



CANADA WATCH

Practical and Authoritative Analysis of Key National Issues

THE ATLANTIC FISHERIES CRISIS: TROUBLED WATERS, ANXIOUS THOUGHTS, CONTROVERSIAL INITIATIVES

by David Johnson

It is said that the prospect of being hanged concentrates the mind. Likewise, the prospect of the waters of Canada's continental shelf being rendered still and barren, devoid of an abundance of fish, has had the effect of concentrating the minds of Atlantic Canadians, federal and provincial government leaders, and now even the representatives of an international fishing regulatory body.

As those Canadians interested in the Atlantic fishery have come to realize that systematic overfishing has resulted in Canada's offshore becoming, in Farley Mowat's brutal words, a "sea of slaughter," we are

finally witnessing a number of initiatives being taken by the federal government to halt the pillage and bring the offshore under a strict, protective regulatory regime.

Both the prime minister and Brian Tobin, the minister of fisheries and oceans, have publicly announced that over this spring the federal government will be seeking parliamentary approval of legislation giving Canadian authorities the power to enforce "custodial management" rules respecting the offshore fisher-

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REFUSING TO RETHINK CANADA

by Kenneth McRoberts

With the results of the last election, the writing was on the wall: the "national unity" strategy that all three federal parties have so faithfully supported for 30 years has not worked. The rise of the Bloc québécois clearly signalled that French Quebec remains committed as ever to Quebec as its primary allegiance. The surge in support for Reform demonstrated that major elements of the strategy, such as the promotion of official language minorities and multiculturalism, have

produced resentment in parts of English Canada.

PQ RETURN A POSSIBILITY

Now, there is a widespread speculation that the Parti québécois soon will be back in power in Quebec. A new PQ government promises to be quite different from the first one, which was so hesitant in defining and pursuing its options. This time

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ies, even in areas beyond Canada's 200 mile Exclusive Economic Zone (EEZ).

And over Easter weekend the Canadian Coast Guard seized the *Kristina Logos*, a trawler that flew the Panamanian flag yet was allegedly Canadian-owned and registered. This ship, apprehended on the Grand Banks 28 miles beyond Canada's 200-mile limit, was found with a hold full of cod and other groundfish, all species now the subjects of a growing international fishing moratorium in these waters. While this action heralds a tougher approach by the federal government to the problem of foreign overfishing on the Grand Banks, it is also a course of action fraught with problematics.

THE FISHERIES' COLLAPSE

From the mid-1980s, the federal Department of Fisheries and Oceans (DFO) became increasingly aware that Atlantic groundfish stock was not being harvested, but destroyed. Between 1988 and 1992, the total catch of northern groundfish fell from roughly 400,000 tons to less than 100,000 tons. Figures for 1993 are expected to reveal a total catch of about 50,000 tons, one-eighth of the catch five years earlier. The 1994 by-catch is expected to be but 6,000 tons.

These figures were not only devastating to the local economy so dependent on the fishery, but frightening to the federal government and the government of Newfoundland. In an effort to safeguard this resource, a conservation moratorium was established by the DFO, in July 1992, for all northern cod—those found off the northeast coasts of Newfoundland and Labrador. Since then, recognition of a crisis in the fishery has extended across species

and across waters, and moratoria have been developed to the point that the entire Atlantic Canadian groundfish fishery has been brought to a halt. With some minor exceptions, Newfoundlanders cannot even legally jig cod for their own dinner tables.

ROOTS OF CRISIS

What brought about this catastrophe? The 1993 Cashin Task Force Report on the Atlantic Fishery highlights a number of contributing factors: overly high total allowable catches based on inadequate understandings of "stock dynamics"—that is, spawning requirements and maturation; underreporting of actual catches; destructive fishing practices such as the taking of "immature" fish through the use of excessively "tight" nets; the promotion of ever larger fleets and ever more fish plants resulting in economic overcapacity; the unforeseen impact of ecological changes ranging from water temperature, and changes in water salinity to the increasing predatory challenge posed by seals; and, the factor most spoken of by Atlantic Canadians, foreign overfishing of "straddling stocks" on the "Nose and Tail" of the Grand Banks.

It is intriguing that while the Cashin report provides ample evidence and argument that those in our governments and within the Canadian fishing industry must bear some significant responsibility for the plight of the fishery, it is the issue of foreign overfishing that most captures public attention in Atlantic Canada. As attention has grown, the Canadian government, with the active support of the government of Newfoundland, has taken increasingly stronger initiatives to deal with that element of the general problem. As these initiatives have become stronger, they have also become more controversial.

THE INTERNATIONAL DYNAMIC

The problem of foreign overfishing, though, is not to be underestimated. Just as Canadian fleets have raped the fishery, so too have the European, Panamanian, and South Korean fleets. Foreign fishing operations primarily occur beyond Canada's 200-mile EEZ recognized by the 1982 International Law of the Sea Agreement. Waters beyond this boundary are considered "high seas," with fish stocks open to all nations, subject to regulation by the Northwest Atlantic Fisheries Organization (NAFO).

This is an international regulatory agency with membership derived from Canada, the European Community, Russia, and Japan. NAFO is established under the International Law of the Sea Agreement to monitor fish stocks in the northwest Atlantic and to set catch quotas for its member states, with this decision making being done in conjunction with adjacent coastal states—that is, Canada.

From the Atlantic Canadian perspective, NAFO and its *raison d'être* elicit two major complaints. First, due to the vagaries of nature, whereas most countries' continental shelves exist wholly within their 200-mile EEZs, in the Atlantic Canadian offshore, the Grand Banks extend beyond Canada's 200-mile limit in two places known colloquially as the "Nose and Tail." These shallow, warmer waters mark an important element of the habitat of the groundfish living in the waters of the continental shelf.

The second perceived problem with NAFO is that most Atlantic Canadians view it as a toothless tiger, the quotas of which are honoured more in the breach than in the observance. In the words of a 1990 DFO review on the northern cod stock, "such nations as Spain and Portugal habitually ignore scientific

advice, flaunt their defiance of conservation strategies, and limit their catches only to the capacity of their fishing fleets."

Although accurate statistics on foreign overfishing are notoriously difficult to establish, evidence of systematic foreign overfishing does clearly exist. In 1986, for example, the European Communities fishing nations admitted to NAFO that despite a northern cod quota of 36,000 tons, they had landed approximately 100,000 tons: this, when the total quota for northern cod agreed to by Canada and NAFO had been 266,000 tons. Such repudiation of quotas has persisted to this day.

RECENT CANADIAN INITIATIVES

It is these two problems that have occupied much of the attention of the DFO in recent years and recent months. Following some two years of Canadian diplomatic pressure, NAFO agreed at its most recent meeting in Brussels on February 18 to match the Canadian moratorium. The result was a one-year prohibition on the taking of all groundfish within NAFO-regulated waters. According to Brian Tobin, this was a major victory, demonstrating that the NAFO states had finally recognized the economic and environmental crisis facing the fishery and the need for a consistent and integrated management process to restore the fish stocks.

Of course, it is deeds not words by which such actions must be judged, and this reality explains a subsequent, major announcement by the prime minister on February 25. Speaking in St. John's, Mr. Chrétien stated that the federal Department of Justice had been instructed to draft legislation authorizing the government of Canada to unilaterally extend its custodial jurisdiction over all fish stocks inhabiting the continental shelf beyond Canada's EEZ.

The prime minister bluntly warned that should the NAFO moratorium on the "high seas" fishery be violated, Canada would take direct action to bring such fishing to a halt. While this statement was met with enthusiasm from the government of Newfoundland and Canadian fishery representatives, its controversial nature cannot be ignored.

HIGH SEAS AND HIGH STAKES

Simply put, unilateral extension of Canadian jurisdiction beyond 200 miles would be a violation of the Law of the Sea Agreement. Such action by Canada would leave this country open to legal proceedings by aggrieved parties before the World Court. In addition, the nations of the European Community have a host of non-legal mechanisms by which they could retaliate.

Canadian direct action in stopping and seizing foreign ships could result in the imposition of punitive trade sanctions on a variety of goods entering European markets. Furthermore, these sanctions would likely not only fall on Atlantic Canadian trade goods, such as pulp and paper, but on goods from other parts of the country as well, thereby subjecting the federal government to inter-regional business pressure and compounding the pressure it would already face from the international community.

Though these difficulties and pressures must be factored, the case for unilateral action is not without philosophical and pragmatic merit. Should the NAFO moratorium be violated in the extreme, thereby impugning both Canadian and NAFO fishery management policies, the federal government can make a strong case that for the northwest Atlantic groundfish fishery to be saved, effective custodial management must be exercised by one sovereign power. In this case, the ge-

ography of the continental shelf dictates that this power be Canada.

It can furthermore be argued that the very concept of the law of the sea has always been "fluid." The gradual extension of coastal state sovereign authority over offshore waters has itself been marked by a number of unilateral actions. In 1952, Chile, Ecuador, and Peru each took unilateral initiatives to establish the first 200-mile EEZs. These actions had been preceded by the unilateral action of the United States in 1945 to claim a "fishing conservation zone" beyond its then 3-mile territorial sea; this zone was set coterminus to the U. S. continental shelf.

And, of course, in 1977, Canada and many other coastal states took unilateral actions to establish 200-mile EEZs, which were not legally recognized before the 1982 Law of the Sea Agreement. From the old 3-mile "cannon shot" rule of sovereignty to the current 200-mile EEZs, the history of the development of sovereign jurisdiction over the sea has been as a result of both diplomacy and unilateral state actions. These precedents assist the Canadian government today.

A final, practical consideration clearly entering into the thinking of the federal government is that unilateral action could be justified as an emergency environmental safeguard. Such a policy might gain the support of the politically powerful European environmental movement. Canadian unilateral action would not be undertaken to push the Europeans out of the "Nose and Tail" to give Canadians unrestricted access to those fish stocks; rather, the action would be to prevent any fishing of these stocks until they have recovered sufficiently to allow environmentally sustainable fishing by all members of NAFO.

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THE FUTURE: POSSIBILITIES AND RESPONSIBILITIES

And so we await the proposed federal legislation and whether the NAFO moratorium will be obeyed, rendering so much of the foregoing moot. Regardless of these current initiatives, a cold, hard reality remains, one disquieting to most Atlantic Canadians. And this is that the tragedy of the fishery cannot be blamed solely on European overfishing. Canadian mismanagement and abusive fishing practices themselves must bear a substantial burden of responsibility. The meaning is clear.

The reform and revitalization of the fishery will also be a Canadian responsibility. But as the Cashin task force report has indicated, an environmentally sustainable fishery for the 21st century will call for a significantly smaller, much more professionalized system of fleets and fish plants than there was in the boom times of the early 1980s. That the fishery can recover if properly protected and managed is not in question. What is in question is the future face of the Atlantic Canadian economy. This is an economy that now must struggle, more than ever before, to redefine itself, to diversify itself, to restructure itself. As the broader country confronts these challenges generally, so must Atlantic Canada confront these demands specifically.

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around, the objective will clearly be defined as sovereignty, and vigorously pursued.

To be sure, much may happen between now and whenever the Quebec election is called. The PQ leadership has already committed errors born of overconfidence; Daniel Johnson has given the Liberals a new sense of direction.

However, it is striking that neither the last election result nor the prospect of a new PQ government has spurred the serious rethinking that one might have expected elsewhere in the country. Both in federal government circles and among major English-Canadian opinion leaders, the dominant stance seems to alternate between fastening on to "the real questions," such as the debt and the need to cut expenditures, and resolutely asserting the continued effectiveness of the old "national unity" strategy.

COLLÈGE MILITAIRE ROYAL: MISSING THE POINT

With respect to the Chrétien government, its decision to close the Collège militaire royal (CMR) does not speak well for its ability to understand the stakes in any upcoming "national unity" struggle. By all appearances, the government simply did not anticipate how nationalist leaders would be able to use the closure to demonstrate their thesis that the federal government, and the Canadian political system in general, is indifferent to the particular interest of Québécois. Unlike most aspects of the federal government's promotion of French and of francophones, this one has a direct bearing upon Quebec: the CMR is based within Quebec and was created to further the advancement of Quebec francophones in the military. Yet, the Chrétien government acted as if the only issue these days

is showing responsiveness to business pressures for debt reduction.

By refusing to reverse its decision, the Chrétien government has compromised the position of Premier Daniel Johnson, who had no choice but to endorse public pressures to save the college. If the Chrétien government had rescinded its decision in the light of Johnson's request, it might have been able to salvage the situation, giving Johnson badly needed credibility as a defender of Quebec's interests. Instead, he, and the federalist cause in Quebec, was left hanging.

To be sure, Ottawa has with great fanfare announced some major grants and spending programs for the province. But they do not have the symbolic impact of closing the Collège militaire royal, which could come back to haunt the federalist cause in any referendum campaign on sovereignty.

As to any strategic planning for a referendum on sovereignty, there is no way of knowing for sure what is occurring within the Chrétien government. Thus, it is difficult to know how much stock to place in a recent press report that planners are, in fact, looking to Jean Charest to lead the federalist cause. If the report is valid, it would suggest that the government is only too acutely aware of the vulnerability Prime Minister Chrétien, as Trudeau's key lieutenant in orchestrating the 1982 constitutional revision from which Quebec was isolated. But this would be all the more reason to do everything possible to ensure the re-election of the Johnson Liberals.

If the Chrétien government is having difficulty gearing up for the possibility of another struggle over "national unity," opinion makers in English Canada are remarkably loath to recognize that the old strategy has not worked and a new one may be necessary.