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## Fishing for a Solution: Canada's Fisheries Relations with the European Union, 1977-2013

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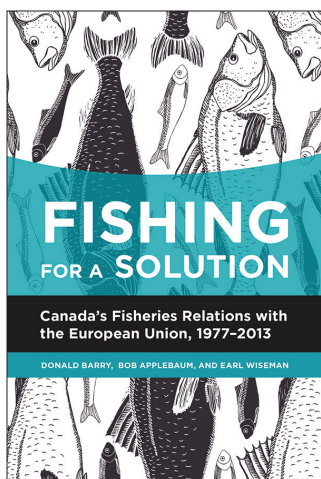
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**FISHING FOR A SOLUTION:  
CANADA'S FISHERIES RELATIONS WITH  
THE EUROPEAN UNION, 1977-2013**  
Donald Barry, Bob Applebaum, and Earl Wiseman

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## THE TURBOT WAR



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

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

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

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

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

## Growth of the Fishery

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

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

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

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

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

## Setting a TAC

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

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

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

behaviour of the Spanish and Portuguese fleets “criminal in the legal sense and in a moral sense too.”<sup>11</sup>

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

## Setting Quotas

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

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

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

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

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

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



nil.”<sup>21</sup> Clyde Wells and his fellow Atlantic province premiers urged Ottawa to take all necessary steps to enforce NAFO’s decision.<sup>22</sup>

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

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

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

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

## Applying Pressure

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

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

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

sides, made up my own mind, and decided to back Tobin” subject to a final diplomatic effort, adding that he kept the minister “in check when I felt he was trying to go too far.”<sup>29</sup>

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

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

## War of Words

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

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

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

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

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

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

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

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

what they deem as their legitimate interests.” However, Spain’s foreign minister, Javier Solana, vowed to “keep up the pressure on all sides to try to solve this problem, which I insist is a European one.”<sup>41</sup>

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

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

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

## Negotiations Begin

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

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

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

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

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

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

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

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

## Renewed Tension

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



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

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

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

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

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

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

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

## Agreement Reached and Rejected

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

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

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

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

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

percent). This would fulfill most of the major elements of the moribund 1992 Canada-EU fisheries accord.<sup>60</sup>

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

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

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

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

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

## Under Pressure, the EU Accepts

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

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

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

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

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

## Aftermath

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

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

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

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

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

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