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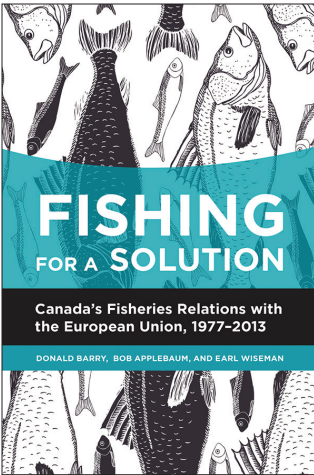
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**FISHING FOR A SOLUTION:
CANADA'S FISHERIES RELATIONS WITH
THE EUROPEAN UNION, 1977-2013**
Donald Barry, Bob Applebaum, and Earl Wiseman

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CONCLUSION



International negotiations stand at the intersection of domestic and external politics. Gilbert Winham was among the first to observe that bargaining takes place at two levels, an external negotiation between parties and an internal negotiation within their policy structures. Robert Putnam has expressed the relationship through the metaphor of a “two-level game” in which governments try “to balance international and domestic concerns in a process of ‘double-edged’ diplomacy.”¹ They seek both to win something competitively from each other and to satisfy domestic interests whose support is necessary to achieve agreement. In the case of the European Union the game is played at three levels: the international level where the Union negotiates with other parties, the EU level where member states and interests bargain with each other to determine the Union’s position in external negotiations, and the member state level where national positions are decided. In reaching agreement, the parties’ internal politics become entangled in that each side’s gains depend upon the other’s ability to meet its undertakings. This can be seen in the history of Canada’s fisheries relations with the European Union during the 1977–2013 period.

Canada’s decision to extend its offshore fisheries jurisdiction to 200 miles in 1977, in order to protect depleted fish stocks, compelled Canada

and the European Union, with member states that had long fished in the waters of the Northwest Atlantic, to work out a new relationship. This led to the 1981 long-term agreement on fisheries (LTA). The cornerstone of the LTA was an exchange of concessions that promised Canada conservation cooperation and better access to the EU market for certain fish products in return for EU fishing rights for non-surplus northern cod and other potentially non-surplus fish stocks inside Canada's 200-mile limit, for a six-year period. The exchange reflected each side's priorities. Canada's were to secure conservation cooperation outside 200 miles and to diversify export opportunities for its expanding fish production in the wake of the extension. The Union's were to maintain West Germany's distant water fishing operations and to ease pressure on its own fish stocks, which would help bring the EU closer to a long-sought Common Fisheries Policy (CFP). In return, the Canadian industry would have to accept slightly lower catch levels to accommodate allocations to the EU, while the Union would have to allow more Canadian competition in its market. Each side's concessions became the focus of internal controversies.

The government of Newfoundland and Labrador and the fishing industry opposed the agreement. The province rejected the strategy of allocating non-surplus fish stocks for trade concessions, which it argued should be pursued in multilateral trade talks. It also believed that conservation cooperation was in the interest of all parties and should not have to be paid for by Canadians. The fishing industry was against the LTA because it guaranteed the Union's fleet catches in Canadian waters but did not assure increased Canadian fish sales in the EU market. Ottawa had the authority to approve the pact, the provincial government's influence over the decision being dependent upon its ability to mobilize the industry's support. The likelihood that the successful operation of the agreement would meet the industry's concerns gave Ottawa leeway to proceed. But that would depend on the EU's cooperation.

Although the EU signed the LTA, member states were not unanimous in their support. The only state with a direct interest in the fish allocations under the LTA was West Germany, whose deep sea fleet stood to gain the most from the pact. The UK, Denmark, and Ireland had little or no interest in securing access to Canadian fish stocks. However, they were vitally interested in access to member states' coastal waters, fishing quotas, and internal market issues. The Canadian fishing rights concession reduced

West Germany's claims to cod stocks in EU waters, thereby making possible higher quotas for other member states. But for the British, the Danes, and the Irish the gain was marginal compared to other objectives they wanted to enshrine in the Common Fisheries Policy. The LTA gave them important leverage in their efforts to secure acceptance of their demands.

Canada expected that its traditional British market would absorb the bulk of Canadian fish exports under the agreement. However, after the LTA was adopted, the British government responded to pressures from its beleaguered domestic fishing industry by demanding that the EU impose market allocation quotas even though Canadian sales to the UK were but a fraction of those of Iceland, Norway, and other EU states. For their part, Denmark and Ireland used the LTA to obtain other quota and market access concessions.

Although the European Commission could negotiate agreements with third parties, it was reliant on member states' support for ratification and implementation. In order to get that support it employed a variety of tactics, including compromise proposals, mediation, suasion, and acting as an outright ally of the German government. However, it failed to secure the consent of the UK. In the end, the Union accepted the British government's demand that would limit Canada's access to the UK market. The trade-off resolved the EU's internal problem at Canada's expense, eliminating most of the market access benefits that Canada had expected to receive from the LTA.

In accepting the British demand, the EU was clearly challenging Canada. European officials did not seem to take seriously Canada's threat to retaliate. But the Union's action, together with its decision, in early 1983, to ban the import of seal pup skins and products, further eroded the Canadian government's ability to create domestic support for the LTA. Ottawa responded by suspending the Union's fishing rights concession.

Canada's ability to force the EU to comply by withholding its fishing allocation depended on whether West Germany could influence other member states. Ottawa's leverage was also affected by the fact that the fishing season ends in April, well before the Union's annual market compliance with the LTA could be assessed. Accordingly, Ottawa could not suspend the EU's fishing rights during the fishing season in 1982, but it did so for the following season in 1983, compelling the Union to renew

its debate over the LTA. This paved the way for Canada-EU compromise arrangements in December of that year.

By 1985 there was new controversy, this time about fishing by EU vessels in the NAFO Regulatory Area (NRA). It began when West German vessels moved into the NRA, where they continued to fish for northern cod after taking most of their allocation in Canadian waters. The issue was resolved when the West Germans agreed to avoid overfishing their LTA quota. But with Spain and Portugal poised to join the Union in 1986, and no new quotas available in its own waters, the EU was under intense pressure from those countries' governments and fishing industries to expand fishing opportunities in the Northwest Atlantic. As a result, it began pressing NAFO for a less restrictive fisheries management approach and higher quotas in the NRA. When its demands were rebuffed, the Union for the ensuing years repeatedly resorted to the organization's objection procedure to set autonomous quotas that were well above those allotted by NAFO and Canada. Some of these were above any historic catch levels. The largest shares were assigned to Spain and Portugal, the actual catches of which were even higher. The Union lacked the authority, means, and inclination to control their fishing behaviour.

The EU's fishing rights under the LTA expired at the end of 1987 and were not renewed. Canada applied diplomatic pressure to the Union to comply with its assigned NAFO quotas, with no effect. Stig Gezelius concludes that "the EU NAFO policy from 1986, with its extensive use of the 'objection procedure,' can most likely be interpreted as a strategy to externalise a problem of overcapacity in its domestic fishing fleet following the accession of Spain and Portugal in 1986. The straddling stocks of the Grand Bank[s] provided an opportunity for externalisation. The NAFO Convention ... provided the autonomy necessary for the EU to externalize part of these ecological costs."² Although Canada's recently expanded fleet never exceeded its quotas, it was the main participant in the NAFO-managed fisheries, which reached unsustainably high levels when the EU began its unrestricted fishing. The Canadian fleet also accounted for most of the catches in the northern cod fishery. But while it fished within its allocations, the Canadian TACs were later found to have been too high because the scientific assessments were based on flawed data. In contrast, the EU knowingly overfished the northern cod stock in defiance of the

Canadian TACs and the NAFO moratorium on fishing for 2J3KL cod outside 200 miles.

Each side looked to the other to help solve its problems. Higher allocations would aid the EU's efforts to restructure its bloated fisheries sector. Canada wanted the Union to reduce its fishing effort to ease pressure on fish stocks so it could meet the demands of its own fishers for sustainable catch levels. But internal pressures and the demands of the scientific advice constrained both parties' capacity to make concessions.

Difficulties in rationalizing the fisheries sector and limited opportunities available to member states' distant water fleets made it hard for the EU to resist pressures from Spain and Portugal to set large quotas. Concern about risks to the fish stocks led Canada to insist, initially, that they be managed conservatively within the ranges set by scientists. But as the stocks declined, Canada also yielded to the pressures of the domestic industry to keep their catches of northern cod high for a few years. As Raymond Blake observes, both sides "maintained high quotas because they did not know how to deal with the massive unemployment that would likely have resulted from shutting down the fishing industry." In short, they "lacked the political will to take the responsible and sensible action required to save the stocks."³

Relations became more cooperative as fish stocks neared collapse and Canada closed the northern cod fishery. Canada and the EU reached an agreement that provided for the Union's acceptance of their NAFO quotas and Canadian management of 2J3KL cod in return for access to a small percentage of northern cod outside the 200-mile limit at some point in the future, and use of Canadian ports. However, the Canadian government did not ratify the pact because of doubts about the ability of the EU to control the fishing behaviour of its fleet.

Ottawa's concern about the EU fleet's fishing practices grew as Spain and Portugal refocused their fishing effort on turbot, one of the last remaining commercial stocks in the NRA at that time. With scientists warning that the stock was in decline, NAFO established a total allowable catch, assigning the largest share to Canada. Under pressure from the Spanish and Portuguese government and fishing interests, the EU opted out of the decision and set a high quota of its own. Pressed by the Newfoundland government and the fishing industry, Ottawa declared a moratorium on turbot fishing by the Canadian and foreign fleets inside

and outside 200 miles, and gave itself the authority to arrest EU vessels in the NRA. A Canadian boarding party seized a Spanish trawler, the *Estai*, and severed the net of another, the *Pescamaro Uno*. An inspection of the *Estai* revealed serious fishing violations. The issue took on national importance in Canada and Spain, with public opinion strongly supportive of each country's respective stand.

Canada's fisheries minister Brian Tobin and his officials took a hard line with the EU. Department of Foreign Affairs officials favoured a diplomatic solution, but Tobin had the backing of Prime Minister Jean Chrétien, who agreed that firm action was required. The Newfoundland government also lobbied for a tough response. The industry mobilized the support of fishing groups across the country. But what made the issue a national one were the arrest of the *Estai* and the ensuing revelations of major fishing violations by the vessel. A public opinion poll reported that 89 percent of Canadians backed the actions taken against the Spanish vessels while 58 percent would support the further use of force if the dispute continued.⁴

In the EU the issue was of direct concern to Portugal and especially to Spain, whose policy was dominated by the need to maintain its large distant water fleet. The Galicia-based industry's long-held belief was that Canada's efforts to limit its operations in the NRA were intended to displace the Spanish trawlers and capture their markets. The issue was handled by Spain's Ministry of Agriculture, Fishing and Food, which supported a strong response. The country's foreign ministry, like its Canadian counterpart, preferred to resolve the dispute by diplomatic means. But circumstances favoured the hard-line position advocated by the industry and supported by fisheries officials. Prime Minister Felipe González's government had a shaky grip on power and was sensitive to the pressure of political opponents who attempted to portray it as weak and irresolute. At the same time, Spanish ship owners and trawler captains seemed willing to go to great lengths to force the hand of their government and the EU. The seizure of the *Estai* made the issue the focus of national attention. According to a Gallup poll, 92 percent of the Spanish respondents believed that Canada was not justified in arresting the vessel.⁵

Within the European Commission, DG XIV Fisheries took the lead in managing the turbot issue during the initial phases, although DG I External Affairs, which had dismissed as "posturing" the warnings of DG

Fisheries officials that Ottawa seemed bent on a confrontation with the Union, assumed a more prominent role as the crisis grew following the arrest of the *Estai*.⁶ Spain privately blamed the Commission for agreeing to a total allowable catch that, it claimed, was lower than necessary to protect the stock, even though the Commission would have been accused of ignoring conservation if it had not done so.⁷ It is clear that at the NAFO meeting in Brussels, the EU was out-lobbied by the determined group of Canadian representatives in the allocation of the NAFO quotas and that Ottawa was intent on using its victory to strengthen its bargaining position in negotiations concerning the fishing practices of the Spanish and Portuguese vessels. However, the steep reduction imposed on the EU fleet put enormous pressure on the Union to set an autonomous quota. This in turn increased domestic pressure on the Canadian government to respond with force.

At the EU Council level, member states, whatever their individual views, found common ground in condemning the seizure of the *Estai* as a violation of international law. But Ottawa succeeded in shifting the focus to that of conservation, testing EU solidarity. The British government in particular came under pressure from its fishing industry, which had also experienced problems with Spanish vessels, to side with Canada. Although its qualified support for the Union's stand was criticized for weakening the EU's bargaining position, the consensus that was reached, prompted by the French presidency, was firm when it needed to be. What forced the EU to make concessions was pressure exerted by Ottawa at critical points: the arrest of the *Estai*, which brought the two sides to the bargaining table; the cutting of the *Pescamaro Uno's* net, which accelerated the negotiations; and a threat of further action against Spanish fishing vessels, which led to EU approval of the agreement ending the dispute.

The agreement increased the EU's turbot allocation and created a stricter control and enforcement scheme to oversee fishing in the NAFO Regulatory Area. It was not well received in Spain and Portugal, but officials on both sides of the conflict agreed it was a good one that responded to each party's concerns. It formally acknowledged the right of EU vessels, and by extension those of Spain and Portugal, to have their interests in the NRA taken into account and established their access to a larger share of the turbot stock than had been assigned originally by NAFO. It also gave the EU a means to pressure member states to act in accordance with the

Union's undertakings. For Canada the prospect of stricter control and enforcement would aid its efforts to ensure the recovery of straddling stocks. The agreement was adopted without incident as a NAFO decision at the organization's annual meeting in September 1995.

For the next six years Canada and the EU concurred in all TACs and quotas, and control and enforcement measures, with the latter being credited for a substantial decrease in fishing violations in NAFO waters. But there were troubling signs that cooperation would not last. The Canadian government, which had already taken tough conservation decisions, was making a concerted effort to reduce the size of its fisheries sector. But although the EU began to cut TACs in its own waters, it still saw foreign fishing grounds as a means of dealing with its overcapacity problem. The first indication that all was not well was an increase in fishing infractions by Spanish and Portuguese vessels in the NRA. Then, at the NAFO special meeting in Helsingor, Denmark, early in 2002, the EU mustered sufficient support among Contracting Parties to raise the turbot TAC and its own quota and defeat an important depth restriction measure for fishing by trawlers to protect moratoria stocks. Despite contrary scientific advice, the NAFO Convention requirement for consistency with the coastal state's management measures, and Canadian opposition, Canada for the first time lost a vote on straddling stock issues in NAFO.

At home, the Canadian government was pressed by the opposition in parliament, and by the government of Newfoundland and Labrador and fishing industry, to assert custodial management over the Nose and Tail of the Grand Banks, and the Flemish Cap. Ottawa rejected unilateral action as a violation of international law but closed Canadian ports to a number of fishing violators. Reforms to the EU's Common Fisheries Policy laid the groundwork for improved cooperation in NAFO. Still, compliance remained a stumbling block. Although the Spanish government and fishing industry took steps to modernize the sector and improve its reputation, the Portuguese dragged their feet and their vessels continued to accumulate infractions in the NRA. The Union, which lacked the authority to act on compliance issues, received little help from Lisbon.

In response to continuing domestic pressure, Prime Minister Paul Martin's government launched a two-fold strategy consisting of stepped-up monitoring and enforcement by Canada in NAFO waters and diplomatic overtures to the EU focused on compliance issues and overall

fisheries governance. The initiatives produced results. After inspections increased, the number of foreign vessels fishing in the NRA dropped sharply and violations went down. Diplomatic efforts culminated in an agreement among the Contracting Parties at NAFO's September 2005 annual meeting to begin a thoroughgoing review of the organization with a view to modernizing its operations and strengthening its control and enforcement functions.

Two years later, the Contracting Parties, subject to ratification, agreed to revamp the NAFO Convention by streamlining the organization's structure and modifying the voting and objection procedures. However, the agreement created the possibility of future NAFO management in Canadian waters and the potential for further weakening Canada's ability to conserve the stocks and ensure sustainable quotas for its own fishers. The agreement did not provide for timely and effective dispute settlement to deal with overfishing problems. NAFO also launched new enforcement measures, which were not part of the proposed Convention amendments. The most important of these required flag states to direct vessels cited for fishing violations to port for full inspection, with guidelines for suitable sanctions against offenders.

Any perception that the Canadian government had failed to bring about the major improvement in fisheries governance it had promised would have been politically unacceptable at home and would have given rise to new pressures to impose custodial management outside 200 miles, which the government realized was impractical. Ottawa was committed to making NAFO more effective and believed the proposed new Convention was an improvement over the original one, especially because it contained dispute settlement arrangements that offered the possibility of deterring overfishing. The main concession of allowing the possibility of NAFO management in Canadian waters contained safeguards that gave Canada the power to prevent that from happening. The Newfoundland government joined critics in opposing ratification. However, the fishing industry appeared to share the federal government's view of the revamped Convention and the adequacy of protections against infringements on Canadian sovereignty. While Ottawa expressed confidence that the port recall requirement for serious fishing violators would increase compliance, the industry took a wait-and-see approach.

Although the European Union claimed the changes to NAFO reflected recent practice within the organization, they also furthered the Union's long-standing goals of weakening Canada's coastal state influence in NAFO and enhancing the rights of distant water fishing states.⁸ The new enforcement measures, which were not included in the proposed new Convention and can be changed at any NAFO meeting, provided greater assurance that the EU fleet would comply with NAFO's fishing regulations and the prospect of more consistency in the application of penalties for offences, paralleling a similar effort to improve adherence to the rules of the Common Fishery Policy. Spain and Portugal believed their vessels had been harassed by Canadian inspectors and wanted a system that could limit Canadian interference with them. They were not keen on the mandatory ordering to port of vessels charged with serious infractions but were won over by the fact that the regulations did not infringe on the principle of flag state enforcement.

At the time of writing, ratifications have not reached the threshold required to bring the proposed new NAFO Convention into force. If enough ratifications are entered and it becomes operative, a development that seems likely, or even if that does not happen, Adela Rey Aneiros predicts that Canada-EU fisheries relations will be cooperative as long as "the difficult balance of interests in the Northwest Atlantic is maintained and NAFO can prove its operational effectiveness; the EU can convince its fishing industry of the need to strictly enforce conservation and control measures, and, subsequently, apply penalties as appropriate; and the Canadian federal government can convince the provinces that a broad consensus has been reached and a high degree of compliance will be attained."⁹ It remains to be seen whether international cooperation will work to allow fish stocks to rebuild and provide stability in the NAFO Regulatory Area as the stocks begin to recover.