HOUSE OF COMMONS
CANADA

REPORT ON THE *OCEANS ACT*

Standing Committee on Fisheries and Oceans

Wayne Easter, M.P.
Chair

October 2001

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THE STANDING COMMITTEE ON FISHERIES AND OCEANS

has the honour to present its

FOURTH REPORT

In accordance with Section 52 of the *Oceans Act*, your Committee undertook a review of the said Act.

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INTRODUCTION

Bill C-98, An act respecting the oceans of Canada, was introduced to Parliament during the 1995-1996 legislative session. The *Oceans Act* received Royal Assent on 18 December 1996 and came into force on 31 January 1997. As a result of the *Oceans Act*, Canada is the only country in the world with comprehensive legislation dealing with oceans.

Under section 52 of the Act, the Standing Committee on Fisheries and Oceans is required to undertake a review of the administration of the Act within three years of the Act coming into force and to submit a report to Parliament within a year after undertaking the review.

The Standing Committee on Fisheries and Oceans has completed its review of the Act. During the review, the Committee held hearings in Vancouver (British Columbia), Halifax (Nova Scotia), and Ottawa (Ontario). The Committee received many excellent presentations and wishes to express its appreciation to all of the witnesses who prepared submissions and who appeared before the Committee for their time and effort.

The Committee has concluded from its review that the *Oceans Act* is fundamentally sound and does not recommend any major amendments to the Act at this time. Nevertheless, the Committee has some concerns over the administration of certain aspects of the Act. Certain principles and programs that were key elements of the Act do not appear to have been as fully implemented as they could or should have been. In addition, a number of more specific concerns were raised — particularly with respect to the creation of Marine Protected Areas and Integrated Management (Part II, Oceans Management Strategy) and marine services (Part III, Powers, Duties and Functions of the Minister) — that the Committee believes should be given due consideration.

PART I — GENERAL OBSERVATIONS

Although witnesses generally supported the Act itself, a number complained of a lack of tangible evidence of its implementation. Some witnesses cited the virtual absence of regulations under the *Oceans Act*, or of adherence to its key principles. Others asked where the "strategy" was. They pointed to the lack of coastal zone management and suggested that there was "a major policy vacuum," and that "current policies were contradictory." Yet others questioned what the Act is really doing to protect or restore the marine environment. The Committee agrees with these view and therefore recommends:

Recommendation 1:

That the Department of Fisheries and Oceans, in consultation with the provinces, territories and stakeholders, immediately draft regulations in accordance with the intent of the *Oceans Act*.

The West Coast Sustainability Association[1] commented that since the development of the *Oceans Act,* the mandate of the Department of Fisheries and Oceans (DFO) is supposed to be much broader than just the management and protection of fish. For example, the DFO is now required to recognize how its policies on licensing and fish management affect the broader community and ecosystem. Yet, in their view, there appeared to be a disconnection between the stated intentions of the *Oceans Act* and its implementation. The Sierra Club of B.C.[2] maintained that policy development should honour conservation first and make use of the precautionary principle. They recommended an annual state of the oceans report.

The Committee agrees that an annual state of the oceans report would provide a useful means of documenting, in a comprehensive manner, progress on the implementation of the *Oceans Act*. Such a report should help to allay the concerns of those who complain of a lack of visible progress.

The Committee recommends:

Recommendation 2:

That the Department of Fisheries and Oceans prepare an annual state of the oceans report to document progress on the implementation of the *Oceans Act*.

1 Dan Edwards, President, West Coast Sustainability Association, Vancouver, B.C., 21 February 2000.

2 Sharon Chow, Sierra Club of B.C., Victoria, B.C., 16 February 2000.

The Area 19 Snow Crab Fishermen's Association[3] objected to the absence of references to fishermen throughout the *Oceans Act*. Several sections of the Act give the Minister the authority to collaborate, consult, and cooperate with various groups including Aboriginal organizations and coastal communities but there are no references to fishermen or their organizations. The Association believes that "coastal communities" have never been identified as entities having legislative or representative powers, and therefore references to coastal communities in the Act are meaningless.

The Committee agrees with the Area 19 Snow Crab Fishermen's Association that fishermen and their organizations have a legitimate interest in the more general aspects of oceans management beyond the management of fisheries. However, it also believes that the broader community, beyond those who have a direct financial interest in the exploitation of marine resources, also has a legitimate interest in the management of Canada's oceans which, after all, still belong to the people of Canada. For this reason, the Committee feels that it would be preferable to retain references to coastal communities in sections of the Act that require the Minister to consult.

The Committee recommends:

Recommendation 3:

That the Department of Fisheries and Oceans amend the *Oceans Act* to include references to fishermen and fishermen's organizations in the sections of the Act that require the Minister to consult.

3 Deborah M. Baker, Legal Representative, Area 19 Snow Crab Fishermen's Association, by videoconference from Halifax, N.S., 16 May 2000.

PART II — THE OCEANS MANAGEMENT STRATEGY

Part II of the Act, the Oceans Management Strategy (OMS), forms the core of the *Oceans Act*. The Strategy is based on three key principles: sustainable development; integrated management of activities; and the precautionary approach. The implementation of the Oceans Management Strategy is built on two programs: Marine Protected Areas (MPAs); and Integrated Management (IM).

MARINE PROTECTED AREAS

A. Introduction

A significant portion of the Committee's study was devoted to Marine Protected Areas. Section 35 of the Act gives the Minister of Fisheries and Oceans the authority to create Marine Protected Areas. MPAs are intended to be a tool for the protection and conservation of the marine environment in areas of the ocean that are considered to require special attention. An area can be designated as an MPA for a variety of reasons that may include the conservation and protection of:

- commercial and non-commercial fisheries resources;
- endangered or threatened marine species and their habitat;
- unique marine habitats; and
- marine areas of high biodiversity or biological reproductivity.

Although witnesses supported the concept of MPAs, they also raised a number of concerns relating to slow progress in creating MPAs, process, zoning, and clarification of terms.

B. Progress

At the time the Committee's hearings began, five pilot MPA projects had been initiated: Race Rocks, located close to Victoria, British Columbia; Gabriola Passage, located in the Gulf Islands of British Columbia; Bowie Seamount, situated approximately 180 kilometres west of the Queen Charlotte Islands; the Endeavour Hot Vents, about 250 kilometres southwest of Vancouver; and Sable Gully, located about 200 kilometres off the eastern shore of Nova Scotia. Several additional locations have now been designated "areas of interest" (AOI). At the time of the Committee's hearings, however, no site had reached full status as a Marine Protected Area.

A number of witnesses expressed concern over the apparent slow progress in the creation of MPAs. A typical comment was that if the designation of MPAs continued to proceed at the current pace, the program would do little to protect threatened and endangered species and their habitats.

The B.C. Chapter of the Canadian Parks and Wilderness Society[4] (CPAWS), for example, commented that momentum had slowed over the previous year. They pointed to the fact that in August 1998, federal and provincial agencies had released a joint Marine Protected Area Strategy, outlining a common vision and objectives for MPAs on the B.C. coast; however, a revised strategy that considered extensive public input had still not emerged. They also complained that the strategy lacked clear action plans and timelines for implementing a representative system of Marine Protected Areas by the year 2010, which had been the stated goal. Other witnesses also supported the need for a timeframe for the designation of MPAs.

The CPAWS also commented that although the public process on the Race Rocks pilot MPA site appeared to be working well, progress on the other B.C. sites had been lagging. They felt that DFO needed to increase the effort to demonstrate its commitment to the program and to ensure public confidence that the program would be maintained.

C. Complementary Programs

There are three complementary federal programs, each with different objectives, whose purpose is to establish protected areas in Canadian waters:

- Marine Protected Areas (see above).
- Canada's National Marine Conservation Area program — which is under Parks Canada — that still requires the passage of Bill C-10, the Canada National Marine Conservation Areas Act. This Act will establish a system of large, multiple-use marine conservation areas which, when completed, will be representative of Canada's 29 marine regions.
- The Canadian Wildlife Service, under the *Canada Wildlife Act* and the *Migratory Birds Convention Act,* conserves Canada's major marine and nearshore areas for wildlife, research, conservation and public education by setting up migratory bird sanctuaries, national wildlife areas and marine wildlife areas (protected areas that extend beyond 12 miles offshore). (To date, no separate marine wildlife areas have been established.)

The Committee heard differing views on the multiplicity of types of protected marine areas. The CPAWS, on the one hand, emphasized the need for a collection of federal protected marine area designations, each with complementary functions and purposes.

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4 Sabine Jessen, Executive Director, B.C. Chapter, Canadian Parks and Wilderness Society, Vancouver, B.C., 21 February 2000.

The CPAWS contended that the three distinct programs could contribute significantly to the protection of marine ecosystems in Canada without unnecessary duplication or waste of scarce public resources. According to the CPAWS, not only had federal departments been working well together to achieve the common objective of establishing a network of protected marine areas while striving to avoid overlap and duplication, there had also been an unparalleled level of cooperation between federal and provincial governments. The CPAWS urged the Committee to support the passage of Bill C-10, the Canada National Marine Conservation Areas Act.

Other witnesses felt, however, that the variety of protected marine area designations caused confusion over the responsibilities of the various agencies and their planning processes for the marine environment, resulting in overlap and duplication of effort. The Committee was also told that, under Bill C-5, the Species at Risk Act, the prospect of "residences" of threatened species being set aside by Environment Canada could potentially add yet another category of protected area, adding further confusion. As a result, some witnesses recommended that the stewardship and sustainable management of the marine environment in Canada should be the responsibility of a single agency.

The Committee agrees; it finds any derogation of the authority of the Minister of Fisheries and Oceans a matter of concern. It therefore recommends:

Recommendation 4:

That an interdepartmental committee be struck to ensure that the stewardship and sustainable management of marine areas be done under the authority of the Minister of Fisheries and Oceans.

D. Process

Although reports of intergovernmental and interagency cooperation on the West Coast were generally positive, witnesses in Nova Scotia complained that there had been little cooperation and collaboration amongst government agencies on the East Coast to further MPA development and that DFO had yet to recognize the potential for non-governmental organization (NGO) and community involvement in MPA development. It was suggested that DFO should develop an MPA strategy and an Integrated Management plan for MPAs in the Atlantic Region.[5]

The Committee was also informed that the processes required for the legal protection of sites under the *Oceans Act* had been a source of frustration for academics and NGOs. It was suggested that DFO should develop a guide to MPA designation for NGOs and stakeholders interested in the MPA process. However, the Committee notes that the Department of Fisheries and Oceans published two documents, in March 1999,

5 Joanne Weiss and Susan Gass, Graduate Students, School of Resource and Environmental Studies, Dalhousie University, Halifax, 8 May 2001.

that seem to largely fulfil this role: the *Marine Protected Areas Policy*, and the *National Framework for Establishing and Managing Marine Protected Areas*. The Framework also indicates that the MPA program provides an opportunity for coastal communities as well as non-government conservation organizations to be intimately involved in the MPA process from nomination and co-management of sites to consultation activities and public awareness programs.

Another recommendation to the Committee was that DFO should assemble a list of suggested MPA sites to be made available to the public so that groups could help assemble information and facilitate the development of MPAs. The Committee agrees that this would be a valuable tool that could be readily provided through DFO's Oceans Program Activity Tracking System (OPAT) Web site,[6] which provides detailed information about Integrated Management projects, Marine Protected Areas, and Marine Environmental Quality Projects. The Committee recommends:

Recommendation 5:

That DFO take the means to publish in a proactive manner, to the public, information on suggested MPA sites through its Oceans Program Activity Tracking System Web site as well as other media.

Some witnesses also indicated a need for more collaboration in research between DFO and industry, NGOs, academics, Aboriginal groups, communities and the fishing groups addressed in subsection 33(2) and recommended that the Minister be *required* to consult with these specified groups to obtain additional information on ocean environments.

E. Zoning

Some of the Committee's witnesses advocated MPAs as strictly "no-take zones," and recommended additional measures such as protection of the benthos, and the surrounding of MPAs with buffer zones in order to ensure their full effectiveness. The CPAWS advocated minimum protection standards for all Marine Protected Areas. They noted that a federal-provincial initiative in B.C. had identified the need for minimum protections standards, including a prohibition on non-renewable resource exploration and development, and dredging and dumping in Marine Protected Areas. In the CPAWS view, bottom trawling and fin-fish aquaculture were also incompatible with the conservation objectives of Marine Protected Areas and should be excluded from MPAs.

The CPAWS recommended that DFO policies, both regionally and nationally, explicitly acknowledge and implement harvest refuge, or no-take areas, as part of the overall network of marine protected areas to be established in Canada's oceans. They pointed to the fact that marine protected areas are increasingly being used around the world as a tool to conserve marine biodiversity and that marine scientists have been

6 http://www.dfo-mpo.gc.ca/CanOceans/INDEX.HTM

stressing the importance of including areas closed to all harvesting in a network of marine protected areas.

The British Columbia Seafood Alliance (BCSA),[7] on the other hand, advocated explicit recognition of the importance of promoting and enhancing seafood production in the development of MPAs. In this approach, MPAs would not only be part of an overall strategy to conserve marine ecosystems but would also be part of a strategy to promote sustainable seafood harvesting and farming opportunities. Consequently, in the view of the BCSA, MPAs (and marine conservation areas) should provide for a wide diversity of uses and zoning designations and should not necessarily be "no-take zones," which ought to be justified with scientifically defensible criteria over and above DFO's regular management measures.

The Committee notes that the *National Framework for Establishing and Managing Marine Protected Areas* already addresses many of these issues. The Framework recognizes that the *Oceans Act* allows for zones defining different levels of protection to be established within MPAs such that an MPA management plan may specify which activities will be permitted or prohibited within each zone. These may include strict "no take," or even "no activity" areas. The Framework also describes the use of buffer zones around MPAs to protect them from unnecessary encroachment of human activities in order to conserve and protect the marine resources and habitats within the MPA.

The BCSA also stressed that, even though marine resources are considered public property, the seafood industry should be compensated for any economic losses stemming from exclusion of licensed harvesting or tenured seafood production from no-take zones, in the same way that private landowners or crown tenure holders are compensated in the case of the creation of a terrestrial park. The Area 19 Snow Crab Fishermen's Association, in a similar vein, recommended amending subsection 35(3) of the Act Regulations regarding MPAs, to recognize the effects of potential dislocation of fishermen on designating an area as a Marine Protected Area and to provide for solicitation of input from fishermen who might be affected.

The Area 19 Snow Crab Fishermen's Association recommended adding a new subsection 35(3) to read:

> Upon identifying any of the reasons listed above [i.e., the reasons for creating an MPA] the Minister shall meet and consult with all the fishermen's organizations that have a direct and vested fishing interest in the area identified for protection.

Subsection 35(3) would become 35(4) and would be amended to read:

> When consultations are complete the Governor in Council, on the recommendation of the Minister, may make regulations…

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7 Michelle James, British Columbia Seafood Alliance, Vancouver, 21 February 2000.

The Framework recognizes that existing or proposed activities may conflict with the conservation objectives of an MPA. When this occurs, the management plan may allow for the activity to be phased out or, in cases where users have rights or tenures permitting them to use the resources of the area, agreements can be sought with the operator and responsible authority for protection of the area's resources. The Framework states that MPA management plans can provide latitude for applying tools according to local conditions, in cooperation with resource users.

1. Interim Marine Protected Areas and Interim Protection Measures

Subsection 36(1) of the *Oceans Act* allows the Governor in Council, on the Minister's recommendation, to create an interim Marine Protected Area in an emergency situation. However, orders issued under this section are limited to the extent that they are consistent with existing land claims agreements. The Area 19 Snow Crab Fishermen's Association argued that land claim agreements should not preclude the Minister from doing whatever is necessary to protect the marine environment and recommended amending section 36 by deleting the phrase "to the extent that such orders are not inconsistent with a land claims agreement that has been given effect and has been ratified or approved by an Act of Parliament."

It should be noted, however, that subsection 36(1) is worded as it is as a result of concerns raised by the Nunavut Wildlife Management Board, Nunavut Tunngavik Incorporated and the Inuit Tapirisat of Canada when Bill C-98 was before the Fisheries and Oceans Committee. The wording was added to provide consistency with subsections 6(1) and 6(2) of the *Nunavut Land Claims Agreement Act*.[8]

In view of the long timeframe needed to establish MPAs, some witnesses advocated the use of interim protection measures for areas of interest (AOI). The Committee notes that the *National Framework for Establishing and Managing Marine Protected Areas* acknowledges that designation of a site as an AOI does not confer immediate protection. The Committee believes that such an amendment is unnecessary as the Framework acknowledges that governments already have at their disposal various measures for protecting marine resources and habitats on an interim or longer-term basis.[9]

2. Clarification of Terms

Some witnesses commented that the *Oceans Act* uses terminology that sounds good in theory but that needs to be clearly defined and applied in practice to be effective.

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8 Standing Committee on Fisheries and Oceans, *Minutes of Proceedings and Evidence*, Ottawa, 21 November 1995.

9 Fisheries and Oceans Canada, *National Framework for Establishing and Managing Marine Protected Areas*, March 1999, p. 10.

They recommended clarifying the terms used in subsection 35(1), which lists the reasons for designating MPAs, including: "endangered or threatened marine species and their habitats," "unique habitats," and "high biodiversity" or "biological productivity." They also recommended that the term "precautionary approach" be more clearly defined in the *Oceans Act* and that the Department of Fisheries and Oceans determine how and when the precautionary approach should be applied. Finally, they suggested that the term "ecosystem approach," used in the preamble of the *Oceans Act*, be defined in order to clarify how the Minister intends to protect ecosystems under the *Oceans Act*. The Committee agrees and recommends:

Recommendation 6:

That such terms be clearly defined in the Act itself or reference made to other Acts which define them.

INTEGRATED MANAGEMENT

A. Introduction

It is assumed in sections 31 and 32 of the *Oceans Act*, that the Minister of Fisheries and Oceans will collaborate with provincial and territorial governments, Aboriginal organizations and coastal communities to lead and facilitate Integrated Management. As one of the underlying principles of the Oceans Management Strategy, Integrated Management is seen as a decision-making process through which stakeholders and authorities can work together toward common goals, plans and policies affecting a specific issue or geographic area. Integrated Management is based on the precepts that stakeholders, including federal departments, should not implement plans related to oceans without seeking the collaboration of other interested parties, that conflicts should be addressed at the planning stage, and that long-term management plans will be based on regional and national goals.[10]

Currently, 18 Integrated Management pilot initiatives are taking place in all three of Canada's ocean regions, including: the Eastern Scotian Shelf Integrated Management Project; the St. Lawrence Upper North Shore Integrated Coastal Zone Management Project; the Southern Beaufort Marine Coastline project; and the Georgia Basin Ecosystem Initiative. The Committee was informed that regionally based programs are being used to implement the *Oceans Act* and to gain experience under the "umbrella" of a national Integrated Management framework. The philosophy is that the concurrent development of a national policy framework with regional, sub-regional and local programs and initiatives

[10] Fisheries and Oceans Canada, Backgrounder, *Integrated Management*, December 1996.

by DFO regions reinforces the pragmatic approach of "learning by doing" under the *Oceans Act*.[11]

B. Environmental Objectives

The Sierra Club of B.C. pointed out that section 31, Integrated Management Plans, makes no references to plans to address: destruction, alteration or degradation of estuarine, coastal or marine habitat; declines or changes in populations of ocean fish, shellfish, invertebrates, marine mammals or plants; introduction of exotic species; impact of population growth; freshwater diversions and alteration; toxic contamination; oil and chemical spills; or land-based pollution. The Committee agrees that these are worthwhile objectives for Integrated Management; however, it notes that, rather than addressing specific activities, this section of the Act authorizes the Minister to lead and facilitate the implementation of plans for Integrated Management.

The Sierra Club of B.C. also recommended: strengthening subsection 32(*d*) to allow monitoring and collection of data to help understand the oceans and their living resources and ecosystems; and making marine quality guidelines, objectives and criteria respecting estuaries, coastal waters and marine waters mandatory. The Committee notes that paragraph 33(1)(*c*) already requires the Minister to gather, compile, analyze, coordinate and disseminate information. In addition, subsection 42(*a*) authorizes the Minister, in exercising the powers and performing the duties and functions assigned by paragraph 4(1)(*c*) of the *Department of Fisheries and Oceans Act*, to collect data for the purpose of understanding oceans and their living resources and ecosystems.

C. Consultation

The Sierra Club of B.C. further recommended to the Committee that subsection 33(1), Cooperation and Agreements, be amended to provide for public consultation. However, subsection 33(2), Consultation, provides that the Minister, in exercising the powers and performing the duties and functions mentioned in Part II, may consult with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected Aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements. The Committee, however, recommends:

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11 Faith Scattolon, Regional Director, Oceans Environment Branch, Maritimes Region, Fisheries and Oceans Canada, Halifax, 8 May 2001.

Recommendation 7:

That subsection 33(2) be amended to read "In exercising the powers and performing the duties and functions mentioned in this Part, the Minister shall consult…"

D. Oil and Gas Exploration

In the Committee's view, one of the most serious issues that came to light during the review of the *Oceans Act* concerns the way in which oil and gas exploration licences have been granted off the coast of Cape Breton by the Canada-Nova Scotia Offshore Petroleum Board (CNSOPB). The granting of these licences suggests that there may be a lack of strategic direction with respect to the Oceans Management Strategy.

In December 1998, the Board issued Call For Bids, No. NS98-2, for new exploration licences for 20 "parcels" in the Nova Scotia offshore area. Bids were received for 19 of the parcels. One of the successful bids was on "Land Parcel No. 1," which comprises a substantial area of the southern Gulf of St. Lawrence off the west coast of Cape Breton.

The news that this region of the southern Gulf was to be opened up for oil and gas exploration raised alarm among fishing organizations and communities in the region. The southern Gulf of St. Lawrence is one of the most productive fishing areas in Canadian waters and the area on which Parcel 1 lies includes important spawning habitat for many of the species that are found in the southern Gulf, and lies along the migratory routes of many of the southern Gulf species. The southern Gulf is also one of the most productive areas in the world for lobster, the mainstay of the Gulf fishery.

In response to growing public concern, two ministers — the Minister of Natural Resources Canada, Ralph Goodale, and the Minister Responsible for the Petroleum Directorate and the Accord Implementation Act, Government of Nova Scotia, Gordon Balser — issued a joint directive on 20 October 2000. The directive ordered the Canada-Nova Scotia Offshore Petroleum Board to conduct a public review of potential oil and gas exploration and drilling activities within Exploration Licences 2364, 2365 and 2368. Exploration Licence 2368 corresponds to NS98-2 Parcel 1. The other two parcels are located in the Sidney Bight area. Unlike previous exploration licences, which had all been issued for offshore parcels, the three exploration licences slated for public review border on the coastline of Cape Breton. Parcel 1 is also adjacent to the waters off Prince Edward Island.

Although the Committee supports the public review commission,[12] it has some misgivings over limitations in both its mandate and in the composition of its staff. The

[12] The Commissioner, Dr. Teresa MacNeil, held identification of issue/information meetings from 25 September to 4 October 2001. Full public meetings are scheduled for January 2002. The Commission expects to report its findings by March 29, 2002.

Committee notes that the Commissioner is empowered to conduct a public review on the effects of potential oil and gas exploration and drilling activities within the licence areas with regard to:

- socio-economic impacts;
- effects on the ecosystem; and
- mitigation of impacts.

The Committee believes that the Commissioner's terms of reference should have been broader to include an explicit mandate to make recommendations as to whether the areas under consideration should be placed under a moratorium. Because the protection of the biodiversity and productivity of this region of the southern Gulf is at the core of the Commission's raison d'être, the Committee feels that it would have been preferable if the Commission staff had included someone representative of the fishing community in the area.

The Committee has no disagreement with the Canada-Nova Scotia Offshore Petroleum Board, which has been acting according to its mandate. However, according to the *Oceans Act*, the Minister of Fisheries and Oceans is expected to assume the lead role in Integrated Management; yet, in this case, the Department of Fisheries and Oceans appears to have been relegated to a mere advisory role.

The underlying concept of Integrated Management is that stakeholders, including federal departments, should not implement plans related to oceans without seeking the collaboration of other interested parties and that conflicts should be addressed at the planning stage, neither of which appears to have happened in this case. The Committee agrees with witnesses who were highly critical of a process that did not consult with coastal communities and fishermen in order to identify sensitive marine areas before putting them up for bid. Members of the Committee have concluded that the fishing community has little confidence that their interests and the environment on which they depend for their livelihood will be sufficiently protected by this process.

The Department of Fisheries and Oceans has a mandate to protect fish and their habitat under the *Fisheries Act*. Integrated Management is one of the three key principles on which the Oceans Management Strategy is built, the other two being the precautionary approach and sustainable development. It is not evident in this case that these principles are guiding the decisions being made.

The Committee shares the concerns of many of our witnesses that the effects of seismic testing, particularly on the larval stages and juveniles of many species, is not sufficiently well documented to provide assurance that damage to important stocks will not occur as a result of oil and gas exploration. The Committee is also concerned about the impacts from long-term discharge of effluent from possible oil and gas exploitation, should economic reserves be found in this area. The shallow waters of the Gulf are virtually

landlocked; they are icebound in winter and they have limited tidal currents, making them especially vulnerable to contamination.

Fishermen have been fishing this region of the Gulf for hundreds of years and, with good management, fishing can be sustainable indefinitely into the future. Oil and gas development would undoubtedly provide valuable economic benefits, but at best only for a few decades. The Committee feels that it may be prudent to consider placing this region under an oil and gas exploration moratorium similar to that on the Georges Bank until the fishermen and their communities can be assured that the risks of exploration and development are minimal. The Committee believes that, in the long term, no great harm would result from a moratorium as any oil and gas reserves are only likely to increase in value.

The Committee notes that the Fisheries Resource Conservation Council (FRCC) has also registered its concern over oil and gas exploration in the Gulf of St. Lawrence and has recommended:

> That any oil and gas production activities in the Gulf of St. Lawrence, from the exploration to production phase, be postponed until a complete assessment, made through a transparent process, on the potential impact of those activities on the marine life is made.[13]

Mr. Jim Dickey, Chief Executive Officer of the Canada-Nova Scotia Offshore Petroleum Board, had this to say:

> I don't deny for a moment that there's a need to look at the whole offshore area in a much more general environmental and fisheries sense and to try to fit it into the oil and gas activity that's proposed for the area. As I understand it, that's exactly what is being done now under the *Oceans Ac*t with DFO and their Integrated Management plans for marine waters. …
>
> But, at the end of the day I think it would certainly be to the advantage of everybody — the boards, the petroleum industry, and the fishing industry — to have a sense from the policy-makers of what areas are open for business and what aren't.[14]

The Committee agrees.

The Committee shares the concerns of witnesses and the FRCC, and questions whether this area of the Gulf of St. Lawrence should have been opened up to oil and gas

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13 Fisheries Resource Conservation Council, 2000/2001 Conservation Requirements for Groundfish Stocks in the Gulf of St. Lawrence, FRCC.2000.R.3, April 2000, p. 7.

14 Jim Dickey, Chief Executive Officer, Canada-Nova Scotia Offshore Petroleum Board, Ottawa, 5 June 2001.

exploration without a prior full environmental assessment under the *Canadian Environmental Assessment Act* (CEAA).[15]

The Committee recommends:

Recommendation 8:

That the federal government give consideration to conducting a full environmental assessment under CEAA on potential oil and gas exploration in the Gulf of St. Lawrence, particularly in the area designated by Exploration Licence 2368.

Recommendation 9:

That the federal government establish broadly based guidelines for oil and gas exploration and extraction based on the key principles of the *Oceans Act* and the interests of other stakeholders in order that the oil and gas industry is aware of what the limitations are prior to applying for a licence.

It is the Committee's understanding that a vacancy currently exists on the Board of the Canada-Nova Scotia Offshore Petroleum Board for an appointee from the Government of Canada. The Committee therefore recommends:

Recommendation 10:

That the federal government, in cooperation with the Province of Nova Scotia, appoint a qualified person representing the fishing community to the Canada-Nova Scotia Offshore Petroleum Board to represent the interests of fishing communities and the fisheries resources on which they depend.

The *Oceans Act* clearly states that the Minister of Fisheries and Oceans is expected to lead and facilitate the development of an integrated oceans management strategy. However, it is also apparent that responsibility for the management of Canada's oceans is becoming increasingly fragmented between different ministers. The *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, for example, designates the Minister of Natural Resources as the responsible federal minister and the proposed Canada National Marine Conservation Areas Act would establish the Minister of Canadian Heritage as the minister responsible for that Act. The Committee is disturbed that such divisions of responsibility represent an erosion of the authority of the Minister of Fisheries and Oceans, which in turn undermines the Minister's ability to lead a coordinated and comprehensive oceans management strategy.

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15 The Standing Committee on Fisheries and Oceans has agreed to consider a future study on the environmental and ecological impacts of oil and gas exploration and exploitation activities.

The Committee therefore recommends:

Recommendation 11:

That the government affirm that the Minister of Fisheries and Oceans has the primary responsibility for all matters relating to the management of Canada's oceans.

Recommendation 12:

That the Minister of Fisheries and Oceans exercise his role as the minister with overall responsibility for the management of Canada's oceans more proactively.

PART III — POWERS, DUTIES AND FUNCTIONS OF THE MINISTER

Part III of the *Oceans Act* defines the powers, duties and functions of the Minister of Fisheries and Oceans and establishes the Minister of Fisheries and Oceans as the Minister responsible for Coast Guard services, hydrographic services and marine sciences.

A. Marine Services Fees

Section 47[16] gives the Minister the authority to fix fees for the provision of services under the Act. At the time the Standing Committee on Fisheries and Oceans was studying Bill C-98 in the fall of 1995, this Part of the Act was controversial with stakeholders in Canada's commercial shipping industry who raised concerns about the delivery of Coast Guard services and about potential economic impacts of fees on the commercial shipping industry.

Many of these concerns were raised again following the announcement in January 1996 by the then-Commissioner of the Coast Guard, John F. Thomas, of the basic principles of a marine services fee. At the time, it was anticipated that the fee would be phased in over a four-year period starting with a revenue target of $20 million, commencing 1 April 1996. Initially the fee was to be applied to aids to navigation. It was also anticipated that fees for icebreaking would be introduced in time for the 1996-1997 season.

During the spring of 1996, the Standing Committee on Fisheries and Oceans conducted a study on the Marine Services Fees in response to the concerns of the commercial shipping sector. On 22 April 1996, the Committee made ten recommendations to the Minister, which were largely agreed to by the Department. These included the recommendations that the Coast Guard be authorized to recover $20 million through fees for aids to navigation commencing 1 June 1996, and that the Coast Guard undertake to commission an independent and thorough socio-economic impact analysis of the cumulative effects of all marine-related fees and initiatives on the commercial shipping industry and dependent industries and regions. Fisheries and Oceans Minister of the day, Fred Mifflin, approved fees for aids to navigation on 9 May 1996, to become effective June 1 that year. The fee was set to recover $20 million in 1996-1997 toward the costs of aids to navigation services provided by the Canadian Coast Guard.

In May 1998, the Minister of Fisheries and Oceans announced a number of initiatives related to Marine Services Fees:

16 Marine Services Fee and the Icebreaking Fee are fixed pursuant to section 47 of the *Oceans Act*. Section 48 of the Act allows the Minister to fix fees for products, rights and privileges. Section 49 of the Act allows the Minister to fix fees for regulatory processes, etc.

- The federal government would place a three-year cap on fees for marine services provided by the Canadian Coast Guard.
- Starting in the 1998-1999 season, the government would implement a fee for icebreaking services to commercial shipping. The fee was intended to recover $13.3 million out of a total annual cost of $76 million.
- Treasury Board Secretariat would undertake a cumulative economic impact study with the appropriate departments within the next three years, to assess the impact of government cost recovery initiatives on the commercial shipping sector.

In the fall of 1998, representatives of the commercial shipping industry again appeared before the Standing Committee on Fisheries and Oceans to make the case that the Icebreaking Fee had the potential to negatively affect the competitiveness of the Canadian shipping industry with respect to U.S. carriers and other modes of transportation. As a result, the Committee recommended to the Minister that the Icebreaking Fee be set at 50% of the Coast Guard's proposal, to be implemented 21 December 1998 for a period of one year in order to provide time for the industry and the Coast Guard to work together to find a more acceptable long-term solution.

Then Minister of Fisheries and Oceans, David Anderson, accepted the Committee's recommendation and, on 4 December 1998, the Department announced an Icebreaking Services Fee revised to 50% of the original proposal beginning 21 December 1998. The fee would remain capped for three years; the impact of the Icebreaking Services Fee would be reviewed between the third and the fourth year; and, in the meantime, the Coast Guard would work with the industry to address costs and service delivery issues.

During the current review of the *Oceans Act*, the St. Lawrence Economic Development Council[17] (SODES) and the Chamber of Maritime Commerce[18] (CMC) appeared before the Committee to make further representations on the subject of fees for Coast Guard services.

The CMC noted that when the Canadian marine industry was first made aware of the government's intention to impose user fees for Coast Guard services, marine shippers and carriers asked for two basic provisions to precede the implementation of fees: a thorough assessment of the level of services required by the commercial shipping industry in order to trade safely and efficiently in Canadian waters; and, that the Coast Guard adjust its service levels and therefore its costs assessed to commercial shipping to the service needs of the industry.

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17 Marc Gagnon, Executive Director, and Claude Mailloux, Assistant Executive Director, St. Lawrence Economic Development Council, Ottawa, 2 May 2000.

18 Jim Campbell, Vice-President and General Manager, Chamber of Maritime Commerce, Ottawa, 2 May 2000.

The CMC recalled the 1996 review of the Marine Services Fee by the Standing Committee on Fisheries and Oceans in which it made recommendations to the Minister. One of those recommendations was that the Committee should address the issues of Coast Guard services as well as future marine services fees on a regular basis. The CMC endorsed that recommendation at the time and reaffirmed its endorsement during the current review of the *Oceans Act*.

Supported by the CMC, SODES recommended to the Committee that, before lifting the freeze on service fees or making any other decision relating to the Coast Guard's cost recovery process, the Minister should:

- allow sufficient time to complete the analysis and review of the structure of the Coast Guard's costs and services.
- wait until such time as the forums (the Marine Advisory Board and the regional advisory boards) have been able to make specific recommendations with respect to changes that need to be made in order to achieve real gains in efficiency.
- reassess the Coast Guard's budgetary requirements on the basis of gains made as a result of rationalization efforts currently under way.
- take into account the results of the economic impact study being conducted by Treasury Board.
- ensure that the results of the projects and the recommendations made by the various consultative bodies be reviewed in depth by the Standing Committee on Fisheries and Oceans and that the Committee have sufficient time to make recommendations to the Minister on any measures required, after consultation with the Coast Guard and representatives of the industry.

Phase I of the Treasury Board Study, which includes a review of the possible methodologies, was completed in June 2001. The Treasury Board Secretariat plans to complete consultations with industry by the end of October 2001 in order to obtain agreement on the methodology to be used in Phase II, the study proper. Completion of Phase II is now anticipated by February 2002.

The Committee agrees with the principles recommended by SODES and the CMC and therefore recommends:

Recommendation 13:

That the Coast Guard not make any revisions to the Marine Services Fee or Icebreaking Fees until the Treasury Board study has been completed and until such time as all interested parties have had a reasonable opportunity to evaluate the study.

B. Ferries

Although a separate category has been created for ferries in the *Marine Service Fee Schedule*, they are still treated as commercial ships. According to SODES, ferry operators believe that this designation does not properly acknowledge their status as a public service. Ferries are required to provide their services to the public under predetermined conditions, generally under agreements with governments, and ferry operators have little flexibility to increase charges or to readjust their schedules. Moreover, fares are generally subject to stringent controls. Most other commercial shippers do not have to contend with these constraints. As ferries can be considered essential public services in many parts of the country, operators believe that they should be categorized as "government ships" for the purpose of Coast Guard service fees, thus exempting ferries from the Marine Services Fee and the Icebreaking Services Fee.

The Committee recommends:

Recommendation 14:

That the Minister evaluate whether classifying ferries as government ships for the purpose of exempting them from the Marine Services Fee and the Icebreaking Services Fee would result in fairer treatment of ferry operators and whether it would serve the broader public interest; and,

Recommendation 15:

That the Minister provide the results of the evaluation to the Standing Committee and Fisheries and Oceans and to the stakeholders.

C. Section 41

Section 41 of the *Oceans Act* establishes the powers and duties of the Minister with respect to Coast Guard services. Paragraph 41(1)(*a*) provides for the safe, economical and efficient movement of ships in Canadian waters through the provision of marine services including aids to navigation, marine communications, ice breaking, and channel maintenance (Subparagraphs 41(1)(*a*)(i) to (iv)).

SODES pointed out that the St. Lawrence has multiple users and therefore, unlike the well-defined area of a port, cannot be transferred to a single group of users. In SODES' view, the services required by users of the St. Lawrence take the form of a public good. SODES recommended amending subsection 41(1) of the *Oceans Act* to provide that the federal government may not abandon or transfer the marine services described in the Act without the consent of the users of these services.

Subsection 41(2) requires the Minister to ensure that the services listed under subparagraphs 41(1)(*a*)(i) to (iv) are provided in a cost-effective manner. The Chamber of Maritime Commerce recommended to the Committee:

- Adding wording to subsection 41(2) to include that the level of services provided by the Coast Guard will be established *only after* consultation with users of the services.
- Amending subsection 41(2) to indicate that service delivery can be delivered by government or the private sector in order to encourage the Coast Guard to consider any and all alternatives to the current system of delivering the services outlined in this section.

The Committee agrees with the former of these recommendations and therefore recommends:

Recommendation 16:

That subsection 41(2) be amended to read "(2) The Minister shall ensure that the services referred to in subparagraphs (1)(*a*)(i) to (iv) are provided in a cost effective manner and that the level of services will be established only after consultation with users of the service."

The Chamber of Maritime Commerce acknowledged that consultation is now well established at the Coast Guard; nevertheless, they recommended that it be entrenched in subsection 41(2).

D. Section 42

Section 42 outlines the functions the Minister may perform with respect to marine sciences. The Sierra Club of B.C. pointed out that this section neglects research studies related to inland areas that affect ocean and marine activities.

E. Sections 47 and 48

The Area 19 Snow Crab Fishermen's Association complained that, under their co-management agreement with DFO, they pay a great deal for various services as well as an extensive management fee to DFO. In addition, they say they also pay a licence fee, which is supposed to be a management fee. In their view, this puts them in the position of paying twice as much as the fisherman who does not have a co-management agreement.

The Association questioned whether fee-setting should not be subject to some exclusionary provisions such that the fees for a facility which is provided for under the terms of paragraph 33(1)(*b*) "agreement" would be set by parties to the agreement. The Association recommended clarifying section 47, which authorizes the Minister to fix fees for

services or the use of facilities, so that there would be no “apprehension of a double tax” by parties seeking to enter into agreements.

The Area 19 Snow Crab Fishermen’s Association had similar concerns with section 48, which provides the Minister with the authority to fix fees for “products, rights and privileges.” The Association’s understanding was that paragraph 33(1)(*b*) “agreements” may enable the private sector to provide goods and services, which previously had been provided by “government largesse.” The Association pointed out that fishermen must now often pay for products and services such as dock-side monitoring, data collection, scientific research and some enforcement that previously had been provided by government.

The Association argued that this “double fee structure” was prejudicial and could discourage others from entering into co-management agreements. The Association also recalled that it had raised the same issue in 1995 when Bill C-98 was before the Standing Committee on Fisheries and Oceans.

It is the understanding of the Committee, however, that fisheries co-management agreements are made under the authority of the *Fisheries Act*, not paragraph 33(1)(*b*) of the *Oceans Act*. It is also the understanding of the Committee that commercial fishing licence fees are paid for the privilege of accessing a public fisheries resource and are, in effect, a rental paid on the resource, not management fees.

F. Section 50

Subsection 50(2) of the Act provides for a maximum period of 30 days from the time the Minister fixes a fee under the Act until publishing the fee in the *Canada Gazette*. Both SODES and the Chamber of Maritime Commerce recommended amending subsection 50(2) to increase the 30-day period to 90 days in order to allow the industry, in partnership with the government, to make an appropriate study of its potential impact of changes to fees.

This recommendation appears to be based on a misunderstanding. The 30-day period specified in subsection 50(2) is provided for public notification, not for public comment. In fact, the fee takes effect as soon as the Minister fixes it. Subsection 50(2) requires the Minister to publish the fee in the *Canada Gazette* within 30 days of fixing the fee.

Although subsection 50(1) requires the Minister to consult with bodies or persons the Minister deems to be interested, it does not specify a consultation period. However, the Committee agrees with the principle that the Minister should engage in a meaningful period of consultation prior to any revisions to fees for services and that the Minister should report on these consultations to the Standing Committee on Fisheries and Oceans and to the stakeholders.

LIST OF RECOMMENDATIONS

Recommendation 1:

That the Department of Fisheries and Oceans, in consultation with the provinces, territories and stakeholders, immediately draft regulations in accordance with the intent of the *Oceans Act*.

Recommendation 2:

That the Department of Fisheries and Oceans prepare an annual state of the oceans report to document progress on the implementation of the *Oceans Act*.

Recommendation 3:

That the Department of Fisheries and Oceans amend the *Oceans Act* to include references to fishermen and fishermen's organizations in the sections of the Act that require the Minister to consult.

Recommendation 4:

That an interdepartmental committee be struck to ensure that the stewardship and sustainable management of marine areas be done under the authority of the Minister of Fisheries and Oceans.

Recommendation 5:

That DFO take the means to publish in a proactive manner, to the public, information on suggested MPA sites through its Oceans Program Activity Tracking System Web site as well as other media.

Recommendation 6:

That such terms be clearly defined in the Act itself or reference made to other Acts which define them.

Recommendation 7:

That subsection 33(2) be amended to read "In exercising the powers and performing the duties and functions mentioned in this Part, the Minister shall consult…"

Recommendation 8:

That the federal government give consideration to conducting a full environmental assessment under CEAA on potential oil and gas exploration in the Gulf of St. Lawrence, particularly in the area designated by Exploration Licence 2368.

Recommendation 9:

That the federal government establish broadly based guidelines for oil and gas exploration and extraction based on the key principles of the *Oceans Act* and the interests of other stakeholders in order that the oil and gas industry is aware of what the limitations are prior to applying for a licence.

Recommendation 10:

That the federal government, in cooperation with the Province of Nova Scotia, appoint a qualified person representing the fishing community to the Canada-Nova Scotia Offshore Petroleum Board to represent the interests of fishing communities and the fisheries resources on which they depend.

Recommendation 11:

That the government affirm that the Minister of Fisheries and Oceans has the primary responsibility for all matters relating to the management of Canada's oceans.

Recommendation 12:

That the Minister of Fisheries and Oceans exercise his role as the minister with overall responsibility for the management of Canada's oceans more proactively.

Recommendation 13:

That the Coast Guard not make any revisions to the Marine Services Fee or Icebreaking Fees until the Treasury Board study has been completed and until such time as all interested parties have had a reasonable opportunity to evaluate the study.

Recommendation 14:

That the Minister evaluate whether classifying ferries as government ships for the purpose of exempting them from the Marine Services Fee and the Icebreaking Services Fee would result in fairer treatment of ferry operators and whether it would serve the broader public interest; and,

Recommendation 15:

That the Minister provide the results of the evaluation to the Standing Committee and Fisheries and Oceans and to the stakeholders.

Recommendation 16:

That subsection 41(2) be amended to read "(2) The Minister shall ensure that the services referred to in subparagraphs (1)(*a*)(i) to (iv) are provided in a cost effective manner and that the level of services will be established only after consultation with users of the service."

APPENDIX A

STANDING COMMITTEE
ON FISHERIES AND
OCEANS

House of Commons
Chambre des communes
OTTAWA, CANADA K1A 0A6

COMITÉ PERMANENT DES
PÊCHES ET OCÉANS

April 22, 1996

The Honourable Fred Mifflin, P.C.
Minister of Fisheries and Oceans
Room 207, Confederation Building
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Sir:

The Standing Committee on Fisheries and Oceans has completed its hearings on the Marine Services Fees and is pleased to present you with its report.

The Committee has listened carefully to the testimony of witnesses from the commercial shipping industry. The Committee feels that it is good public policy that those who benefit specifically from government goods and services should be asked to pay a fair share of the cost of providing them. The objective is to promote equity by shifting the financial burden from taxpayers generally to those who benefit most directly. While the Committee is sensitive to the concerns expressed regarding the potential negative effects on business and employment, the Committee is also aware that it has a responsibility to the Canadian taxpayer who, up until now, has been paying for the full cost of services provided to the commercial shipping industry. While we acknowledge that many of the presenters suggested a moratorium, we note that virtually all of the participants in our hearings agreed in principle with the concept of cost recovery. We agree with the principle of cost recovery, but we also believe that it is now time to go beyond principle and put this concept into practice.

In this context, we feel that the phased introduction of Marine Services Fees planned by the Coast Guard represents a balanced approach and we note that, at the initial level of $20 million in the 1996-97 fiscal year, the rate of cost recovery represents only

approximately 10% of the current cost of services to the commercial shipping industry provided to the industry by the Canadian Coast Guard through taxpayers' contributions. We believe that, at this level, the risk of serious harm to industry is minimal and that to postpone introduction of the fees would only serve to reduce the incentive for the Coast Guard and the commercial shipping industry to proceed expeditiously with the badly needed rationalization of Coast Guard services. We appreciate the concerns of the shipping industry with respect to the impact of fees and we would be uncomfortable with the introduction of any further fee increases until an independent, thorough, in-depth analysis of the cumulative impact of all fees facing the industry has been completed and the Coast Guard, the industry and an appropriate committee of Parliament have had a reasonable time to review the results of the analysis.

We are fully in agreement with the position that many of the Coast Guards aids to navigation are currently in excess of what is required by the commercial shipping sector and that this trend toward obsolescence of certain existing navigational aids will continue as new technology such as the Differential Global Positioning System becomes universally adopted. We also agree that many specific aids such as buoys could be more cost-effectively maintained by the private sector. However, determination of the required level of aids to navigation should not be driven by commercial interests alone and therefore we see the Coast Guard as continuing to play an essential role in ensuring the safety of marine traffic.

The Standing Committee on Fisheries and Oceans therefore recommends:

That Coast Guard be authorized to recover $20 million in the 1996-97 fiscal year through fees for aids to navigation commencing June 1, 1996 as planned;

that the Coast Guard undertake to commission an independent and thorough socio-economic impact analysis of the cumulative effect of all marine-related fees and initiatives on the commercial shipping industry and dependent industries and regions;

that this study be completed and a reasonable period of time be allowed for review by both the Coast Guard and the industry before ice breaking or other increases of the Marine Services Fee are introduced;

that the study be reviewed by an appropriate committee of Parliament;

that the marine shipping industry be invited to participate in the development of the terms of reference for this study and that the industry be asked to contribute financially to, consistent with the funding formula in the terms of reference, and to participate in the study;

that the Coast Guard, in conjunction with the commercial shipping industry, assess the level of services that are required for the safe and efficient transit of ships and ensure that only those services that are required by the

commercial shipping sector will be paid for by the commercial shipping sector;

that the Coast Guard, in conjunction with the industry, investigate the least expensive and most cost-effective means of delivering these services, including the option of privatization and that, within each region, consideration be given to developing port-specific incentives to reduce costs;

that the Coast Guard continue to work with the ensure that the cost recovery formula remains fair and equitable and, as far as practicable, establishes a close link between the services used and the level of fees charged but which does not unduly penalize any segment of the industry or region of the country;

that the Coast Guard, with the Marine Advisory Board and industry stakeholder groups in each region, report on progress on these initiatives every three months starting June 1, 1996; and,

that the Standing Committee on Fisheries and Oceans adopt for itself a monitoring role to oversee progress on these initiatives at regular intervals.

I trust that you will find this report useful in advance of your decision on the implementation of the Marine Services Fee.

Yours sincerely,

Joe McGuire, M.P.
Chair,
House of Commons Standing
Committee on Fisheries and Oceans

APPENDIX A
LIST OF WITNESSES

THURSDAY, SEPTEMBER 20, 2001 (OTTAWA)

Aerospace Industries Association of Canada

Peter Smith, President and Chief Executive Officer

Canadian Employee Relocation Council

Bruce Atyeo, Co-Chair, Government Relations Committee
Jacques Prévost, Co-Chair, Government Relations Committee

Ottawa Centre for Research and Innovation

Wes Biggs, President, Edgeflow
Mike Darch, Special Adviser to the President, Ottawa Economic Development, Division of OCRI

Pratt & Whitney Canada

Gilles Ouimet, President

TUESDAY, SEPTEMBER 25, 2001 (OTTAWA)

Business Council on National Issues

Thomas P d'Aquino, President and Chief Executive
David Stewart-Patterson, Senior Vice-President, Policy and Communications

Business Tax Reform Coalition

Fiona Cook, Vice-President, International Trade and Government Relations, Forest Products Association of Canada
Barry Lacombe, President, Canadian Steel Producers' Association

Canadian Chemical Producers' Association

Richard Paton, Chief Executive Officer
David F Podruzny, Senior Policy Manager, Business and Economics

Canadian Co-operative Association

Lynne Toupin, Chief Executive Director

Canadian Federation for Promoting Family Values

Michael Gorman, President

Canadian Nature Federation

Christie Spence, Co-Manager, Wildlands Campaign

Canadian Real Estate Association

Pierre Beauchamp, Chief Executive Officer
Gregory Klump, Senior Economist

Canadian Resource Centre for Victims of Crime

Steve Sullivan, President and Executive Director

Green Budget Coalition

Robert Hornung, Policy Director, Pembina Institute for Appropriate Development
Joan Kuyek, Executive Director, Mining Watch Canada

Hotel Association of Canada

Anthony P Pollard, President

Mining Association of Canada

Dan Paszkowski, Vice-President, Economic Affairs
Gordon Peeling, President and Chief Executive Officer

National Science Organization Working Group

Howard Alper, Member

"Union des producteurs agricoles du Québec"

Serge Lebeau, Deputy Director, Agricultural Research and Policy

World Wildlife Fund Canada

Julia Langer, Director, International Programs

WEDNESDAY, SEPTEMBER 26, 2001 (OTTAWA)

Canada Foundation for Innovation

David W Strangway, President and Chief Executive Officer

Canadian Library Association

Vicki Whitmell, Executive Director

Canadian Museums Association

Francine Brousseau, President
John G McAvity, Executive Director

Community Foundation of Canada

Monica Patten, President and Chief Executive Officer

Heritage Canada Foundation

Brian P. Anthony, Executive Director

THURSDAY, SEPTEMBER 27, 2001 (OTTAWA)

Association of Fundraising Professionals

Nicholas Offord, President, Mount Sinai Hospital Foundation of Toronto
James Pitblado, Chair of the Board, Hospital for Sick Children Foundation

Canadian Conference of the Arts

Philippa Borgal, Associate Director
Megan Williams, National Director

National Council of Women of Canada

Shirley Browne, Vice-President
Maria Neil, Convenor of Economics

National Task Force to promote Employer-Provided Tax-Exempt Transit Benefits

Donna-Lynn Ahee, Project Manager
Amelia Shaw, Manager, Public Affairs, Canadian Urban Transit Association

TUESDAY, OCTOBER 2, 2001 (OTTAWA)

Association of Universities and Colleges of Canada

Robert J. Giroux, President

Canadian Advanced Technology Alliance

David Paterson, Executive Director

Canadian Animal Health Institute

Jean Szkotnicki, President

Canadian Association of Physicists

Don McDiarmid, Director of Professional Affairs

Canadian Association of Research Libraries

Tim Mark, Executive Director
Paul Wiens, University Librarian, Queen's University

Canadian Consortium for Research

John C. Service, Chair

Canadian Dental Hygienists Association

Susan A. Ziebarth, Executive Director

Canadian Film and Television Production Association

Guy Mayson, Senior Vice-President, Operations and Membership Services
Elizabeth McDonald, President and Chief Executive Officer

Canadian Healthcare Association

Sharon Sholzberg-Gray, President and Chief Executive Officer

Canadian Institutes of Health Research

Alan Bernstein, President

Natural Sciences and Engineering Research Council of Canada

Thomas A Brzustowski, President

Social Sciences and Humanities Research Council of Canada

Marc Renaud, President

"Université de Montréal"

Robert Lacroix, Chief Administrative Officer
Chairman, "AUCC" Board of Directors

WEFA Canada Inc

Dale Orr, Senior Vice-President and Chief Economist, Canadian Services

WEDNESDAY, OCTOBER 3, 2001 (OTTAWA)

National Anti-Poverty Organization

Bonnie Morton, President
Bruce Tate, Executive Director

National Research Council of Canada

Arthur J Carty, President

North-South Institute

Roy Culpeper, President

THURSDAY, OCTOBER 4, 2001 (OTTAWA)

Appraisal Institute of Canada

John Clark, President Elect, Building and Construction Trades Department
Robert Blakely, Director of Canadian Affairs

Canadian Association of Insurance and Financial Advisors

Bill Strain, Chair, Taxation, Conference for Advanced Life Underwriting
David Thibaudeau, President and Chief Executive Officer

Canadian Construction Association

Michael Atkinson, President
Jeff Morrison, Director of Communications

Canadian Development Institute

Nicholas J Patterson, Executive Director

Canadian Federation of Agriculture

Bob Friesen, President

Insurance Bureau of Canada

Paul Kovacs, Chief Economist and Senior Vice-President, Policy Development

MONDAY, OCTOBER 15, 2001 (TORONTO)

Campaign Against Child Poverty

Caroline DiGiovanni, Executive Director, Hope for children Foundation, Catholic Children's Aid Society of Toronto
Gerald Vandezande, Spokesperson

Canadian Alliance for Children's Healthcare

Jean-Victor, Wittenberg, Chair, Task Force on Working Parent with Sick or Disabled Children

Canadian Association for Community Living

Connie Laurin-Bowie, Director of Policy and Programs
Dianne Richler, Executive Vice-President

Canadian Bankers Association

Dan Marinangeli, Executive Vice-President and Chief Financial Officer, Financial Affairs Committee

Canadian Pensioners Concerned Incorporated

Mae Harman, Past President, Ontario Division, Chair of Economic Concerns Committee
Gerda Kaegi, Immediate Past President, Ontario Division, Vice-President, National Association

Canadian Vehicle Manufacturers Association

Mark Nantais, President
David Penney, General Director, Tax and Customs, General Motors of Canada
Michael Sheridan, director of Government Relations, Ford Motor Company of Canada
Tayce Wakefield, Vice-President, Corporate and Environmental Affairs, General Motors of Canada

Certified Management Accountants of Canada

Robert Dye, President
Richard Monk, President

Citizens for Public Justice

Greg DeGroot-Maggetti, Coordinator, Socio-economic Concerns

Crop Life Canada

Charles D. Milne, Vice-President, Government Affairs

Greater Toronto Services Board

Gordon Chong, Chairman

Horse Racing Tax Alliance of Canada

Michael Van Every, Chairman, Chartered Accountant, PricewaterhouseCoopers
Catherine Willson, Willson Lewis, Barristors and Solicitors, Nesbitt Burns Inc
Donald K. Johnson, Vice-Chairman, BMO

Ontario Non-Profit Housing Association

Noreen Dumphy, Manager, Public Affairs, Toronto Training Board
Peter Landry, Business Director
Mike McCue, Labour Co-Chair

Toronto Transit Commission

David Miller, Commissioner

University of Toronto

Heather Munroe-Blum, Professor, Vice-President, Research and International Relations

University of Western Ontario

David Laidler, Professor, Department of Economics

Writers' Union of Canada

Barry Grills, First Vice-Chair

As an Individual

Margaret Dinsdale

TUESDAY, OCTOBER 16, 2001 (TORONTO)

Best Medicine Coalition

Pat Kelly

Campaign 2000

Laurel Rothman, National Coordinator

Canada Council of the United Brotherhood of Carpenters and Joiners of America

Bud Calligan, President
Eddie Thornton, Executive Director, Local 27, Canadian Lightweight Materials Research Initiative
William Harney, Director of New Product Development, Magna International
MJ Wheeler, Chairman, Industry Steering Committee

College of Dental Hygienists of Ontario

Kathy Walker, President

Co-operative Housing Federation of Canada

Donna Charbonneau, Board Member
Mark Goldblatt, Senior Consultant

Direct Sellers Association of Canada

Paul Thériault, President

Greater Toronto Homebuilders' Association

Peter Gilgan, Representative
Jim Murphy, Director of Government Relations
Patrick O'Hanlon, President

Group Health Centre

David Murray, President and Chief Executive Officer, Sault Ste Marie and District Group Health Association

Hospital for Sick Children and Hospital for Sick Children Foundation

Manuel Buchwald, Chief of Research

Hospital for Sick Children Foundation

Dianne Lister, President and Chief Executive Officer

Multiple Sclerosis Society of Canada

Deanna Groetzinger, Vice-President, Communications

Ontario Hospital Association

David MacKinnon, President

Star Navigation Systems

Reg Tanner, Manager, Network Services, MFP Financial Services
Hilary Vieira, President

Toronto Board of Trade

Elyse Allan, President and Chief Executive Officer

WEDNESDAY, OCTOBER 17, 2001 (MONTREAL)

Canadian Institute of Chartered Accountants

Pierre Brunet, Vice-Chair of the Board of Directors

Canadian Parks and Wilderness Society (Montreal)

Catherine Guillemette, Director

Canadian Taxpayers' Federation

Walter Robinson, Federal Director

"Centrale des syndicats démocratiques"

Jean-Guy Ouellet, Legal Counsel
François Vaudreuil, President

"Chambre de commerce du Québec"

Michel Audet, President

"Confédération des syndicats nationaux"

François Bélanger, Research Adviser, Labour Relations Unit
Claudette Carbonneau, First Vice-President

Forest Products Association of Canada

Frank Dottori, President and CEO, Tembec Inc.
Ashok Narang, Chairman, "Papier Masson Ltée"

McGill University

Pierre Bélanger, Vice-Principal, Research
Morty Yalovsky, Vice-Principal, Administration and Finance

Municipality of Iqaluit

Rick Butler, Chief Administrative Officer
John Matthews, Mayor

Popular action front on urban redevelopment

Lucie Poirier, Organizer
François Saillant, Co-ordinator

Shipping Federation of Canada

Gilles J. Bélanger, President and Chief Executive Officer

Tourism Industry Association of Canada

Charles Lapointe, Vice-Chairman; President and CEO, Tourism Montreal; Chairman, TIAC Policy Committee

Christena Keon Sirsly, Vice-Chairman; Chief Strategy Officer, VIA Rail Canada Inc.

THURSDAY, OCTOBER 18, 2001 (HALIFAX)

Annapolis Valley-Hants Community Action Programme fro Children

Pauline Raven, Regional Coordinator

Cement Association of Canada

Bill E. Dooley, Vice-President, Halifax Chapter
Ted Hounslow, Halifax Chapter; Sales Manager, Atlantic Region, Lafarge Canada

Child Care Connections Nova Scotia

Elaine Ferguson, Executive Director

Dalhousie Legal Aid Services

Jenane Fay, Community Legal Worker

Dartmouth Literacy Network

Calinda Brown, Board of Directors

Federation of New Brunswick Faculty Associations

Claude Dionne, President
Desmond Morley, Executive Director
Hans Vanderleest, Professor

Independent Living Resource Centre of St. John's

Cecilia Carroll, Chairperson

MacKillop Centre for Social Justice

Mary Boyd, Director

Metro Resource Centre for Independent Living

Lois Miller, Executive Director

Newfoundland-Labrador Federation of Co-operatives

Glen Fitzpatrick, Managing Director

Nova Scotia Association of Health Organizations

Peter Mackinnon, Member of Board of Directors, Chair of Working Group

Nova Scotia New Democratic Party

Graham Steele, Finance Critic

Nova Scotia School Boards Association

Lavinia Parrish-Zwicker, President

Population Health Research Unit

George Kephart, Director
Mike Pennock, Research Director

As an Individual

Jane Warren

MONDAY, OCTOBER 22, 2001 (VANCOUVER)

B.C. Road Builders & Heavy Construction Association

Jack Davidson, President

Canadian Parks and Wilderness Society, B.C. Chapter

Sabine Jessen, Conservation Director

College Institute Educators' Association of B.C.

Roseanne Moran, Research and Communication
Maureen Shaw, President

First Nations Summit Society

Harold Calla
Jason Calla, Councillor

Indian Taxation Advisory Board

C.T. (Manny) Jules, Chair

Natural Sciences and Engineering Research Council of Canada

Linda Bartram, Industrial Post-doctoral Fellow
Tom Calvert

Tenants Rights Action Coalition

Vanessa Geary
Linda Mix, Community Legal Worker

University Presidents' Council of British Columbia

Don J. Avison, President

TUESDAY, OCTOBER 23, 2001 (VANCOUVER)

British Columbia and Yukon Territory Building and Construction Trades Council

Tony Tennessy, President, Operating Engineers Local 115

Canadian Association of Gift Planners

Janice Loomer Margolis

Canadian Health Food Association

Donna Herringer, President and Chief Executive Officer

Coalition of Child Care Advocates of B.C.

Susan Harney, Chairperson

Coalition of Leaky Condo Owners

James Balderson

Coalition to Renew Canada's Infrastructure

Jeremy Kon, Vice-Chairman

David Suzuki Foundation

Dermot Foley, Energy Director
Jim Fulton, Executive Director
Gerry Scott, Director, Climate Change

Greater Vancouver Regional District

Robert Paddon, Manager, Communications
Helen Sparkes, Mayor of New Westminster

Parent for Child Care

Heather Northrup

University of British Columbia

Professor Martha Salcudean, Emerita Professor, Department of Mechanical Engineering

WEDNESDAY, OCTOBER 24, 2001 (EDMONTON)

Cement Association of Canada

Keith Meagher, Manager, Constructs and Technical Support. Western Region
Ken Pensack, Vice-President, Western Region

Northern Alberta Institute of Technology

David Janzen, Vice-President, Finance
W.A. (Sam) Shaw, President

Nunavut Association of Municipalities

David General, Chief Executive Officer
Keith Peterson, Vice-President

THURSDAY, OCTOBER 25, 2001 (WINNIPEG)

FRIDAY, OCTOBER 26, 2001 ()

MONDAY, OCTOBER 29, 2001 (OTTAWA)

TUESDAY, OCTOBER 30, 2001 (OTTAWA)

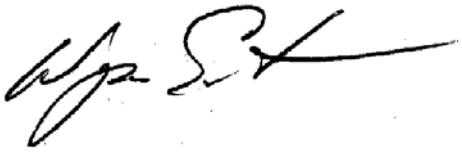
WEDNESDAY, OCTOBER 31, 2001 (OTTAWA)

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, your Committee requests that the Government table a comprehensive response to this report within 150 days.

A copy of the relevant Minutes of Proceedings of the Standing Committee on Fisheries and Oceans is tabled (*Meetings Nos 12, 16, 17, 20, 24 and 26 which includes this Report*) is tabled.

Respectfully submitted,



Wayne Easter, M.P.

Chair

DISSENTING OPINION BY THE CANADIAN ALLIANCE

Has the *Oceans Act* Succeeded?

Canada needs a statute that recognizes the Department of Fisheries and Oceans (DFO) as the lead agency in oceans policy. Such a statute would recognize the unique priority of the public fishery and the need to protect fish habitat.

The *Oceans Act* is not such a statute.

It was enacted to respond to the opportunities provided by the United Nations Convention on the Law of the Sea and was intended to be a significant step toward Canada's ratification of the Convention.

The Law of the Sea Convention has never been ratified.[1]

The Act was to strengthen the role of the Minister of Fisheries in oceans management and to recognize DFO as the lead agency for oceans policy. That has not happened.

Not only has the *Oceans Act* not served the basic function of recognizing Fisheries and Oceans as the lead agency for oceans policy, it has undermined the Minister of Fisheries unique constitutional role for the protection of fisheries and fish habitat.

When key decisions are made in regard to the ocean, its fisheries and their habitat, the Minister and his department are absent, they are off the radar screen.

The question must be asked, why has the *Oceans Act* failed to meet its primary objective of recognizing Fisheries and Oceans as the lead agency for oceans policy?

*** * ***

Undermining DFOs Lead Role: Canadian Heritage

Since the enactment of the *Oceans Act* serious questions have arisen as to whether the government intends DFO to be the lead agency for oceans policy.

The government has introduced the Marine Conservation Areas Act, Bill C-10, that would put large, yet undefined, areas of coastal waters under the control of the Minister of Canadian Heritage as marine conservation areas (MCAs). The *Oceans Act* already provided the Minister of Fisheries with a competing authority to establish marine protected areas (MPAs).

In keeping with the objective of the *Oceans Act* to create in the Minister of Fisheries the focal point for oceans policy, the Oceans *Act* should be amended to incorporate the

objectives of Bill C-10. Integrated oceans management would be greatly facilitated by having one Minister responsible rather than two competing bureaucracies.

Fishermen and other stakeholders are completely confused by the number of competing processes to "plan" for the ocean environment and there is no integrated strategy and there won't be as long as there are too many people and organizations taking responsibility for different pieces of the same pie.

* * *

Undermining DFOs Lead Role: Environment

The Department of the Environment (DOE) has released for public consultation a major policy document entitled, *Compliance and Enforcement Policy for the Habitat Protection and Pollution Provisions of the Fisheries Act*.

In the document, Environment claims it, not Fisheries and Oceans, has responsibility for the administration and enforcement of those sections of the *Fisheries Act* dealing with the deposit of deleterious substances in water frequented by fish (fish habitat). The Minister of Fisheries and Oceans should have been front and centre in this development, with fishermen involved at every step.

* * *

Undermining DFOs Lead Role: Natural Resources

On the East Coast the government has allowed the Minister of Natural Resources to make the decisions about where and when to explore and drill for oil and gas, even though such decisions directly impact fish and fish habitat.

When an inquiry was established to consider the impact of oil and gas exploration in the area adjacent to Cape Breton, it was the Minister of Natural Resources who was ultimately responsible even though the fishery was the only area that could be directly impacted by exploration.

DFO failed to effectively insert itself into the key decisions involving oil and gas exploration.

* * *

Constitutional Priority of the Public Fishery

Under section 91 of the *Constitution* the federal government has exclusive jurisdiction over the conservation and protection of Canada's fisheries whether coastal or inland.

In the *British Columbia Fisheries Constitutional Reference* of 1913, the judgement stated that "the right [to fish] being a public one, all that could be done to regulate its exercise and exclusive power of regulation was placed in the Dominion Parliament." The

high court was stating a fundamental constitutional point with regard to fisheries, the federal Parliament has exclusive responsibility to regulate the public fishery.

In *Agawa*, the Ontario Court of Appeal in 1988 neatly summarized the responsibility of the federal government and the Minister of Fisheries: **"The purpose of the *Fisheries Act* and Regulations made thereunder, although binding upon all persons, is not to abolish the right to fish of all persons, but to monitor and regulate, so that the fisheries will provide an adequate supply of fish now, and in the future."**

In 1996, the Supreme Court in the *Gladstone* decision reaffirmed the primary role of the "right to fish". This right, it said, could "only be abrogated by the enactment of competent legislation": It has been unquestioned law since *Magna Carta* that no new exclusive fishery could be created by the Crown and that no public right of fishing can be taken away without competent legislation.

In a nutshell, the primary constitutional responsibility and mandate of the Minister of Fisheries and Oceans is to regulate and protect the public fishery. The real question must be whether the *Oceans Act* is true to the Minister's primary responsibility? Put another way does it enhance or does it undermine his primary constitutional responsibilities?

* * *

Handling Competing Interests

Unfortunately the *Oceans Act* has created a conflict for the Minister between his primary duty to protect the fishery and fish habitat and his responsibility to manage ocean-based industrial activities.

For example the Minister stated, before Fisheries Committee on May 15, 2001, that as a result of the *Oceans Act* he now views his role as that of managing competing interests and activities in our coastal waters: "Traditional activities — like fishing... — are now joined by new expanding activities, like oil and gas development, tourism and aquaculture. All ocean users... deserve a say in how our oceans are managed over the long term. Managing this growth — and these competing interests — calls for a coherent, integrated approach. The *Oceans Act* gives just such an approach."

The *Oceans Act* does not oblige the Minister to ignore his primary responsibility to manage the public right to fish and thus to protect the fishery and fish habitat but it has provided the Minister and his Department with an excuse to emasculate the primacy of the fishery and fish habitat.

Fishing is not just another ocean activity like aquaculture or oil and gas exploration and drilling. Constitutionally it is different because there is a right to fish, there is no comparable right to undertake aquaculture or oil and gas exploration and drilling. From an environmental perspective fishing is of a different order than

aquaculture or oil and gas exploration and drilling. Foreign marine organisms and other pollutants once released cannot be recalled. Damage caused can be permanent.

The fundamental problem with the *Oceans Act* is a failure to address the unique position of fisheries and fishing. Due to this failure the Minister can be forgiven for seeing his job as one of merely balancing the demands of the many potential users of the ocean environment, all with an equal priority.

* * *

Establishing Priorities

The* Oceans Act *is legislation searching for a policy.

Instead of stating in the Act what the policy and its priorities was, Parliament advised the Minister to develop a policy and then to administer it.

Unfortunately Parliament abdicated its lawmaking role to the Minister and now is left with few if any criteria on which to judge if the Act is now working as it was intended. Unfortunately the Minister is equally adrift without clearly stated objectives and directives. **At its root, Parliament failed to speak clearly about the primary responsibility of the Minister for fish and fish habitat. It forgot that fishing is a right not a privilege.**

On this point, it is disheartening that the report of the Fisheries Committee also made this mistake at 3.23 when it stated: “It is also the understanding of the committee that commercial fishing licence fees are paid for the privilege of accessing a public fisheries resource...” **In a public fishery the government is not the owner of the resource. The “public” in the “public fishery” refers to the public right of access to a common property resource rather than a resource owned by government.** Put simply, in public waters there is a right to fish and fishing is a right not a privilege.

In failing to recognize the right to fish in public waters the Act fails to effectively differentiate between fishing and other ocean activities such as aquaculture and oil and gas drilling. **Without a firmly established superstructure the *Oceans Act* has the form and texture of a jellyfish**.

* * *

Recognition of Fishermen

Because the Act fails to recognize the priority of the public right to fish, it also fails to recognize fishermen as the primary affected group in the establishment of marine protected areas. This is particularly unfortunate since it is fishermen and their families who would be most affected by the creation of MPAs.

It must be remembered that the *Fisheries Act* already provides an effective tool to protect and promote the fishery through the creation of refuges or no take zones. The Minister has the power to close an area for fishing if he believes it necessary, unfortunately he has often failed to do so. The creation of marine protected areas is not an appropriate substitute to effective fishery management.

Fishermen must be involved in the creation of protected areas in those relatively rare instances where MPAs are a more effective vehicle for protecting the fishery than closures under the *Fisheries Act.*

With any protected area fishermen will need to know what specifically the MPA is designed to do and what specific activity the MPA may curtail. There should be a clear indication that fishermen are the cause of specific conservation problems and that less severe conservation measures such as gear restrictions or closed season will not adequately address the targeted conservation problem. Any not-take regulations should be specific, there should be measurable criteria to determine the conservation benefit of a no-take zone on the affected stocks of fish and provide a timetable for periodic review of the continued need for the no-take zone.

* * *

Primary Responsibility of Minister

Nowhere in Part III of the *Oceans Act,* where the powers and duties of the Minister of Fisheries and Oceans are spelled out, does it say that the primary responsibility of the Minister is the protection of the public fishery and fish habitat. Instead the Act adds a competing set of duties and responsibilities that are at odds with the protection of the public fishery and fish habitat.

This oversight could easily be remedied through a simple amendment to indicate the first responsibility of the Minister is the protection of the public fishery and fish habitat.

* * *

Recreating the *Oceans Act*

The *Oceans Act* could more effectively establish the Department of Fisheries and Oceans as the lead agency in oceans management if it recognized the constitutional priority of the fishery and the protection of fish habitat. In doing so, the Act would acquire a form and structure that it has, heretofore, lacked.

The government must reconsider its transfer of responsibility for marine conservation areas to the Minister of Canadian Heritage, fisheries habitat protection to Environment, and all decisions regarding oil and gas developments in coastal waters to Natural Resources. Fisheries and Oceans must be the senior agency in these matters, not a poor cousin.

In keeping with the recognition of the priority of the fishery, the Act should also recognize the special place of fishermen and involve them as much as is practicable in the creation and management of marine protected areas.

With the establishment of a foundation on which to build an oceans policy, DFO will acquire a framework within which to manage and regulate major industrial users of the marine environment such as aquaculture and oil and gas exploration and drilling. Without such a foundation these industries are more often than not viewed as threats to the marine environment. It is time to give them a legitimate place at the table.

Finally, the duties and responsibilities of the Minister of Fisheries and Oceans must be prioritized so that he is able to carry out his constitutional responsibilities for the fishery and fish habitat. If these duties are properly ordered much of the confusion that has been identified will be resolved.

The challenges in oceans policy are not insurmountable if a road map is available. The *Oceans Act* must provide such a map.

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1. If Canada were to ratify the Convention it might be allowed to formally establish the outer limits of the continental shelf beyond 200 nautical miles for the purposes of the Convention.

DISSENTING OPINION BY THE BLOC QUÉBÉCOIS

Background

The Bloc Québécois opposed passage of the *Oceans Act* in 1995, considering it inconsistent and difficult to apply. At that time, we raised the problem of overlapping responsibilities among various federal and provincial departments. In Quebec, the *Oceans Act* is seen as an encroachment on Quebec's prerogatives, in particular with respect to protection of the environment. This being so, the Bloc Québécois has difficulty agreeing that the *Oceans Act* is "fundamentally sound" as claimed in the introduction to the report by the Standing Committee on Fisheries and Oceans.

Recommendations

The review process by the Standing Committee on Fisheries and Oceans is designed to improve the *Oceans Act*. The Bloc Québécois played an active part in the process, supporting in particular the following four measures:

The Bloc Québécois considers that it was imperative for the Committee to recommend a continued freeze on marine services fees and icebreaking fees until such time as the Canadian government has completed its study of the Coast Guard's costs and services structure.

The Bloc Québécois is satisfied with the Committee's position on recognition of special status for ferries, which should be considered as government ships since they provide an essential public service. This provision would allow ferries to be exempt from marine services fees and icebreaking fees.

The Bloc Québécois is pleased that the Committee has recognized the need for an assessment of the environmental impact of potential oil and gas exploration in the Gulf of St. Lawrence.

The Bloc Québécois is especially in favour of amending the *Oceans Act* to require the Minister to include fishermen and fishermen's organizations in any consultation process from now on.

Points in dispute

The problem of multiple types of protected marine areas

There will soon be at least three types of marine areas under federal administration. In addition to Fisheries and Oceans Canada's Marine Protected Areas, the Department of Canadian Heritage will shortly have "national marine conservation areas", while Environment Canada is proposing to establish "marine wildlife areas".

To coordinate the activities of these three departments, and prevent any derogation of the Minister's authority, the Standing Committee on Fisheries and Oceans is proposing

that an interdepartmental committee be struck to ensure that “the stewardship and sustainable management of marine areas” be done under the authority of the Minister of Fisheries and Oceans.

> **The Bloc Québécois considers this recommendation a step in the right direction. But advantage should be taken of the fact that Bill C-10, An Act respecting the national marine conservation areas of Canada, is still before the Standing Committee on Canadian Heritage, to ensure that the government avoids duplication and encroachment on Quebec's jurisdiction and provides for a responsibility-sharing mechanism.**

In this regard, there is a precedent that has produced good results: the *Saguenay-St. Lawrence Marine Park Act*, which was passed in 1997 in identical form by both parliaments, Canada and Quebec. This ensures respect for the jurisdictions attributed to each of the two governments.

In addition, Bill C-10 should be amended to include the explicit provision that no national marine conservation area can be set up where the local community rejects the idea.

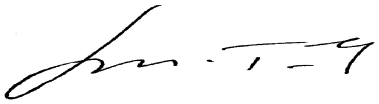
Recognition of Quebec’s prerogatives

The *Oceans Act* officially deprived Quebec and the other provinces of their power to manage the marine environment and handed it over to the federal government. By invoking the need to protect the marine environment from degradation, the federal government will always have the option of interfering as it chooses in areas that are rightfully under the jurisdiction of Quebec and the other provinces.

In addition, the Committee's report does not tackle the problem of federal-provincial overlaps; nor does it attempt to impede the proposal by the Department of Canadian Heritage to create national marine conservation areas (Bill C-10).

The *Oceans Act* and Bill C-10 are thus in our opinion two examples of the federal government's centralizing agenda. They threaten Quebec's jurisdiction in environmental matters.

In this dissenting opinion, the Bloc Québécois is speaking for all those who want to see a clarification of the roles of each department, and want the Department of Canadian Heritage to stay out of management of the marine environment.



Suzanne Tremblay,
MP for Rimouski-Neigette-et-La Mitis
Bloc Québécois Fisheries and Oceans Critic

Jean-Yves Roy
MP for Matapédia—Matane
Bloc Québécois Deputy Fisheries and Oceans Critic

DISSENTING OPINION BY THE NEW DEMOCRATIC PARTY

The Standing Committee on Fisheries and Oceans Report on the *Oceans Act.*
Supplementary Recommendations
Peter Stoffer, MP (Sackville — Musquodoboit Valley — Eastern Shore)

Dear Committee Members:

As a member of the Standing Committee on Fisheries and Oceans, I was pleased to be a full participant in the process that led to the creation of this report. I was also fortunate to have an opportunity to hear and question a number of witnesses. Throughout the process I gained a better understanding of the issues associated with the *Oceans Act.*

I have no objections to the overall foundation, direction and structure of the report. There are, however, several points that need clarification and some recommendations that I believe need to be strengthened or added.

- In the draft report, while there is frequent reference to the Minister of Fisheries and Oceans, there is no clear definition of the Minister's role. It should therefore be reinforced that the Minister of Fisheries and Oceans remains the final decision maker concerning the management of Canada's Oceans.
- Another reference that is missing from the draft report is; that the consultation process leading to all decisions be open and transparent. I maintain that failure to reinforce the importance of clarity in the decision-making process would be a detrimental omission.

In addition to the above general objections, I have some specific supplementary recommendations. They are as follows:

In Part II — The Oceans Management Strategy, section 2.38 — where the reports states:

> *"the Committee feels that it would have been preferable if the Commission staff had included someone representative of the fishing community in the area"*

- I would suggest that the wording *"it would have been preferable"* could be strengthened and that the report should recommend that:

  "Representatives of the fishing community are present on any commissions or boards whose decisions have an impact on the fisheries".

In section 2.47 where the Committee recommends:

> **"That the federal government give consideration to conducting a full environmental assessment under CERA on potential oil and gas**

exploration in the Gulf of St. Lawrence, particularly in the area designated by Exploration Licence 2368"

- I suggest changing, strengthening and broadening the recommendation to include all oil and gas exploration. For example the phrasing could be as follows:

"The Committee recommends:

> That the federal government **require** that a full environmental assessment be conducted before licenses and leases are granted for **any and all** oil and gas exploration. And, that the federal Minister of Fisheries and Oceans have final approval of all marine oil and gas licenses and leases.

- There is a perception within the fishing, Aboriginal and environmental communities that ministerial approval has been deferred particularly in matters relating to oil and gas exploration. Given the expressed concerns of these communities, and the potential expansion of oil and gas sector on the Pacific Coast, additional wording should be included in the report to recognize the concerns and to reaffirm the role of the Minister.

In Part III, section 3:11

- I recommend that any revisions to the marine services fee or Icebreaking fees be reflective of the differing service needs of various ports. For example, the ports of Halifax and Vancouver do not require icebreaking on a regular basis.
- I maintain that there are potential competitive and economic disadvantages in having a "blanket" marine service fee structure. The concept of "scaled fees" or "fee for service" (i.e. icebreaking) should be examined and ensure that the views and opinions of ports like Halifax and Vancouver are reflected in any changes to the marine service fee and in the final report.

I trust that you will give my suggestions serious consideration and thank you for the opportunity to provide my input.

Sincerely,

Peter Stoffer, MP
Sackville—Musquodoboit Valley—Eastern Shore

MINUTES OF PROCEEDINGS

Tuesday, October 23, 2001
(*Meeting No. 26*)

The Standing Committee on Fisheries and Oceans met *in camera* at 9:11 a.m. this day, in Room 536, Wellington Building, the Chair, Wayne Easter, presiding.

Members of the Committee present: John Cummins, Rodger Cuzner, Wayne Easter, Georges Farrah, Loyola Hearn, Dominic LeBlanc, Bill Matthews, Lawrence O'Brien, Jean-Yves Roy, Paul Steckle, Peter Stoffer, Suzanne Tremblay, Tom Wappel.

In attendance: *From the Library of Parliament*: Alan Nixon, Research Officer.

Pursuant to Section 52 of the *Oceans Act*, the Committee resumed consideration of the draft report.

It was agreed, — That the evidence gathered by the Standing Committee on Fisheries and Oceans of the second session of the 36th Parliament be adduced.

It was agreed, — That the Chair be authorized to make such typographical and editorial changes as may be necessary without changing the substance of the report.

It was agreed, — That, pursuant to Standing Order 109, the Committee request the Government to table a comprehensive response to the report within 150 days.

It was agreed, — That the draft report, as amended, of the Committee's review of the *Oceans Act* under Section 52 of the said Act, be adopted as the Committee's Fourth Report, and that the Chair present the said report to the House.

It was agreed, — That 550 copies of the Fourth Report be printed in accordance with the policy established by the Board of Internal Economy in a tumble bilingual format.

It was agreed, — That, pursuant to Standing Order 108(1)(*a*), the Committee authorize the printing of any dissenting opinion as appendices to the report immediately following the signature of the Chair.

It was agreed, —That any dissenting opinion be limited to not more than five (5) pages in Arial 12 point font.

It was agreed, — That any dissenting opinion be received in both official languages and an electronic format by the Clerk not later than 2 p.m., Friday, October 26, 2001.

At 9:43 a.m., the Committee proceeded to consideration of future business of the Committee.

It was agreed, — That the Committee adopt the budget in the amount of $145,000 for the Committee's travel to the Pacific Coast from Monday, November 19 to Saturday, November 24, 2001.

It was agreed, — That the Committee adopt the budget in the amount of $66,250 for the Committee's travel to the Atlantic Coast from Monday, December 3 to Wednesday, December 5, 2001.

It was agreed, — That the Committee adopt the budget in the amount of $11,705 for the Committee's operation until 31 December 2001.

At 10:23 a.m., the Committee adjourned to the call of the Chair.

Andrew Bartholomew Chaplin
Clerk of the Committee