seek international agreement to permit its management of all fish stocks indigenous to the Canadian continental shelf and that extend beyond the 200-mile economic zone and, failing achievement of this objective, Canada take unilateral action to acquire management rights.

September 1990

Canada hosts a gathering of experts on high seas conservation in St. John's, Newfoundland. At the next meeting held in May 1991, in Santiago, Chile, Canada joins with other coastal states to develop a text of principles and measures (known as the "Santiago Text"). At the 12th annual meeting of NAFO, a working group is established to develop proposals for the improvement of fisheries surveillance and control. A resolution directed toward eliminating catches by fleets from non-members of NAFO, particularly fleets operating under flags of convenience, is adopted.

17 May 1991

Randolf Gherson is appointed Ambassador for Fisheries Conservation (replacing Alan Beesley), with responsibility to coordinate Canada's efforts to resolve the problem of overfishing.

September 1991

A report tabled at NAFO's 13th annual meeting shows that all stocks managed by the organization are in decline. Some stocks are believed to be so low that scientists can no longer offer meaningful management options.

24 February 1992

Canada's Minister of Fisheries and Oceans announces a conservation ceiling for the management of the northern cod stock, effectively shutting down the Canadian offshore fishery inside the 200-mile limit.

March 1992

During a preparatory meeting for the United Nations Conference on Environment and Development, the principles in the Santiago Text (of September 1990) are incorporated in "L.16," a United Nations document on high seas fishing regulation. The proposals on high seas fishing are supported by 40 coastal states. On 30 March, a convoy of seven Canadian trawlers sets out from St. John's to take "symbolic custody" of the fishery beyond Canada's 200-mile limit.

3 June 1992

The EC suspends fishing for cod, plaice and yellowtail in areas outside the 200-mile zone.

5 June 1992

The Scientific Council of NAFO releases a report that validates the data and analysis presented by Canadian scientists on the state of northern cod.

6 June 1992

A resolution is passed at the United Nations Conference on Environment and Development (UNCED, also known as the Earth Summit) committing nations to the conservation and sustainable use of marine living resources on the high seas.

2 July 1992

A two-year moratorium on the Canadian northern cod (2J3KL) fishery is announced by the Minister of Fisheries and Oceans. On 19 July, Save our Northwest Atlantic Resources (SONAR) is formed by the Fishermen, Food and Allied Workers Union and the Fisheries Association of Newfoundland and Labrador.

September 1992

At its annual meeting, NAFO unanimously adopts a ban on fishing for northern cod in 1993. The EC, for the first time since 1984, agrees to abide by all NAFO conservation decisions for 1993. Quotas are generally set in accordance with the advice from the NAFO Scientific Council. NAFO approves measures developed at a special session on surveillance and control (convened at Canada's request) in May 1992. A pilot project begins in January 1993 to place observers on vessels (from each Contracting Party) for 10% of fishing days. Measures to reduce the harvest of small fish include new minimum sizes for cod and flounder, and new minimum mesh sizes. Measures to improve the effectiveness of inspections at sea include the requirement to maintain production log books or stowage plans.

22 December 1992

The UN General Assembly adopts a resolution to convene a Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks.

21–24 January 1993

Representatives from 47 United Nations countries meet in St. John's to prepare for the United Nations Conference on High Seas Fisheries, to be held in April and July.

19–23 April 1993

Sixty-five countries attend the organizational session of the UN Conference on High Seas Fisheries in New York City.

6 July 1993

DFO releases a report on the status of groundfish stocks, which indicates that northern cod stock may not recover until the end of the decade.

9 July 1993

The Canadian Prime Minister asks for the commitment of other Group of Seven (G7) members to support the upcoming United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks.

12–30 July 1993

The second session of the Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks meets at the United Nations in New York City. On 16 July, the Canadian delegation tables a draft convention that requires: recognition of the special interest of coastal nations in straddling and migratory species outside their 200-mile limits; consistency in conservation and management measures inside and outside Exclusive Economic Zones; a stipulation that there be no adverse impact on resources inside 200-mile limits from fishing in areas outside the limits; and a compulsory dispute settlement mechanism. The proposal is co-sponsored by Argentina, Chile, Iceland and New Zealand.

September 1993

At its annual meeting, NAFO extends the 1993 moratorium on fishing for northern cod outside 200 miles to the end of 1994, and adopts a moratorium for 1994 on fishing 3LNO American plaice and yellowtail flounder, and 3NO witch flounder. New conservation measures are approved for fishing shrimp and 3NO cod. For 3NO cod, this includes: the presence of Canadian or European Community (EC) patrol vessels when the stock is being harvested; 50% observer coverage on vessels; and dockside monitoring by EC officials for all EC fishing vessels. NAFO-member countries commit themselves, over the next year, to pursue means of ending fishing by vessels from non-NAFO countries.

October 1993

The Fisheries Crisis Alliance (a coalition of Newfoundland church groups, municipalities, development associations, unions and fishery organizations) releases, on 1 October, a petition calling for the restoration of fish stocks. On 20 October, a national campaign called “No Fish, No Future” is launched by the Canadian Ocean Caucus (an alliance made up of about 50 environmental groups from across Canada).

24 November 1993

The *International Agreement to Promote Compliance with International Conservation and Management Measures for Fishing Vessels on the High Seas* is adopted by the UN Food and Agriculture Organization in Rome.

Known as “the FAO Compliance Agreement” (and the first stage to be completed of the FAO’s *Code of Conduct for Responsible Fisheries*), the Agreement places a general obligation on flag states to take measures to ensure that their vessels do not engage in activities that undermine the effectiveness of international conservation and management measures.

29 November 1993

Canada’s Fisheries Resource Conservation Council (FRCC) recommends that the moratorium on fishing for northern cod be extended through 1994, and that it include cod in the Gulf of St. Lawrence and areas off Nova Scotia. The FRCC believes overfishing by foreign fleets generally (and their catches of small fish in particular) to be a serious constraint to the rebuilding of stocks on the Grand Banks, and recommends that the Government of Canada take appropriate action.

20 December 1993

The Minister of Fisheries and Oceans announces the 1994 Atlantic Groundfish Management Plan. The northern cod moratorium is to continue indefinitely, all major cod fisheries inside the Canadian zone are to close, and quotas for most other species of groundfish are to be sharply reduced. Total Allowable Catches of groundfish in the Atlantic region are reduced to 250,000 tonnes, a 75% reduction from 1988. In December, the European Community agrees to respect the ban on fishing northern cod outside Canada’s 200-mile limit.

18 January 1994

The Throne Speech underlines the federal government’s commitment to “take the action required to ensure that foreign overfishing of East Coast stocks comes to an end.” Later in January, the Minister of Fisheries announces that he had asked the Minister of National Defence to be prepared, when the time came, to inform the government of options available to deal with overfishing.

February 1994

Results of Canadian research on turbot (also known as Greenland halibut) off lower Labrador and eastern Newfoundland suggest a two-thirds decline in biomass since 1991. At a special NAFO meeting held in Brussels on 15-17 February, NAFO votes to cancel the 6,000-tonne 3NO cod quota that it had approved in September 1993, agrees to impose a moratorium on fishing 3NO cod, and adopts Canada’s proposal to extend, until the end of the year, a pilot on-board observer program.

14–31 March 1994

The third session of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, meets in New York City.

2 April 1994

DFO seizes the *Kristina Logos* (a trawler flying the Panamanian flag) for fishing in 3NO, an area placed under NAFO moratorium.

4 May 1994

New regulations come into force that require Canadian fishing vessels operating on the high seas or in the waters of another country to be licensed by Canada.

May 1994

Canada's Minister of Foreign Affairs and the Minister of Fisheries and Oceans announce the introduction of new legislation giving the Government of Canada the authority to make regulations for the conservation of straddling fish stocks on the high seas. Bill C-29, *An Act to amend the Coastal Fisheries Protection Act*, provides for the arrest of vessels that have no international registration or that fly flags of convenience and that refuse to comply with conservation measures in the NAFO Regulatory Area. Canada amends its acceptance of the compulsory jurisdiction of the ICJ in The Hague. Bill C-29 receives Royal Assent on 12 May, and goes into effect on 31 May 1994. Stateless and flag-of-convenience vessels reportedly leave the Grand Banks.

20 May 1994

Canada is the first country to become party to the FAO *International Agreement to Promote Compliance with International Conservation and Management Measures for Fishing Vessels on the High Seas* of 24 November 1993.

June 1994

The Minister of Fisheries and Oceans indicates that Canada will be requesting that NAFO regulate the turbot fishery by setting a Total Allowable Catch. In its review of the state of turbot, the NAFO Scientific Council and Canada's Fisheries Resource Conservation Council warn that fishing effort in offshore areas is in excess of what the stocks can sustain. Canada responds by reducing its domestic quota off Baffin Island by more than half, and ends a fishery development program off the coast of Labrador. Quotas are further reduced on 20 July.

26 July 1994

Two U.S. vessels are seized by Canadian fisheries officers for having fished Icelandic scallops without licences on the Nose of the Grand Bank outside the 200-mile limit. Later that year, in November, the Minister of Fisheries and Oceans announces that the United States has recognized Canada's jurisdiction over Icelandic scallops on the continental shelf outside 200 miles. Following a review of the scientific evidence, the United States concludes that the scallops are a sedentary species as defined in international law. The proceedings against the two American captains are stayed.

15–26 August 1994

The fourth session of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Species is held in New York City. Canada urges the adoption of a binding convention that would allow regional fisheries organizations (such as NAFO) to set total catches, create mechanisms to settle disputes, and enforce the rules concerning straddling and migratory stocks. On 23 August, a 31-page draft convention is circulated among delegates. The Conference ends with a draft treaty that would regulate fishing on the high seas, and an agreement to continue negotiations into 1995 to make it legally binding.

30 August 1994

The Prime Minister announces the appointment of Paul Lapointe as Ambassador for Fisheries Conservation.

September 1994

At its annual meeting, NAFO agrees for the first time to establish a Total Allowable Catch (TAC) for turbot of 27,000 tonnes – a significant reduction from annual catches of more than 60,000 tonnes in previous years. The TAC is set to try to halt the decline and allow the stock to rebuild, and includes all catches in NAFO Sub-areas 2 and 3.

26 November 1994

The 1982 United Nations LOS Convention comes into force one year after its 60th ratification.

9 January 1995

Canada and Norway reach an agreement on reciprocal fisheries enforcement outside each country's 200-mile fishing zone. The enforcement authorities of each country are allowed to board, inspect and seize vessels of the other country fishing illegally in international waters outside each other's 200-mile zones. (Similar reciprocal enforcement agreements had already been signed with Estonia, Latvia and Lithuania.)

30 January–1 February 1995

At a special meeting of the NAFO Fisheries Commission, the EU claims 75% of the TAC for turbot, but receives an allocation of only 12.59% (3,400 tonnes), while Canada receives 60.37% of the allowable catch (16,300 tonnes – an amount reflecting its traditional share of the stock). NAFO allocates 3,200 tonnes to Russia (11.85% of the TAC), 2,600 tonnes to Japan (9.63%), and 1,500 tonnes (5.56%) for other members combined. The EU votes against the decision.

5 February 1995

Canada's Minister of Fisheries and Oceans informs the EU Fisheries Commissioner that Canada is prepared to consider transitional measures to allow the EU to adjust to the 1995 quota, provided that the EU does not invoke the NAFO objection procedure.

15 February 1995

Canada's Fisheries Minister announces that Canada would use any means necessary to prevent the destruction of turbot in NAFO Sub-areas 2 and 3.

1 March 1995

After having objected to its assigned turbot quota, the EU sets an autonomous catch limit – 69% of the TAC, or six times more fish than allotted to the EU by NAFO.

3 March 1995

Canada's Minister of Fisheries and Oceans announces that the *Coastal Fisheries Protection Regulations* have been amended, making it an offence for Spanish and Portuguese vessels to fish for turbot on the Grand Banks. Until then, the regulations had applied only to flag-of-convenience vessels and stateless vessels. Canada's Prime Minister also proposes to the EU President that a 60-day moratorium be imposed on fishing turbot in NAFO waters. The proposal is rejected by the European Council of Ministers on 6 March.

9 March 1995

Canada's Minister of Fisheries and Oceans announces that Canada is enforcing a 60-day moratorium on fishing turbot inside and outside the 200-mile limit. In what has become known as “the turbot

war,” Canadian fishery officers and an RCMP emergency response team seize and arrest a Spanish fishing vessel, the *Estai*, outside Canada’s 200-mile limit. An inspection of the *Estai* by Canadian fishery officials reveals that: 79% of the turbot aboard are less than 38 cm in length; and 6% of the catch is less than 17 cm in length (mature turbot are 60-70 cm in length). The vessel’s log books show the misreporting of catches, and 25 tonnes of American plaice, a species under a NAFO fishing moratorium, are discovered behind secret bulkheads. On 10 March, the media report that Spain has dispatched a navy ship to the NAFO Regulatory Area.

12 March 1995

The captain of the *Estai* is charged with illegally fishing turbot, obstructing a fishery officer, destroying fishing gear, and failing to stop when ordered to do so; he is released on an \$8,000 bond. The hearing of the charges against the captain is set for 20 April in St. John’s (the charges were later dropped). Soon after the *Estai*’s arrest, the remaining Spanish and Portuguese trawlers reportedly withdraw beyond the turbot grounds on the Grand Banks. The *Estai*’s nets (which were cut loose prior to its seizure) are retrieved and show that undersized fish were caught with illegal gear.

16 March 1995

Bilateral discussions between Canada and the EU over turbot begin in Brussels. The morning after, the *Estai* and the vessel’s 24-man crew leave St. John’s harbour after posting a \$500,000 bond.

26 March 1995

The warps of the Spanish vessel *Pescamaro Uno* are cut by the Canadian Coast Guard vessel *Sir Wilfred Grenfell*.

27 March–12 April 1995

At the fifth session of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks in New York City, Canada’s Minister of Fisheries and Oceans delivers a speech stressing the need for effective enforcement on the high seas. The nets from the *Estai* are displayed.

28 March 1995

Following the boarding of the *Estai* (on 9 March 1995), Spain files an Application to the ICJ in The Hague instituting proceedings against Canada. Spain claims Canada has no legal right to arrest the *Estai* in international waters.

15 April 1995

The *Canada-EU Control and Enforcement Agreement* settles the dispute between the EU and Canada over turbot in NAFO Sub-areas 2 and 3.

20 April 1995

The *Canada-EU Control and Enforcement Agreement* is formally signed by the EU and Canada. Both parties agree to immediately implement 100% observer coverage. Other aspects of the Agreement include: independent, full-time observers on board all vessels at all times; enhanced surveillance via satellite tracking; dockside inspections of all vessels at each port of call; special powers to order a vessel to port for a thorough inspection; authority to seal fish holds and preserve evidence of apparent infringements; the requirement that observers report, within 24 hours, any infringements of conservation and enforcement measures to NAFO inspection vessels and to the Organization’s

Executive Secretary; the requirement that observers provide their reports at the end of each voyage to the Executive Secretary; the sharing of information on the location and identity of vessels; the option of having Canadian officials present during the inspection of an EU vessel ordered to port by an EU inspector; and the sharing of information by all Contracting Parties regarding follow-up action where a vessel has been cited for an infringement. Canada and the EU agree to propose jointly to NAFO that the measures specified in the Control and Enforcement Agreement be adopted by NAFO Contracting Parties. Canada repeals the provisions of its federal regulations made pursuant to the *Coastal Fisheries Protection Act*.

21 April 1995

Canada informs the ICJ that, in its view, the Court lacks jurisdiction to deal with the case brought to it by Spain because of a reservation Canada made in its 10 May 1994 declaration. In this declaration, Canada stated that the Court had compulsory jurisdiction over all disputes other than disputes arising out of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area and the enforcement of such measures.

June 1995

On 9 June, the Fisheries Commission of NAFO ends three days of closed-door discussions on the conservation and enforcement measures in the *Canada-EU Control and Enforcement Agreement* of April. On 12 June, the Tourist Office of Spain announces that the visa requirement that had been imposed on 1 April for Canadians visiting that country would be lifted on 14 June. That day, a Spanish trawler becomes the first known violator of the *Canada-EU Control and Enforcement Agreement* when a boarding party from the Canadian destroyer *Nipigon* finds 11 tonnes of turbot over and above the amount recorded in the vessel's fishing log, which is subsequently confirmed by an EU inspector.

24 July–4 August 1995

The final session of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks approves a new UN instrument – the *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 Fish Stocks* (generally known as the United Nations Fish Stocks Agreement, or UNFA). Conservation measures established by regional fisheries management organizations (RFMOs) or arrangements are to be binding on all parties. UNFA provides: the means for members of RFMOs, such as NAFO, to take enforcement actions against vessels on the high seas when the flag state is unable to do so; for the compatibility of conservation measures both inside and outside 200-mile limits (including a provision to ensure that measures outside 200 miles do not undermine those inside); and compulsory and binding settlement of disputes concerning high seas fisheries. Countries become legally bound by UNFA following 30 ratifications.

September 1995

At its 1995 annual meeting, NAFO adopts, on 15 September, new fisheries control measures based on the April 1995 Canada-EU Agreement. Beginning on 1 January 1996, all vessels belonging to NAFO Contracting Parties fishing on the Nose and Tail of the Grand Banks are to have an independent observer on board at all times. Canada's Minister of Fisheries and Oceans announces that NAFO has adopted "the toughest set of control and enforcement measures of any fisheries management organization in the world."

3 November 1995

U.S. President Bill Clinton signs into law legislation that, among other things, authorizes that country to join NAFO. U.S. officials subsequently deposit the necessary documents for joining the Organization on 29 November.

4 December 1995

The sixth session of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks is convened in New York City for the opening for signature of UNFA.

31 May 1996

The Government of Canada announces the opening of Canadian ports to EU fishing vessels.

31 January 1997

Canada's *Oceans Act* comes into force; jurisdiction over ocean areas is recognized through the declaration of an Exclusive Economic Zone (EEZ) and a Contiguous Zone (CZ).

4 December 1998

The ICJ decides not to hear Spain's claim against Canada, declaring it has no jurisdiction in the matter (see 28 March 1995).

3 August 1999

Canada ratifies the 1995 UNFA.

11 December 2001

UNFA enters into force (one month following ratification by the 30th state on 11 November 2001).

29 January–1 February 2002

At a special meeting of NAFO held in Helsingør, Denmark, Canada presents information showing an increasing trend in non-compliance by vessels of some countries belonging to NAFO. Canada proposes measures to address the problems of excessive by-catches of species under moratoria, misreporting, and exceeding quotas. NAFO increases the TAC for turbot, from 40,000 to 44,000 tonnes, an amount above the catch level recommended by science. NAFO agrees to establish a process to review and assess compliance performance by NAFO members on an annual basis.

14 March 2002

During a port inspection in Long Pond, Newfoundland and Labrador, Canadian fishery officers find on board a Russian-registered vessel (the *Olga*) that fishes for shrimp and groundfish, 48 tonnes of cod, 9 tonnes of skate and other species caught on the southern Grand Banks.

21 March 2002

In response to persistent violations in the NAFO Regulatory Area beyond Canada's 200-mile limit, Canada announces the closure of its ports to Faeroese shrimp vessels.

9 April 2002

Evidence that Estonian shrimp boats are violating NAFO conservation measures for shrimp leads Canada to close its ports to that country's fishing fleet.

May 2002

At meetings of the North Atlantic Fisheries Ministers Conference (NAFMC) in Russia, the Minister of Fisheries and Oceans raises Canada's concerns about conservation and the increasing trend towards non-compliance in the NAFO Regulatory Area.

11 June 2002

In a report entitled *Foreign Overfishing: Its Impacts and Solutions, Conservation on the Nose and Tail of the Grand Banks and the Flemish Cap*, the House of Commons Committee on Fisheries and Oceans recommends that Canada withdraw from NAFO and establish custodial management of fisheries on the Nose and Tail of the Grand Banks and the Flemish Cap. Also recommended is the use of UNFA and the *Coastal Fisheries Protection Act* to address non-compliance in the NAFO Regulatory Area.

August 2002

A Custodial Management Coalition is formed in Newfoundland and Labrador.

September 2002

The annual meeting of NAFO held in Santiago de Compostela, Spain, ends with the adoption of measures designed to improve the effectiveness of NAFO. With the exception of turbot, quotas in the Regulatory Area are based on advice from the NAFO Scientific Council. NAFO's Standing Committee on International Control (STACTIC) is also asked to measure compliance in the NAFO Regulatory Area. The TAC for turbot is set at 42,000 tonnes for 2003, above the 36,000-tonne catch level recommended by the Scientific Council.

27 September 2002

The Minister of Fisheries and Oceans announces that Canada will close its ports to foreign fishing vessels it believes are committing serious violations of the conservation and enforcement measures set by NAFO.

13 December 2002

The Minister of Fisheries and Oceans announces that Canada is reopening its ports to the Estonian fishing fleet, lifting a ban it had imposed in April.

20 February 2003

A Roundtable Forum on Improving the Management of Straddling Fish Stocks is held at the Marine Institute, Memorial University, St John's, Newfoundland and Labrador.

17 March 2003

A report by a Newfoundland and Labrador All-Party Committee on the 2J3KL and 3Pn4RS cod fisheries calls for a Canadian-based fisheries management regime to be adopted beyond 200 miles to protect the straddling fish stocks on the Nose and Tail of the Grand Banks.

25 March 2003

The House of Commons Standing Committee on Fisheries and Oceans releases a report on *Custodial Management Outside Canada's 200-Mile Limit* that reiterates recommendations made earlier in June 2002.

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- DFO, News Releases and Backgrounders (various years), <http://www.ncr.dfo.ca>
- NAFO, Annual Reports (various years), <http://www.nafo.ca/>

APPENDIX 4

Witnesses

- November 26, 2002 *From the Department of Fisheries and Oceans:*
- Patrick Chamut, Assistant Deputy Minister, Fisheries Management
 - Guy Beaupré, Director General, International Affairs Directorate
- December 3, 2002 *From the Fisheries Crisis Alliance:*
- Gus Etchegary, Spokesperson
- December 11, 2002 *From the Department of Foreign Affairs and International Trade:*
- Robert Hage, Director General, Legal Affairs Bureau
 - David Ehinger, Deputy Director, Oceans Law Section
 - Allison Saunders, Oceans Law Section
- February 2, 2003 *From the Northwest Atlantic Fisheries Organization:*
- David Bevan, Chair, Standing Committee on International Control
- February 25, 2003 *From the Newfoundland Provincial Advisory Council on Overfishing:*
- Dr. Art May, Member
 - Alistair O'Rielly, Member
- March 25, 2003 *From the Newfoundland and Labrador Ministry of Fisheries and Aquaculture:*
- Mike Samson, Deputy Minister
- April 1, 2003 *From the Fish, Food and Allied Workers Union/CAW (Newfoundland):*
- Bill Broderick, President, Inshore Council
- From the P.E.I. Fishermen's Association:*
- Rory McLellan, General Manager
- From the Maritime Fishermen's Union:*
- Sandy Siegel, Executive Secretary
- April 29, 2003 *From the Fisheries Council of Canada:*
- Patrick McGuinness, Vice-President
- On behalf of the Marine and Environmental Law Programme, Dalhousie University:*
- Professor Douglas Johnston
- May 6, 2003 *From Memorial University:*
- Professor George Rose, Senior Chair of Fisheries Conservation
- From the Fisheries Resource Conservation Council:*
- Fred Woodman, Chair