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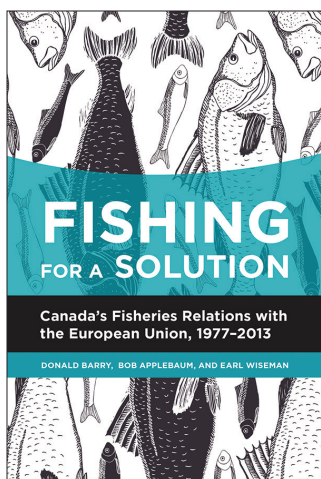
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**FISHING FOR A SOLUTION:
CANADA'S FISHERIES RELATIONS WITH
THE EUROPEAN UNION, 1977-2013**
Donald Barry, Bob Applebaum, and Earl Wiseman

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NEW CONFLICTS ARISE



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

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

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

A Promising Start

At NAFO’s annual meeting in September 1996, the Contracting Parties approved, by consensus, the TACs and quotas for 1997, including the agreement on northern cod reached by Canada and the EU as part of the settlement of the Turbot War. They also agreed to continue making overtures to states registering flag-of-convenience vessels in order to control illegal fishing, and to set up a working group on dispute settlement with the goal of reforming the organization’s objection procedure.³ Fred Mifflin, the new Canadian fisheries minister, said the decision on northern cod confirmed Canada’s right to manage the stock and would prevent “a buildup of foreign effort on the Nose of the Grand Banks that could jeopardize the rebuilding of the Northern cod stock.”²⁴ The EU Fisheries Council approved the measures in December.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Clash of Views

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

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

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

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

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

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

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

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

Internal Pressures Mount

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

The committee's deliberations took on added impetus when Canada closed its ports to vessels from the Faroe Islands and Estonia for exceeding their shrimp quotas. The closures forced the ships to return home to unload their catches, thereby reducing their profit margins. Canadian inspectors also cited a Russian factory freezer trawler for illegally fishing cod in the NAFO Regulatory Area. Russia cancelled its vessel's fishing licence in the NRA for the remainder of 2002.²⁷

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

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

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

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

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

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

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

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

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

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

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

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

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

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

New Internal Pressures

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

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

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

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

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

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

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

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

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

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

Improved Cooperation in NAFO

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

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

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

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

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

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

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

Fishing Violations

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

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

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

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

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

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

However, more Canadian inspections did lead to a substantial decline in the number of foreign vessels operating in the NAFO Regulatory Area. Diplomatic initiatives begun by Prime Minister Martin's government, which was returned to power in the general election in June 2004, also produced positive results. Martin raised the overfishing issue at the G-8 summit and in follow-up discussions with European leaders. Ottawa secured the European Commission's support for a technical consultation between NAFO inspectors aimed at achieving a common understanding of their respective inspection practices. In a sign of their closer cooperation, Spain invited Canada to participate in the inspection of a Spanish trawler that had been cited for fishing violations in the NAFO Regulatory Area. Ottawa also headed off a threat from Denmark (on behalf of the Faroe islands) unilaterally to increase shrimp allocations assigned to the Faroes, by agreeing to support the Faroese demand for a larger share of the TAC at NAFO's next annual meeting, in September 2004.⁶⁴

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

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

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

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

Pressures for Reform

The Martin government continued to keep the overfishing issue in the public eye. The prime minister, in his address to the UN General Assembly in September 2004, emphasized Canada's interest in stronger international fisheries governance, calling for a "global oceans policy" to facilitate the recovery of depleted stocks.⁶⁸ Regan held discussions with Portugal's fisheries minister in Lisbon. They launched an initiative to improve mutual understanding of how the Canadian and Portuguese judicial systems deal with fishing violations, which would culminate in a workshop involving legal advisors and officials from both countries in St. John's in February 2005.⁶⁹ Regan also took part in a UN General Assembly debate on overfishing, at which time he announced that Canada would host a conference on "Governance of High Seas Fisheries and the United Nations Fish Agreement – Moving from Words to Action" to further international fisheries regulation.⁷⁰ At home, he appointed an Advisory Panel on the Sustainable Management of Straddling Fish Stocks in the Northwest Atlantic. The panel, chaired by Arthur May, a former Deputy Minister of Fisheries and Oceans and the first chair of NAFO, was to provide advice on how to reduce overfishing in the NRA and strengthen the role of coastal states in protecting straddling stocks.⁷¹

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

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

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

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

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

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

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

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

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

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

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

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