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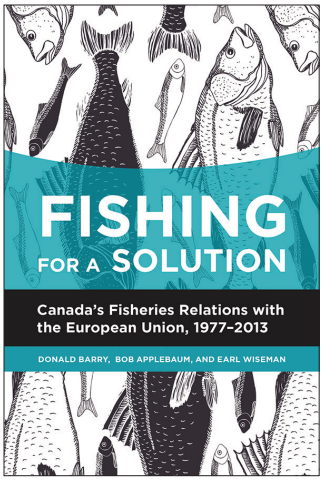

FISHING FOR A SOLUTION: CANADA'S FISHERIES RELATIONS WITH THE EUROPEAN UNION, 1977–2013

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REFORMING NAFO

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

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

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

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

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

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

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

Improving Control and Enforcement

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

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

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

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

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

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

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

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

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

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

The NAFO Amendments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Aftermath

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

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

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

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

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

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

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

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

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

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

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

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