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Tuesday, October 6, 2009

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Chair

Mr. Kevin Sorenson

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•(0905)

[English]

The Clerk of the Committee (Mrs. Carmen DePape): Honourable members of the committee, I see a quorum.

We can now proceed to the election of the chair. I am ready to receive motions to that effect.

Ms. Brown.

Ms. Lois Brown (Newmarket—Aurora, CPC): I nominate Kevin Sorenson for chair.

The Clerk: It has been moved by Ms. Brown that Mr. Sorenson be elected chair of the committee.

Are there further nominations? Is it the pleasure of the committee to adopt the motion?

(Motion agreed to)

The Clerk: I declare the motion carried and Mr. Sorenson duly elected chair of the committee.

If the committee wishes, we will now proceed with the election of the vice-chairs. I am now prepared to receive motions for the first vice-chair.

Mr. Goldring.

Mr. Peter Goldring (Edmonton East, CPC): I wish to make a motion that Monsieur Patry be elected vice-chair.

The Clerk: It has been moved by Mr. Goldring that Mr. Patry be elected first vice-chair of the committee.

Y a-t-il d'autres nominations?

Is it the pleasure of the committee to adopt the motion?

(Motion agreed to)

The Clerk: I declare the motion adopted and Dr. Patry elected first vice-chair of the committee.

[Translation]

I am now ready to receive motions for the second vice-chair.

Ms. Johanne Deschamps (Laurentides—Labelle, BQ): I nominate Ms. Francine Lalonde.

The Clerk: It is moved by Ms. Deschamps that Ms. Lalonde be elected second vice-chair of the committee.

Are there any other motions?

Is it the pleasure of the committee to agree to the motion?

(Motion agreed to)

The Clerk: I declare the motion carried and Ms. Lalonde duly elected second vice-chair of the committee.

[English]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): All right. We need unanimous consent to go back into committee business. My intention is to present the steering committee report and adopt it. Then, if that is good, we'll carry on and invite our guests to come forward.

Do we have unanimous consent?

Some hon. members: Agreed.

The Chair: All right, that is carried.

Good morning. This is meeting number 31 of the Standing Committee on Foreign Affairs and International Development. I want to welcome everyone back. It's like we haven't been away. Thank you for nominating and electing me back into the chair.

First of all, before we go into committee business, I want to introduce and welcome Ms. DePape as our clerk. Carmen has served as clerk on many different committees over the years. She has a lot of experience in the position, so let's just welcome Carmen as our new clerk.

Some hon. members: Hear, hear!

The Chair: Most recently, I think she worked with the health committee.

We also have a new researcher and analyst, Allison Goody. She has been on the Hill before. She's been provided to us by the Library of Parliament. She's joining Melissa Radford and James Lee. We always appreciate the good work that our Library of Parliament and our researchers do. Thank you for being here, and we welcome Allison.

Some hon. members: Hear, hear!

The Chair: All right, we'll go to orders of the day. We'll proceed to committee business.

Our clerk will distribute the steering committee report. Your steering committee met last week, or the week before the break. We came forward with some recommendations for the committee. We'll pass those out and let you take a look at them. She will also give you a copy of the proposed calendar.

I want to give you a few minutes to take a look at the steering committee report. I'm not going to read the entire report, but we'll give you a few moments to look it over. There are two pieces of paper: one is the steering committee report, the other is the calendar. This may seem a little confusing. We were not able to pass out the report until we had unanimous consent to proceed with the meeting today, so that's why you're getting it now and not earlier.

You'll take note in the report that item number one is already completed. We had an informal meeting with the exiled Burmese Prime Minister and a delegation from Burma, and I thank all of you who came out for that.

● (0910)

You'll also note that item number two is in reference to today's meeting. We have guests who are waiting to appear as soon as the report is adopted.

Mr. Patry.

Mr. Bernard Patry (Pierrefonds—Dollard, Lib.): I'll move adoption.

The Chair: Mr. Patry moves the adoption of the steering committee report.

Ms. Brown seconds the motion.

(Motion agreed to [See *Minutes of Proceedings*])

The Chair: Thank you.

Mr. Paul Dewar (Ottawa Centre, NDP): Mr. Chair, I wanted to intervene—I was waiting until we had passed the steering committee report—on the agenda for today. In terms of sequencing, I have a request that we change the order to have departmental officials first, if possible. The reason for this is that there was to be another guest whose plane is late and who would want to join with the cohort of individuals of Mr. Applebaum and Mr. Parsons. It's actually the Minister of Fisheries from Newfoundland who's wanting to join them. In light of the fact that his plane has been delayed, I'm asking whether we could change the order of witnesses.

The Chair: It's up to the committee.

Mr. Paul Dewar: That's why I'm putting it forward first, before we invite people to come forward.

The Chair: I don't hear any complaints or concerns.

Mr. Paul Dewar: I would also ask that the Minister of Fisheries from Newfoundland be added to the second cohort, because he wasn't on this list.

The Chair: Was his name submitted as a witness?

Mr. Paul Dewar: Yes, but when we confirmed last night, there were issues around fog in Newfoundland.

The Chair: I'm not hearing any opposition to that, so it's agreed.

Mr. Paul Dewar: Thank you, Chair, and thank you, committee.

The Chair: I'll invite the departments to make their way forward.

This morning we have two departments appearing before the Standing Committee on Foreign Affairs and International Development. We welcome those from the Department of Fisheries and Oceans: Mr. David, the acting assistant deputy minister, fisheries and

aquaculture management, and Mr. Guy Beaupré, the acting associate assistant deputy minister, fisheries and aquaculture management.

We've always had different representation from the Foreign Affairs and International Trade Department. This morning we have Mr. Alan Kessel, the deputy legal adviser and director general, bureau of legal affairs; and Caterina Ventura, deputy director, oceans law section.

Are we correct?

● (0915)

Mr. Alan H. Kessel (Legal Advisor and Assistant Deputy Minister, Department of Foreign Affairs and International Trade): Well, I'm actually the legal adviser and the ADM legal at Foreign Affairs. What you described was my former job.

The Chair: All right, then, congratulations on your promotion—

Mr. Alan H. Kessel: Three years ago.

Some hon. members: Oh, oh!

The Chair: We feel even doubly honoured that you've been promoted to this position.

Mr. Alan H. Kessel: I've enjoyed this for four years, Mr. Chairman. Thank you.

The Chair: Maybe because of my faux pas there, I will invite you, from the Department of Foreign Affairs and International Trade, to open, if that's all right. Or did you have it...?

Mr. Alan H. Kessel: Thank you, Mr. Chairman. I think that my colleague from Fisheries and Oceans would like to open, and we've agreed on this.

The Chair: All right, thank you.

You have ten minutes for your opening remarks. Then we'll go into our first round and second round of questioning.

Mr. David Balfour (Acting Assistant Deputy Minister, Fisheries and Aquaculture Management, Department of Fisheries and Oceans): Thank you, Mr. Chairman.

It's a pleasure for us to be here with you this morning. We welcome the opportunity to outline the amendments to the 1978 Convention on Future Multilateral Cooperation in the North Atlantic Fisheries, also known as the NAFO convention.

The amendments to the NAFO convention are important for Canada and for Canada's fishing industry. They will help to ensure the conservation and sustainable management of fish stocks and ecosystems in the North Atlantic, thereby contributing to the economic development and prosperity of coastal communities in Atlantic Canada. Canada's overriding objective has been to curb overfishing and to ensure the sustainability of the fish stocks and the long-term health of the ecosystems in which they live. Given that most of NAFO-managed fish stocks are straddling—they occur both within Canada's exclusive economic zone on the Atlantic side and also beyond the 200-mile limit on the high seas, in the NAFO regulatory area—these concerns also reflect global interest.

Of particular significance for Atlantic provinces, in particular the province of Newfoundland and Labrador, is Canada's membership and leadership in the Northwest Atlantic Fisheries Organization. After 30-some years, NAFO members agreed that it was time to modernize the convention in order to bring it in line with the provisions of the 1995 United Nations Fish Stocks Agreement. NAFO members agreed that we had to be forward-looking and to give ourselves the modern decision-making tools required to deal with the modern problems we face.

The amendments to the convention were only one of a number of reforms that NAFO engaged in. First came the enforcement reform in 2006. Changes to NAFO conservation enforcement measures enacted in 2007 have led to encouraging success in enforcing the rules on the high seas in the NAFO regulatory area. The Department of Fisheries and Oceans, acting on behalf of NAFO, has increased enforcement and surveillance to detect and deter illegal fishing activities, and compliance has improved significantly as a result. Serious infringements in the NAFO regulatory area declined from thirteen in 2005 to seven in 2006, one in 2007, and zero in 2008.

We have also seen tangible results of increased cooperation, better management measures consistent with scientific advice, and enforcement vigilance. As a result, important stocks such as yellowtail flounder, 3M cod, and 3LN redfish have recovered, and other stocks such as American plaice are also showing signs of recovery. At the recent NAFO annual meeting, NAFO reopened two stocks—3M cod and 3LN redfish—after a decade of their being under moratorium.

But improved enforcement and conservation and cooperation was only one part of the solution. Canada has consistently worked within NAFO to develop scientific advice and adopt conservation and management measures to effectively manage straddling stocks important to Canada, such as Greenland halibut, yellowtail flounder, 3L shrimp, and others. We recognized that there was a need to reconsider the way NAFO makes decisions on how we govern ourselves as an organization. That's why we as NAFO members negotiated and adopted amendments to the 1978 convention in 2007. Canada supported these amendments because they are important and beneficial for Canada. Provincial governments and industry representatives were there by our side throughout the whole multi-year process and were consulted extensively. All the stakeholders involved agreed with us that the amendments were in the interest of Canada. Senior officials of the Newfoundland and Labrador government were full members of the Canadian delegation that negotiated these amendments and supported us throughout the negotiations.

As I said earlier, NAFO faces very different issues today from those when the original convention was agreed to in 1978. Parties today are committed to applying an ecosystem-based approach to fisheries management in the northwest Atlantic, which includes protecting the marine environment, preserving marine biodiversity, and reducing the risks of long-term impacts of fishing. The amendments to the NAFO convention are designed to provide the organization with a more modern and forward-looking governance framework that will allow it to meet its ongoing and future commitments under the United Nations Fish Stocks Agreement, the

United Nations Convention on the Law of the Sea, and other international instruments.

Mr. Chairman, I will outline the key benefits of the amended convention to try to address some of the concerns that have been raised.

First, under the original 1978 NAFO convention, fish stocks were managed as a single species, and management decisions did not always adhere to the received scientific advice. Over time, this type of management proved to be ineffective for the long-term health of the fish stocks. As a result, more than ten stocks have been under moratorium for many years and are only starting to recover.

- (0920)

The amended convention now shifts NAFO to an ecosystem-based approach to decision-making, an approach that considers the inner relationship between marine species and between these species and their habitats. This includes considering how catches of one fish stock would affect other species as well as identifying and addressing the impacts of particular fishing gear on sensitive ocean habitats.

Second, under the 1978 rules, members could object to any management decision deciding on a unilateral quota and fish it without any constraint even if it ultimately results in overfishing. The old convention also lacked a dispute settlement process, leading to long-standing disagreements.

Under the amended NAFO convention, we will have a controlled system to address objections and disputes, a system that requires a contracting party that objects to a conservation and management measure to set out alternative measures it intends to take for the conservation and management of the fishery, consistent with the objectives of the convention and an active role of the commission in trying to resolve the issues. In this way contracting parties will be held accountable for their actions, so that we avoid these unnecessary and counterproductive situations and reduce overfishing.

Third, under the original convention rules, NAFO's decisions were made by a simple majority vote, leaving an impression that we're only winners and losers. In some cases, particularly in the late 1980s and early 1990s, this led to defiance of the rules, unilateral quotas and overfishing. The amended convention emphasizes consensus. A two-thirds majority voting system has been introduced for those situations where consensus cannot be reached. Any NAFO member that wishes to change the way NAFO allocates fish must obtain support from eight of the twelve NAFO members instead of the seven needed before. As a result of this change, Canada's fish quotas in NAFO will be better protected, thus addressing a key preoccupation of the Canadian industry.

I would like to comment on the criticisms of the amended convention. In summary, the concerns are as follows: one, the government failed to protect Canada's sovereignty to make decisions for fisheries management enforcement within Canadian waters; two, the changes in the rules on decision-making from the requirement of the simple majority to a two-thirds majority will weaken Canada's ability to obtain support for more restrictive conservation-based management proposals in NAFO; three, the amendments with respect to the objection procedure are not robust enough to limit objections and unilateral decisions; and four, the dispute settlement procedure in the amended convention is useless as it does not provide for binding decisions.

Briefly, these criticisms are unfounded. I will respond to each of these respectively.

First with respect to sovereignty, the amended convention is quite clear. Canada maintains control over its waters, and NAFO measures will not be applied in Canadian waters unless Canada requests that they apply and votes in favour of such a measure.

The amended NAFO convention explicitly maintains Canada's sovereign right to take management decisions on fisheries within its 200-nautical-mile exclusive economic zone. It is clear that NAFO has no mandate to take management decisions within Canadian waters, nor does it give foreign vessels rights to fish in Canadian waters. I would also note that this provision applies to all coastal states, Denmark for Greenland, France for St. Pierre and Miquelon, and the U.S.A. None of these parties seem to be troubled by this article.

Second, with respect to the change to a two-thirds requirement as previously noted, this will better provide protection for Canadian quota shares in the NAFO stocks. This reflects the priority of Canadian industry in Canada to protect quota shares.

Third, with respect to the objection procedure, the amended convention provides for constraints on the use of the objection procedure, limiting the grounds for objecting, placing the onus on the party wishing to object to demonstrate grounds for its objection and to adopt equivalent conservation measures while the objection procedure operates.

Fourth, the amended convention strengthens decision-making by including, for the first time, timely mechanisms to resolve disputes, and contracting parties can invoke dispute settlement procedures that ultimately provide for binding decisions.

Canada's interests are better protected with the amendments to the NAFO convention. The reforms are in Canada's best interests and the interests of fish stocks in the northwest Atlantic. They provide clear benefits important to Canada for Canada's fishing industry. They will help to ensure the conservation and sustainable management of fish stocks and ecosystems in the northwest Atlantic.

• (0925)

Mr. Chairman, before I close, I would like to briefly report on the recent NAFO meeting held from September 21 to 25.

Canada succeeded in persuading NAFO to adopt conservation-oriented outcomes that are important to Canada to protect fish stocks and their ecosystems in the NAFO regulatory area. The decisions

included the setting of the total allowable catches and quotas for 2010, which include a rollover of the TAC of 16,000 tonnes of Greenland halibut for one year.

As I noted previously, we reached agreement to reopen two stocks that have been closed to fishing for 10 years, and Canadian quota shares of these stocks were maintained at pre-moratorium levels. These stocks have now sufficiently recovered to allow targeted fisheries.

There was also a commitment to redouble efforts to reduce the bycatch of southern Grand Banks for 3NO cod and additional measures to protect vulnerable marine ecosystems, such as corals and sponges.

Canada takes scientific advice seriously. In fact, the TAC decisions made at NAFO clearly reflect the scientific advice that we're within the safe scientific parameters. The NAFO decisions on the reopened stocks also incorporated additional conservation measures to ensure the continued recovery of these stocks. In addition, incorporated into a number of the decisions were commitments to undertake additional research to improve the scientific advice and to improve the reliability of the catch statistics to improve future decision-making.

The NAFO decisions took account of the views of Canadian industry and the Province of Newfoundland and Labrador. The Canadian industry representatives on the Canadian delegation expressed to me their satisfaction with the NAFO outcomes, which will provide significant economic benefits to the economy and people of Newfoundland and Labrador. By Canadian industry estimates, the maintenance of the TAC for Greenland halibut means over \$25 million, primarily for the Newfoundland and Labrador economy.

With respect to 3L shrimp, Canada's quota next year will remain at almost 25,000 tonnes, with a harvest value of \$29.7 million.

The total allowable catch of yellowtail flounder was maintained at 17,000 tonnes for 2010, and Canada's share of 16,575 tonnes has an estimated harvest value of over \$6 million.

The reopening of 3LN redfish stocks will provide 1,500 tonnes, with an estimated harvest value of about \$1 million.

These outcomes will provide benefits primarily to the economy and the people of Newfoundland and Labrador.

I'd like to thank you, Mr. Chairman, for this opportunity to say this.

• (0930)

The Chair: Thank you very much, Mr. Balfour.

Now we'll move over to Mr. Kessel.

[*Translation*]

Mr. Alan H. Kessel: Thank you, Mr. Chair.

Members of the committee, I thank you for inviting me to appear before you today on the reform of the convention on multilateral cooperation in the Northwest Atlantic fisheries.

My name is Alan Kessel, I am the legal advisor at Foreign Affairs and International Trade and I am accompanied by Caterina Ventura, acting director of the Oceans and Environmental Law Division. We are always pleased to appear before you, together with our colleagues.

[English]

Mr. Balfour has outlined the amendments to the 1978 NAFO convention. In my brief presentation, I would like to situate the amendments in the broader context of the international legal framework.

As required by the extensive international legal framework in place, international collaboration is necessary for the sustainable management of fisheries for stocks that are both within and outside the jurisdiction of states.

When discussing oceans issues, it's useful to start with the constitution for the oceans, the 1982 United Nations Convention on the Law of the Sea, which Canada ratified in 2003 and which Canada in fact was very instrumental in crafting. It sets out the framework for many aspects of ocean governance, including areas in which states have sovereign rights and exercise jurisdiction.

A coastal state has sovereign rights over the natural resources within 200 nautical miles. This of course includes the right to conserve and manage fisheries. Beyond the 200-nautical-mile limit on the high seas, foreign vessels have freedom to fish.

However, this right to fish is not an unfettered right. Indeed, UNCLOS mandates states to cooperate in the conservation and management of living resources in the areas of the high seas. In this regard, states fishing these resources have the obligation to enter into negotiations to take measures for their conservation or, as appropriate, cooperate to establish regional fisheries organizations to this end.

This brings me to the discussion of the 1995 United Nations agreement on straddling and highly migratory fish stocks, which Canada ratified in 1999. The UN fish stocks agreement establishes a regime for the long-term conservation and sustainable use of these stocks.

The agreement elaborates on the duty of states to cooperate in the management of straddling and highly migratory fish stocks on the high seas. It reiterates the duty to cooperate by coastal states and by states fishing on the high seas to conserve and manage such stocks. It also provides that the conservation and management measures adopted both within and outside these areas under national jurisdiction shall be compatible.

The UN fish stocks agreement gives priority to regional fisheries management organizations as the most effective means for states to cooperate in the conservation and management of these stocks. The UN fish stocks agreement encourages states to cooperate through RFMOs or other arrangements to conserve and manage straddling and highly migratory fish stocks.

The Northwest Atlantic Fisheries Organization, also known as NAFO, is the RFMO for the northwest Atlantic. Its objective has always been to ensure the management and conservation of fish stocks in the NAFO convention area, which is the area both inside and outside of Canada's 200-nautical-mile exclusive economic zone.

NAFO contracting parties have the duty to cooperate in furthering the objectives of the convention. For that purpose, each coastal state has the obligation to inform NAFO of the actions it has taken for the conservation and management of straddling stocks within its national jurisdiction.

The amendments recognized the importance of compatibility of conservation and management measures as reflected in the UN fish stocks agreement by providing states the option to request that a measure be adopted by NAFO for an area under the jurisdiction of that state. Therefore, it is the coastal state, in the exercise of its sovereign rights, that requests NAFO to adopt the measures in the state's jurisdiction.

Mr. Chairman, in conclusion, the amended NAFO convention incorporates principles of modern fisheries governance while providing sufficient safeguards for the protection of Canada's sovereign rights in its waters.

Thank you, Mr. Chairman.

•(0935)

The Chair: Thank you very much to both departments for coming here today and for sharing this with us. It's my understanding that this convention and this agreement are also going to be studied by our fisheries committee, but international conventions are a responsibility of the foreign affairs department, so thanks to both departments for being here.

We'll move into the first round of questioning with Mr. Byrne.

Hon. Gerry Byrne (Humber—St. Barbe—Baie Verte, Lib.): Thank you very much, Mr. Chair.

Thank you to my colleagues in the Liberal Party for allowing me to sit in on the foreign affairs committee on the NAFO issue. I welcome Scott Simms, who is joining as well. Thanks again for the opportunity.

I want to direct a question immediately to Mr. Balfour.

Mr. Balfour, you raised the issue of recent decisions of NAFO specifically with respect to Greenland halibut, cod, and two other species. NAFO just recently decided to increase the quotas for several vulnerable fish species in excess of what the NAFO scientific council had recommended. Specifically for Greenland halibut, a recommendation came in at 14,000. NAFO decided that 16,000 was actually the appropriate quota, not 14,000. So 4.5 million pounds of Greenland halibut will be taken in excess of what the scientific advice recommends.

On cod, not only has the World Wildlife Fund said that cod is being overfished as a bycatch, but we actually reopened the 3M fishery well after a 10-year moratorium, well above the scientific recommendation. That's NAFO's decision. The Government of Canada's policy is that we have now instituted custodial management on the nose and tail on the Grand Banks. Why doesn't Canada just invoke custodial management and set that decision right, to at least a minimum of what the scientific council's scientific advice recommends to be the actual quota? Why not invoke custodial management? Apparently we haven't.

The Chair: Thank you, Mr. Byrne.

Mr. Balfour.

Mr. David Balfour: At the recent NAFO meeting, all the decisions taken by the NAFO fisheries council were inside the scientific advice that was presented. For example, with respect to Greenland halibut, there was a great deal of uncertainty about the status of that stock, largely as a result of an inability for a scientific survey to be completed because of a breakdown of a vessel in 2008. Therefore, the scientific advice that came forward was a projection of the advice that was considered by the NAFO fisheries council in 2008.

At that point there was a decision by the fisheries council to continue the quota at 16,000 tonnes while requesting the scientific council to review the robustness of the methodology they used to provide prediction of the TAC recommendation for that stock. The reason was that the actual experience on fishing grounds, both within the Canadian zone by Canadian inshore fixed-gear harvesters and the offshore, again this year showed that the catches were at the highest level on record and there was the need to take a look at the basis for the calculation.

The scientific council reviewed six models, five of which, based on the data, projected an increase in the abundance of the stock. One suggested that there was a downward decline, which was the basis of the scientific advice received this year. Given the uncertainty, the fisheries council, on the initiative of the Canadian delegation, undertook a number of measures to improve the science for next year. These included additional science to be undertaken by Canada and others to determine the contribution of large turbot that exist in waters deeper than 1,500 feet, the level at which scientific surveys are currently being conducted, to come to a determination of how these larger turbot are contributing to the stock's bonding biomass. That's a major gap in this science.

There are issues in terms of the scientific models that use catch reports based on extrapolations of scientific observers on Spanish vessels that put catches at 50% higher than our conservation and surveillance records have shown our catches would have been in the NAFO regulatory area, creating a skewing in the model. There is also going to be work to develop a risk management strategy for the management of Greenland halibut, which would involve scientists, managers, and industry, in order that there be an improvement next year in the science knowledge of this stock. At the same time, the science advice received by NAFO showed that, over time, that stock was stable and it was a reasonable position to continue the TAC at 16,000 tonnes.

With respect to the 3M cod fishery that occurs on the Flemish Cap, the scientific advice suggested a range at which fishing could reopen and still see a rebuilding of that stock above 8,000 tonnes. The scientific advice included a spot reference point at 4,125 tonnes, which is very conservative, in combination with a number of management measures adopted by NAFO, again at the initiative of the Canadian delegation, to see that with this stock being reopened after a moratorium—

• (0940)

Hon. Gerry Byrne: I think we're having a fairly lengthy discussion about science, which I would refute, but in the interest of time, if I could move to some other questions, it may be—

The Chair: You only have 30 seconds.

Hon. Gerry Byrne: He's done an extremely good job of ragging the puck here, Mr. Chair.

The Chair: No, I think the time is allocated, and you asked one question and he's responding to it. So if you have a quick comment, you're welcome to make it.

Hon. Gerry Byrne: Sure.

Moving on directly to the objection procedure, the impression probably left with the committee is that no objection procedure can be allowed, that the decisions are now binding. Yet article 14 goes on at length providing 12 different paragraphs explaining how member states and NAFO contracting parties can actually implement an objection procedure and have that procedure go on for about a four-year period.

The Chair: Your time is up, and we try to keep to a time, especially because we have other guests coming.

We'll move on to the Bloc Québécois. Monsieur Blais, vous avez sept minutes.

[*Translation*]

Mr. Raynald Blais (Gaspésie—Îles-de-la-Madeleine, BQ): Thank you very much, Mr. Chair.

I would like to thank also my colleague Francine Lalonde who is leaving it up to me to ask questions today.

At the same time, have no fear, members of the Standing Committee on Foreign Affairs and International Development, this is not an invasion by the Standing Committee of Fisheries and Oceans. You will certainly understand that we do not want to invade the Standing Committee of Foreign Affairs and International Development. We are very much interested in this issue and this will allow us to ask our questions, but in a completely different venue. At the same time, this will enable you to try and move forward in this file.

My first question is for Mr. Balfour. Did you find the old convention inefficient?

[English]

Mr. David Balfour: I believe the previous convention reflected the context of the times it was established in. That was a time pre the moratoria that we had established where we saw 10 stocks in NAFO closed for over 10 years. It's a time before our industry and the industries of other countries and their communities had to deal with the hardship and the cost of seeing their fisheries curtailed. It's before a time when modern instruments were established for the management of fisheries on the high seas.

We have today a growing interest in the world on the part of the public, environmental NGOs, the fishing industry, and governments in ensuring that we secure fisheries so they're conducted on a sustainable basis. This is becoming a growing imperative in markets, as you would be aware, sir. It's not possible, the way it was in the past, that one could object, declare a quota that one would fish or even ignore to the point where one puts the conservation of a resource at risk in that one was clearly overfishing and expected to get away with that in the world and in the marketplace. So I do think things have changed very much.

Now we have a proposed convention that reflects the modern approaches, the heavy emphasis on cooperation in the adoption of management measures. We have mechanisms to bring to closure disputes that didn't exist before; and with the new convention, we have the tools in hand to ensure that we secure the sustainability and the conservation harvesting basis for the use of these resources for now and into future generations.

• (0945)

[Translation]

Mr. Raynald Blais: I thank you, but if I may, I will put the question to you in a different manner.

I would like to talk about the massacre of cod—I am using this word advisedly—that has been committed in the past few years by foreign countries outside of this 200-mile zone. Would the disappearance of the cod be avoided with the new convention that is being put on the table?

[English]

Mr. David Balfour: As I said earlier, I think the historical context was different. At the time this convention was enacted, many of the other modern management instruments did not exist. I don't believe there was the same appreciation or understanding of the implications of overfishing. That is now well known and understood by all.

I believe that with the convention, with the spirit of cooperation that we see at NAFO, with the imperatives that are imposed on all members of NAFO by their own industries to ensure that they have the stability, certainty, and opportunity to fish continued rebuilding stocks, the public and fishing nations and NGOs...

What is occurring in markets is that it is a completely different world than what existed under the previous convention prior to the collapse of cod. Because of the measures that have been taken with respect to the 3M cod on the Flemish Cap, which has now been reopened after ten years of moratoria, the members of NAFO came together in a cooperative spirit in response to a proposal that came from the Canadian delegation to see, as opposed to an adoption of the old ways, which would have permitted a 10% bycatch in other

fisheries of this 3M cod because the stock was open, the continuation of the protocols that were in place when the stock was under moratorium at a 5% bycatch. So we would carefully manage the rebuilding of this stock.

They also agreed that bycatches would count against the quotas of 3M cod for those who had quotas. This is all indicative of a new approach, and one that we would expect to be continuing. There are expectations for this regional management organization to be able to operate to high standards in a transparent way.

• (0950)

The Chair: Mr. Blais.

[Translation]

Mr. Raynald Blais: This will probably be the last question of this round. You said that the two-thirds rule was a new advantage created by the new convention. However, I remind you that the two-thirds rule can also be to our disadvantage because if the 50% rule is no longer applicable, it is gone for any consideration. In other words, if we want to impose conservation measures within the new NAFO, it will be just as difficult to impose such measures, because the two-thirds rule will apply in that case as well. The two-thirds rule could be to our benefit, but it goes both ways. The difficulty remains, be it for something good or something bad.

[English]

The Chair: Thank you, Mr. Blais.

Mr. Balfour, very quickly, please.

Mr. David Balfour: Very quickly, as I've said, we see operating by way of consensus, as we did, as I explained, around the arrangements about bycatch for the reopened 3M cod fishery. The two-thirds voting rule will likely come into play or be invoked possibly when it comes to a question of shares. What are the quota shares between the NAFO parties? This was a requirement that our Canadian industry placed a heavy emphasis on seeing obtained, in order that they could see more safeguarding of their historic shares of the fisheries that were closed and subject to moratoria, and that their sacrifice and their history during the closures would be respected in terms of being able to have the certainty and predictability of the use of the resources going forward. Obtaining a two-thirds vote will be quite daunting and challenging within NAFO to adjust the quota shares.

The Chair: Thank you, Mr. Balfour.

We'll move to the government side with Mr. Lunney.

Mr. James Lunney (Nanaimo—Alberni, CPC): My thanks to our witnesses for being here today.

On the committee side, I see a lot of fishy colleagues who've been on the fisheries committees for many years. They all seem to be present in the room today. Obviously, we have the attention of the fisheries crew.

A lot has changed since the original agreement on NAFO in 1978. Those of us who sat around the table in fisheries for a number of years heard a lot of objections from the fishing community. We also heard about the challenges that the department and the country were having under the old agreement.

I know the amendments being proposed to this agreement have taken at least a couple of years to come up with. We have changes in the UNCLOS, the convention on the sea, coming in since. We have other agreements that are making a difference in fisheries management, what with the whole shift toward an ecosystem-based approach.

In the last few years, even since these changes have been under consideration and the management has changed, beyond our 200-mile limit, particularly on the nose and tail of the Grand Banks and the Flemish Cap, where we have vessels patrolling, we see that infractions have decreased significantly. You mentioned statistics showing that the number of infractions in the last number of years have been steadily decreasing. I would call that a success, so it seems that we're definitely moving in the right direction.

I'm wondering if you could describe for us how the dispute settlement process actually works under the amended agreement.

The Chair: Thank you, Mr. Lunney.

Mr. Balfour.

Mr. David Balfour: This is a point that I may ask my foreign affairs colleagues to assist me on.

Under the former convention, a party could simply object and establish a quota that they could either abide by or disregard. That was the situation, and it caused a number of conservation issues.

With the new proposed convention, where a party wishes to object to, for example, a quota decision of NAFO, they now have to come forward and provide explanations for their objections. This is new and it makes for transparency to the public and NGOs. The party would in all likelihood have to defend itself outside of NAFO.

There is also a process for establishing a fisheries commission or an ad hoc panel to bring resolution to the objection. Such a body would see if there's merit in the arguments being presented, working within the spirit of cooperation and consensus to come to a resolution that would be good for conservation. While that process is going on, the objecting party would have to adopt measures to ensure that the conservation requirements of NAFO are being respected.

If the decision of this process is not accepted, there is then recourse to a binding process under the UN Fisheries Agreement. While that process is under way, the parties would have to adhere to the decisions that arose out of the ad hoc process. Ultimately, the results of the dispute resolution under the UNFA would be binding on all parties in NAFO. This would bring closure to systemic and outstanding objections that in the past have put the resource at risk.

• (0955)

The Chair: Thank you, Mr. Balfour.

Mr. Lunney.

Mr. James Lunney: For example, I think there's a quota on shrimp. Denmark and Greenland, together with the Faeroes, were assigned a quota of something like 314 tonnes. They're disputing that, and they have unilaterally gone ahead and set their own quota of about 3,000 tonnes.

So you're saying that under the old agreement they could just go ahead and set their own limit and fish that way, but under the new amended agreement they would have to honour the quota they were assigned while the dispute resolution process was taking place. Is that correct?

Mr. David Balfour: Currently—and we are operating under the 1978 NAFO convention—the Faeroe Islands can object to the quota, and it is the case now that they are fishing a self-declared quota ten times what NAFO had assigned to them based on historic use of that resource, without the need for presentation of any explanation.

Under the new convention, they have to provide reasons and rationale for setting a higher quota. We would be into an ad hoc process or a process through the commission to try to quickly come to a resolution of the matter, and if that was not successful we would ultimately have a binding dispute resolution; and rather than have an ongoing outstanding problem, we would be able to then have a go-forward situation that would respect the principles of NAFO in conservation and cooperation and so on.

Mr. James Lunney: So I gather you're satisfied that the objection procedure is robust enough to protect Canadian interests?

Mr. David Balfour: Yes, absolutely.

Mr. James Lunney: Could you review for us the infractions that we've observed historically over the last number of years, and the decline? I think you mentioned it in your report, but I just wanted to go over those figures.

Mr. David Balfour: We have declined over the last four or five years from 14 to seven, to two or three, to zero last year. All parties are making an effort to see that their fleets comply with the conservation measures stipulated by NAFO. We also have an effective enforcement presence on the water. We have two offshore patrol vessels on-station, monitoring the foreign fleets in that area. We have an air surveillance effort. We do a lot of electronic tracking of vessels so that there is an effective and vigilant enforcement posture to ensure there is compliance with the requirements of fishing in the area. There is good cooperation of flag states in calling vessels to their home ports for inspections. There's a lot of cooperation where our fishery officers are invited to observe those inspections. There's a follow-up in terms of charges and fines and penalties. These are also having to be filed with the NAFO Secretariat so that they're given visibility and transparency.

• (1000)

The Chair: Thank you, Mr. Balfour.

Mr. Harris.

Mr. Jack Harris (St. John's East, NDP): Thank you, Mr. Chairman, and thank you for your presentation, gentlemen.

We seem to have gone from what I would regard as at least a 20-year history of dissatisfaction in this country to what now appears to be sweetness and light in the future. You know, just for colleagues on the committee, this dispute about NAFO's role goes back to the attempt by Canada to control its fish stocks, which happened to be outside of 200 miles but on the continental shelf, the so-called "straddling stocks". This resulted in a call going on for many years for Canada to have some control over these fish stocks, resulting in 2006 in a unanimous report of the fisheries and oceans committee calling for custodial management by Canada of the fish stocks on the nose and tail of the Grand Banks and the Flemish Cap. This was adopted, of course, by the Conservative Party. The previous Minister of Fisheries in the last government, of course, had adopted this as his policy as well, having been a member of this committee.

I noticed in your presentation no mention whatsoever of the notion of custodial management, which Canada was supposedly trying to achieve in these negotiations. In fact, what we have instead, following on the heels of, for example, the time between 2004 and 2008, is a total allowable catch that has been exceeded by 30% on average on the turbot. We have a moratorium on other stocks. We have the rules having been ignored up till then. There's been under-reporting, misreporting of catch, targeted fishing for moratorium species under the guise of bycatch—all sorts of problems that have been brought about. Yet now we have a situation where there's a proposal by the EU to have management of Canadian fish stocks inside the 200-mile limit. It started off as a proposal that NAFO would actually conduct this management inside or outside the 200-mile limit, which I think was negotiated down, with the consent of the state.

Perhaps you could explain to me, in a situation where Canada is calling for custodial management of its own stocks, why would the EU put on the table a proposal that NAFO should control the stocks both inside and outside of the 200-mile limit?

The Chair: Mr. Balfour.

Mr. David Balfour: First, I wasn't there with regard to negotiating the terms of the new convention. I'm not really in a position to speculate or comment on imputed motives.

I have to say, however, that when I read the text of the convention, I see that it is very clear about confirming the rights of the coastal state and the sovereignty of the coastal state within its exclusive economic zone. It's clear that the NAFO convention is to operate on the high seas outside Canada's EEZ.

The provision you referenced is reflected, as I understand it, in other modern regional fisheries management organization conventions, such as that governing the fisheries on the eastern Atlantic. But when I read the provision, I see it as in fact putting others on notice: You know what? You'll do nothing inside the Canadian zone unless Canada asks for it—because we have some reason to ask for it—and we vote in favour of it. Besides that, you're not doing anything within the Canadian zone.

That's reflective of Canada's sovereign rights under all the other international instruments. It's also there in the event that one of the other three coastal states in the NAFO area perhaps had some reason—looking at the management of fisheries from an ecosystem point of view, maybe, things being different—to want to see some

basis of cooperation with others, whether it be science or the safeguarding of vulnerable marine areas or the like. Really, in terms of the way forward, this convention has an emphasis on cooperation with all in order that we are managing fisheries within the context of an ecosystem and managing to secure the sustainability of the resources and benefits for everyone's respective fishing fleets within their rights and histories.

I don't believe we would read that section of the convention as in any way suggesting that the EU or others would do anything within the Canadian zone. It's as much an affirmation that you're not doing anything unless we explicitly ask you to do that.

• (1005)

The Chair: Mr. Harris.

Mr. Jack Harris: Surely, Mr. Balfour, we don't need a treaty with the NAFO nations to underscore our control within the 200-mile limit. That's well established, and has been since 1972.

I want to ask you, or whoever else wants to answer this, about the fact that we go into these negotiations with a stated intention that Canada is attempting to seek control and custodial management of its resource outside the 200-mile limit and inside, and we come away not only empty-handed but in fact worse off than when we began, because we now have provisions that contemplate—let's use that word broadly, "contemplate"—that NAFO in fact would exercise management within the 200-mile limit.

It seems to me that we went there with one intention and we came away in fact worse off than when we started.

The Chair: Mr. Kessel.

Mr. Alan H. Kessel: Thank you, Mr. Chairman.

I'll give Mr. Balfour a bit of a break here.

I think everybody is aware that we have gone through a severe awakening on the issue of the fish stocks of the North Atlantic and, in fact, the fish stocks around the world. As a government, we also take part in various other RFMOs around the world in order to be good stewards of the environment.

What we have now is still the current NAFO agreement. And within that period, we have seen a shift in approach, which Mr. Balfour has indicated, that has moved us toward an ecosystem awareness. It has moved us to a much greater sense of concern about conservation. It has moved us to a precautionary guidance system. It has moved us to working with those who, in the past when there was abundance, would just be worrying about how to divide up the pie. And that was the overarching mentality that went into the devising of a new, modern, up-to-date, current, 21st century document that better reflected how we should conduct ourselves.

As the Government of Canada, we are satisfied that this amended convention, when it comes into force, will reflect our objectives. And I'll run through a couple.

It introduces constraints on the use of the objection procedure, by making objections part of the decision-making process, limiting the grounds for objection and placing the onus to justify the objection on the party wishing to object. Mr. Balfour went through the explanation that, before, you would just go in and fish willy-nilly. This has now answered that issue by implementing, for the first time, mechanisms to resolve disputes. We had no dispute resolution mechanism. We were sort of isolated in the 20th century with the document, which we've now upgraded to allow for a dispute resolution mechanism.

With respect to the application.... And there's a bit of a mythology that's been created that somehow Canada is giving up sovereign rights. These are fully protected, as Mr. Balfour has indicated. There's no way anyone could come into our 200-mile zone without our agreement. We have a complete veto on that. We would have to invite them in and we would have to vote for it. There is a double-pronged process for that.

The benefits that were discussed in the process are that in some cases we may actually want to work with other organizations and conservation groups to try to determine how the science could be improved, and in that case we have a way to say yes or no. Before, there was no mention of that in the agreement. And I think, based on what Mr. Balfour has said.... And a plain reading of the text would show you that there has been a quantum leap between what the old agreement has and what the new one will have when it comes into force.

• (1010)

The Chair: Thank you very much.

I want to thank the department for being here and for giving us the scoop, so to speak, on both the Fisheries perspective and the Foreign Affairs perspective. Thank you for your testimony here today.

We'll suspend for a few moments to let you exit your seats and to let our other guests make their way to the table, please—and as quickly as possible. Our intentions are still to go until 11 o'clock.

• (1010)

_____ (Pause) _____

• (1010)

The Chair: Because we were a little late getting going this morning with some of the committee business we had to look at first, we still have to pretty well conclude at 11 o'clock. I therefore want to rush along here as quickly as possible.

We are very pleased to have three guests appearing in the second hour today: first of all, Mr. Bob Applebaum, former director general, Department of Fisheries and Oceans; Mr. Scott Parsons, former assistant deputy minister, Department of Fisheries and Oceans; also, the Honourable Tom Hedderson, Minister of Fisheries and Aquaculture, Province of Newfoundland and Labrador.

We welcome all our guests this morning.

We will begin with Mr. Parsons. You can have some opening comments, and then we'll go into the round of questioning. We noted you were here for the first hour, so you know how the process works.

Mr. Parsons.

Mr. Scott Parsons (Former Assistant Deputy Minister, Department of Fisheries and Oceans, As an Individual): Thank you, Mr. Chairman.

As you said, my name is Scott Parsons. I worked for 34 years with the Government of Canada, most of it with the federal Department of Fisheries and Oceans in various capacities. For the last 18 years of my career, I was an assistant deputy minister in the department, responsible at various times for fisheries management science and for oceans, including the development and passage of the Oceans Act of 1997, which embodied the concepts of ecosystem management and precautionary approach that the previous speaker alluded to this morning. That was done in 1997 and passed by the Parliament of Canada. Also, I was chief scientist of the department for a number of years, and for three years I was president of an intergovernmental marine science organization that spanned the North Atlantic.

Since I retired, in my involvement in this particular issue of NAFO, in 2005 I conducted a review of NAFO for the advisory panel on straddling stocks. That report was severely critical of NAFO, describing it as a toothless tiger and concluded that NAFO was broken and that nothing short of radical reform would suffice. By that point, around 2005 or 2006, there was a general consensus in Canada that NAFO was broken and needed to be fixed, and today we're here discussing these amendments, which were originally an attempt to do that.

How did we get to the point we are at today? As one of the honourable members referred to previously, in 2006 the current government, before coming to power, made a fairly bold commitment with respect to how we would deal with this issue. It stated that it would extend the 200-mile limit to the edge of the continental shelf, the nose and tail of the Grand Banks, and the Flemish Cap in the North Atlantic and would be prepared to exercise Canadian custodial management over this area. So when the new Minister of Fisheries and Oceans, the former minister, Mr. Loyola Hearn, came to office, he was then under significant pressure to implement this commitment. After prolonged discussions, however, the focus shifted to making improvements to NAFO rather than implementing what was traditionally thought of as custodial management. The negotiations that have been referred to commenced and were known as NAFO reform.

Through bureaucratic bungling, the union negotiators were able to seize control of the drafting pen, and in any negotiation he who has the drafting pen is in an advantageous position. It allowed them to put proposals on the table and put Canada in a reactive position and forced to give ground time after time in the negotiations.

Why are we in the mess that we are now with this package of amendments, and we do think it is a bad set of amendments? It is really because the Canadian negotiators did not have the option to walk away from the table. Why didn't they have that option? Because the negotiators were under enormous political pressure to develop a deal at any cost that could be portrayed as fulfilling the 2006 commitment. This is demonstrated by the fact that once the package of amendments was agreed to, former Minister Hearn, in a press release, claimed that Canada had become the custodian of the resources outside 200 miles. And in 2008, the government would go even further in its election platform to say that it had, and I quote: "assumed custodial management of the fishery in the Northwest Atlantic Fisheries Organization (NAFO) regulatory area". We would certainly question this claim.

•(1015)

In reality, we think that the negotiators have failed to achieve any fundamental reforms in these proposed new amendments. The proposals are in fact a charade, a game of smoke and mirrors. They fall far short of making NAFO more effective and will create substantial new problems. In particular, as alluded to earlier, they will undermine Canada's ability to maintain sole control over fisheries management in the Canadian 200-mile zone. Overall, the package of amendments is fatally flawed, and we call on you to urge the government not to proceed with ratification and, instead, embark upon a new process.

The Chair: Thank you, Mr. Parsons.

Mr. Applebaum.

Mr. Bob Applebaum (Former Director General, Department of Fisheries and Oceans, As an Individual): Thank you, Mr. Chairman.

Mr. Chairman and honourable members, my name is Bob Applebaum, as you have heard. I'm a former director general for international relations in the Department of Fisheries and Oceans, retired since 1996.

During my public service career, I was a member of the Canadian delegation during the 1970s to the United Nations Conference on the Law of the Sea. This conference resulted, among other things, in the extension of Canadian fisheries jurisdiction to 200 miles.

I was also a Canadian delegation member in the immediately following international negotiations that produced the present Northwest Atlantic Fisheries Organization convention in 1978. The purpose of this convention was to provide for the international management of fisheries outside 200 miles. And I'd like to emphasize that last part—outside 200 miles. Nothing in the present convention—the convention that is right now in force—will allow even the possibility of any international management inside the Canadian 200-mile limit.

About two years ago, I and three of my former colleagues—Bill Rowat, a former deputy minister of fisheries and oceans; Scott Parsons, here today, a former assistant deputy minister; and Earl Wiseman, who succeeded me as director general for international relations—discovered that something puzzling to us was happening in the negotiations that were then in progress with the stated purpose of strengthening the NAFO convention. We had thought these

negotiations were to develop an amendment to change one particular section of the convention, to limit the ability of NAFO members to opt out of NAFO conservation rules through a convention procedure that allowed for objections.

We learned, in discussions with DFO officials, that much more was going on than that. We learned that the existing NAFO convention was being substantially overhauled to produce what was really a new convention. We also learned that a member of the European Union delegation was doing all the writing. Scott referred to that before. Please note that. A representative of the major overfishing countries was doing all the writing, and the Canadian delegation had allowed that to happen.

When we were shown the current drafts, we saw things we found very disturbing. Specifically, we found one provision that would empower NAFO to manage fisheries inside the Canadian 200-mile limit, with the proviso at that time that Canadian concurrence would be required. This was astounding to us since no one had ever before conceived that international fisheries management inside 200 miles would ever be considered—at least not by Canada. And secondly, we found that the voting system in NAFO was to be changed from the simple majority system in the present NAFO convention to a two-thirds system. This would make it harder, as you have heard, for Canada in future to get NAFO decisions on tough conservation measures to reduce catches from the fish stocks that straddle the Canadian 200-mile limit.

We assumed these things were mistakes and that the Canadian officials involved, who previously had no involvement in the law of the sea conference and the earlier NAFO convention negotiations, and the DFO officials, who had no experience in the negotiation of international conventions—they had been going to NAFO meetings—didn't understand the implications of what they had developed.

We raised our concerns with DFO officials and tried to give them the background they didn't have. And I left the meeting with the impression that these things would be fixed in the ongoing negotiations. A few months down the road, we obtained new and close-to-final drafts of the proposed amendments, and we were very disturbed. The provision for NAFO management inside 200 miles was still there. The Canadian concurrence had been changed to a Canadian request, but the revision was now expanded so that the full range of NAFO powers for the area outside 200 miles—NAFO management and enforcement, all the range of NAFO powers for outside 200 miles—could now apply to the entire area of Canadian east coast waters, including the Gulf of St. Lawrence up to the shore lines. And the two-thirds voting system stayed.

•(1020)

We also realized that the new provisions to limit the possibility of foreign states opting out of NAFO conservation decisions were a bit of a sham. There was now to be a review procedure, but nothing that could result during the fishing season in a binding decision that would overrule objections and prevent overfishing. You've heard some vague expressions of how this all can lead to a binding decision. Nothing there can lead to a binding decision during the fishing season that would overrule objections and prevent overfishing.

As a final point, we realized the new amendments did nothing to improve enforcement outside 200 miles. They could have incorporated the new high seas enforcement provisions already developed in the mid-1990s in the UN Convention on Straddling and Highly Migratory Fish Stocks, but they didn't include those provisions. Overall, the new amendments, which the public has been told will strengthen NAFO's ability to conserve the fish stocks outside 200 miles, would instead weaken NAFO.

We brought these concerns to the then Minister of Fisheries in writing, thinking he did not understand what was going on. We never received a reply to that letter. The negotiations concluded, they finished, with all the objectionable provisions intact. Since then, we've campaigned publicly against these amendments. The Government of Newfoundland has become alerted to the problem and the premier has written to the Prime Minister asking him to withhold Canadian ratification and to prevent the amendments from coming into force.

My three colleagues and I have also written to the Prime Minister supporting Newfoundland's position. Dr. Parsons and I, speaking for our two colleagues as well, are asking you today to join us and the Government of Newfoundland in requesting that the Prime Minister refuse ratification of the proposed amendments and lodge a formal objection in NAFO that will end the current process. It will also open the door for new talks aimed at achieving meaningful improvements to the NAFO convention without undermining Canada's sovereign rights inside 200 miles.

•(1025)

The Chair: Thank you, Mr. Applebaum.

We'll also welcome the Honourable Tom Hedderson from Newfoundland and Labrador.

Hon. Tom Hedderson (Minister of Fisheries and Aquaculture, Government of Newfoundland and Labrador): I'm very pleased to be here, Mr. Chair.

To the committee members and you, a very hearty thank you for allowing me this opportunity to represent the government of our province and, naturally, the people of Newfoundland and Labrador.

Again, when I speak about the fishery, I speak about an industry that is of vital importance to the people of Newfoundland and Labrador. The prosperity of our province has been highly dependent upon the resources of the sea. As a result, any developments in international law relating to the concept of territorial seas and the rights of coastal states have been followed with keen interest in our province, not only of late but throughout our history.

The fish stocks of our Grand Banks have been a significant contributor to the Newfoundland and Labrador fishery and, indeed, to the economy. Unfortunately, the Canadian 200-mile exclusive economic zone does not encompass the entire bank. The nose and the tail of the Grand Banks are international waters, and several very important fish stocks to our province of Newfoundland and Labrador, and indeed to our country, straddle this 200-mile limit. It has always been a difficulty, because of the straddling, going back and forth. It provides, I guess, an easy portal for opportunities for overfishing and for deleting our particular stocks.

Historically, the most noted of these stocks is the northern cod. Prior to the establishment of the zone, this stock felt the impact of foreign overfishing. Since 1968, you're talking about approximately 800,000 tonnes of northern cod taken and landed by foreign vessels. And this stock, I have to say, has never, ever fully recovered to the level it had been prior to this.

With the extension of the jurisdiction in 1977 came the establishment of NAFO, a multilateral organization responsible for managing fish stocks in the northwest Atlantic. The objective of NAFO is to contribute, through consultation and cooperation, to optimum utilization, rational management, and conservation of fisheries resources in the convention area. We contend that NAFO has failed to live up to this objective. Others agree. The House of Commons Standing Committee on Fisheries and Oceans report of the advisory panel on straddling stocks reached the same conclusion after examining the performance of NAFO.

The problems through the 1980s and 1990s are well documented. The objection procedure was used regularly for grossly overfished stocks, and NAFO could do nothing to stop it. Flags of convenience were used to fish outside the rules, and NAFO could do nothing to stop it. Many countries were misreporting, and NAFO could do nothing to stop it. The result was the collapse of just about every straddling stock off the coast of our province, off the coast of this nation. The reform effort has failed to remove the objection procedure or to achieve an internal binding dispute settlement procedure. Having one vote of 12 clearly, and I say clearly, does not afford this nation what it needs to protect our adjacent and straddling stocks.

Some improvements were made as a result of the infamous turbot war, such as the introduction of the 100% observer program. The improved fishing behaviour, however, was very short-lived and came at a very high price in terms of resource access. Illustrating the poor fishing behaviour in 2003, the estimated foreign catch of moratorium species was 15,000 tonnes, over half of which was American plaice, a stock for which Canada holds 98% of the quota and that was historically fished and processed primarily by Newfoundlanders and Labradorians. The Government of Canada responded to the problem by increasing its patrols and surveillance. This action, combined with a lack of fish and increasing cost, has reduced activity by foreign fleet vessels on the nose and tail of the bank.

What happens if and when the fish return? We believe that without an effective management regime, there is more than a high probability that we will go down the same road again. Just as the stocks are coming back, we're already getting indications that we're pushing towards that same road.

The motivation behind custodial management is to protect and rebuild fish stocks. It is about ensuring that fish stocks that straddle our 200-mile EEZ are given a chance to recover and to be sustained for the benefit of all—not only Canada, but all nations that fish in the northwest Atlantic. To reach this goal, custodial management involves enhanced fisheries management by the adjacent coastal state, and this is where Canada comes in.

• (1030)

It is an approach that could be used by other coastal states, but would be initiated on the nose and tail of the Grand Banks. By applying custodial management out to the edge of the continental shelf, this nation will manage the stocks that currently straddle the 200-mile limit. This would ensure consistent application of resource conservation measures while respecting the established shares of other nations. It would also be consistent with the measures outlined in the UN fish stocks agreement on straddling and highly migratory stocks.

As a coastal state, Canada would assume responsibility for ensuring that conservation and scientifically based management are applied. Canada would be responsible for the surveillance and enforcement. This would be the start of a solution that can work in a multilateral context. NAFO, which is the regional fisheries organization, could continue to be responsible for access and allocation decisions, scientific recommendations, and the management of these great stocks outside Canada's 200-mile EEZ.

Let me be clear: this is not an extension of jurisdiction; this is not a grab for resources or territory. It would respect historical shares, it would promote conservation, and it would enhance the role of this great nation of ours as a coastal state. It would strengthen compliance with management measures and provide greater deterrence for fisheries violations outside the 200-mile limit. Straddling stocks such as cod, American plaice, flounder, redfish, and Greenland halibut would all be given a better chance to rebuild. However, if this cannot be implemented within NAFO, then in the interest of allowing the stocks to rebuild we will continue to urge the Government of Canada to pursue this option through other means, such as creating an alternate regional fisheries management organization, as was suggested by the advisory panel chaired by Dr. Art May.

The current federal government promised the people of Newfoundland and Labrador that it would pursue custodial management if elected. Both Prime Minister Harper and the former Minister of Fisheries and Oceans, Loyola Hearn, committed in writing and verbally that they would pursue custodial management. The failure in this instance is that they never even tried. Instead, the Government of Canada, along with the other NAFO members, undertook a NAFO reform process. As part of this process, the NAFO convention has been amended.

We have great concerns in regard to some of these amendments. The amended NAFO convention can serve as a vehicle for other

nations to impose their management of overstocks inside Canada's sovereign 200-mile limit. History has shown the tragic ecological results of mismanagement of stocks by foreigners outside our 200-mile limit, and we must ensure that this never, ever happens within our 200-mile zone.

Our province and many experts, including my friends here, the former Department of Fisheries and Oceans executives with extensive NAFO experience, are extremely concerned with the clause in the amended NAFO convention that in certain circumstances allows NAFO to apply measures in the waters under our national jurisdiction. The new wording could very easily and clearly lead to increased influence of NAFO inside our EEZ. This amendment gives, for the first time ever, the opportunity for NAFO to influence decisions within our sovereign territory as a country. There should never be any circumstance whatsoever that allows for even the possibility of such an action to exist. Particularly in these times when Arctic sovereignty issues abound, Canada must demonstrate with clarity and with certainty that we will not accept such measures in the jurisdiction of our great country.

Some have argued that we need not worry because the proposed amendment would only put this option into the NAFO convention, and Canadian politicians will never allow it to happen in practice. Unfortunately, nobody can predict how any future minister, let alone a government, will act. It is therefore critical that the option not exist in any manner, shape, or form that opens the possibility of foreign management and enforcement in Canadian waters.

• (1035)

One of the primary objectives stated by the federal government heading into NAFO reform was to prevent the continued abuse of the objection procedure. The EU has historically used this clause to grossly overfish stocks off our coast during the 1980s and 1990s with the blessing of NAFO. The agreed-upon NAFO objection review procedure in this new convention continues to be inadequate. While it puts a process in place, granted, nothing within this process is binding on a contracting party or prevents unilateral action that could seriously jeopardize conservation. Nations can continue to use the objection procedure and this can be challenged by others.

If I could, I have just some—

The Chair: You're over the 10 minutes, but go ahead, Mr. Hedderson, very quickly.

Hon. Tom Hedderson: To finish up, custodial management is a multilateral and collective opportunity to restore, protect, and share the resources for the future. As it speaks to Newfoundland and Labrador's awareness that the current system is not working, it might serve as a model for other parts of the world. I would ask for your support for Canadian custodial management of straddling fish stocks off the coast of Newfoundland and Labrador.

I'm sorry for that override. I just got carried away there. Thank you for your indulgence, Mr. Chair.

The Chair: Thank you very much, Mr. Hedderson.

We're going to move very quickly. I think what we may do to make certain that Mr. Harris gets his opportunity at the end is cut us to five minutes each.

I remind the members of this committee as well as those visiting that the five minutes really belong to the member. You can manage your own five minutes.

Mr. Byrne.

Hon. Gerry Byrne: Thanks very much.

Listen, this is extremely interesting, because what I'm hearing is that the government believes that custodial management not only is a commitment for the future—it doesn't believe that—custodial management is now the official policy of the Government of Canada. Canada owns custodial management of the nose and the tail.

Are you telling me that's incorrect, Mr. Applebaum?

Mr. Bob Applebaum: Yes, sir, that's incorrect.

Hon. Gerry Byrne: Well, in other words, Canadian foreign policy as it relates to fisheries is built on an absolutely false platform.

Let me ask you this. We heard testimony here this morning that fishing willy-nilly is no more. The objection procedure is gone. Binding arbitration is now the rule of law as soon as this revised convention is in place. Yet here's what I read in article XIV, paragraph 2:

Where any Contracting Party presents an objection to a measure by delivering it to the Executive Secretary...The measure shall then become binding on each Contracting Party, except any [party] that has presented an objection.

Does that mean they can go ahead and fish willy-nilly after an objection procedure is outlined? If so, could you outline the timeframe of the objection procedure?

Let me ask you this question and conclude. If an objection procedure is raised, will the objection procedure be resolved within a few weeks or days of the procedure being filed or will it be prolonged or last for months, if not years? Will the objection procedure be resolved within the time period of the fishing season, at least, so we can stop that? Will nations be able to keep fishing while they do the objection?

• (1040)

The Chair: Thank you, Mr. Byrne.

Mr. Applebaum.

Mr. Bob Applebaum: To deal with the last part of Mr. Byrne's question, it is true that if an objection is lodged, states will be able to continue to fish without hindrance until an entire process has gone through, which cannot be effectively concluded to overrule that during the fishing season.

The procedure is set up where there are panel procedures. It's not days and it's not weeks; it's months to go through the original procedure, which cannot reach a binding conclusion. Then there's a possible step, itself a very difficult step, to move to the UNCLOS or UNFA dispute settlement procedures, which normally are aimed at taking two to three years to conclude.

So the answer to your question is that if there's an objection lodged now, nothing in this convention will stop that—

Hon. Gerry Byrne: The revised convention?

Mr. Bob Applebaum: The amendments to revise it.

Maybe I can answer Mr. Lunney's question too, because I think he asked a question and I don't think he got a straight answer for it.

I believe this was your question. If under this procedure an objection is lodged, do they have to fish within the limits that were set in the NAFO decision, their quota limits, until these processes are completed? I believe that was it.

The answer was kind of obscure, but the answer to your question is no, Mr. Lunney. They are not required to fish within the limits of the quota given to them in the decision. They are free to continue to fish according to whatever quota they set for themselves.

Hon. Gerry Byrne: So what you're saying, then, is that there is still an objection procedure and there is still a lengthy procedure within NAFO itself. NAFO has to concur with the ad hoc panel or the recommendations. If the objecting contracting party does not agree with the NAFO review of the ad hoc panel, they can continue the objection and continue to fish unilaterally, and then they have the option of raising it to a provision within UNFA or UNCLOS, which is the International Court of Justice.

Am I reading that correctly?

Mr. Bob Applebaum: It's the equivalent. It's the UNCLOS tribunal or the UNFA tribunal.

Hon. Gerry Byrne: Is that a process that takes a couple of days, a couple of weeks, or is it a couple of years? What's the cost? Has Canada ever brought something like that to, say, the International Court of Justice? Just give us a practical scenario of how this rolls out.

Mr. Bob Applebaum: With respect to the international tribunals you're talking about, I was involved with the Gulf of Maine arbitration for the boundary between Canada and the United States as well as the Canada-France arbitration about the boundary. Those things took from two to three years and involved, for Canada alone, maybe \$10 million to \$20 million of expenditures. They were long, drawn-out processes.

Hon. Gerry Byrne: And that is exactly what would have to occur under this revised NAFO convention dispute settlement measure.

Mr. Bob Applebaum: Yes, that's right.

Hon. Gerry Byrne: So let me ask you this.

The Chair: Mr. Byrne, your time is up.

Madam Deschamps.

[*Translation*]

Ms. Johanne Deschamps: Thank you, Mr. Chairman.

Thank you very much for your presentations. I am quite new to this file, but in light of what you have said, I would like to put two questions.

My first question is about the convention that the Department of Fisheries and Oceans and the Department of Foreign Affairs are presently negotiating. You are saying that this convention is not at all in line with the wishes of the previous federal minister of Fisheries and Oceans who had agreed to pursue a Canadian management of fisheries that would be a custodial management.

What went wrong in the negotiations that could, among other things, open the door to a foreign jurisdiction in Canadian waters?

I will put my second question, even though my colleague has already put it to the departmental officials. It deals with the much talked about two-thirds majority rule. The then minister did not protect the voting procedure, that is by way of a simple majority. Will the two-thirds majority improve the decision-making in Canada, or will it be an impediment?

• (1045)

[English]

The Chair: Madam Deschamps, please direct your question. Is it for anyone in particular?

Mr. Parsons.

Mr. Scott Parsons: We just agreed that I would take the first question and Mr. Applebaum would take the second.

The Chair: You have to let Mr. Hedderson in there somewhere too. But go ahead.

Mr. Scott Parsons: Madame Deschamps, you asked what went wrong with the negotiations. You talked about the government's promoting custodial management. The bottom line is that they did commit to implementing custodial management; in fact, they committed to more than that. They committed to extending fisheries jurisdiction not only to the edge of the Grand Banks, which covers the straddling stocks, but also to the edge of the Flemish Cap, which includes discrete stocks beyond the Canadian 200-mile zone.

That's what they said before coming to power. Then the task was turned over to a group of negotiators, some of whom were in the room earlier today. In fact, the one person who was in the negotiations was sitting to the right of Mr. Balfour but said nothing when the question was asked.

What went wrong, in our view, is that because there was a commitment to pursue custodial management, those who participated in the negotiations from the Canadian side were under great pressure to deliver something called "improvements" that could be then spun as results fulfilling the promise made in 2006.

They also made mistakes in the negotiations. One fundamental error was that they allowed the European Union to be the drafter of amendments, to hold the drafting pen. In fact, each time there was discussion, a European Union drafter would be the one that brought the proposals back to the table.

The other thing was that the negotiators could not walk away from the table. Anyone in this room who has been involved in negotiations knows that if you do not have the option of walking out of the room, thereby saying no to what's being proposed, then the only way out is to acquiesce, to give ground, and to make concessions without concessions being made on the other side. In

such cases, you're going to end up with a mess, and that's what we have in front of us.

Thank you.

The Chair: Go ahead Mr. Applebaum. There are 30 seconds left.

Mr. Bob Applebaum: On that particular question of two-thirds voting instead of majorities, I was a member of all the NAFO delegations and all the NAFO meetings from the beginning of NAFO in 1978 until I retired in 1995. In every one of those meetings, we had to scramble to get a simple majority vote for any decision that involved cutting down total allowable catch limits. On any conservation measure that restricted fisheries—smaller or larger mesh sizes, whatever the issues were—every single time we had to work amazingly hard to get a majority vote.

This new system will now change that. Now they will have to work even harder to get a two-thirds vote, because the people who don't want to lose fish catches are the ones who are going to be saying, "Well, we just won't go along with this unless you give us some, and then we'll join you and make it two-thirds." It will have to increase the catches over the years.

Second is this two-thirds business of protecting Canadian percentage shares. Well, yes, but the Canadian percentage shares are there and you'd need a two-thirds vote to overturn them. Shares are only shares of a catch that you can make. Over the long term, the total allowable catches go down; the fish disappear. You have 40%, as you always had, but of what? Your 40% turns into 100 tonnes, 50 tonnes, 10 tonnes, but you have your 40%.

The Chair: Thank you, Mr. Applebaum.

In view of the time, we want to get as many questions in as possible.

Mr. Kamp.

Mr. Randy Kamp (Pitt Meadows—Maple Ridge—Mission, CPC): Thank you, Mr. Chair.

Thank you, gentlemen, for appearing.

I'll begin with Minister Hedderson.

I'll say at the outset that where I agree with you, and I think everyone around this table and perhaps even those at the table with you agree with you, is that prior to 2006 NAFO did not function well. I think that point has been made here.

Where I'm confused is this. It's my understanding that the Province of Newfoundland and Labrador was well involved in the negotiations of this amended convention. It was certainly involved in the current talks, as well, in Norway. It was supportive of the direction that these amendments were taking. Now you're appearing before us—and we've seen a recent letter from your premier and so on—taking quite a different view of the results of these negotiations. Can you clarify for this committee the chronology of all that? Is it not true that Newfoundland and Labrador has had two positions on this amended convention?

•(1050)

Hon. Tom Hedderson: Absolutely, and we're there at the table to try to protect our interests. We haven't been very successful. As you know, my people at the table give advice to the delegation, and the delegation goes forward and makes all the decisions around the larger table. We have always stood behind custodial management, and as I pointed out to you, what happened when they went to the table was that they never went after custodial management; they went after NAFO reform. That's where we are today.

On the reforms, we try to make the best of them in looking at them. The vote is academic, I suppose—some will argue two-thirds and some 50%. But on sovereignty and a look at where we were, we cannot accept any intrusion on the 200-mile zone.

Mr. Randy Kamp: Rather than giving advice and perhaps lodging your objections, you actually supported the direction.

Hon. Tom Hedderson: No. I will say unequivocally that my two representatives did not support where this convention has gone.

Mr. Randy Kamp: That may be your position.

Hon. Tom Hedderson: They go and represent the province, a decision is made, and then it comes back to us.

Mr. Randy Kamp: We have seen a letter to our minister from you.

Hon. Tom Hedderson: Exactly. We were holding our noses and trying to make the best of a bad situation, but do you know something? We can't hold our noses on this. We came out very strong, and our position is clear. I guess we're asking Canada to also take its hand off its nose, look at what's there, and go in the right direction.

Mr. Randy Kamp: You had an opportunity during negotiations. You supported the position and—

Hon. Tom Hedderson: No, again, those are your words. Again, I say to you—

The Chair: Excuse me, Mr. Hedderson. It's Mr. Kamp's time. Let him have the—

Hon. Tom Hedderson: I have to take exception to what he's saying.

The Chair: Okay.

Mr. Kamp.

Mr. Randy Kamp: You started your testimony by saying yes, you've had two positions, and I think that's the case.

Let me move on to Mr. Parsons.

We've had this discussion before. You weren't involved in the negotiations directly yourself. I understand that you are a keen observer and well experienced and so on, but you weren't involved in the negotiations, neither you nor Mr. Applebaum, although one would think perhaps from your testimony that you were.

We've talked about this before, as I mentioned, but where I really take exception is your assuming that you know the mindset of our former minister, Loyola Hearn, that somehow he was driving these negotiations because of a particular motivation, and that somehow you know the motivation of the negotiators themselves. You've

speculated on what that might be, but let's be very clear that it is just speculation.

Mr. Scott Parsons: Was that a question?

Mr. Randy Kamp: Would you confirm that this is a conclusion you've drawn, but you have no direct evidence to support that conclusion?

Mr. Scott Parsons: I think the facts speak for themselves. They support the conclusion. Mr. Hearn had spoken publicly on numerous occasions about what his objective was in pursuing these negotiations. That's not speculation; that's fact.

Mr. Randy Kamp: What is fact is that if you talk to Mr. Hearn you will find out that he believes this direction that NAFO was going in since 2006 and all of the good results that have been demonstrated are certainly better results than in prior years. When you yourself were in the department, the results were not good. The results since 2006 have been much better. He believes that these were genuinely good reforms to NAFO, not for some political motivation that you have somehow speculated on.

•(1055)

The Chair: I don't know if there was really a question there, but I do know our time is up on that, so we'll move to Mr. Harris.

Mr. Jack Harris: Thank you, Mr. Chairman.

I thank the three of you for your very interesting presentations today.

Am I right in hearing you, Mr. Applebaum, in talking about how NAFO actually worked, say that Canada—I hesitate to say “paid for votes”—in order to get certain decisions through, took action that actually resulted in the quotas being raised? If that is the case, would it not have contributed to the fact that most of these stocks ended up in a moratorium because they ended up being overfished even if they were following the rules?

Mr. Scott Parsons: Thank you, honourable member.

I don't know if we would say they paid directly, but certainly in any international negotiation there is discussion around the table in terms of sharing arrangements, what the level of the total allowable catch will be set at, and so forth, and during the most difficult years of NAFO certainly there were compromises at certain times.

I'd like to respond to the point made by the honourable member across, if I may take one minute of your time, Mr. Harris.

The Chair: Go ahead, Mr. Parsons.

Mr. Scott Parsons: He said that Mr. Hearn merely said that these were improvements to the situation. Mr. Hearn went far beyond that. Mr. Hearn said that with these results Canada was now the custodian of the resources beyond 200 miles, and Mr. Hearn was responsible for the statement in the 2008 election platform that said they'd assumed custodial management beyond 200 miles. So I don't think attempts to downplay or create a smokescreen will succeed.

Mr. Harris, I'm sorry.

Mr. Jack Harris: Mr. Applebaum, you've been familiar with the NAFO convention. I'm sure you and maybe many in the room are familiar with the *Estai* case and Canada's attempt to enforce NAFO rules directly. Has anything changed in this particular convention that would allow Canada to directly enforce NAFO requirements, whether that be total allowable catches, overfishing, reporting problems, or anything like that?

Mr. Bob Applebaum: There is not a single thing, Mr. Harris.

Mr. Jack Harris: Then the same result would end up as ended up with the *Estai* in 1995, that we really don't have the jurisdiction to do anything other than conduct surveillance and perhaps report it, and someone else has to enforce it, not Canada.

Mr. Bob Applebaum: That's right.

Mr. Jack Harris: Mr. Hedderson, I've read the letter from Mr. Williams. I think we all have. It's a very clear and strong statement by the Province of Newfoundland and Labrador as to its opposition to this convention. And yet when this matter is raised in the House of Commons, the minister reads letters from the Government of Newfoundland and Labrador. Can you tell us whether something has changed or whether this matter has now been fully considered, or what has happened?

Hon. Tom Hedderson: First of all, when looking at the conventions, before the delegation went to NAFO for that particular year, we made representation that sovereignty could not be compromised in any way, shape, or form. We unequivocally did that and we stated it in a letter to the minister of the day, and also with regard to quotas and so on and so forth, as we usually do. There's also a letter on file from the past year. It just happened that we did that as well. So sovereignty is a big thing, and obviously custodial management is the second.

We did see a situation when we looked at one of the conventions and there was the aspect of a minister—just a minister—having the authority to allow any incursion into the 200-mile limit. I wrote back to the minister and said that at the very least it should go to cabinet. That's where I was. I didn't go far enough, but I certainly am owning up to that.

Again, when we reviewed it, and in light of new information, we had these gentlemen come to our province and present. We analyzed and reanalyzed, and guess what? We're where we are and strong in our position. We've articulated that position to the Prime Minister and we're again asking that these conventions not be ratified, that an objection be put in place, and that we move forward as a nation that is looking to have the authority to manage our stocks as well as the straddling stocks. That's our position. We feel very, very strongly that without that, we're going down the same road that started back in the 1960s and got us to where we are right now.

● (1100)

Mr. Jack Harris: Thank you.

The Chair: Thank you very much, Mr. Hedderson.

I want to thank all of you for appearing here today. It's always good to get both sides of the story. Certainly, you have brought forward your concerns, and we appreciate your being here today. Thank you very much.

Mr. Jack Harris: Mr. Chairman, before we go, I have a notice of motion to present.

The Chair: Yes, we'll put forward the motion. You can put it forward and we can discuss that in 48 hours. Thank you, Mr. Harris.

Thank you, guests, and thank you all.

The meeting is adjourned.

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