



**HOUSE OF COMMONS
CANADA**

ATLANTIC FISHERIES ISSUES: MAY 2003

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

**Tom Wappel, M.P.
Chairman**

November 2003

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THE STANDING COMMITTEE ON FISHERIES AND OCEANS

has the honour to present its

SEVENTH REPORT

Pursuant to Standing Order 108(2), the Committee has studied Atlantic fisheries issues and is pleased to report as follows:

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INTRODUCTION

On January 30, 2003, the Fisheries and Oceans Committee adopted the First Report of its subcommittee on Agenda and Procedure, which recommended, "that the Committee undertake a study into issues related to the Atlantic fishery." The Committee agreed that the study be broad rather than narrow in scope. Further to that decision, on February 13, 2003, the Committee adopted the Second Report of its subcommittee on Agenda and Procedure, which recommended, "that, in relation to its study on the Atlantic fishery, the Committee travel to the Atlantic provinces."

From May 5 to 9, 2003, the Standing Committee on Fisheries and Oceans travelled to Eastern Canada and held meetings in Gaspé, QC, St. John's, NL, Halifax, NS, and Moncton, NB. A further meeting was held in Ottawa on May 14, 2003 to hear additional witnesses.

The Committee identified the following five core issues for the focus of its visit:

- The Atlantic Fishery Policy Review (AFPR);
- The Fleet Separation Policy, the owner-operator principle, the concentration of licenses, and the corporatization of public resources;
- The recent ministerial decision to close the cod fishery in the Gulf of St. Lawrence and northeast of Newfoundland and Labrador;
- The management of marine mammals and the recovery of depleted fish stocks; and,
- The role and the state of DFO science.

Witnesses took advantage of the visit to bring a number of other issues, some new and some revisited, to the attention of the Committee. These included:

- DFO's consultation process in general;
- Snow crab allocation for 2003;
- Environmental issues including the development of a quarry and marine terminal in the Digby Neck area of Nova Scotia, the effect of the Confederation Bridge on shellfish stocks, seismic exploration, and marine dumping of munitions; and

- Conservation of Atlantic salmon.

ISSUES

Atlantic Fisheries Policy Review

Witnesses expressed concerns about the *Atlantic Fisheries Policy Review* (AFPR), relating both to process and content. For example, there appears to be a contradiction between the Department's intentions and its actions. While the draft Policy Framework Document, *The Management of Fisheries on Canada's Atlantic Coast*, states "the government will continue to replace strict top-down management with co-management," the Department continued to act in its traditional command and control mode in 2003.

Witnesses also described an "elitist" philosophy, which seemed to exclude the input of stakeholders. An example, although not directly related to the Department, is the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) process that has recently designated two cod populations respectively as "endangered" and "threatened." This has implications for the management of these populations under the *Species at Risk Act* (SARA). Despite the affirmation in the draft Atlantic Fisheries Policy Framework that resource users will be allowed to play a larger role in decision making and to take greater responsibility for resource management decisions, this is not reflected in the COSEWIC/SARA process, even though it will have serious consequences for fishing communities. These processes are viewed as eroding the authority of the Minister of Fisheries and Oceans.

Another issue concerns the Fleet Separation Policy.¹ Although this policy is regarded as a cornerstone of the inshore fishery, it is not mentioned by the draft Policy Framework. Witnesses recommended that a new Atlantic Fisheries Policy Framework (AFPF) reiterate the government's commitment both to the fleet separation policy and to the owner-operator principle and that the AFPF should identify three areas where the owner-operator principle could be made more flexible without undermining the intent of the policy:

- Temporary arrangements to facilitate intergenerational transfers;
- Partnering between heads of enterprises; and

¹ In 1979, the Department of Fisheries and Oceans developed what became known as the Fleet Separation Policy in response to concerns in Atlantic Canada about corporate concentration of fishing rights. One of the objectives of the policy was to separate the harvesting and processing sectors of the industry, particularly in the inshore fisheries where licence holders are restricted to using vessels less than 19.8m (65') LOA. The intent was that fish processing companies would not be able to own fishing licences or to establish vertically integrated operations. The specifics of the policy are laid out in Section 15 of the *Commercial Fisheries Licensing Policy for Eastern Canada*, 1996.

- Qualified designated operators for heads of enterprises with a long-term attachment to the industry.

Another deficiency of the proposed Atlantic Fisheries Policy Framework identified by a witness is that it addresses only the harvesting side of the fishing industry even though the processing industry is a primary stakeholder, especially in light of its involvement with the development of the shellfish industry. Most of Canada's production is exported and the global marketplace places significant demands on the continuity of food supply, food safety and traceability. In the view of the witness, the processing sector should therefore be considered an integral part of the strategic development of the Atlantic fishery industry.

Some witnesses noted that, at the time of discussions on the Atlantic Fisheries Policy Review, they had asked that the powers of the Minister be clearly set out in the Policy in order that it be known when and how he can act. In fact, the Minister's powers are set out in the *Fisheries Act*. Section 7 of the *Fisheries Act* gives the Minister the absolute discretion to issue fishing licences. This degree of power is unique amongst ministers of Canada's government. Section 43 gives the Governor in Council (rather than the Minister directly) the power to make regulations affecting virtually all aspects of the management of fisheries. However, sections 34 to 42 also oblige the Minister to protect fish stocks and their habitats. It must be kept in mind, however, that the resource belongs to the people of Canada and that the government is the steward of the resource on their behalf.

A number of witnesses proposed models for the future development of the fishery. These included, on the one end of the scale, the Icelandic model, where the day-to-day management of the fishery is left in the hands of the industry and where the Ministry, the Directorate of Fisheries and the Marine Research Institute are responsible for policy, setting total allowable catches (TACs), monitoring and enforcement and science, but do not micromanage the industry. The Icelandic model, however, is based on the individual transferable quota (ITQ) system, which is not accepted in many fisheries in Canada. Other witnesses advocated community-based management or co-management as an alternative to ITQ-based management. Although community-based management has merits, it may also have drawbacks, particularly as it may diminish the ability of the direct stakeholders, the fishermen, to conduct their business as they best see fit. The Committee agrees, however, that a model or vision for the development of the fishery is a subject that deserves further serious discussion.

Finally, on this trip as on many others, we have heard from witnesses who have told us that, while DFO consults, it does not listen. The Committee urges the Department to make its discussions meaningful.

Recommendation 1

The Committee agrees that these issues require serious consideration and therefore recommends:

That before finalizing the Atlantic Fisheries Policy Framework, the Department of Fisheries and Oceans conduct a further round of direct, timely and meaningful consultations with stakeholders, including public forums with fishermen themselves. The Department should complete this round no later than May 31, 2004.

Fleet Separation Policy

In 1979, the Department of Fisheries and Oceans introduced what became known as the Fleet Separation Policy, in response to concerns in Atlantic Canada about corporate concentration of fishing rights. One of the objectives of the policy was to separate the harvesting and processing sectors of the fishing industry, particularly in the inshore fisheries (vessels less than 19.8 m (65') LOA). Under the policy, fish processing companies would not be allowed to own fishing licences or to establish vertically integrated operations. The intent was that the benefits of the fishery should be broadly shared up and down the coast.

The Committee heard strong support for not only maintaining the Fleet Separation Policy but also for closing loopholes that have contributed to the erosion of the owner-operator and fleet separation principles. There is an overwhelming desire to maintain the fishing industry anchored to communities and not to allow concentration of the industry in the hands of a small number of corporate investors to the detriment of social and economic well-being of coastal communities.

Loopholes, such as trust agreements, undermine the intent of the fleet separation and owner-operator principles by separating ownership of the title of fishing licences from the "beneficial use" of the licence. Witnesses maintained that such loopholes could be readily closed by making the owner-operator and fleet separation policies part of the regulations under the *Fisheries Act*.

A somewhat related issue was raised by the Association québécoise de l'industrie de la pêche. The share of northern shrimp landed in Québec has fallen from a traditional value of 20% to 5%, and possibly as little as 2% of the total harvest. A major factor in this was Clearwater's sale of its processing plant in Matane, QC, to a group of investors, while keeping the boats that it used to harvest shrimp in the North and its licences. Because Clearwater kept an address in Québec, it appears that there are still nominally two major shrimp permits in Québec; however, the shrimp caught under those licences is not destined for Québec but is landed elsewhere.

The Committee believes strongly that the economic and social benefits of fisheries resources should flow to adjacent and dependent coastal communities rather than to absentee investors. However, it also recognizes that in some circumstances it may be beneficial for fishermen to establish their own processing operations either individually or as cooperatives. It is essential, however, that any such “flexibility” be limited to prevent excessive corporate concentration of the resource.

Recommendation 2

The Committee recommends:

That the loopholes in the owner-operator and fleet separation policies described previously be closed by making the appropriate regulations under the *Fisheries Act*, so as to prevent undue corporate concentration of the resource.

Closure of Newfoundland and Labrador and Northern Gulf of St. Lawrence Cod Fisheries

On April 24, 2003, the Minister of Fisheries and Oceans closed cod stocks in the Gulf of St. Lawrence and northeast of Newfoundland and Labrador. Earlier this year, the Newfoundland and Labrador All-Party Committee on the 2J3KL and 3Pn4RS Cod Fisheries had recommended against a complete closure of these fisheries in its report *Stability, Sustainability and Prosperity, Charting a Future for Northern and Gulf Cod Stocks*, tabled on March 17, 2003. The Standing Committee on Fisheries and Oceans supported, in particular, the first two recommendations of the All-Party report which called on the government not to impose a moratorium on the 2J3KL and 3Pn4RS cod stocks and instead to implement a series of measures to assist with the recovery of both stocks.

In addition, the Fisheries Research Conservation Council (FRCC), the Minister’s own arm’s-length advisory body, also recommended against complete closures of these stocks, arguing that such action would likely do more harm than good. In the view of the FRCC, the modest presence of fishermen was desirable for stewardship, for responsible fishing, and to gather intelligence about what was happening on the water.

During the Committee’s hearings in Atlantic Canada, many witnesses criticized the moratorium on these fisheries and asked that the decision be revisited. They pointed to the hardship inflicted on fishing communities and to the strain placed on the relationship between the governments of Canada and Newfoundland and Labrador.

Witnesses also asked for measures to ease the impact of the closures, including extension of EI benefits, an early retirement program and special adjustment and assistance programs geared to addressing the special needs of women. Other witnesses argued for a continuation of recreational fishing opportunities.

The Committee stands by its earlier position, supporting the Newfoundland and Labrador All-Party Committee recommendations for an index and sentinel fishery only in 2J3KL and for a limited, hook and line, commercial fishery in the northern Gulf of St. Lawrence. The Committee notes that these recommendations closely parallel those of the FRCC. Both of these bodies recommended other significant conservation measures to rebuild the stocks.

A number of witnesses argued in support of a recreational cod fishery in Newfoundland. Although, the Committee supports recreational fishing in general, recognizing that there is a public right to fish and that the recreational fishery makes a valuable contribution to the economy, the Committee agrees with both the All-Party Committee and the FRCC that recreational fishing should not be allowed on the Newfoundland and Labrador and northern Gulf cod stocks until such time as they have recovered sufficiently to permit a modest commercial fishery.

Recommendation 3

The Committee recommends:

That the Minister of Fisheries and Oceans revisit his decision to impose a moratorium on the 2J3KL and 3Pn4RS cod stocks and that the Minister give serious consideration to the conservation measures recommended by the Newfoundland and Labrador All-Party Committee and the Fisheries Resource Conservation Council.

Marine Mammals

The large populations of seals, particularly harp and hooded seals and increasingly of grey seals in the Gulf of St. Lawrence, remains a major concern. The Standing Committee on Fisheries and Oceans addressed the issue of seals in June 1999 in *The Seal Report*.² In this report the Committee made a series of recommendations covering science, barriers to trade, regulations, public awareness, trade and promotion, management plans, and monitoring and enforcement.

The first recommendation was that the government establish an expert panel to be tasked to evaluate the state of scientific knowledge concerning seals and to develop a long-term strategic reduction and utilization plan. That panel submitted its own report³ in the fall of 2001 with a series of recommendations focused primarily on the scientific and technical aspects of seal management.

² Standing Committee on Fisheries and Oceans, *The Seal Report*, June 1999.

³ Dr. Ian McLaren et. al., *Report of the Eminent Panel on Seal Management*, Communications Branch, Fisheries and Oceans Canada, Fall 2001.

The FRCC has repeatedly raised concerns over the impact of seal predation on the recovery of cod stocks and has recommended both seal exclusion zones and the reduction of up to 50% of seal populations in specific areas.

During our meetings on the East Coast, we heard many of the same concerns raised this time that we heard four years ago. For example, some witnesses urged that the Canadian government should pressure the United States to open its markets to Canadian seal products and that the government provide support to the industry, especially with assistance on marketing and exports. There is no doubt that there are significant opportunities. For example, with the increasing interest in health food supplements, there is potential for seal oil to be promoted as a source of Omega-3 fatty acids. The U.S. *Marine Mammal Protection Act*⁴ (MMPA), however, creates a substantial barrier to obtaining access to the U.S. market. In fact, the Committee recommended in its 1999 report that Canada commit itself to removing the barriers within the U.S. MMPA to seal products. The Committee also recognizes that marketing seal products has to be approached carefully due to potential public concerns. Discussions with officials during the Committee's visit to Brussels in September 2003 indicated that aggressive attempts to promote seal products in European markets would likely be counterproductive.

Witnesses also cautioned that while there should be a clear, decisive and cooperative management plan for the industry that recognizes the viability and vibrancy of the industry, the plan must also be timely and stand up to public scrutiny. The TAC should be such as to not saturate the market and depress prices for seal products.

The Committee believes that the management of seal populations has to be approached through an ecosystem management approach, as espoused by the draft Atlantic Fisheries Policy Framework. (The AFPF designates an ecosystem management approach as "one of the four policy strategies calculated to ensure that conservation is the paramount priority for resource management and that all fishing activities are conducted at sustainable levels.") The Committee observes that Iceland and Norway are already moving actively to incorporate marine mammals into an ecosystem approach. Iceland, for example, is including the roughly 45,000 minke whales found in its waters in its modeling of the marine ecosystem. The Committee stands by the recommendations made in its 1999 report and calls on the Government of Canada to support an ecologically and economically sustainable sealing industry.

⁴ (U.S.) *Marine Mammal Protection Act of 1972* (16 U.S.C. 1361-1407).

Recommendation 4

The Committee recommends:

That the Government of Canada actively promote the growth of a sustainable seal harvest by working with the sealing industry to expand markets in order to enhance economic opportunities in Atlantic Canada and Quebec.

Rebuilding the Atlantic Fisheries

A number of witnesses emphasized the need to quickly get on track to rebuild groundfish stocks. They offered a variety of proposals including:

- Developing a multi-year recovery strategy in consultation with the industry;
- Using more selective fishing gear that would allow juvenile cod to escape;
- Establishing large marine protected areas on the Grand Banks;
- Establishing a 3L eco-zone extending west from longitude 50° where, except for crab fishing, all other fishing would be confined to the territorial sea and fishing for cod would be restricted to handline;
- Establishing closed areas that protect the migratory cycle to address “loopholes” such as cod by-catch in other fisheries;
- Managing the capelin fishery taking into account that this is a major prey species for cod and, in particular, ending the capelin roe fishery;
- Establishing wild cod “catch, grow-out and release” programs for the enhancement of wild cod stocks.

The Committee believes that DFO should investigate the feasibility and environmental sustainability of wild cod catch, grow-out and release as a means of enhancing wild cod stocks.

The Committee notes that the Minister of Fisheries and Oceans already has the responsibility for conserving fish stocks and their habitat under the *Fisheries Act*. Under the *Species at Risk Act*, however, when a population is listed in Schedule I of the Act, the Minister is obliged to develop a strategy for the recovery of that population.

Licence Buyout

A number of witnesses judged that there were still far too many groundfish licences for the resource to support. The Committee agrees but observes that the effectiveness of previous buyouts has been undermined by the failure to deal with inactive licences.

Recommendation 5

The Committee recommends:

That the Department of Fisheries and Oceans conduct another round of groundfish licence buyouts; and

Recommendation 6

The Committee recommends:

That the Department of Fisheries and Oceans consider the feasibility of cancelling groundfish licences that are deemed to have been inactive for two or more fishing seasons.

Foreign Overfishing on the Nose and Tail of the Grand Banks

The Committee has addressed this issue in two previous reports^{5, 6} and will therefore not report on it in detail here, except to say that we found that there is still strong support for the concept of Custodial Management. Another approach that appears to be gaining some ground is the concept of using Canada's rights over its continental shelf out to 350 nautical miles to place limits on the damage that may be caused to the seabed by dragging.

DFO Science

The Department of Fisheries and Oceans is one of 10 principal "science based" departments within the federal government. Many of the Department's activities depend on science and there are about 1,600 science staff within its total workforce of approximately 10,000 persons (including the Canadian Coast Guard).

One of the major areas of scientific activity supports fisheries management, not only in terms of stock assessment, but also in terms of activities such as basic biology,

⁵ Standing Committee on Fisheries and Oceans, *Foreign Overfishing: Its Impacts and Solutions*, June 2002.

⁶ Standing Committee on Fisheries and Oceans, *Custodial Management Outside Canada's 200-mile Limit*, March 2003.

population dynamics, oceanography and so on. While there is general agreement that sound science is fundamental to competent modern fisheries management, there are, nevertheless, continuing areas of concern with respect to DFO science. Many of the same issues have been raised during previous Committee hearings. At the same time, DFO faces the challenge of the increase in number and in complexity of issues affecting fish, fish habitat and the oceans.

Some witnesses questioned the independence of DFO science. Many witnesses believe that there is a culture of conformity where DFO scientists are reluctant to speak out or to “rock the boat” and that they are instead encouraged to “keep their heads down.”

One witness, expressed the view that the DFO Science Branch was “too beholden” to Fisheries Management and that it should be more involved with other branches of DFO such as Oceans. The witness also thought that the profile of “marine environmental science” should be elevated within DFO.

There is also a perception that there is a lack of communications, not only between DFO scientists and fishermen, but also between DFO Science and the other branches of DFO. One of the consequences is that there is a “disconnect” between the fishermen and the scientists. Consequently, fishermen do not trust what the scientists say.

Specific complaints included the fact that Newfoundland and Labrador’s share of DFO science funding is proportionately far less than the area of ocean for which the region is responsible and that snow crab fishermen, who help to finance research on the crab stocks, do not get the same information as the Minister.

Various solutions were proposed to the Committee. The most fundamental was that DFO science should have the funding necessary to carry out the research required for sound fisheries management and to ensure the survival of the fishery. Another recommendation was that DFO should use an independent body to carry out stock assessments.

Several suggestions were made to help bridge the gap between scientists and fishermen. For example, it was suggested that scientists make better use of fishermen as their “eyes and ears” out on the water. It was also suggested that DFO utilize fishermen to help monitor fish resources and environmental conditions. Indeed, during the Committee’s visit to Iceland in September 2003, we learned that scientists from the Icelandic Marine Research Institute routinely spend time on fishing boats and employ fishermen to gather data. To some extent, the sentinel fisheries, in addition to providing valuable information, are already helping to bridge the divide between fishermen and scientists.

Other proposals advocated creating positions within DFO the function of which would be to liaise between the different branches and improve communications, and understanding and allowing scientists to present ideas directly to the Committee or the public.

One tangible initiative that is already helping to bridge the gap between scientists and fishermen is the Fishermen & Scientists Research Society (FSRS), which was incorporated in January 1994 as a non-profit organization, with the primary goal of collaborative research and coeducation among fishermen and scientists. To date, the FSRS has proven an extremely effective vehicle for promoting cooperation between fishermen and scientists.

Recommendation 7

The Committee recommends:

That the Department of Fisheries and Oceans properly fund scientific research and that results be made available both to fishermen and the public as soon as they are available.

Recommendation 8

The Committee recommends:

That the Department of Fisheries and Oceans provide some financial support to the Fishermen & Scientists Research Society with a view to promoting mutual understanding between scientists and fishermen; and

That the Department of Fisheries and Oceans consider promoting similar societies in other regions of the country.

Recommendation 9

The Committee recommends:

That, where possible, the Department of Fisheries and Oceans encourage the use of sentinel fisheries and that it ensure that they are adequately funded.

Late Announcement of Fishing Plans

A number of witnesses complained about the late announcement of fishing plans, often after the anticipated start of the season. These delays cause uncertainty for both harvesters and processors. This is a perennial problem on which the Committee has

commented before (for example in its 1998 Prince Edward Island Report⁷). **Far from improving, the situation appears to be getting worse.**

In view of the disruption caused, the Committee finds it deplorable that management decisions on fishing plans come after the fact.

Recommendation 10

The Committee therefore recommends:

That the Department of Fisheries and Oceans establish multi-year fishing plans that would be clearly understood by all the participants and which would be subject to adjustment only in the event of changing scientific information about the status of the stock.

This problem appears to be symptomatic of the overly centralized, hierarchical control structure within DFO. The Committee has previously recommended⁸ that DFO reallocate resources from Ottawa to the regional offices and that the regions be given the appropriate authority to manage resources and make decisions closer to the source.

Recommendation 11

The Committee recommends:

That there be a reallocation of human and financial resources from the Department of Fisheries and Oceans' national headquarters in Ottawa to the five regional offices and that those five regional offices be given the appropriate managerial authority.

Snow Crab Allocations for 2003

The Gulf snow crab fishery continues to be controversial. On May 2, 2003, the Minister of Fisheries and Oceans announced a new Three-year Snow Crab Management Plan for the Southern Gulf of St. Lawrence. This plan significantly reduced the quota for snow crab in Crab Fishing Area (CFA) 12 and, at the same time, provided 15% of the total allowable catch (TAC) to core fishermen and groundfish-dependant fishermen on a permanent basis. In 2003, this amounted to 2,167t.

One of the rationales for this decision was that the new access would be used to reduce effort in the lobster and groundfish fisheries. In addition, fishing organizations

⁷ Standing Committee on Fisheries and Oceans, *The Prince Edward Island Report*, December 1998, p. 9.

⁸ Recommendation 1 of the 1998 *West Coast Report* and recommendation 21 of the 1998 *East Coast Report*.

would be involved in administering this new access, in the same way as in the previous year, 2002, including a rotation of access among fishermen.

The new access to the non-traditional crabbers was divided according to traditional shares (adjusted to include the amalgamation of CFA 18 into CFA 12 in 2003). The shares broke down as follows: New Brunswick, 56.5981%; Quebec, 32.2439%; Nova Scotia, 6.0836%; and in Prince Edward Island, 5.0743%.

For 2003, based on a TAC of 17,148 tonnes, the following amounts of snow crab were allocated to core fishermen and groundfish-dependant fishermen:

New Brunswick	1,227t
Quebec	699t
Nova Scotia	132t
Prince Edward Island	110t

The Association des crabiers acadiens objected to the Minister's decision to grant a permanent share of snow crab in Area 12 to the non-traditional fishermen, thereby permanently increasing the number of participants in the snow crab fishery.

When the Association appeared previously before the Committee in April 2003, it explained that its objection to permanent sharing was based on conservation concerns. The traditional industry has invested millions of dollars in scientific research activities, conservation and stock management practices.

At the earlier meeting, the Association stated that increasing the number of permanent licences would have a disastrous effect on the stock, because this did not take into account the natural abundance cycles of the resource. It explained that, while new licence-holders might be profitable in the short term without affecting the stock, in years of low biomass, new participants would have insufficient quota to be profitable and would therefore pressure the Minister to maintain quotas at excessive levels.

The Association recommended maintaining a temporary snow crab sharing formula in Area 12, with an initial 20,000 tonne allocation awarded to traditional and native fishermen. Over this threshold, an initial temporary allocation of 2,000 tonnes would be awarded to non-traditional fishermen, and any amount beyond the combined threshold and temporary allocation would be divided 70% to traditional fishermen and 30% to the non-traditional fishermen.

The Botsford Professional Fishermen's Association (BPFA) recommended that the Gulf area of New Brunswick be divided into regions for distribution of allocation and that the area next to the Confederation Bridge be managed by the BPFA. They felt that core fishermen should themselves be responsible for the co-management, conservation,

stability and employment in the snow crab (and rock crab) fishery in partnership with DFO and buyers.

They took the position that fishermen's organizations such as the Maritime Fishermen's Union, which takes a 15% levy of gross revenues for distributing access to core fishermen, should not be allowed to profit from any fisheries resource, arguing that 15% was excessive for administration.

The MFU explained that the "administration cost" included the cost of dockside monitoring and observers at sea, as well as actual administration, all of which added to close to 15%.

For its part, the MFU was not pleased with share of Area 12 snow crab allocated to the Gulf New Brunswick inshore fleet in the new Three-year Snow Crab Management Plan. The allocation was less than the average New Brunswick inshore share of temporary allocations of 8%⁹ and less than the 12.5% share they had asked for in an earlier proposal to the Minister. Although, according to the MFU, the Gulf New Brunswick inshore fleet was far from satisfied with parts of the plan, it was still prepared to work within it. The MFU also stated that permanent sharing was not a conservation issue, but was about equity and sharing.

The MFU offered advice with respect to the plan including:

- The plan must be upheld if confidence is to be retained in the rule of law with regard to the implementation of Canadian fisheries policy. (This comment relates mostly to the violence and property damage that occurred following the announcement of the plan.)
- Any increases to the Area 12 TAC must be allocated according to the sharing formula.
- Government and industry should compensate for the loss of the Big Cove crab vessel.
- All involved stakeholders in the New Brunswick crab fishery should commit to maintaining traditional patterns of processing and marketing Area 12 snow crab.

A witness representing the snow crab processing industry highlighted concerns over stability of the industry. Two main factors have affected stability. One is that the late announcement of fishing plans impedes the industry's ability to prepare for the upcoming season and makes the banks reluctant to provide financing because of the uncertainty. The other is that the allocation of part of the resource to the non-traditional crabbers, who

⁹ This average is calculated only for the years 1995, 1996, 1997 and 2001 when sharing took place.

are likely to sell their catch to the highest bidder, has undermined the stability of supply of raw material to the processors.

The P.E.I. Fishermen's Association was very unhappy with its allocation of 110 tonnes of snow crab under the new three-year plan. According to the Association, the allocation represented a decrease of 64% over the previous year,¹⁰ was grossly unfair and spoke loudly to the need for a fisheries policy review.

Recommendation 12

The Committee recommends:

That the Minister of Fisheries and Oceans examine:

- **whether the creation of permanent shares to the non-traditional crabbers is consistent with the conservation and viability of the resource;**
- **whether the current distribution of the 15% permanent share allocation among the non-traditional crabbers is equitable; and**
- **whether giving organizations a share of the catch to distribute promotes stability of the industry; and**

The Committee urges the Minister in the strongest possible terms to consider these issues early and carefully so as to avoid a repetition of the violence that occurred in 2003.

ENVIRONMENTAL ISSUES

Quarry and Marine Terminal, Digby Neck

There is a proposal to develop a 380-acre basalt quarry with the integral construction of a marine terminal at Whites Cove on Digby Neck. Witnesses raised concerns over the potential environmental effects of the project that included:

¹⁰ Part of this decrease can be attributed to an overall decrease in the TAC of 22%.

- The effects of blasting on marine mammals and fish;
- The cumulative effects of siltation on fish stocks including lobsters, periwinkles and sea urchins;
- The effect of the marine terminal on the navigation of the small boats that frequent the area;
- The potential for introduction of alien species via contaminated ballast water brought in by ships visiting the terminal;
- The necessity for an evaluation of the socio-economic impacts of the project on the local economy, which is based largely on fisheries.

The environmental assessment of this project was started on February 17, 2003.¹¹ The Committee agrees with the witnesses that these issues are important and that the Department of Fisheries and Oceans, as the responsible authority, should take them into account as the assessment proceeds.

Confederation Bridge

A number of witnesses raised concerns about the effects of the Confederation Bridge between New Brunswick and Prince Edward Island on fisheries, particularly lobster. Concerns were also raised over wastes dumped by processing plants into the Northumberland Strait. A DFO official confirmed that, in the centre part of the Northumberland Strait, there had been significant declines especially of lobster, but also other species, including scallops, but that it was difficult to determine whether this was a direct cause and effect relationship with the bridge because there were also other factors at play.

Recommendation 13

The Committee recommends:

That the Department of Fisheries and Oceans conduct a scientific study to determine whether the Confederation Bridge is affecting the surrounding marine environment and, if so, what actions can be taken to mitigate the impacts.

¹¹ Federal Environmental Assessment Index Reference Number: 37211.

Seismic Exploration

A number of witnesses raised concerns over seismic exploration, particularly in the near-shore areas off the west coast of Cape Breton and in the Sydney Bight. These are highly productive fishing waters, which include important spawning and nursery areas and are reported to be home to some endangered species.

According to one of our witnesses, despite all the work on marine oil and gas development around the world, there is still not sufficient evidence that the shock waves from seismic testing are not destructive and do not have an effect on marine life. There is, however, agreement that seismic testing does have sub-lethal effects on fish and invertebrates such as stress, hearing loss, and damage to internal organs, particularly the swim bladder.

The Committee appreciates that the development of oil and gas resources is important both to the Canadian and local economies. At the same time, it is critical to protect fisheries resources. In order to do this, it is essential to have the fundamental scientific information required to assess the impact of oil and gas exploration on fisheries resources in particular and the marine environment in general.

The Committee has previously expressed its concerns over oil and gas exploration in its 2001 *Report on the Oceans Act*. In that report, a majority recommended among other things:

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

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

That the federal government, in cooperation with the Province of Nova Scotia, appoint a qualified person representing the fishing community to the Canada-Nova Scotia offshore Petroleum Board to represent the interests of fishing communities and the fisheries resources on which they depend.¹²

Marine Dumping of Munitions

Myles and Associates expressed concern to the Committee over the lack of action by, and silence from, government departments on the issue of ocean dumping of munitions, particularly the chemical warfare agents Mustard Gas and Lewisite. In the view

¹² Mr. Brian Giroux was appointed to the CNSOPB, in July 2002.

of the witnesses the lack of information on nautical charts about the location of dumpsites and the opening of areas believed to contain munitions to oil and gas exploration present a hazard to the public, to fishermen and to the environment.

They asked for: the immediate charting of suspected chemical and conventional weapons dumpsites on civilian navigation charts; the establishment of exclusion zones for bottom fishing and petroleum exploration around charted and suspected sites until the Department of National Defence is able to provide assurance that the locations are safe; and for research by independent agencies on the effects of chemical and conventional munitions and their breakdown products in the marine environment.

Recommendation 14

The Committee recommends:

That the Department of Fisheries and Oceans cooperate with the Department of National Defence in locating weapons dumpsites and that it encourage National Defence to provide information on dumpsites in order for the Canadian Hydrographic Service to update its nautical charts.

Atlantic Salmon Conservation

The recreational fishing industry of wild Atlantic salmon currently contributes well over \$200 million each year to the regional economies of Quebec and Atlantic Canada and supports thousands of good, permanent jobs. Cities, provinces, and businesses actively present salmon fishing as a drawing card to attract tourists, customers and employees to these regions.

According to the Atlantic Salmon Federation (ASF), this fishery faces major challenges and needs leadership and support. Over the past several decades, the populations of wild Atlantic salmon, brook trout and other freshwater fish species have declined significantly and in some cases have been extirpated, undermining the important social and economic benefits that the recreational fishery brings to Canada.

The ASF believes that there is great potential to protect this social and economic asset, and that the federal government cannot afford to overlook the recreational fishing industry for wild salmon and other native species; however, immediate leadership and action are required.

The ASF believes that the centrepiece of an initiative to protect and restore wild Atlantic salmon rests in a significant new thrust to conserve, restore and manage fresh water fish habitat and that there is an existing solid legislative and policy base, which

includes the *Fisheries Act* and the Department of Fisheries and Oceans 1986 Policy for the Management of Fish Habitat.

The ASF is calling on the federal government, through DFO, to lead a coordinated effort with the Atlantic provinces and Quebec to link policy instruments and programs and to build on the cadre of existing provincial and NGO programs.

Accordingly, the ASF proposed that the federal government play a leading role by:

- Creating an Atlantic salmon endowment fund in Atlantic Canada and Quebec, with interest from the fund being used to assist conservation programs and community stewardship groups;
- Strengthening volunteer community stewardship of fish and fish habitat in the Atlantic provinces and Quebec according to DFO and federal-provincial policies;
- Providing A-base funding to the core budget of DFO to strengthen its capacity to conduct research and conservation programs.

The Committee recognizes the social and economic value of recreational fishing. It believes that a great deal more can be accomplished through the partnering of government agencies with committed volunteer organizations than by government acting alone. The Committee also believes that the protection of fish and fish habitat lies at the heart of DFO's responsibilities and has long supported adequate funding for scientific research related to conservation and habitat stewardship.

Recommendation 15

The Committee therefore recommends:

That the federal government establish, in cooperation with the Atlantic Salmon Federation, a wild Atlantic salmon endowment fund to be used to assist volunteer organizations to implement Atlantic salmon conservation and habitat stewardship programs.

Recommendation 16

The Committee recommends:

That the federal government use the Pacific Salmon Endowment Fund as its model to establish the equivalent fund for wild Atlantic salmon; and

That the Department of Fisheries and Oceans increase permanent funding for research directed toward conservation of fish and fish habitat, particularly with respect to wild Atlantic salmon.

LIST OF RECOMMENDATIONS

Recommendation 1

The Committee recommends:

That before finalizing the Atlantic Fisheries Policy Framework, the Department of Fisheries and Oceans conduct a further round of direct, timely and meaningful consultations with stakeholders, including public forums with fishermen themselves. The Department should complete this round no later than May 31, 2004.

Recommendation 2

The Committee recommends:

That the loopholes in the owner-operator and fleet separation policies described previously be closed by making the appropriate regulations under the *Fisheries Act*, so as to prevent undue corporate concentration of the resource.

Recommendation 3

The Committee recommends:

That the Minister of Fisheries and Oceans revisit his decision to impose a moratorium on the 2J3KL and 3Pn4RS cod stocks and that the Minister give serious consideration to the conservation measures recommended by the Newfoundland and Labrador All-Party Committee and the Fisheries Resource Conservation Council.

Recommendation 4

The Committee recommends:

That the Government of Canada actively promote the growth of a sustainable seal harvest by working with the sealing industry to expand markets in order to enhance economic opportunities in Atlantic Canada and Quebec.

Recommendation 5

The Committee recommends:

That the Department of Fisheries and Oceans conduct another round of groundfish licence buyouts; and

Recommendation 6

The Committee recommends:

That the Department of Fisheries and Oceans consider the feasibility of cancelling groundfish licences that are deemed to have been inactive for two or more fishing seasons.

Recommendation 7

The Committee recommends:

That the Department of Fisheries and Oceans properly fund scientific research and that results be made available both to fishermen and the public as soon as they are available.

Recommendation 8

The Committee recommends:

That the Department of Fisheries and Oceans provide some financial support to the Fishermen & Scientists Research Society with a view to promoting mutual understanding between scientists and fishermen; and

That the Department of Fisheries and Oceans consider promoting similar societies in other regions of the country.

Recommendation 9

The Committee recommends:

That, where possible, the Department of Fisheries and Oceans encourage the use of sentinel fisheries and that it ensure that they are adequately funded.

Recommendation 10

The Committee recommends:

That the Department of Fisheries and Oceans establish multi-year fishing plans that would be clearly understood by all the participants and which would be subject to adjustment only in the event of changing scientific information about the status of the stock.

Recommendation 11

The Committee recommends:

That there be a reallocation of human and financial resources from the Department of Fisheries and Oceans' national headquarters in Ottawa to the five regional offices and that those five regional offices be given the appropriate managerial authority.

Recommendation 12

The Committee recommends:

That the Minister of Fisheries and Oceans examine:

- whether the creation of permanent shares to the non-traditional crabbers is consistent with the conservation and viability of the resource;**
- whether the current distribution of the 15% permanent share allocation among the non-traditional crabbers is equitable; and**
- whether giving organizations a share of the catch to distribute promotes stability of the industry; and**

The Committee urges the Minister in the strongest possible terms to consider these issues early and carefully so as to avoid a repetition of the violence that occurred in 2003.

Recommendation 13

The Committee recommends:

That the Department of Fisheries and Oceans conduct a scientific study to determine whether the Confederation Bridge is affecting the

surrounding marine environment and, if so, what actions can be taken to mitigate the impacts.

Recommendation 14

The Committee recommends:

That the Department of Fisheries and Oceans cooperate with the Department of National Defence in locating weapons dumpsites and that it encourage National Defence to provide information on dumpsites in order for the Canadian Hydrographic Service to update its nautical charts.

Recommendation 15

The Committee recommends:

That the federal government establish, in cooperation with the Atlantic Salmon Federation, a wild Atlantic salmon endowment fund to be used to assist volunteer organizations to implement Atlantic salmon conservation and habitat stewardship programs.

Recommendation 16

The Committee recommends:

That the federal government use the Pacific Salmon Endowment Fund as its model to establish the equivalent fund for wild Atlantic salmon; and

That the Department of Fisheries and Oceans increase permanent funding for research directed toward conservation of fish and fish habitat, particularly with respect to wild Atlantic salmon.

APPENDIX A LIST OF WITNESSES

Associations and Individuals	Date	Meeting
<p>“Association des capitaines propriétaires de la Gaspésie”</p> <p>Gilles Champoux, Technical Adviser Sylvain Samuel, Director General</p> <p>“Association québécoise de l’industrie de la pêche”</p> <p>Jean-Paul Gagné, Director General</p> <p>“Fédération des pêcheurs semi-hauturiers du Québec”</p> <p>Gabrielle Landry, Director General</p> <p>Gaspé Cured Inc.</p> <p>Robert Langlois, Owner</p> <p>“Groupe de travail sur le poisson de fond”</p> <p>Réginald Cotton, Fishermen's Representative</p> <p>“Les morutiers traditionnels de la Gaspésie”</p> <p>Hercule Ruel, Secretary</p> <p>“Regroupement des palangriers et pétoncliers uniques Madelinots”</p> <p>Ghislain Cyr, Fisherman</p>	06/05/2003	32
<p>“Alliance des pêcheurs professionnels du Québec”</p> <p>O’Neil Cloutier, Director Jean-François Martel, Vice-President</p> <p>“Groupe de commerce international Eng.-Hubert inc.”</p> <p>Georges-Henri Hubert, Vice-President and Co-owner</p> <p>“Regroupement des pêcheurs professionnels du Nord de la Gaspésie”</p> <p>André Boucher, Coordinator</p>		33
<p>Fish, Food and Allied Workers Union</p> <p>Earle McCurdy, President</p> <p>Fisheries Crisis Alliance</p> <p>Gus Etchegary, Spokesperson Sandy Sandeman</p> <p>Fisheries Recovery Action Committee</p> <p>Dean Bavington, Member Fred Winsor, Chair</p>	07/05/2003	34

Associations and Individuals	Date	Meeting
Inshore Council of Fish, Food and Allied Workers Union Bill Broderick, President	07/05/2003	34
Marine Institute of Memorial University of Newfoundland Glenn Blackwood, Director		
Memorial University of Newfoundland Richard Haedrich, Professor		
Newfoundland and Labrador Department of Environment Leslie Grattan, Deputy Minister Robert Mercer, Minister		
Newfoundland and Labrador Department of Fisheries and Aquaculture Yvonne Jones, Minister Mike Samson, Deputy Minister Mike Warren, Executive Director		
Newfoundland and Labrador House Assembly Jack Harris, Leader of the NDP Trevor Taylor, Fisheries Critic (Progressive Conservative Party)		
Petty Harbour Fishermen's Cooperative Tom Best, President		
Canadian Sealers Association Tina Fagan, Executive Director		35
Newfoundland and Labrador Wildlife Federation Rick Bouzan, President Arthur Elkins, Chairman, Fisheries Committee		
Non-Core Fishers Committee Wayne Budgell Randy Fleming Mervin Rice Junior Stuckey		
Outdoor Rights and Conservation Association Max Thornhill		
Bay of Fundy Inshore Fishermen's Association Arthur Bull, Coordinator	08/05/2003	36
Coastal Communities Network Scott Milsom, Communications Officer		

Associations and Individuals	Date	Meeting
Guysborough County Inshore Fishermen’s Association Patricia Rhynold, Manager	08/05/2003	36
Legislative Assembly of Nova Scotia John MacDonell, Fisheries Critic (NDP)		
Lobster Advisory Committee, Lobster Fishing Area 34 Ashton Spinney, Chair		
Partnership for Sustainable Development of Digby Neck and Islands Society Ashraf Mahtab, Chair, Legal Committee Carol Mahtab, Secretary		
Sierra Club of Canada — Atlantic Canada Chapter Mark Dittrick, Conservation Chair		
As an Individual Debbie MacKenzie		
Canadian Parks and Wilderness Society — Nova Scotia Chapter Martin Willison, President		37
Dalhousie University Ransom Myers, Chair of Ocean Studies		
Fishermen & Scientists Research Society Patricia King, General Manager		
Myles & Associates Myles Kehoe		
As an Individual Teresa MacNeil		
“Association des crabiers acadiens” Joel Gionet, Spokesperson Robert Haché, Director General	09/05/2003	38
Atlantic Salmon Federation Stephen Chase, Vice-President		
Botsford Professional Fishermen’s Association Donna Murray, Executive Director Pauline Smallwood, Recording Secretary and Herring Coordinator		

Associations and Individuals	Date	Meeting
“Fédération régionale acadienne des pêcheurs professionnels” Jean Saint-Cyr, Director General New Brunswick Seafood Processors Association Angéline Cool, Executive Director Richibucto River Association Gerald Beck, President and Coordinator	09/05/2003	38
Department of Fisheries and Oceans James Jones, Regional Director General, Gulf Region Mikio Moriyasu, Head, Snow Crab Section Ecology Action Centre Mark Butler, Marine Issues Coordinator Maritimes Fishermen’s Union Reginald Comeau, Provincial Coordinator Ron Cormier, President Sandy Siegel, Executive Secretary New Bandon Fishermen’s Association Michel Arseneau Gerald Haché Paul Jagoe P.E.I. Fishermen’s Association Ltd. Rory McLellan, Executive Director Keith Paugh, President		39
Fisheries Association of Newfoundland and Labrador Alastair O’Rielly, President Fisheries Resource Conservation Council Dan Lane, Council Member Fred Woodman, Chairman	14/05/2003	41

APPENDIX B LIST OF BRIEFS

“Alliance des pêcheurs professionnels du Québec”

“Association des capitaines propriétaires de la Gaspésie”

“Association des crabiers acadiens”

“Association des employé(e)s d’usines des produits marins”

“Association des pêcheurs de la M.R.C. de Pabok Inc.”

“Association québécoise de l’industrie de la pêche”

Atlantic Salmon Federation

Bay of Fundy Inshore Fishermen’s Association

Botsford Professional Fishermen’s Association

Canadian Parks and Wilderness Society, Nova Scotia Chapter

Canadian Sealers Association

Coastal Communities Network

Department of Fisheries and Oceans

Ecology Action Centre

“Fédération des pêcheurs semi-hauturiers du Québec”

“Fédération régionale acadienne des pêcheurs professionnels”

Fisheries Association of Newfoundland and Labrador

Fisheries Crisis Alliance

Fisheries Recovery Action Committee

Fishermen & Scientists Research Society

“Groupe de commerce international Eng.-Hubert inc.”

“Groupe de travail sur le poisson de fond”

Jack Harris, MHA

“Les morutiers traditionnels de la Gaspésie”

Lobster Advisory Committee, Lobster Fishing Area 34

John MacDonell, MLA

Debbie MacKenzie

Maritimes Fishermen’s Union

Memorial University of Newfoundland

Myles & Associates

New Bandon Fishermen’s Association

New Brunswick Agriculture, Fisheries and Aquaculture

New Brunswick Seafood Processors Association

Newfoundland and Labrador Department of Environment

Newfoundland and Labrador Department of Fisheries and Aquaculture

Newfoundland and Labrador Wildlife Federation

Non-Core Fishers Committee

P.E.I. Fishermen’s Association Ltd.

Partnership for Sustainable Development of Digby Neck and Islands Society

Petty Harbour Fishermen’s Cooperative

“Regroupement des pêcheurs professionnels du Nord de la Gaspésie”

Regroupment of Fishermen’s Associations of the Lower North Shore

Richibucto River Association

Sierra Club of Canada

Stop 1169 Horse Island Fish Farm

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. 32, 33, 34, 35, 36, 37, 38, 39, 41, 50, 51, 55, 56, 57 and 58*) is tabled.

Respectfully submitted,

Tom Wappel, M.P.
Chairman

**SUPPLEMENTARY OPINION OF THE CANADIAN ALLIANCE
JOHN CUMMINS, M.P.
ANDY BURTON, M.P.**

Atlantic Fisheries Policy Review

Few would deny the need for a review of Atlantic fisheries policy. Even fewer would deny that for the review to be meaningful everything must be on the table. The surprise then is that the most serious shock to fisheries policy management in the Maritimes is not a topic of discussion in the Policy Review. Amazingly the government's decision to transfer hundreds of millions of dollars worth of licences, vessels and equipment out of communities and away from families that have fished the waters of the Maritimes for the past hundred years does not even warrant a mention in the Atlantic Fisheries Policy Review.

On October 22, 2002 Fisheries Minister Thibault advised the Fisheries Committee 90 vessels had been transferred or purchased for aboriginal communities under the Allocation Transfer Program and some 166 vessels were transferred from November 1999 to the end of January 2002 under the *Marshall* Response Initiative. These numbers did not include the licences the government committed to transfer but had not done so as of January 2002. Amazingly, nowhere in the policy review documents is there the acknowledgement that the government's aboriginal fishing policy has changed the landscape of fishing communities and in some cases destroyed a way of life.

Changed Landscape

The seriousness of the shock to fisheries management is revealed in a February 10, 2002 Briefing Note for the Minister — Mr. Thibault is advised that the acquisition of lobster licences has "changed the landscape for some local communities," and that the change was "particularly significant for the villages of Richibucto and Neguac." "In Richibucto," the document advised the Minister, "Big Cove First Nation now has 40 lobster licences, Indian Island First Nation 6 and non-native fishers 39. The number of lobster licences being fished from that port increased from 50 to 85." The Minister is advised of the transfer of 109 lobster licences to bands: "Under the Fisheries Access Program which was introduced following the *Marshall* decision, seventy three LFA 23 and 25 lobster packages have been acquired for Aboriginal organizations. If you add the lobster packages acquired prior to *Marshall* under the Allocation Transfer Program, the number of lobster licences amounts to 109."

Destroying a Way of Life

Fishermen are concerned that their way of life is being destroyed, the February 10th Briefing Note advises the Minister: “[They] would like to know how far that licence retirement will go. They are concerned that the process is destroying a way of life in some coastal communities and create significant upheaval in others. They may further, take the position that the Government of Canada is using the fishery to correct wrongful treatment of Aboriginals that has occurred for the last half millennium.”

A Saturation Point

The Minister is advised in the February 10th departmental note to tell fishermen that the transfer of licences out of the public fishery to aboriginals will end only when the saturation point is reached, when every aboriginal who wants to fish has a licence: “There will be a point however, where saturation is reached. This is due to the fact that there are limited numbers of First Nation members who are able to fish and who will want to participate in the fishery.”

Negative Impact on Non-Native Fishers

A May 8, 2002 Briefing Note for the Minister advised of snow crab transfer in Eastern New Brunswick:

- “Under the *Marshall* Long-term Response Gulf Region has retired 5 midshore snow crab and 79 lobster fishing enterprises.
- The acquisition of snow crab quota has a negative economic impact on non-native fishers in the village of LeGoulet as four of the five licences were retired from this area. This issue has not impacted the MFU.
- In Miramichi Bay, DFO has so far retired most of the inshore lobster enterprises from the Neguac area.
- There will be growing difficulty in acquiring licences so as not to increase the effort.”

Ageing Pool of Non-Native Fishermen

A May 10, 2002 Briefing Note For the Minister, entitled *Implications of the Marshall Decision in Malpeque Bay*, was advised:

- “Traditional commercial lobster fishers from the Malpeque Bay, Prince Edward Island, are growing increasingly frustrated with how DFO is implementing the Marshall decision in providing more access to the local commercial fisheries, most notably lobster.
- Lennox Island First Nation fishes 21 lobster licences in LFA 24 from Lennox Island located in Malpeque Bay. Two other lobster licences in LFA 25 are fished from Higgins Wharf. Aside from lobster, Lennox Island First Nation is allocated to fish 30 metric tonnes of snow crab.
- Abegweit First Nation has 5 communal lobster licences for LFA 24 as well as 30 metric tonnes of snow crab.
- Native council of PEI has 4 communal lobster licences, two in LFA 24 and two in LFA 26A.
- The difficulty in acquiring additional LFA 24 lobster licences to meet future commitments will increase as the pool of older fishers gets smaller ... There remains a pool of only 46 traditional commercial fishers in the area.
- In 2000, Lennox Island had a 20,000 lbs lobster quota for food, social and ceremonial purposes. In 2001 there was no set quota but under their fishing plan each member received only one tag provided they did not participate in the commercial lobster fishery.
- Traditional commercial fishers have the perception that the food, social and ceremonial fishery at Lennox Island is reducing the lobster stock in Malpeque Bay.”

Unauthorized Sale of Landings

A March 2, 2002 draft of the same memo put the illegal sale of lobster in stronger terms: “In the view of many fishers, the food fishery will remain an issue as long as it is conducted outside of the commercial fishing season and the authorized sale of landings continue to take place.”

Marshall Did Not Recognize a Treaty Right to Lobster

The Atlantic Fisheries Policy Review fails to consider the impact of the continued transfer of inshore licences, particularly for snow crab and lobster, to aboriginals. This oversight is all the more reprehensible given the department’s acknowledgement of the difficulties posed by the transfer in Briefing Notes prepared for the Minister.

Equally disturbing is the government's insistence that the transfers were necessary to meet the requirements of the Marshall decision. The government relies on the "devil made me do it" argument for a policy that is seen disruptive and destructive by fishermen and fishing communities. The reality is that no court has identified a treaty right to lobster or snow crab based on the Marshall decisions of September and November 1999. In fact courts have rejected claims that a treaty right to lobster exist. They did it in part on a careful reading of the Marshall decisions and on the evidence provided to the court by the Department of Fisheries and Oceans that aboriginals in the Maritimes had never been actively engaged in a lobster fishery either prior to contact with Europeans or at the time that the Halifax treaties of 1760-61 were entered into.

Consider the following:

Barlow Case: In 1999 immediately following the first Marshall decision a New Brunswick band claimed in Federal Court a treaty right to fish lobster commercially. Department of Justice lawyers representing the Minister of Fisheries rejected the claim, offered to provide detailed evidence to show that aboriginals had not engaged in a lobster fishery at the time the treaties were entered into, and requested that the court follow the test established in Marshall to establish a treaty right. They requested a detailed examination of historical, anthropological and ethno-historical evidence to determine:

- "Whether or not the Applicant Ken Barlow is a member of an aboriginal community which was a signatory to one of the series of 1760 Treaties of Peace and Friendship entered into between the Mi'kmaq people and the Crown? ;"
- "If so, which Treaty is it?"
- "What are the terms of that Treaty?"
- "Are the activities of lobster fishing and trading aspects of the rights recognized by the Treaty?"
- "Was the Applicant Barlow exercising any such right in an area traditionally used by the aboriginal community?" and
- "What is the traditional territory of his aboriginal community?"

The applicant did not pursue the case once these demands were made by the Department of Justice lawyers.

Shubenacadie Case: This Nova Scotia case is being pursued in Federal Court by a group of Nova Scotia aboriginals claiming a right to lobster. The Department of Justice on behalf of the Minister of Fisheries has prepared extensive evidence to show that there was never a aboriginal fishery for lobster either before or at the time the treaties

were entered into. The Minister of Justice offered the defence in Federal Court in Halifax on May 14, 2001 that the aboriginal claim to a treaty right is “historically inaccurate:”

25. “He specifically denies that these Plaintiffs have any constitutionally protected aboriginal or treaty rights to fish lobster in St. Mary’s Bay or at all.
26. He specifically denies that the Plaintiffs, their predecessors or the Mi’kmaq Indians in Nova Scotia fished lobster for food, social or ceremonial purposes before or at the time of European contact in St. Mary’s Bay or at all.
27. He further specifically denies that the plaintiffs, their predecessors or the Mi’kmaq Indians in Nova Scotia fished lobster for a moderate livelihood at the time of the Treaties.
28. He denies that the Treaties include a term providing the Plaintiffs with a right to fish lobster for a moderate livelihood. He further says it was not within the reasonable contemplation of the parties that the plaintiffs be granted a right to fish lobster for a moderate livelihood pursuant to the Treaties.”

Confronted with this irrefutable evidence denying the existence of an aboriginal right to fish lobster, the Shubenacadie Band and the Department of Fisheries and Oceans are considering ending the court case and negotiating an aboriginal right to fish lobster, a right denied by historical evidence.

Simon and Duplessis: Simon and Duplessis were New Brunswick aboriginals who were charged under the Fisheries Act. They claimed a treaty right to harvest lobster. Department of Justice lawyers on behalf of the Fisheries Minister provided evidence that the men did not enjoy a treaty right to harvest lobster. Later in the trial as part of joint statement of fact by both sides **the Crown asked the Court to assume that the accused had a right to lobster.**

It seems clear that the Court was incensed by the concession by the Crown and would have rejected the claim to a right lobster if it had been allowed to decide the issue. In the decision the judge stated:

“The first matter is whether the defendants, as members of the Burnt Church First nation had an aboriginal right to fish lobsters for food, social and ceremonial purposes in the waters of Miramichi Bay. For the purposes of this prosecution, and this prosecution only, the crown asked this court, in the Agreed Statement of Fact, to assume that the defendants had an aboriginal right to fish lobster...

“In the absence of this agreement, it would have been incumbent on the defendants to establish the aboriginal right to fish lobsters for food ... pursuant

to the requirements set out in cases such as *Sparrow*, *Gladstone*, and *Van der Peet*. These cases clearly point out that to be an aboriginal right, the activity, in this case fishing lobsters for food ..., must be an 'element of practice, custom and tradition integral to the distinctive culture of the aboriginal group claiming the right ... to be integral, a practice, custom or tradition must be of central significance to the aboriginal society in question ... one of the things which made the culture of society distinctive. A court cannot look at those aspect of the aboriginal society that are true in every human society (eg eating to survive) or at those aspect of the aboriginal society that are only incidental or occasional to that society. ... The practices, customs and traditions which constitute aboriginal rights are those which have continuity with the practices, customs and traditions that existed prior to contact with European society ...”
R. v. Van der Peet.”

“Although it should have been of no concern to me because of the concessions of right by the Crown in the Agreed Statement of Facts, I have to admit, that as I listened to Chief Dedam, and the lobster experts presented by the Crown and the Defence, to the affect that there was no lobster fishery prior to 1800, the questioned the validity of the aboriginal right which, in this Agreed Statement of Facts I was asked to assume existed for members of the Burnt Church First Nation.

“As to the *Marshall* commercial fishing taking place ... **it was, in my opinion, ill conceived and illegal.** Chief Dedam obviously felt that the case of *R. v. Marshall* gave the fishers of Burnt Church a treaty right to fish lobster commercially whenever they wished and without DFO regulation of any kind. ... In my respectful opinion, Chief Dedam and the Burnt Church First nation fishers have interpreted the Marshall decision too broadly. I find it provides no protection or support for the Defendants in this prosecution.

“The Supreme Court in *Marshall* made it clear that each of these cases dealing with treaty rights must be decided on the merits of each case. Donald Marshall was fishing for eels in the closed season using a fyke net. There is a clear distinction to be made between someone fishing for eels on a very small scale and the type of lobster fishery that took place on Miramichi Bay... The unregulated commercial lobster fishery which took place at Burnt Church in the Fall of 2000 in no way resembled the Donald Marshall eel fishery at Pomquet harbour, Nova Scotia in 1993. Unlike Pomquet harbour, at Burnt Church there was indeed conservation issues; there is a significant non-Native commercial fishery; there was no suggestion that at Burnt Church, lobsters were a traditional harvest, being harvested by a traditional method, and in relatively small quantities. Some court in the future will ultimately decide these issues when presented with the appropriate set of circumstances. I suspect that at that time, contrary to what took place in *R. v. Marshall #1* ... As mentioned

earlier, the *Marshall* case provides no defence for the Defendants to these charges, because in order to benefit from a treaty right there must be a proper foundation laid in the evidence. In this case, there has been no evidence led which would support a treaty right defence to these charges.

Francis Case: In *Francis*, an aboriginal was charged under the *Fisheries Act*. The Nova Scotia Provincial Court in May 2003 rejected a claim of a treaty right to harvest lobster. Justice Jean-Louis Batiot in rejecting the treaty right to fish defence reviewed the law as laid down in the *Marshall* decision:

“The Supreme Court, in *R v. Marshall (No. 2)* provides guidelines with respect to prosecution of these matters and explains the onus on the Defence to prove the existence of a Treaty. I paraphrase for the benefit of the Defendant:

1. The Crown must establish the factual elements of the offence;
2. The accused must show that he or she is a member of an aboriginal community in Canada with which one of the local treaties described in the September 17th 1999, majority judgement was made;
3. The accused must show that he or she was engaged in the exercise of the community’s collective right to hunt or fish in that community’s traditional hunting and fishing grounds since no Treaty was made by the British with the Mi’kmaq population as a whole.”

The Court also rejected the claim to an aboriginal right to fish lobster for food, social and ceremonial purposes:

“In the case at bar the evidence does not establish an aboriginal right to fish for food lobsters in St. Mary’s Bay since there is no evidence to show that it was an integral and distinctive aspect of the Mi’kmaq group to which Mr. Francis belongs and that the practice existed at the time of European encounter.”

Perpetuating a Hoax

It is remarkable that on one hand the Minister of Fisheries and Oceans claims that he is obligated to transfer licenses to aboriginals until all aboriginals who wish to fish commercially can do so and at the same time provide expert evidence to the courts that there is no basis for aboriginal claims to lobster based on either an aboriginal right as defined in the *Sparrow* and *Van der Peet* decisions or a treaty right as defined in the *Marshall* decisions.

It is all the more remarkable to read the evidence provided to both federal and provincial courts in New Brunswick and Nova Scotia by the Department of Justice on behalf of the Minister of Fisheries and realize that historically aboriginals have never engaged in a lobster fishery. No court decision has endorsed aboriginal claims to either an aboriginal right or treaty right to harvest lobster. Claims that the *Marshall* decisions of September and November 1999 have established the basis of a treaty right to harvest lobster have been rejected.

Why is then that the Fisheries Minister perpetuates the hoax that the Marshall decision requires him to transfer boats, gear and licences to fulfill treaty obligations? No such obligations exist.

Policy Review Misses the Biggest Shift in Policy

The failure of the government to consider the impact of its aboriginal fishing policy in the Atlantic Fisheries Policy Review makes meaningless the whole process. The arbitrary transfer of hundreds of millions of dollars worth of access from one group to Canadians to another simply because some Liberal thought it a good idea is unconscionable. This arbitrary transfer of fishing rights is the biggest policy shift in the fishery since Confederation yet the government avoids discussion of it in its Atlantic Policy Review. It's a shameful oversight that makes a mockery of the whole policy review process.

Snow Crab Allocation for 2003

The three-year Snow Crab Management Plan for the southern Gulf of St. Lawrence announced by the Minister of Fisheries in May 2003 has serious implications for all fishermen:

1. The seizure of 30 percent of the traditional snow crab fishermen's allocation and transfer to other user groups without compensation undermines the very essence of a limited entry fishing regime. The value and stability fishermen attach to a limited entry licence is cast aside when government can without compensation cavalierly reassign that access.
2. Transferring allocation to a Union, in this case the Maritime Fishermen's Union, compromises the union and undermines the very essence of a union which is to represent its members. As a distributor of government largesse the union is at once beholden to the government and the possessor of an inappropriate lever over fishermen to ensure compliance with union leadership objectives. A union's job is to represent its members not to be the distributor of government largesse. A union should be the agent of its members not of government.

A May 16, 2002 Briefing Note For the Minister, entitled *Maritime Fishermen's Union*, advised the Minister of Fisheries that the union had a conflict of interest, the union wanted the allocation awarded to the union rather than to individual fishermen:

"The MFU was very disappointed that the snow crab management plan for Area 12 in 2002 did not provide them with permanent access to the resource as they have been requesting for several years. They were seeking 25% of the share provided to the permanent midshore fleet in New Brunswick and they proposed that the allocation be provided to their organization as opposed to individual fishermen.

The departmental Briefing Note further appeared to be advising the Minister of Fisheries that the union wanted control of the allocation so as to induce and control fishermen to maintain membership in the union:

"... The MFU is also aware that there exists a tendency when permanent access is provided to individuals within an organization, that within a short frame, they disassociate themselves from the organization to form their own entity."

1. Government decisions should always be made in the best interest of all Canadians. Government has no right to use the powers granted to it to convey a political benefit to its friends. An April 9th 2003 story in the Saint John Telegraph Journal entitled, *Ottawa Playing Politics*, stated:

'New Brunswick's snow crab fishermen are accusing Ottawa of putting politics ahead of science when comes to deciding the future of their industry. Leaders of the Northeast Crabbers Association and the Acadian Crabbers Association told a federal committee Tuesday there is no other reason to explain why Ottawa wants to turn temporary access to the snow crab fishery in the Gulf of St. Lawrence into a permanent sharing agreement. "I think there's been political pressure," Joel Gionet, President of the Acadian crab fishermen said.'

A May 6th 2003 story in the Telegraph Journal, entitled "*Politicians Failed to Do Their Jobs In Snow Crab Dispute*," stated:

"Elected officials must do more than just lobby on behalf of their constituents. They must also strive to ensure that government decisions are well understood and accepted — be it grudgingly or willingly — by the people involved. For that task you need a diplomat, not a DJ."

A May 7th 2003 story in the Moncton Times and Transcript, entitled “*Fisheries Ministry Mishandled Crab Quota Plan*,” stated:

“Fisheries Minister Robert Thibault should have done a better job explaining his snow crab management plan. Instead, it was ‘released’ when Beausejour-Petitcodiac Liberal MP Dominic LeBlanc encouraged New Brunswick reporters at the end of Question Period Friday to ask Thibault about new permanent access to snow crab for inshore fishermen. Thibault obliged and said the former temporary access to the snow crab would become a permanent 15 per cent share. LeBlanc crowed that it was a victory for the inshore, many of whom live in his riding.”

A May 10th 23003 story in the Telegraph Journal, entitled “*LeBlanc Stands By ‘Fair and Reasonable’ Snow Crab Fishery Decision*,” stated:

“As flames lit up the night sky in Shippigan last weekend, it was only natural to wonder if New Brunswick Liberal MP Dominic LeBlanc was feeling the heat. It was LeBlanc, after all, who had been the most outspoken federal politician in the volatile snow crab fishery dispute. He was also the MP widely credited (and blamed) for a modern-day Robing Hood story in which the wealth of a few northeastern crabbers was to be permanently shared — in part — with the sizable fishing community within his own riding.”

The heist of 30 percent of the quota of traditional crab fishermen by this year’s Management plan resulted in a movement of fish to a Liberal Member of Parliament’s riding from a riding which has not traditionally supported the government. **Transfers of allocation must be made without a hint of political favouritism.**

2. Since 1989 the traditional Snow Crab fishermen in Area 12 have invested close to \$10 million in scientific research and co-management to the resource. When need be they have shut down the fishery in order to protect the crab stocks their livelihood depended upon. With the end of co-management, the Minister has refused to permit the traditional crab fishermen to undertake science work that they would fund using their own highly qualified scientist, vessel and gear. This disgusting display of pique by the Department only adds insult to injury. **Fishermen who seek to do research should be lauded not stymied at every turn.** The good will and unparalleled investment in cash and resources made by the fishermen for the betterment of their fishery has ended with the Minister’s arbitrary, unprincipled, and uncompensated seizure of quota.

Atlantic Salmon Conservation

The establishment of a wild Atlantic salmon endowment fund is a welcome step forward. Unfortunately no mention is made of the need to ascertain what has led to this disastrous decline in wild Atlantic salmon. The Department of Fisheries must commit to address the cause of the decline so that rebuilding can begin. Failure to do so means that in short order the only spawning salmon in rivers and streams on the East Coast will be escapees from fish farms.

MINUTES OF PROCEEDINGS

Tuesday, November 4, 2003
(Meeting No. 58)

The Standing Committee on Fisheries and Oceans met *in camera* at 10:18 a.m. this day, in Room 536 Wellington Building, the Chair, Tom Wappel, presiding.

Members of the Committee present: Andy Burton, John Cummins, Rodger Cuzner, Loyola Hearn, Dominic LeBlanc, Bill Matthews, Carmen Provenzano, Jean-Yves Roy, Tom Wappel and Bob Wood.

Acting Member present: Alan Tonks for Georges Farrah.

In attendance: Library of Parliament: Alan Nixon, Principal.

Pursuant to Standing Order 108(2) and the motion adopted by the Committee on January 30, 2003, the Committee resumed its study on Atlantic fisheries issues.

The Committee resumed consideration of a draft report.

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

It was agreed, — That the Committee append to its report a supplementary opinion from the Canadian Alliance provided that it is no more than 40% of the length of the report and is submitted electronically to the Clerk of the Committee no later than 5:00 p.m. on November 4, 2003.

It was agreed, — That the Chair, Clerk and researcher 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.

Pursuant to Standing Order 108(2) and the motion adopted by the Committee on January 30, 2003, the Committee resumed its comprehensive study on the Canadian Coast Guard.

The Committee discussed its future business with regard to this study.

At 11:00 a.m., the Committee adjourned to the call of the Chair.

Jeremy LeBlanc
Clerk of the Committee