



**HOUSE OF COMMONS
CANADA**

**CUSTODIAL MANAGEMENT OUTSIDE
CANADA'S 200-MILE LIMIT**

**REPORT OF THE STANDING COMMITTEE
ON FISHERIES AND OCEANS**

**Tom Wappel, M.P.
Chair**

March 2003

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

If this document contains excerpts or the full text of briefs presented to the Committee, permission to reproduce these briefs, in whole or in part, must be obtained from their authors.

Evidence of Committee public meetings is available on the Internet <http://www.parl.gc.ca>

Available from Communication Canada — Publishing, Ottawa, Canada K1A 0S9

**CUSTODIAL MANAGEMENT OUTSIDE
CANADA'S 200-MILE LIMIT**

**REPORT OF THE STANDING COMMITTEE
ON FISHERIES AND OCEANS**

**Tom Wappel, M.P.
Chair**

March 2003

STANDING COMMITTEE ON FISHERIES AND OCEANS

CHAIR

Tom Wappel

VICE-CHAIRS

Bill Matthews
Peter Stoffer

MEMBERS

Andy Burton

Dominic LeBlanc

John Cummins

Joe Peschisolido

Rodger Cuzner

Carmen Provenzano

R. John Efford

Yves Rocheleau

Reed Elley

Jean-Yves Roy

Georges Farrah

Bob Wood

Loyola Hearn

CLERK OF THE COMMITTEE

Jeremy LeBlanc

FROM THE RESEARCH BRANCH OF THE LIBRARY OF PARLIAMENT

Alan Nixon

THE STANDING COMMITTEE ON FISHERIES AND OCEANS

has the honour to present its

SECOND REPORT

Pursuant to Standing Order 108(2), the Committee has studied the implications of extending Canada's Exclusive Economic Zone to include the Nose and Tail of the Grand Banks and the Flemish Cap and is pleased to report as follows:

TABLE OF CONTENTS

Introduction.....	1
The Government Response	2
2002 NAFO Annual Meeting.....	2
The Official View	2
Total Allowable Catches	3
<i>Compliance of Foreign Fleets</i>	3
<i>Conservation Measures</i>	4
<i>Observer Coverage</i>	4
The View of Other Observers	4
A Targeted Information Campaign	6
Port Closures.....	7
Conclusions and Recommendations	8
APPENDIX A — LIST OF WITNESSES	11
REQUEST FOR GOVERNMENT RESPONSE	13
MINUTES OF PROCEEDINGS.....	15

CUSTODIAL MANAGEMENT OUTSIDE CANADA'S 200-MILE LIMIT

Introduction

In June 2002, the Standing Committee on Fisheries and Oceans tabled its report *Foreign Overfishing: Its Impacts and Solutions, Conservation on the Nose and Tail of the Grand Banks and the Flemish Cap*. This report was the Committee's response to a trend of increasing non-compliance by members with rules of the Northwest Atlantic Fisheries Organization (NAFO) coupled with the conviction of many knowledgeable individuals and organizations that NAFO is either unwilling or incapable of fulfilling the role for which it was created, namely "to contribute through consultation and cooperation to the optimum utilization, rational management and conservation of the fishery resources of the Convention Area."

The principal recommendation put forward by the Committee was that the Government of Canada amend the *Coastal Fisheries Protection Act* to empower it to implement custodial management on the Nose and Tail of the Grand Banks and of the Flemish Cap. By custodial management, the Committee did not intend that Canada should claim sovereignty over or exclusive rights to the resources of these regions of the ocean but that Canada should assume the role of managing and conserving the fisheries resources of the NAFO regulatory area in a way that would fully respect the rights of other nations that have historically fished these grounds.

Although the Committee's report was well received in Atlantic Canada, particularly in Newfoundland and Labrador, the province most affected by NAFO's failures, it was dismissed with little consideration by the Minister of Fisheries and Oceans. The Minister's hasty public rejection of our report undermined its message and fatally damaged any value the report might have had to the Canadian delegation at the September 2002 NAFO meeting in conveying to other NAFO members the depth of frustration with NAFO among Canada's fishing communities, and the need for NAFO to live up to its responsibilities.

After thoughtful consideration of the government's response to our report, further hearings, and analysis of the limited gains made at the September 2002 NAFO meeting, the Committee is more convinced than ever, that custodial management of the Nose and Tail of the Grand Banks and the Flemish Cap is the only practical alternative to NAFO, if rational management and conservation of fish stocks are not to be held hostage to short-term economic and political interests.

The Government Response

The Government of Canada tabled its response to the Committee's report in November 2002. While the government acknowledged that some of the recommendations were helpful, it characterized the Committee's central recommendations as problematic because their implementation would not lead to effective solutions to the issue of foreign overfishing. Essentially, the government took a position similar to that presented previously to the Committee. It argued that there would be little support in the international community for custodial management, that Canada would not receive the benefits of belonging to NAFO and that NAFO itself could conceivably collapse without Canadian participation or funding, leading to unregulated fishing in the NAFO regulatory area. The government argued that any attempt by Canada to unilaterally impose custodial management would be vigorously opposed by other nations, potentially leading to confrontation and impacts on the conservation of fish stocks.

2002 NAFO Annual Meeting

The 24th Annual Meeting of NAFO was held in Santiago de Compostela, Galicia, Spain from the 16th to the 22nd of September 2002. At its annual meetings, the Scientific Council reviews and assesses the status of fish stocks in the NAFO area. The Council's advice and recommendations are then presented to the Fisheries Commission, which makes decisions in relation to the conservation and enforcement measures regarding fish stocks in the NAFO Regulatory Area for the following and subsequent seasons.

The Official View

According to Department of Fisheries and Oceans (DFO) officials, Canada's overall objectives going into the September meeting were to make improvements to NAFO in order to achieve: more effective conservation measures; improved strategies to protect stocks; better deterrence mechanisms; and improved compliance amongst all the fleets fishing in the NAFO regulatory area.

Although, in some respects, the results of the meeting were positive, Mr. Patrick Chamut, head of the Canadian delegation, advised the Committee not to expect radical changes in the way NAFO operates:

...in terms of being satisfied with incremental steps, working within NAFO our objective has been to try to improve the functioning of it. If we go in and try to make radical change that would fundamentally alter the way in which the institution operates, I think it's probably not likely to be successful. Our objective is to bring about improvements to the rules, improvements to the way in which enforcement is conducted, as well as to the response and to the reaction or the follow-up that is taken by contracting parties. We think that working in that manner is more likely to give us a more productive outcome than trying to achieve radical transformation.

Patrick Chamut
Assistant Deputy Minister
Fisheries Management

Total Allowable Catches

One of Canada's specific objectives going into the meeting was to ensure that total allowable catches (TACs) would be based on scientific advice. This was achieved for all but one stock. Canada obtained agreement on continuing the moratoria on all stocks currently at low levels, in many cases for two years.

For yellowtail flounder, a stock that has been rebuilding, Canada got agreement to increase the TAC by 1,500 tonnes to 14,500 tonnes. As Canada receives 97.5% of the TAC of this stock, this decision benefited Canadian harvesters. A new TAC on 3L shrimp was delayed until all of the scientific advice was received. It was anticipated that this would be dealt with within the December 2002-January 2003 period. (The Scientific Council recommended, at its November 2002 meeting, that the TAC for 3L shrimp should not exceed 13,000 tonnes for 2003 and 2004.) The Canadian delegation was also optimistic that it had laid the foundation for Canada's share of 3L shrimp to remain at the level negotiated the previous year, which gave Canada about 83% of the TAC. A TAC of 7,500 tonnes was set on oceanic redfish, ensuring that previous high harvest levels would in future be regulated by a TAC.

A significant setback for Canada was that it did not achieve its goal for Greenland halibut. In 2002, the TAC for Greenland halibut was set at 44,000 tonnes, 10% above the level recommended by the Scientific Council. The scientific advice for 2003 was that the TAC should be reduced to 36,000 tonnes; however, NAFO reduced the TAC only to 42,000 tonnes. This was a concern for the Canadian delegation and particularly for fishermen in Newfoundland and Labrador.

Compliance of Foreign Fleets

At the September meeting, Canada made a presentation revealing the behaviour of foreign fleets in terms of their compliance with NAFO rules. It identified instances where contracting parties had conducted directed fisheries for species under moratoria, misreported catches, exceeded quotas and used illegal gear. The purpose was to highlight Canada's concerns and press for improved compliance within NAFO.

According to officials, NAFO accepted Canada's concerns and adopted a new compliance framework. In future, NAFO itself will assess the compliance of each party and those that are not operating consistently within the rules will be called to account and asked to explain why they have not complied and what they will do to fix the problem. Of course, such measures will not put back into the sea fish improperly or illegally harvested.

Conservation Measures

Canada also wanted NAFO to adopt new conservation measures to ensure stocks would be better conserved and given the opportunity to rebuild. Canada had two specific objectives going into the meeting: to reduce the bycatch of species under moratoria and to achieve a regulated regime for 3O redfish, which did not have a TAC and was therefore not subject to restrictions. Both of these objectives were achieved.

NAFO also adopted a new definition of what constitutes a directed fishery. This should improve the ability to enforce against vessels targeting moratoria species. Improvements were also made to the calculation of bycatch, which should make the identification of parties directing for species under moratoria, and taking corrective measures against them more effective. Canada also got agreement to seek scientific advice on 3O redfish and to consider the adoption of a TAC for 2004.

Observer Coverage

Canada sees the maintenance of the observer program as an essential component of its ability to ensure compliance and enforcement. However, the majority of NAFO contracting parties do not fully support the 100% observer scheme because of the cost, which many of them would prefer to avoid. Although there was agreement to continue 100% observer coverage through the 2003 fishing season, there is no guarantee that it will be continued beyond this timeframe. Canada also agreed to the establishment of a technical working group that will examine whether there are alternatives that will permit an improved ability to detect violations and to ensure that activities are monitored. Such alternatives could include a combination of observers and satellite monitoring and tracking with real time transmission of data.

The View of Other Observers

Notwithstanding the efforts of the Canadian delegation and its head, other observers at the September NAFO meeting in Spain were less positive about the meeting and its outcome for Canada. In their view, a fundamental weakness of NAFO remains that the parties are more interested in divvying up the spoils than conserving the resource. Although NAFO members were apparently embarrassed by Canada's presentation on the lack of compliance by member fleets, their response, or rather lack of it, belies any genuine commitment to conservation:

As I said, Pat Chamut put the facts on the table with a slide presentation. He gave evidence of misreporting of catches; directing on moratorium species; use of illegal troll liners, which was shown right on the slide; exceeding quotas; and failing to submit observer reports. All of those infractions were outlined graphically at the meeting, but there was very little discussion about them.

The Honourable Gerry Reid
Former Minister of Fisheries and Aquaculture
Government of Newfoundland and Labrador

Another observer characterized the gains Canada made at the September NAFO meeting as essentially marginal and overdue:

A lot of things that were cited as sort of Canadian gains or accomplishments at the meeting were in fact just our hanging onto the share we'd always had. There were no great breakthroughs or successes in getting scientific advice followed on stocks. Whenever there's any amount of fish at stake, boy, I tell you, conservation takes a second place to appetite.

Earle McCurdy
President
Fish, Food and Allied Workers Union

There were things on compliance that should have been done a long time ago on NAFO. NAFO moved at a glacial speed on some of these technical measures on how bycatch was recorded and so on. They were positive steps, by and of themselves, but when you saw that in the context, first of all, the decision on the turbot quota, which was really unconscionable in relation to scientific advice, and secondly, in the context of the tremendous number of violations that Canada had documented, then that has put those decisions and those improvements in the context that they were not going to solve anything.

Earle McCurdy
President
Fish, Food and Allied Workers Union

Witnesses told the Committee that, in order to keep 100% observer coverage, Canada had to trade agreement to a TAC of 42,000 tonnes for Greenland halibut for 2003. This figure is not only well above the scientific advice of 36,000 tonnes but in fact represents an increase of 2,000 tonnes in the difference between the TAC and the scientific advice from the previous year.

In the view of the Committee, this trade-off is unacceptable. Greenland halibut is one of the few remaining reasonably healthy fish stocks within the NAFO regulatory area. Overfishing is what brought other groundfish stocks to their present status under moratoria. In our view, setting a TAC above the level advised by the Scientific Council, without a compelling argument that the scientific advice is unsound, is untenable. Of course, this view applies to all countries, Canada included.

At the same time, even though it may be flawed, the observer program is the best tool we have for detecting and deterring infractions by fishing vessels in the NAFO regulatory area. Even with the concession made on Greenland halibut, Canada may have gained only a one-year extension of full observer coverage. The Committee does not believe that the kind of technological substitutes suggested represent either a practical or effective alternative to on-ship observers. To be more precise, it is the view of the Committee that, rather than weakening the observer program, it needs to be strengthened by having fully independent, professional observers on board vessels from all parties.

Despite the assertion that Canada's status as a coastal state gives it weight at the table, the fact remains that Canada is only one of 18 contracting parties, which may be outvoted by a faction of other members acting together for reasons outside of fisheries management:

The EU is the largest member, and then you have countries like Lithuania, Latvia, and Estonia. They sit around the table, and whatever the commissioner from the EU says, as soon as he's finished speaking up goes the hand of one of those four countries' representatives supporting him 100%.

The Honourable Gerry Reid
Former Minister of Fisheries and Aquaculture
Government of Newfoundland and Labrador

A Targeted Information Campaign

Recommendation 4 of the Committee's previous report on this issue was one of the few recommendations in the report supported by the government. In this recommendation we advocated a targeted public information campaign to raise public awareness of violations of NAFO conservation measures by member states. However, in rejecting our most important recommendation, namely the implementation of custodial management over the Nose and Tail of the Grand Banks and the Flemish Cap, the government cited the certain hostility that Canada would face over what would be seen as an attempt to extend unilateral jurisdiction over these areas of the ocean. Yet it is clear to us that Canada's message is not getting through and that NAFO itself is a major part of the problem.

Mr. Reid, for example, described the reaction of Mr. [Struan] Stevenson, President of the European Parliament's Fisheries Committee, to Canada's presentation at the September meeting. Having been told previously by Mr. Spencer, head of the European delegation to the meeting in Spain, that the EU was not breaking any of the rules outside the 200-mile limit,¹ he told Mr. Reid that he felt betrayed for the most part and that he had been lied to. Mr. Stevenson had always been given the impression that

¹ The term "200-mile limit" refers to the outer limit of Canada's Exclusive Economic Zone.

the EU was squeaky clean with respect to overfishing outside the 200-mile limit but, when he saw the Canadian presentation, he understood the frustration with the EU that he had sensed earlier in Canada and Newfoundland and Labrador.

Mr. Reid also described a meeting in the spring of 2002 with a group of German parliamentarians, in which he explained what was happening outside Canada's 200-mile limit and had put forward the proposal for custodial management. According to Mr. Reid, the Germans were sympathetic and reacted positively to the proposal on custodial management. Even Spain may not be as implacably opposed to custodial management as the government appears to believe. Mr. Reid recounted an earlier meeting with his counterpart, the fisheries minister from the northwestern region of Spain:

I said "Look, we're not intending to drive you off the Grand Banks of Canada, and we would respect your historic share, but we're not going to permit you to overfish." He seemed to be in agreement with that....

He was somewhat pleased to hear that we certainly didn't have this hate over here for the Spanish people, an idea that seems to be prevalent in some areas of Spain. But he was also pleased to hear that we weren't, even under custodial management, willing to throw the Spanish and Portuguese off the Grand Banks.

The Honourable Gerry Reid
Former Minister of Fisheries and Aquaculture
Government of Newfoundland and Labrador

Port Closures

In March 2002, in response to continued violations of NAFO conservation measures by Faroese vessels, Canada closed its ports to fishing vessels from the Faroe Islands that had been fishing shrimp beyond Canada's 200-mile limit. The Faroese fleet had exceeded their shrimp quotas in Division 3L, misreported their catches for 2001 and 2002, failed to submit observer reports, and had not complied with the requirement to limit the number of vessels fishing in the area to one at any one time. Shortly after, in April 2002, Canada closed its ports to Estonian fishing vessels for similar violations.

In September 2002, the Minister of Fisheries and Oceans announced a new approach whereby Canada would close its ports to individual foreign fishing vessels believed to have committed serious violations of NAFO conservation and enforcement measures.

In the view of the Committee, these actions, while necessary, fall far short of an ideal solution. They are only potentially effective against fleets that use Canadian ports for landing and transshipping their catches. The closures hurt the economies particularly of the Newfoundland ports of Bay Roberts and Harbour Grace and place an unfair burden on local businesses and workers.

In the case of Estonia at least, the closure appears to have had a positive outcome. Estonian officials have acknowledged that their vessels broke NAFO rules and Estonia has taken measures to address Canadian concerns. As a result, Canada reopened its ports to the Estonian fishing fleet in December 2002. The Faroese, however, appear to be less willing to mend their ways. Although they have provided assurances that they will take better control of their fleet, they have so far not proved willing to comply with NAFO quotas or rules.

Conclusion and Recommendations

Many fish stocks around the world are in serious difficulty. The United Nations Food and Agriculture Organization (FAO) reports that 47 to 50% of stocks are fully exploited, 15 to 18% are overexploited and 9 to 10% are depleted or recovering from depletion. Only 25 to 27% of stocks are moderately fished or underexploited.²

If this state of affairs were limited only to the developing world, it would at least be more understandable, but it is not. Fisheries scientists have warned that cod stocks in European waters, once a mainstay of fishing fleets from all over Europe, are so severely depleted that the species is facing near extinction. Other species such as haddock and hake are also at risk. Despite the imminent threat, several European countries, notably Spain and Portugal, have raised objections to measures proposed recently by the European Fisheries Commission to reduce quotas and the size of fishing fleets.

On the one hand, if the Europeans have difficulty in acting responsibly to save fish stocks on their own doorstep, why should we believe that they would do so on Canada's? On the other hand, the urgency of the situation in European waters may create an opportunity to develop new alliances with partners who are willing to look at alternatives to the status quo. It is not just the survival of species and fish stocks that is at stake, it is the integrity of the food supply and the viability of our fishing fleets and communities.

We have seen nothing either in the government response to our previous report or from the latest NAFO annual meeting that changes our minds. The arguments that the government makes in its response to our earlier report are essentially the same as those put forward during our hearings. The fact that NAFO has updated some of its methods or rules is encouraging but not sufficient. NAFO has been ineffective in ensuring compliance in the past. Until members put conservation before self-interest, that is unlikely to change.

² The United Nations Food and Agriculture Organization, *The state of world fisheries and aquaculture 2000, Part 1 World review of fisheries and aquaculture*, <http://www.fao.org/DOCREP/003/X8002E/x8002e04.htm#TopOfPage>.

For Canada to withdraw from NAFO without an alternative regime is not an option. What is needed is a regime where the rules are binding and enforced. If NAFO cannot do the job, Canada should be prepared to step in to ensure compliance with conservation measures. We have recommended that this be done through the implementation of custodial management.

Canada's contribution to NAFO is currently over a half million dollars (2001 contribution), accounting for about 43% of the total cost of NAFO. This is by far the largest share paid by any of the contracting parties. While it is true that Canada receives the largest share of quota for stocks under NAFO management, it should be kept in mind that the greatest part of Canada's allocation is fished within its 200-mile limit. (The United States, which makes the next largest contribution to NAFO, over \$200,000 in 2001, receives a miniscule share of NAFO quotas.) The Committee suggests that Canada's contribution to NAFO could be better spent on custodial management. It would not be enough, but it would be a good start.

In making these recommendations, we emphasize that it is not our intention that other countries would be excluded from fishing, only that they would no longer be allowed to flout conservation measures. The regime put in place must ensure that management decisions are in line with scientific advice in order to conserve stronger stocks and allow the rebuilding of weak stocks without being hostage to short-term interests. The regime we envisage will bring greater certainty and stability to management of these resources for the benefit of all of the nations that have traditionally fished these waters.

In short, preservation of fish stocks for the benefit of not only today's but of tomorrow's generations is essential. We believe this can be done by Canada managing these stocks, using preservation as the number one priority, but, all the while, respecting the rights of other nations that have fished these grounds throughout history.

Accordingly, we reiterate the recommendations from our earlier report:

Recommendation 1

That the Government of Canada amend the *Coastal Fisheries Protection Act* to empower it to implement custodial management of fisheries resources on the Nose and Tail of the Grand Banks of Newfoundland and on the Flemish Cap.

Recommendation 2

That the Government of Canada inform NAFO and its contracting parties that Canada will proceed with the implementation of custodial management on the Nose and Tail of the Grand Banks and on the Flemish Cap, and will withdraw from NAFO no later than December 31, 2004, in accordance with Article XXIV of the NAFO Convention.

Recommendation 3

That the Government of Canada conduct a targeted public information campaign in NAFO countries to increase awareness of violations of NAFO conservation measures by vessels under the flag of member states and to canvass for public support to end the abusive exploitation of the fisheries resources of the Northwest Atlantic.

Recommendation 4

That Canada make clear that it is prepared to use the provisions of Bill C-29 against NAFO members who have not ratified the United Nations Fisheries Agreement (UNFA) and that, in the case of NAFO members who have ratified UNFA, Canada is prepared to use the provisions of UNFA to ensure compliance with conservation measures. Canada should confirm its intentions by prescribing offending countries in the Coastal Fisheries Protection Regulations.

Recommendation 5

That the Government of Canada pursue discussions with the NAFO Fisheries Commission to establish a process whereby observer reports would be more transparent and would be submitted in a timely fashion.

APPENDIX A LIST OF WITNESSES

Associations and Individuals	Date	Meeting
Department of Fisheries and Oceans	21/11/2002	4
Nadia Bouffard, Director, Atlantic Affairs Division		
Patrick Chamut, Assistant Deputy Minister		
Fish, Food and Allied Workers Union	10/12/2002	8
Earle McCurdy, President		
Government of Newfoundland and Labrador		
Hon. Gerry Reid, Minister of Fisheries and Aquaculture		

REQUEST FOR GOVERNMENT RESPONSE

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

A copy of the relevant Minutes of Proceedings (*Meetings Nos. 4, 8, 11 and 20*) is tabled.

Respectfully submitted,

Tom Wappel, M.P.
Chair

MINUTES OF PROCEEDINGS

Thursday, February 27, 2003
(Meeting No. 20)

The Standing Committee on Fisheries and Oceans met *in camera* at 11:19 a.m. this day, in Room 536, Wellington Building, the Chair, Tom Wappel, presiding.

Members of the Committee present: John Cummins, Georges Farrah, Dominic LeBlanc, Bill Matthews, Carmen Provenzano, Jean-Yves Roy, Peter Stoffer, Tom Wappel, Bob Wood.

In attendance: From the Library of Parliament: François Côté and Alan Nixon, research officers.

Pursuant to Standing Order 108(2), the Committee resumed its study of the implications of extending Canada's exclusive Economic Zone to include the Nose and Tail of the Grand Banks and the Flemish Cap (See *Minutes of Proceedings, Thursday, November 7, 2002, Meeting No. 2*).

The Committee proceeded to the consideration of a draft report.

It was agreed, — That the draft report, as amended, be adopted.

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

It was agreed, — That the Chair present the report to the House.

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

It was agreed, — That the Clerk of the Committee make the necessary arrangements for a press conference to be held after the tabling of the report at a time to be determined by the Chair.

It was agreed, — That the report be translated into the languages of the member countries of NAFO.

At 11:53 a.m., the sitting was suspended.

At 11:56 a.m., the sitting resumed.

Pursuant to Standing Order 108(2), the Committee resumed consideration of its study of aquaculture in Canada (*See Minutes of Proceedings, Thursday, November 7, 2002, Meeting No. 2*).

The Committee resumed consideration of a draft report.

At 12:42 p.m., the Committee adjourned to the call of the Chair.

Jeremy LeBlanc
Clerk of the Committee