

**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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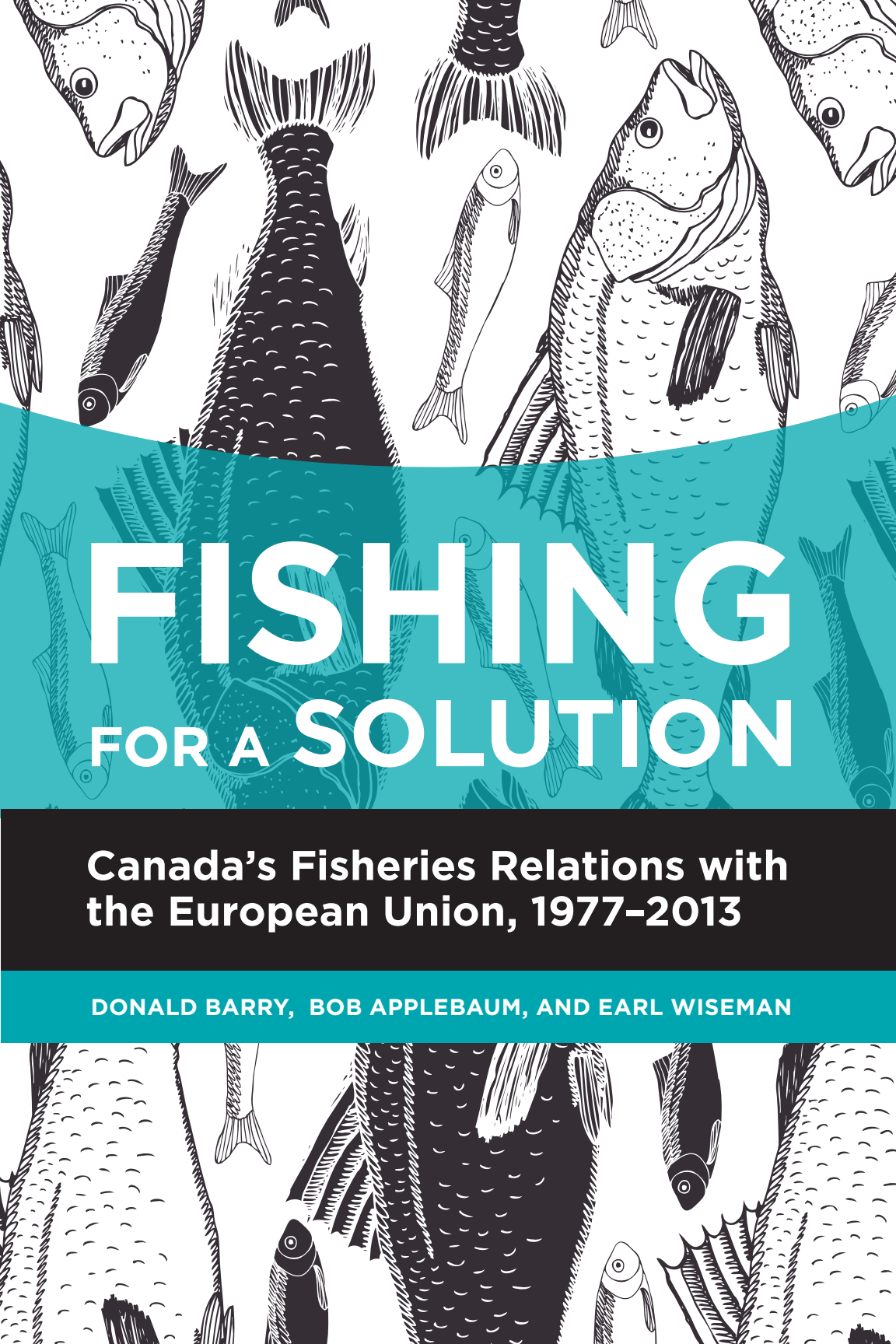
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the European Union, 1977–2013**

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*To the memory of my parents,  
and to the other members of my family*

(DB)

*To the memory of my former Deputy Minister,  
Peter Meyboom*

(BA)

*To Karen, Tara, and Brahm  
for your love, support, and acceptance  
of my many work-related absences*

(EW)



## FOREWORD

The buildup of European fisheries in the Northwest Atlantic after World War II resulted in a steady depletion of fish stocks along the Canadian Atlantic seaboard, until by the mid-1970s many stocks were reduced to the point of marginal economic viability for Canadian fisheries. The establishment by Canada of the 200-mile limit on January 1, 1977, promised to reverse this situation.

On extending fisheries jurisdiction, the Canadian authorities established a very conservative management regime inside 200 miles, in some areas against significant domestic opposition, as the 200-mile limit had created high expectations within the fishing industry. For the next five years fisheries statistics and biological data indicated that a slow recovery was taking place.

Meanwhile the European Union (EU) was preoccupied with the development of a Common Fisheries Policy, an extremely difficult challenge made all the more so with the accession of Portugal and Spain to the EU in 1986. This set the stage for aggressive fishing practices and aggressive fisheries negotiations with other coastal states, including Canada.

In these early years of extended fisheries jurisdiction, Canada was preoccupied with rebuilding fish stocks; the EU was preoccupied with finding outlets for its fishing capacity. The stage was set for a confrontation between the restrictive policies of the Canadian authorities and the demands for utilization of fishing capacity by EU member states at a time when fish stocks in the Northwest Atlantic as a whole were fished to their sustainable maxima, and often beyond.

To make matters even more complex, many of the groundfish stocks off Newfoundland and Labrador were distributed on either side of the 200-mile limit on the Grand Banks, and completely outside 200 miles on

the Flemish Cap. Some were largely outside 200 miles on the Grand Banks during the spring spawning season. However, EU interest in fishing inside 200 miles remained. Anticipating significant increases in Canadian catches, the Canadian government decided that when such access inside 200 miles was allowed benefits to Canadian industry should be obtained in the form of enhanced access to EU markets. Thus a policy of “allocations for access” was adopted. It was not successful, either in terms of conservation incentives or access to markets,

This book tells the story, beginning in 1977 and continuing for the next 35 years of Canada-EU fisheries relations. It is a story of successes and failures, good intentions and bad outcomes, simple goals and complex results, and overall not the well-managed fisheries and positive bilateral relationship that was sought. Perhaps the low point occurred in the 1980s when fish stocks had been reduced by adverse environmental conditions, when unusual migration of spawning stocks occurred outside the 200-mile limit, and when Spain and Portugal overfished there to such a large extent that most of the stocks collapsed. In particular, the large Labrador/Northeast Newfoundland cod stock, already stressed because faulty data had led to scientific advice that allowed total allowable catches to be set too high, was essentially destroyed, resulting in the displacement of some 20,000 Newfoundland and Labrador fishers.

In essence the Canadian fisheries became a casualty of the EU’s Common Fisheries Policy, leaving Spain and Portugal free to fish without restraint, which they did. Serious confrontations resulted, among the most visible of which was the “Turbot War” in the mid-1990s.

Eventually (2005), members of the Northwest Atlantic fisheries Organization (NAFO) decided to modernize and modify the NAFO Convention in response to the experience of the previous 30 years. The proposed changes were controversial and opposed by experienced former Canadian fisheries officials, and by all opposition parties in the House of Commons, which voted 147 vs 142 *not* to ratify. The Harper government, nevertheless, announced the next day that it had ratified the agreement.

Obviously the story is far from finished. This book, meanwhile, provides a detailed account of the relationship to date, an object lesson in the importance of regional politics in EU fisheries policy, and foreign policy more generally, and a disappointing outcome in terms of the promise of

the 200-mile limit for the Atlantic fisheries economy, especially in Newfoundland and Labrador.

After some 35 years of extended jurisdiction, the situation outside 200 miles has stabilized in a set of uneasy compromises. The Canadian offshore groundfish trawler fleet has all but disappeared. It might even be concluded that after all this time the primary beneficiaries of the fisheries in the Northwest Atlantic outside 200 miles are a few EU countries.

Carefully researched and documented, this book is an essential reference for any analysis of the Canadian Atlantic fisheries in the NAFO area, NAFO itself, and the evolution of Canadian and EU international fisheries policy.

A. W. (Arthur) May



## ACKNOWLEDGMENTS

This is a work of research and reflection on Canada's fisheries relations with the European Union (EU) from the late 1970s, when Canada established a 200-mile exclusive Canadian fishing zone, and the Northwest Atlantic Fisheries Organization (NAFO) was created to manage fisheries outside the 200 miles, to the conclusion of a proposed new NAFO Convention in 2007, which is currently in the international ratification process. The volume brings together the insights of Donald Barry, a long-time student of the relationship, and those of Bob Applebaum and Earl Wiseman, two former senior public servants who served a combined total of nineteen years in the position of Director General of the International Affairs Directorate in Canada's Department of Fisheries and Oceans.

We take this opportunity to thank those who have assisted us and to pay tribute to those, in Canada and elsewhere, who have worked over the years to improve the international management of marine resources. Friends, colleagues, and close observers of Canada-EU fisheries relations generously shared their views with us. The Ottawa-based libraries of the Department of Fisheries and Oceans; the Department of Foreign Affairs, Trade and Development; and the Delegation of the European Union to Canada were indispensable resources. Regrettably, the Department of Fisheries and Oceans and EU libraries have since closed. We would also like to thank Scott Parsons, author of the definitive book *Management of Marine Fisheries in Canada*, for his suggestions as our work progressed. Osvaldo Croci kindly read the introduction and made useful comments.

We are grateful to the late Dr. Arthur May for contributing the Foreword to the book. Dr. May headed the Canadian delegation in the international negotiations that led to the founding of NAFO, and to NAFO's meetings in the early years of its operations. He also served as the

organization's first chair. Dr. May was Deputy Minister of the Department of Fisheries and Oceans from 1982 to 1985. His eminence in international fisheries issues was recognized in his appointment, in 2004, as chair of the Canadian government's Advisory Panel on the Sustainable Management of Straddling Fish Stocks in the Northwest Atlantic. He passed away in January 2014, as this book was going to press. Dr. May's untimely death was a great loss.

Donald Barry would like to thank the University of Calgary's Killam Resident Fellowship Committee for the award of a Killam Resident Fellowship that allowed him to get the project underway. Chapter 1 and chapter 3 are revised versions of articles that originally appeared in the *Journal of European Integration* and the *International Journal*, and are reproduced with the kind permission of the editors of those publications.

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Bonnie Walter provided valuable assistance in formatting the text.



# ACRONYMS

|         |   |
|---------|---|
| CAFSAC  | Canadian Atlantic Fisheries Scientific Advisory Committee                       |
| CFCA    | Community Fisheries Control Agency (European Union)                             |
| CFP     | Common Fisheries Policy (European Union)  |
| COREPER | Committee of Permanent Representatives (European Union)                         |
| DG      | Directorate General (European Commission)                                       |
| DG MARE | Directorate General for Maritime Affairs and Fisheries<br>(European Commission) |
| EC      | European Community  |
| EEC     | European Economic Community   |
| EEZ     | Exclusive Economic Zone   |
| EU      | European Union  |
| FANL    | Fisheries Association of Newfoundland and Labrador                              |
| FAO     | Food and Agriculture Organization   |
| FFAW    | Fish, Food and Allied Workers Union   |
| GATT    | General Agreement on Tariffs and Trade  |
| ICNAF   | International Commission for the Northwest Atlantic<br>Fisheries                |
| IUU     | Illegal, Unreported and Unregulated Fishing                                     |
| LTA     | Canada-European Union Long-Term Agreement on Fisheries                          |
| NAFO    | Northwest Atlantic Fisheries Organization                                       |
| NEAFC   | Northeast Atlantic Fisheries Commission   |
| NRA     | NAFO Regulatory Area  |
| RFMO    | Regional Fisheries Management Organization                                      |

|         |  |
|---------|--|
| STACTIC | Standing Committee on International Control (NAFO)   |
| t       | Tonne (metric ton = 1,000 kg. = 2,205 lb.)   |
| TAC     | Total Allowable Catch  |
| UNCLOS  | United Nations Convention on the Law of the Sea  |
| UNFA    | United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Stocks (UN Fish Agreement) |
| VSM     | Vessel Satellite Monitoring  |
| WWF     | World Wildlife Fund  |

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## INTRODUCTION



European fleets have long plied the rich fishing grounds in the Northwest Atlantic off Canada's east coast. Sailing under the British flag in 1497, John Cabot was among the first Europeans to report codfish in such abundance that they could be scooped up "in baskets let down with a stone." By the early 1500s, British, French, Portuguese, and Spanish fishers, their own fish stocks in decline, began fishing for northern cod, the largest and most important fish stock in the waters of the continental shelf off the coast of southern Labrador and northeastern Newfoundland. Everyone believed the resource was inexhaustible. A report by Canada's Department of Agriculture in 1885 proclaimed, "Unless the order of nature is overthrown, for centuries to come our fisheries will continue to be fertile."<sup>1</sup>

The cod fishery was the foundation for the settlement of Newfoundland. Over the years, the fishery evolved into two distinct components: a domestic fleet of small vessels operating in coastal waters, and a mostly foreign fleet operating offshore. In the century prior to 1950, cod catches in the combined fishery ranged up to 300,000 tonnes (t) a year, with the offshore fleet taking the largest share. In 1949, following a steady increase in the number of European vessels participating in the offshore fishery, Canada and other states with fleets in the region formed the International

Commission for the Northwest Atlantic Fisheries (ICNAF) to regulate fishing outside Canada's three-mile limit.

In the 1950s and 1960s the foreign fishing effort intensified, with vessels from the United States, the United Kingdom, the Soviet Union, East and West Germany, Spain, Portugal, and Japan in search of cod and other groundfish stocks. "The introduction of high-powered factory trawlers – which operated in all seasons and weathers, located fish on their spawning grounds with sonar equipment, dragged huge nets to scoop vast quantities of the fish from the seabed, and then filleted and froze the fish in onboard processing plants – made possible dramatic increases in catches," says Elizabeth Brubaker, with the northern cod catch reaching a peak of over 800,000t in 1968. "With two hundred factory trawlers plying the waters off Newfoundland," Brubaker adds, "it took only the fifteen years between 1960 and 1975 for fishermen to catch as many northern cod as they had in the 250 years following Cabot's arrival."<sup>2</sup> By the mid-1970s fish stocks were in rapid decline, threatening the survival of the Canadian fishing industry. ICNAF, which had only limited authority, proved powerless to halt the slide.

Meanwhile, in 1964, the Canadian government, under pressure from the fishing industry and Atlantic provincial governments, established a nine-mile fishing zone adjacent to its three-mile territorial sea, extending the latter to 12 miles six years later. By the mid-1970s a consensus had been reached at the United Nations Law of the Sea Conference that coastal states should have the right to expand their fisheries jurisdiction to 200 miles from their coasts. In 1977, Canada joined other maritime nations and the European Union (EU) in establishing a 200-mile zone.<sup>3</sup> Led by Canada, ICNAF members formed a new body, the Northwest Atlantic Fisheries Organization (NAFO), to replace their outdated organization. The changes brought about new fisheries relationships between Canada and other ICNAF members, including the EU, which was in the process of creating a Common Fisheries Policy (CFP) for its member states.

In 1981, after accords had been reached with other distant water fishing states, Canada and the European Union signed a long-term agreement on fisheries (LTA), which gave the Union access to northern cod and other fish stocks in Canada's waters in return for conservation cooperation and improved access to the EU market for certain fish products. However, the Union adopted a market allocation scheme that limited the access benefits

that were to have been available to Canadian fish products under the agreement, and in 1985, West German trawlers, the main beneficiaries of Canada's fishing concessions, continued fishing for northern cod outside 200 miles after taking most of their LTA quota – a development that Canada had not anticipated.

No sooner had these problems been resolved than another one arose with the entry of Spain and Portugal into the Union in 1986. With its own stocks fully allocated, the EU sought to increase fishing opportunities for Spanish and Portuguese fishers in NAFO waters. Rejecting the total allowable catches (TAC) and quotas for its fleet, the Union began giving much larger allocations to Spain and Portugal, the actual catches of which were even greater. Canada's expanded fleet continued to fish within its quotas, taking the lion's share of the catches, as was by then customary. However, the TAC's for northern cod were too high because the scientific advice was based on faulty information. The pressure of years of overfishing led to the collapse of northern cod and other groundfish stocks, the imposition of fishing moratoria by Canada and NAFO, and a new crisis in Canada's Atlantic fishing industry.

After the stocks collapsed, Canada and the EU began to normalize their fisheries relations. Even as they did so, Spain and Portugal were turning their attention to the Greenland halibut (turbot) stock outside 200 miles, for which no total allowable catch had ever been established by NAFO. Scientists warned that increasing catches threatened the survival of the stock. Pressed by Canada, NAFO established a TAC and quotas for 1995. The EU disputed its share and set its own higher quota, precipitating a new conflict with Canada, which took unilateral action against Spanish vessels. The dispute was resolved when Canada and the Union reached an agreement on turbot quotas and rules to curb fishing violations that were adopted by NAFO the same year.

The agreement had a salutary, though temporary, effect upon the relationship. Spain and Portugal began expanding their fishing effort, which was accompanied by an increase in fishing violations in the offshore zone. In 2002, NAFO members, under pressure from the Union, disregarded Canada's opposition and warnings from scientists, and voted to increase the turbot TAC, although they agreed to some measures to improve compliance. With domestic pressure to extend Canada's offshore jurisdiction to protect fish stocks on the rise, Ottawa stepped up its own enforcement

efforts and pressed for action to improve fisheries governance. In 2005, NAFO launched a major initiative led by the EU and Canada to revamp the NAFO Convention with the expressed aim of improving the organization's structures and decision-making rules as well as its surveillance and enforcement functions. The new NAFO agreement, which was reached in 2007, awaits approval and thus has yet to be tested.

## Importance of Internal Politics

The checkered history of Canada-EU fisheries relations reflects the differing interests of the two parties. The European Union has a large distant water fleet with an extensive history of fishing in the Northwest Atlantic and has sought to enhance fishing opportunities for its vessels. Canada has sought to ensure the conservation of the stocks and to protect the interests of its own fishing industry. In both Canada and the EU, the fisheries sector wields political influence disproportionate to its economic importance. Although it contributes less than 1 percent to the gross domestic product of Canada and EU countries, the industry is concentrated in coastal communities, the members of which have strong opinions on matters affecting their livelihood. While small in numbers, they can have an outsized impact on local and national elections that politicians are bound to take into account.<sup>4</sup> The importance of the fishery, Christian Lequesne has noted, is reinforced by “images that belong to the maritime past” of countries on both sides of the Atlantic, and “the hardships of fishermen seeking to provide food for the population.”<sup>5</sup>

In Canada the federal government has exclusive authority over ocean fisheries. Provinces in Atlantic Canada also have a role due to their control over fish processing and related activities.<sup>6</sup> Although the economies of the Atlantic provinces in varying degrees have been reliant on the fishing industry, that of Newfoundland and Labrador has been most dependent, although that dependence has been declining. The industry's share of the province's gross domestic product has fallen from 10 percent in the early 1980s to 3.4 percent in recent years. The number of fishers and fish plant workers has decreased from about 60,000 to 21,000 over the same period.

Of these, 11,000 people, in 500 communities, are employed in the harvesting sector while the remaining 10,000 work in the province's 102 primary fish plants. Together they represent about 11 percent of Newfoundland's labour force.<sup>7</sup>

The role played by European fleets in the decline of Northwest Atlantic fish stocks has made foreign fishing an especially sensitive issue in Newfoundland. Barbara Johnson has observed that those whose livelihood depends upon the fishery have long been "hostile to the claims of distant-water fleets fishing in what they view as their waters."<sup>8</sup> The province's government and fishing industry strongly supported the 200-mile extension. After the EU fleet escalated its fishing effort in the Northwest Atlantic in the late 1980s and again after 2000, they pressed Ottawa to assume "custodial management" of fish stocks on the continental shelf outside the 200-mile limit, for conservation purposes. (In recent years the term has come to describe a system providing for Canadian management of fish stocks outside 200 miles to ensure the sustainability of the stocks and prevent overfishing, while maintaining the traditional proportionate catch shares of distant water fishing states.<sup>9</sup>) However, St. John's and the industry have not always seen eye-to-eye. For example, while the province was against the NAFO Convention amendments, developed from 2005 to 2007, the industry was in favour.

Fishing in the European Union is governed by the EU's Common Fisheries Policy, which consists of four main pillars: conservation and management of fisheries resources, market organization for fisheries products, structural measures to facilitate the modernization of the sector, and foreign fisheries relations. Although authority is vested in the Union, Lequesne has pointed out that "The CFP operates not through a transnational process in which experts regulate problems in a rational way; instead it is based on negotiations between diverse political and social actors who defend interests which are anchored in national and local territories."<sup>10</sup>

At the apex of the policy process are EU institutions, the principal actors being the Council of Ministers, the European Commission, the European Parliament, and, occasionally, the European Court of Justice. The Council of Ministers of Agriculture and Fisheries (Fisheries Council), composed of ministerial representatives of the member state governments, is the venue in which the main decisions about the CFP, including TACs and quotas, are made on the basis of proposals put forward by the

European Commission. The Council's agenda is prepared by senior national officials and the fisheries counsellors from member state delegations in Brussels. It is reviewed by the Committee of Permanent Representatives (COREPER), composed of member states' ambassadors or their deputies, which seeks to reach agreement or, failing that, to offer options for the Council's consideration. Since the launch of the CFP in 1983, Council decisions that formerly required unanimity have been made by consensus or qualified majority vote, with each member state's vote being weighted according to its population. But such decisions often involve trade-offs, and even apparent losers rarely emerge empty-handed.<sup>11</sup>

The European Commission is the EU's executive arm. The Commission is divided into administrative units called Directorates General (DG), each of which reports to a commissioner appointed by the Commission's president from members chosen by EU states. The DG for Maritime Affairs and Fisheries (DG MARE), formerly known as DG XIV Fisheries, is responsible for fisheries issues. In making proposals to the Council, DG MARE draws upon scientific advice that furnishes "rational arguments for passing unpopular regulatory measures, such as the establishment of new TACs or reductions in fleet capacity, for which it is necessary to convince fishermen and national ministers." When the Council becomes engaged, "negotiations move into a political mode, shifting from an emphasis on the protection of stocks to the balance between different geographical areas and the preservation of socio-economic peace."<sup>12</sup>

Until 2009, the European Parliament (EP) had a limited role in decisions on fisheries matters. The Council adopted measures after consulting the EP, although it was not bound by parliamentarians' views. That changed with the adoption of the Treaty of Lisbon, which established the "ordinary legislative procedure" as the principal means by which decisions are made. The procedure, which gives the EP "a genuine co-legislative role in fisheries," adds a measure of complexity to EU policy making and provides additional points of access for member state governments and fishing interests to influence EU decisions.<sup>13</sup> The EP's endorsement of the revised NAFO Convention in 2010 marked the first time parliamentarians exercised their power under the Lisbon Treaty to approve or reject an international fisheries accord entered into by the EU.<sup>14</sup>

Member state governments and fishing interests have numerous opportunities to influence the outcomes of CFP deliberations. Because the



EU lacks the competence to take enforcement action, member states are also responsible for carrying out decisions agreed to, including enforcement of the measures adopted for the conservation and management of fish stocks, which they have not been willing to delegate to the Union. This is consistent with the Union's subsidiarity principle, which is based on the notion that action should be taken at the level of governance (EU, national, or local) at which it is most effective. Enforcement systems vary according to the differing legal traditions, resources, and political will of the member states. Not surprisingly, enforcement has been highly uneven. In 2005, the EU established the Community Fisheries Control Agency to work with member states to improve compliance with the rules of the CFP. The European Commission has called the results "disappointing," noting that

inspection systems do not guarantee efficient prevention or detection and there is an absence of general control standards. Member States do not make optimal use of inspection activities.... What controls are carried out are too often ineffective and insufficient. Follow-up procedures do not guarantee that sanctions are imposed. Sanctions are either non-existent or not dissuasive. [The result is] an 'infringement culture' in the sector and administrations which puts the whole CFP into question.<sup>15</sup>

West Germany was the principal EU country fishing in the Northwest Atlantic until 1986, when Spain and Portugal joined the Union and became its major distant water fishing members. Both states had a long and sometimes contentious history of fishing in the Northwest Atlantic. Spain is the EU's leading fishing power, the largest component of which is the distant water fleet. The fleet operates out of the Autonomous Region of Galicia, which is the most dependent of all of Europe's regions on the fisheries sector. Almost 5 percent of Galicia's workforce is employed in the industry, and 12 percent of its workers depend upon it. The NAFO fishery contributes some 6 percent of the economy of the region. Decentralization of constitutional powers in Spain gives regions leeway in the formation of national policy, further complicating policy making at the national and EU levels. Officials from the regions, including Galicia, which has its own Ministry of Fisheries, "have never hesitated to exploit EU institutions and law at every possible opportunity in order to involve themselves to a

greater extent in the formulation of the CFP.” For example, in 1996, Galicia intervened in the Court of First Instance on behalf of vessel owners in their unsuccessful attempt to overturn a regulation lowering the EU’s turbot fishing quota in the wake of the “Turbot War” with Canada.<sup>16</sup>

Although the contribution of the fisheries sector to Portugal’s economy has fallen over the last two decades, it remains an important part of the economy of the country’s coastal regions. Fisheries account for 24 percent of all employment in the Norte region, where most of the vessels fishing in NAFO waters are based. The economic value of their catches makes up 5 to 7 percent of that of the country’s entire fleet.<sup>17</sup> As with the case of Spain, the industry’s dependence on offshore catches ensures that access to fish stocks in the offshore zone remains a significant issue.

## NAFO

Although Canada’s 200-mile declaration brought most of the continental shelf under Canadian control, significant portions of the most important fishing grounds off the northeast coast of Newfoundland (known as the Grand Banks) extend beyond the boundary. These are: the eastern edge of the Grand Banks, known as the “Nose” (NAFO Division 3L); the southern edge known as the “Tail” (NAFO Division 3NO); and the “Flemish Cap” (NAFO Division 3M), which is completely outside the 200-mile limit. (See map, Appendix I.) About 90 percent of the fish stocks are found within 200 miles, but depending on the time of the year up to 10 percent are outside the boundary and can be fished in international waters on the Nose and Tail of the Grand Banks. They are known as “straddling stocks.”

The Northwest Atlantic Fisheries Organization, which came into being on January 1, 1979, manages the major fish stocks in the Northwest Atlantic beyond 200 miles. Currently, Canada and 11 other Contracting Parties are members of NAFO. (For a list of past and present members see Appendix II.) The waters outside Canada’s 200-mile zone constitute the NAFO Regulatory Area (NRA) to which, under the 1979 Convention, the organization’s management functions apply. Each year NAFO establishes TACs and quotas for straddling stocks, including redfish, American plaice, yellowtail flounder, witch flounder, Grand Banks cod, capelin,

squid, Greenland halibut, shrimp, and thorny skate. It also manages the discrete stocks, primarily cod, redfish, shrimp, and American plaice, on the Flemish Cap. In addition to having the exclusive right to manage fish stocks inside 200 miles under the 1979 Convention, Canada manages the northern cod stock in NAFO Divisions 2J3KL, which extends beyond the 200-mile limit to such a limited extent (averaging under 5 percent over the course of a year) that it is not considered to be a straddling stock.

The 1979 NAFO Convention recognizes Canada's "special interest" in fish stocks outside the 200-mile limit through two provisions. The first requires that in managing straddling stocks outside 200 miles NAFO "shall seek to ensure consistency" with Canada's management strategy inside 200 miles. (The organization has generally followed Canada's conservative management strategy of  $F_{0.1}$ , which permits annual catches of about 20 percent of the fishable biomass of each stock.) The second requires that Canada be given "special consideration" in the allocation of fish stocks straddling the Canadian 200-mile limit and those entirely outside.<sup>18</sup> Although Canada has always supported the strict application of the  $F_{0.1}$  approach for the straddling stocks, it has not been as insistent regarding the 3M stocks. These stocks, being discrete high seas stocks for which the consistency rule does not apply, have been subject to different approaches.

NAFO currently consists of the General Council, charged with supervising the work of the organization; the Fisheries Commission, with responsibility for managing the fisheries resources and enforcement in the NRA; the Scientific Council, which provides advice on matters pertaining to fish stocks; and a Secretariat, headquartered in Dartmouth, Nova Scotia, that manages the organization's ongoing activities. Each Contracting Party is a member of the General Council and the Fisheries Commission and can make scientists available to the Scientific Council. NAFO meets annually in September to set the next year's TACs based on the scientific advice and quotas for fish stocks that reflect historic fishing patterns. (The exception is the northern cod TACs and quotas, which are set by Canada for the stock as a whole, both inside and outside 200 miles.) NAFO also establishes control and enforcement measures. Decisions are taken by consensus or majority vote of the Contracting Parties.

The NAFO Convention has serious weaknesses, the effects of which became apparent in the mid-1980s when Canada-EU fisheries relations deteriorated after Spain and Portugal joined the Union. The first is the

objection procedure, which allows any Contracting Party that disagrees with a quota decision to file an objection with NAFO's executive secretary within 60 days. As a result, the decision is not binding on the objecting party, which is free to set its own quota. There is no dispute settlement procedure to resolve such conflicts. The second is the issue of flag state enforcement, which leaves it to the home (flag) state to deal with vessels that violate NAFO's rules. Although NAFO has increased its surveillance and control capabilities over the years, there remains a substantial gap between detecting infractions and doing something about them.<sup>19</sup>

In 2007, the NAFO Contracting Parties attempted to remedy these problems by agreeing to proposals for amendments to modernize the Convention, and new enforcement measures. The amendments, Adela Rey Aneiros points out, "essentially constitute a new convention with only one article from the previous text remaining intact."<sup>20</sup> Among other things, the proposed new Convention would require members to justify their objections to quotas and sets out complex non-binding dispute settlement procedures to resolve disagreements, with the option of invoking binding arrangements contained in the United Nations Convention on the Law of the Sea (UNCLOS) or the United Nations Fish Agreement (UNFA) should NAFO processes fail.<sup>21</sup> However, it would also open the door to NAFO management inside Canada's 200-mile limit, which is explicitly excluded in the 1979 Convention. Bringing the proposed new Convention into force requires the approval of three-quarters of NAFO's 12 Contracting Parties. By the time of NAFO's annual meeting in 2013, five of them – Norway, Canada, the EU, Cuba, and Russia – had given their consent.

The new enforcement provisions, which came into effect in 2007, require flag states to order vessels cited for serious violations of NAFO rules, including misreporting of catches, directed fishing for stocks under moratoria, and repeat offences, to return to port for inspection, with guidelines for appropriate sanctions against offenders. The regulation still leaves ultimate control in the hands of flag states that have shown significant inconsistency in fulfilling their obligations.

## Overview of the Book

The role of internal politics in shaping the policies of Canada and the European Union is a central theme of this book. Chapter 1 shows how Canada and the European Union forged a new relationship in the wake of Canada's 200-mile extension, culminating in the adoption of a long-term fisheries agreement. The pact reflected Canada's interest in securing conservation cooperation and reduced tariffs for selected fish products in the EU market, and the Union's interest in maintaining access to northern cod in Canadian waters for West Germany's deep sea fleet. Relations began to unravel when the EU introduced a market quota system that restricted the gains Canadian fish products were to receive under the LTA, and West German trawlers continued to fish for northern cod in the NAFO Regulatory Area after taking the bulk of their quota inside Canada's 200-mile zone. Both issues were settled, but a new problem loomed when Spain and Portugal joined the Union in 1986.

Chapter 2 explores the troubled state of Canada-EU fisheries relations following the Spanish and Portuguese accessions. With access to other fishing grounds limited, the EU looked to NAFO waters to help accommodate those countries' demands. Abandoning its earlier cooperation in NAFO, the Union challenged the organization's  $F_{0.1}$  management approach and objected to most TACs and quotas. It set its own quotas at much higher levels, which Spain and Portugal regularly exceeded. Since the extension of jurisdiction, Canada's fleet had taken the largest share of the catches and continued to do so, while staying within its NAFO allocations. The EU also began a major fishery for northern cod outside 200 miles, ignoring the TACs and quotas set by Canada. Later the Canadian government, too, acted out of line with conservation principles, disregarding warnings that its northern cod TACs were too high. It feared the consequences of the enormous unemployment that would result if sharp reductions were imposed. The collapse of the stocks and the closure of most fisheries, in 1992, ushered in a more cooperative, if short-lived, period in Canada-EU relations.

Chapter 3 discusses the Turbot War. Following the collapse of most of the other stocks, Spain and Portugal shifted their fishing effort to turbot, the largest remaining commercial stock. In response to scientists'

warnings that the turbot stock was overfished, NAFO established a TAC and quotas for the 1995 fishing season. Pressed by Spain and Portugal, the EU objected to its allocation and set its own much higher quota. Backed by the Newfoundland government and the fishing industry, Ottawa, using new legislation that gave the government authority to conserve straddling stocks outside 200 miles, took enforcement measures against Spanish vessels fishing in the NAFO Regulatory Area. The conflict ended with a new quota-sharing agreement for turbot and stricter conservation and enforcement rules to deter fishing violations.

Chapter 4 traces the rise and fall of Canada-EU fisheries cooperation in the wake of the Turbot War. Six years of collaboration ended abruptly in 2002 when the EU mobilized sufficient support among NAFO's Contracting Parties to raise the turbot TAC above that recommended by scientists. This was the first time Canada was outvoted on a conservation measure for a straddling stock. Only some of Canada's proposals to curb growing fishing violations, especially by Portuguese vessels, were accepted. In the face of mounting calls from the Newfoundland government and fishing industry to take over responsibility for the management of stocks on the Nose and Tail of the Grand Banks and the Flemish Cap, Ottawa bolstered its own surveillance and enforcement. But it rejected the custodial management option in favour of working with other Contracting Parties to strengthen management through NAFO reform.

Chapter 5 describes efforts to overhaul the NAFO Convention and tighten the organization's surveillance and enforcement rules. In 2007, these resulted in approval of an expanded control and enforcement regime, and proposals for what is effectively a new Convention to streamline the organization's structures, change its voting and objection procedures, and seek to avoid future "fish wars" by providing for less strict approaches to conservation. Ottawa ratified the proposed new Convention, which Newfoundland's fishing industry supported but the province's government and a majority of Members of Parliament opposed. The European Union ratified the amendments without incident.

Chapter 6 explores the impact of internal politics in Canada and the European Union through the successive stages of the Canada-EU fisheries relationship, and the prospects for future relations.