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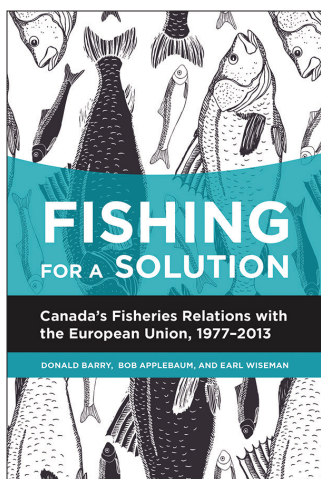
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**FISHING FOR A SOLUTION:
CANADA'S FISHERIES RELATIONS WITH
THE EUROPEAN UNION, 1977-2013**
Donald Barry, Bob Applebaum, and Earl Wiseman

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FROM CONFLICT TO COOPERATION



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

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

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

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

Spain and Portugal Join the EU

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

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

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

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

to such a level that this dependence constitutes one of the fundamental aspects of the basic equilibria in the policy.” The Commission considered the NRA to be “a permanent field of activity for external fishing.”²⁴

Both Spain and Portugal criticized NAFO for following Canada’s conservative $F_{0.1}$ fisheries management approach. “With Spain and Portugal’s accession to the EEC,” said a Spanish fishing official, “we will be able to unite to reject the very low Northwest Atlantic cod quotas imposed by the Northwest Atlantic Fisheries Organization, a group dominated by Canada, which wants to safeguard the resources for commercial not biological reasons.”²⁵ The claim was not entirely unfounded. The $F_{0.1}$ management strategy had two main purposes. One was to provide a buffer against the possibility that TACs would be set too high based on faulty scientific data. The other was to maintain the stocks at fairly dense levels to improve catch per unit effort levels, thereby improving economic returns for all who fished them. However, Spain and Portugal preferred higher catches to higher densities and were not concerned about the health of the stocks.

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

NAFO Engaged

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

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

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

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

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

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

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

Positions Harden

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

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

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

The EU kept up its offensive at NAFO's next annual meeting in September 1986. The head of its delegation publicly criticized the F_{0,1} management strategy for ignoring "social considerations" and called for a new agreement to replace the organization's high seas enforcement regime. Ottawa released a position paper, which noted that of the 37 fishing violations uncovered by Canadian inspectors, Spain was responsible for 27 and Portugal nine. Offences ranged from failure to maintain adequate fishing records to the use of small mesh nets. As they had the previous year, the Contacting Parties rebuffed the Union's bid for higher TACs and quotas. Armed with the Scientific Council's advice that "less than 5 percent on average" of the 2J3KL cod stock is present in the NAFO Regulatory Area "throughout the year," Canada proposed that the moratorium on 3L cod fishing be continued. The EU took issue with Canada's claim that the TAC was used up in Canadian waters, saying "it could not accept the principle of a stock occurring in the international waters of the Regulatory Area being 'fully subscribed in the Canadian zone'."¹⁴ But NAFO members voted to renew the ban. Dissatisfied EU officials reiterated the Union's intention to stay out of the NAFO enforcement agreement. The EU lodged objections against nine measures it had voted against. The Fisheries Council established unilateral quotas for four stocks, including a 2J3KL cod quota of 68,560t, which the Union would not enforce.¹⁵ (See Table I.)

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

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

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

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

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

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

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

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

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

Canada’s Situation Worsens

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

in St. John's, to provide a detailed stock assessment. The panel was asked to provide an interim report by May 1989.²⁴

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

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

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

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

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

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

Signs of Change

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Testing Time

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Frustrated by the slow progress and pressed by Newfoundland and fishing industry officials, the Canadian government announced in January 1992 that it would increase its diplomatic and public relations campaigns to try to persuade the EU to abide by NAFO's fishing quotas. Ottawa called for a special meeting of the organization to deal with surveillance and control, and non-member fishing. It would also seek agreement at the Earth Summit in Rio in June on new measures to give effect to the provisions of the Law of the Sea Convention dealing with straddling stocks⁶⁰

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

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

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

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

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

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

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

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

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

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

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

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

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