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Some Facts About the Canada/United States  
East Coast Fisheries Agreement

On March 29, 1979 the Governments of Canada and the United States of America signed in Washington, D.C. an "AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA ON EAST COAST FISHERY RESOURCES". Before the agreement enters into force, however, both countries must ratify it in accordance with domestic procedures. In Canada ratification requires the approval of the Federal Cabinet, while in the United States ratification requires the advice and consent of two-thirds of the Senate.

Since March 29, a number of questions and concerns about the Agreement have been raised by the East Coast fishing industry, in particular, and the Canadian public in general. This information bulletin is an attempt to provide a summary and explanation of the Agreement for use by the press and the public. It is not intended to be an exposition of the legal position of other countries and is without prejudice to any positions which may be adopted by Canada on legal issues respecting its offshore boundary claims.

The Agreement

The Agreement is the best arrangement that could be negotiated to maximize for both countries the benefits from the fishery resources of mutual interest.

It is the result of eighteen months of intricate negotiations and represents a series of compromises made by both sides in the interest of achieving an overall package which would benefit the fishing industries of both countries. The Treaty is the most comprehensive and detailed fisheries agreement ever negotiated by the Government of Canada. There are five major elements to the Agreement:

1) Management Regime

The Agreement establishes the management regime for some 28 fish stocks or groups of stocks of mutual interest to the fishermen of the two countries. There are three management categories.

The stocks covered by the Agreement are listed in Annexes A, B and C to the Agreement on the basis of how they will be managed.

Category A includes those stocks which will be jointly managed because they migrate widely throughout the waters of both countries or "waters claimed by both countries". Category B covers those fish stocks where one country has the primary interest generally determined on the basis of past fishing performance. The country of primary interest will be responsible for proposing management measures for the consideration and acceptance of the other country. Both Categories A and B stocks are to be managed in accordance with a series of seven Governing Management Principles included in the Agreement. Category C includes those stocks found primarily in the undisputed waters of one country to which the other country has been given an entitlement in the treaty (see summary for management category for each stock).

2) Shares and Access

Annexes A, B and C of the Agreement also establish the negotiated shares the fishermen of each country will be entitled to catch from each stock covered by the agreement. In addition, the annexes specify, for each stock, the terms of access each country's fishermen will have to each stock. In many cases the fishermen of both countries will not have access to a stock throughout its entire range (see summary for shares and terms of access for each stock).

3) The Fisheries Commission

The Agreement establishes a bilateral Fisheries Commission which will be responsible for making recommendations to governments for management measures for Categories A and B stocks. In addition the Commission will serve as a forum for consultations between the two sides for Annex C stocks. Each country will be permitted to name seven representatives to the Commission and they will be supported by advisers and technical experts as necessary. Each country will have one vote and decisions by the Commission require the agreement of both sides. The agreement prescribes specific procedures the Commission must follow in making its recommendations to Governments. These procedures differ for Annex A and B stocks in order to recognize, with respect to Annex B stocks, the special position of the country of primary interest. To assist it in its work the Commission will have a permanent staff.

4) Dispute Settlement Procedures

Since decisions by the Commission require the affirmative vote of both sides, a potential for the occasional disagreement or dispute exists. Consequently, the Agreement establishes a two level dispute settlement procedure. Each country is required to name a co-chairman who in addition to sharing the responsibilities of chairing the Commission meetings will attempt to resolve any disputes which may arise between the two sides. If the co-chairmen are able to resolve the disputes referred to them, their decisions will become final and binding.

5) Review Procedure

Although the Agreement itself is a permanent agreement there is provision for review and adjustment of the shares of the stocks at regular ten-year intervals. Either side will have the right to

request such a review and, if agreement cannot be reached on adjustments to entitlements, the question will be referred to the arbitrator.

The arbitrator may make adjustments to the originally negotiated entitlements, up to a maximum of ten per cent of the total allowable catch for a stock, if a country has more than 50 per cent share of the stock. If a country has less than 50 per cent share, the maximum adjustment is limited to five per cent of the total allowable catch.

Such adjustments are to be made on the basis of the placement of the maritime boundary between the two countries which will be established by means of third party settlement procedures, but may be modified taking into account relevant factors such as the socio-economic importance of the fisheries to the coastal communities of each country.

#### Why is the Agreement necessary?

Prior to 1977, the area seaward of 12 miles from the coasts of Canada and the United States was high seas and was regulated by the International Commission for the Northwest Atlantic Fisheries (ICNAF). However, in January 1977 Canada extended its fisheries jurisdiction to 200 miles and shortly thereafter, in March of the same year, the United States also established a 200-mile fisheries limit. With this change in fisheries jurisdiction by both countries, it became necessary to establish a new framework for fisheries management and cooperation between the two countries.

The initial negotiations between the two countries on a long-term fisheries agreement began in the fall of 1976. Although both sides recognized the need for a long-term agreement it was not possible at that time to achieve such an agreement. Accordingly, a short-term,

one-year interim agreement for 1977 was negotiated in order to allow time for the negotiation of a more comprehensive and longer term agreement.

Negotiations continued throughout most of 1977 and again it was not possible to reach agreement on a longer term fisheries treaty, because of the large number of complex issues to be balanced in the give and take of negotiation. A measure of the difficulty in achieving an acceptable agreement was the fact that, in the end, it became necessary to conclude another interim agreement for 1978 notwithstanding the fact that both countries had found the 1977 interim fisheries agreement unsatisfactory.

Indeed, the 1978 agreement never came into force because Canada reluctantly decided to suspend provisional implementation of the agreement when it became clear that the provisions could not be implemented by the U.S. side under its law and that, in effect, the agreement did not contain effective mechanisms for cooperation and conservation for the proper management of fish stocks of mutual interest.

This development made clear to both countries the need to arrive at a more permanent, more comprehensive fisheries agreement, which would normalize our fisheries relations and create a reasonable fisheries management environment in the area to the long-term benefit of both countries.

#### Why such a complicated Agreement?

There are two reasons why the Agreement is rather complicated. First of all there are three different categories for the management of fish stocks, and the different procedures for dealing with each of the categories. Secondly, there are the comprehensive dispute settlement procedures.

Canada's initial position in the negotiations was that there should only be two categories of stocks: jointly managed stocks and stocks managed by the appropriate coastal state. In Canada where the jurisdiction for fisheries management is vested in the Federal Government, it was relatively easy to negotiate such a simplified approach. In the United States, however, with the passage in 1976 of the Fisheries Conservation and Management Act, fisheries management was placed in the hands of a number of localized regional councils and the United States argued that Canada's approach would take away from the Regional Councils some of the management authority the Act had given to them.

Thus, in order to accommodate internal U.S. requirements, Canada agreed to accept a compromise whereby a new Category B was developed which would be the designation for most stocks found in the area of overlapping boundary claims. For these stocks, the country of primary interest would be responsible for developing management proposals for consideration by the Fisheries Commission. Even though it was recognized that this additional category complicates somewhat the management procedure, it was apparent early on in the negotiations that, if the two countries were to arrive at an agreement, Canada would have to accept this approach.

Since the Agreement is a bilateral agreement with each country having an equal voice within the Fisheries Commission, it was accepted by both sides that there was a need to establish within the Agreement some means of resolving disputes which might arise within the Commission. Otherwise disputes would have to be resolved at the Government-to-Government level and, as the experience of the 1977 and 1978 Interim Fisheries Agreements has proven, this would not be an effective way of managing a common fishery resource for the long term.

Accordingly, the two sides agreed to establish a binding third party arbitration procedure whereby each country would be able to make its case before an impartial arbitrator. Thus, protracted Government-

to-Government negotiations are eliminated and there is no possibility of an impasse frustrating timely fisheries management decisions. It must be pointed out, however, that the binding dispute settlement procedure is a last resort and that the Agreement provides for extensive, but expeditious, consultation and negotiation before the dispute settlement procedure is triggered.

Why did Canada negotiate a permanent fisheries agreement when acceptance of its boundary claim would have entitled Canadian fishermen to a much higher share of many of the Georges Bank stocks than the present agreement?

When the Special Negotiators were appointed by the two governments in July of 1977, their mandate was to resolve the four maritime boundary disputes between the two countries and to negotiate an agreement on related resource issues, i.e. fisheries and hydrocarbons. At the outset of the negotiations both sides agreed that the negotiation of boundaries would be greatly facilitated if agreement could first be reached on the related resource issues.

This common understanding was based on the belief that once a satisfactory resource agreement was concluded, the economic and social importance of the ultimate placement of the boundaries would be diminished. Both sides believed that the stability and predictability which a permanent agreement would afford the two country's fishing industries would greatly facilitate long-term planning and investment decisions and that these advantages would far outweigh the possible gains which might result from the uncertainties inherent in a boundary adjudication.

It was recognized, however, that the placement of the boundary should play some role in the allocation of shares and consequently the ten-year interval clause for the review of entitlements was incorporated into the Agreement. However, in order to avoid a major disruption in

the fishing industry of either country the degree of change that can be affected by this review clause has been limited to a maximum of ten per cent of the total allowable catch for each stock following each ten-year review.

What were Canada's fisheries objectives in the negotiations?

The overall Canadian objective was an agreement which would be, and be perceived by each country as being, fair, balanced and equitable. It was thought that, in general, this could be achieved through a maintenance of traditional fishing patterns on Georges Bank as evidenced by fisheries statistics over the last decade or so. Canada viewed the fisheries Agreement as a package: concessions by one side in one area (for example, a departure from recent fishing patterns) had to be balanced by concessions by the other side in another area. It had to be accepted that it was not possible to achieve all of the individual fisheries objectives that had been established at the outset, but that it was possible to achieve an overall balance of interests. However, most Canadians have recognized the need for making sacrifices in terms of shares or management aspirations in the interest of stability and order in the Georges Bank area. Some Canadians with special interests to defend have expressed opposition to certain allocations of stocks and have questioned the desirability of Canada meeting United States aspirations with respect to certain stocks in return for the U.S. doing likewise in other stocks.

In the end, it is generally conceded that an overall balance of interests between the Canadian and U.S. fishing industries has been achieved with the least possible disruption to either country's fishing industry.

Why did Canada agree to a management regime which will allow the United States to have a say in the management of stocks such as mackerel and illex squid in Canadian waters as far north as the Gulf of St. Lawrence and off Newfoundland?

The migrations of fish stocks do not respect man-made boundaries. For instance, scientific tagging programs have shown that the northwest Atlantic mackerel stock spawns in the Gulf of St. Lawrence and in the Bays of Newfoundland during the summer and fall, but migrates as far south as New York and Cape Hatteras during the winter.

Effective management of such wide ranging stocks cannot be achieved unless the two countries cooperate and jointly manage the stocks to the mutual benefit of both countries' fishermen. It would be imprudent and mutually destructive for the two countries to ignore this reality and adopt a "beggar thy neighbour" policy.

The management regime established in the Agreement does result in Canada having to give up some of its exclusive fisheries management authority, but it must be recognized that the U.S. is making a similar concession. Far more can be achieved by two countries working together in the spirit of cooperation and goodwill than if they were to work independently of each other.

Why did Canada agree to give the U.S. major entitlements to redfish, cod and haddock in Canadian waters off Nova Scotia when it is not surplus to Canadian harvesting requirements?

It is true that the more than 10,000 tons of groundfish the U.S. will receive in Canadian waters off Nova Scotia are not surplus to Canadian harvesting capacity, but it must be recognized that U.S. fishermen have traditionally prosecuted and have come to depend upon these fisheries.

It was recognized by the Canadian negotiators that, if Canada hoped to obtain access to U.S. waters for a number of important fish stocks, reciprocal access had to be granted to the U.S. Because most of the entitlements allocated to Canada under the agreement are for Georges Bank stocks which can be harvested in the area of Georges Bank currently

subject to Canadian jurisdiction, both sides recognized that an imbalance in reciprocal fishing concessions existed in favour of the United States. Consequently, the U.S. agreed to balance its fishing opportunities in undisputed waters by granting Canada the opportunity to engage in the loligo squid fishery in waters clearly under the jurisdiction of the United States. At the present time, the U.S. does not have the capacity to harvest all of this stock. It is consistent with the draft Treaty provisions negotiated at the U.N. Law of the Sea Conference to distribute such surplus to foreign countries.

Why did Canada agree to give up approximately twelve per cent of its recent historical share of the Georges Bank scallop stock?

Canadian negotiators took the position at the outset that should retain its five-year average share of 85 per cent or its ten-year average share of 80 per cent of the Georges Bank scallops. This was strongly opposed by the US side. In order to help reach agreement on an overall balance, Canada was prepared to make a major concession and accept that its recent historical share of the Georges Bank scallop catch would be reduced maintained in the Agreement.

It is recognized that as scallop abundance returns to its normal level of about 50 per cent of the catch over the past two years, the reduction in Canada's share will create some hardship among Canadian scallop fishermen. However, the Canadian negotiators believe that the advantages of having for the first time a permanent fisheries agreement which includes a comprehensive management regime for Georges Bank scallops compensate for the lost share of the scallop stock.

What is the most significant benefit of the Canada/USA East Coast Fisheries Agreement?

The most important benefit of the Agreement to the Canadian fishing industry is that it establishes a framework for cooperation with our important neighbour to the South.

The fishing industries of both countries have suffered severely over the past decade as a result of indiscriminate overfishing by foreign fishing nations. Working together, the two countries will now be able, under the umbrella of the agreement, to cooperate to ensure proper management and conservation of these stocks so that their full potential may be realized to the benefit of both countries.

Without such an agreement the potential for conflict between two friendly nations exists to the detriment of all concerned. The absence of an agreement would increase likelihood of competitive overfishing as each country tries to raise its share of Georges Bank catches. In the short run, one country or the other may benefit, but in the long run the fishing industries of both countries will lose.

The two countries can achieve far more working together in a spirit of cooperation and goodwill than if they were to act independently of one another. In short the fishing industries of both countries and the people of both countries will be the greatest beneficiaries of the present Agreement.

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