

## 1.0 Introduction

On May 14, 2003, Newfoundland and Labrador's House of Assembly unanimously passed a resolution seeking negotiations between the province and the Government of Canada on the establishment of a joint management regime for fisheries. To ensure that both governments enter into this new arrangement as equal partners, the resolution also seeks changes to the Terms of Union that would provide the province with shared jurisdiction over fisheries in waters adjacent to Newfoundland and Labrador. These new arrangements would be entrenched in the Constitution through an amendment to the province's Terms of Union with Canada.

The pursuit of joint fisheries management has been a long-standing priority of the Government of Newfoundland and Labrador. The importance of this issue was most recently highlighted by the federal decisions to impose moratoria on the Northern (2J3KL) and Gulf (4RS3Pn) cod stocks. These are decisions that the people of Newfoundland and Labrador reject absolutely. In the late 1970s to mid 1980s, and again in the 1991-1993 period, the province promoted joint management as an option to improve fisheries management. Continued problems in the fishery prompted the Government of Newfoundland and Labrador to propose joint fisheries management in its 1999 strategic economic plan *Securing Our Future; The Renewal Strategy for Jobs and Growth*.

The Government of Newfoundland and Labrador's call for joint management is not intended to usurp the authority or exclude the interest of other provinces or territories with existing fishing rights in waters adjacent to the Newfoundland and Labrador coastline. The principles of adjacency and historical dependence would apply under joint management. Indeed, these principles would be applied with greater transparency and clarity under such a plan. Where non-Newfoundland and Labrador interests participate in fisheries, the current access and historical presence in fisheries would be respected.

The current system of Canadian fisheries management is meeting neither the needs of Newfoundland and Labrador, nor the needs of the country as a whole. Lack of a single policy framework to guide decision-making in the areas controlled by each separate order of government undermines effective industry development. Integration of federal and provincial responsibilities would enable a joint management authority to align harvesting and processing decisions, replacing conflict with consistency. A joint management system would institute coherence and cooperation in the implementation of all fisheries management decisions.

The fact that other provinces have interest in these resources should not be used as a reason for maintaining the status quo. Current arrangements are simply not sustainable. Rather, we should accept the challenge of finding better solutions, so that Canadian fisheries management is renewed and strengthened.

Joint management of the Newfoundland and Labrador fishery is the most effective way to achieve responsible fisheries management and related economic development. Integration of federal and provincial fisheries responsibilities through a jointly managed Canada/Newfoundland and Labrador Fisheries Management Board would reduce federal-provincial conflict over fisheries policy, provide a stable framework for resource management and industry investment, and allow the province to incorporate consistent fisheries policy into its implementation of broader economic and social plans. Furthermore, it would remove the potential for arbitrary or inconsistent fisheries management decisions.

A properly-managed fishery can contribute to the economic and social fabric of Newfoundland and Labrador in perpetuity. The wealth generated by the rich biological marine resources of the Grand Banks can continue to benefit the people of this province and this nation long after non-renewable resources such as oil and mineral deposits are extracted and consumed. Our renewable marine resources must be protected, fostered and encouraged to grow: it is our

duty to preserve these resources for future generations of Newfoundlanders and Labradorians, for Canadians and for humankind.

In coming months the contents of this paper will stand as a basis for discussion and action. It is the Province's hope that the Government of Canada will engage in discussions on the basis of this paper. We look forward to the support of Newfoundlanders and Labradorians as we seek to advance this issue, which is so critical to our future.

## **2.0 Historical Contexts**

### ***The Newfoundland and Labrador Fishing Industry***

For most of its 500-year history, the Newfoundland and Labrador fishing industry flourished, providing bounty for the world's great fishing fleets. Indeed, our abundant cod stocks and prosperous fishery were the drivers for both historical and modern-day settlement of the province. They were - and remain - the very fibre of our social, cultural and economic fabric.

Almost immediately following John Cabot's voyage to Newfoundland and Labrador in 1497, the great fishing fleets of Europe could be found off our shores exploiting then-abundant Northern cod stocks. The French, Spanish and Portuguese concentrated on the Banks of Newfoundland where fish was salted aboard ship and brought directly back to the European market. The English, lacking access to abundant supplies of salt, developed a system which combined light salting, followed by washing and then drying fish in the open air. The English would harvest from small boats close to shore, returning at evening to process their catch. Processing operations were established on shore in areas closest to the fishing grounds. On these sites fishermen built bunkhouses and stages for splitting, curing and drying fish. These sites developed into settlements circumscribing the coast of Newfoundland and Labrador.

Over the past century, the Newfoundland and Labrador fishery changed substantially: what was once a trade in salt cod developed into a modern, competitive industry based on fresh and fresh frozen multi-species products. At the turn of the last century, cod was the primary harvest species; at the outbreak of World War I, some 40,000 Newfoundlanders and Labradorians secured their livelihoods from the fishery. The 1949 entry of Newfoundland and Labrador into Canada - and thus the mainstream of North America - precipitated application of new technology and provided opportunity to introduce new types of fish products to a new and much enlarged marketplace. The industry continued to produce salt cod together with the fresh and frozen products that would eventually dominate all other forms of production.

An appetite for fresh fish was the key driver for introducing new harvesting technologies in the predominant inshore sector, as well as for establishing large processing facilities dependent on an offshore trawler fleet for its supply. Foreign offshore trawlers, however, decimated fish stocks through uncontrolled and unregulated fishing on the Continental Shelf. In time, this overexploitation had an impact on cod, flatfish and other groundfish stocks, from which most have never recovered.

Throughout the 1960s and early 1970s the large foreign presence in waters adjacent to the province resulted in record catches. At peak, throughout the late 1960s, the annual catch of all species totalled over 1.7 million tonnes - almost 3.7 billion pounds of fish. Stocks could not sustain this level of harvest and, since that time, most have collapsed.

In 1977 a Canadian 200-mile limit was established, leading to unprecedented expansion in the domestic fishery. Optimistic estimates of resource availability pushed expansion in both the processing and the harvesting sectors. With an anticipated catch of more than one million tonnes of groundfish as stocks were brought under clear Canadian control, domestic harvesting and processing capacity expanded. Stocks, did not increase as expected, however, and over-capacity remained in the groundfish industry.

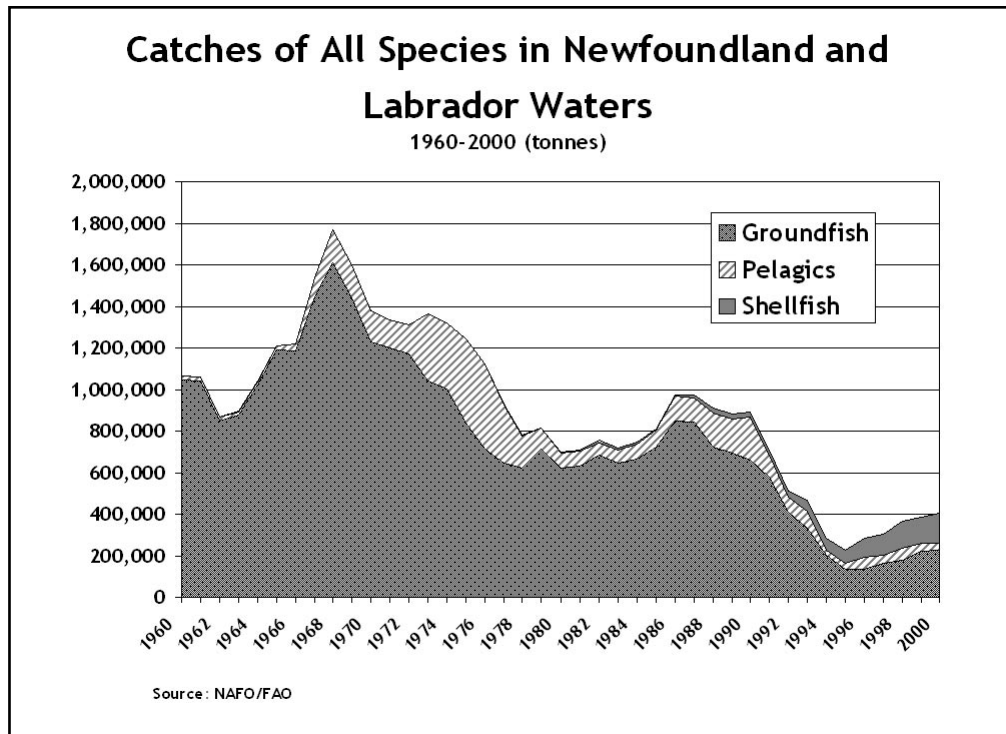


Figure 1

This situation continued until 1992, when a fishing moratorium was imposed on the once-great Northern cod stock. Moratoria on other groundfish soon followed. Over the past ten years, the fishing industry has been transformed from dependence on groundfish to a more diverse utilization of less abundant species such as snowcrab and shrimp, especially where groundfish stocks have not recovered.

Consequently, Newfoundland and Labrador's fishing industry is now much smaller than it was ten years ago. Shellfish processing is less labour intensive than groundfish processing, which has resulted in a decrease of close to 15,000 in processing sector employment and localization of processing activities in fewer communities.

Yet the fishery remains the single most important industry in Newfoundland and Labrador. The future of communities unable to benefit from the expanded shellfish industry therefore rests with the recovery of groundfish stocks, especially Northern and Gulf cod stocks. The province, however, does not have any meaningful input into or authority over decisions related to these resources. As a result, the fear remains that federal management could again lead to collapse, wiping out the new industry we have fought to build since the groundfish moratoria of the early 1990s.

Today, there are more than 40 commercial marine species harvested in waters adjacent to this province. Many of these once-healthy stocks are now in jeopardy. Most groundfish stocks have been decimated. Indeed, one of the largest single fish stocks in the Northern hemisphere, the Northern cod, has been managed to commercial extinction. Besides cod, many other fish stocks are under moratoria or in decline and appropriate measures have not been taken to ensure their recovery.

Table 1 illustrates the large number of species under moratoria or in decline. Clearly, federal fisheries management since 1949 has failed miserably, particularly since 1977 when Canada assumed complete control of fisheries management within the 200-mile limit. Federal fisheries management has worked neither for this province, nor for Canada as a whole.

## Summary of Major Fisheries Under Moratoria or Declining in Waters Adjacent to Newfoundland and Labrador

Species	Average Annual Catches 1981-1990 (tonnes)	NAFO Area	Status
Northern Cod	214,000	2J3KL	No Directed Fishery
Gulf Cod	82,000	3Pn4RS	No Directed Fishery
3Ps Cod	42,500	3Ps	15,000
3NO Cod	35,000	3NO	No Directed Fishery
Redfish	17,000	2+3	No Directed Fishery
Gulf Redfish	25,000	4RS	Index fishery 2,000
American Plaice	40,000	3LNO	No Directed Fishery
Witch Flounder	8,500		No Directed Fishery
Haddock	9,600	3Ps/3LNO	No Directed Fishery
Snow Crab		2J, 3PS	Reductions in 2J, 3Ps
<b>Subtotal</b>	<b>473,600</b>		
Capelin	60,000	Adjacent	30,000
<b>Total</b>	<b>533,600</b>		

Table 1

## ***Conservation***

The Government of Newfoundland and Labrador has an extensive record of support for conservation. In fact, the province raised concerns regarding Northern cod management several times prior to the first moratorium in 1992. In 1990, the federal government released the Harris Review Panel's *Independent Review of the State of the Northern Cod Stock*. In response, Newfoundland Fisheries Minister Walter Carter stated: "The province's position on the TAC for the 2J3KL stock has consistently been conservation-oriented to permit rebuilding and stability. Current evidence suggesting recent harvesting levels beyond  $F_{max}$  give rise to major concerns." In January 1990 Premier Clyde Wells raised concerns about the Total Allowable Catch (TAC) of 197,000 tonnes for Northern cod announced in the Atlantic Groundfish Management Plan. Premier Wells stated that "the basic guideline here should be conservation and, in the context of the work of the Harris Review Panel, the province would have been more comfortable with a TAC of 190,000 tonnes." He went on to say that "it should be part of an overall plan to reduce the TAC further in future years so as to ensure proper restoration of the stock."

Scientific research in support of the conservation, management and development of ocean resources is also a federal responsibility. Despite the major transformations that have occurred in the fishery, and the serious crises facing some fish stocks, funding for science within the Newfoundland and Labrador region has declined over the past ten years. The interrelationship between species such as seals and groundfish are often ignored. Research on capelin, a key food source for groundfish, has been virtually eliminated. The industry is now almost completely dependent on shellfish stocks, yet scientific information on these fish populations is very limited and little is known about the interrelationships between all species populating the waters adjacent to this Province.



One of the most important innovations in fisheries management to come out of the groundfish crisis has been creation of the Fisheries Resource Conservation Council (FRCC). The FRCC seeks to integrate industry knowledge gained from day-to-day working experience with scientific advice emerging from research. The province has consistently supported the work of the FRCC, as well as the fact that its decisions are consistently conservation-directed.

Additionally, as recently as last month, despite the hardship imposed by crab quota cuts on the south coast and southern Labrador, the province supported the Department of Fisheries and Oceans (DFO) decisions to reduce the TAC for these stocks as necessary conservation measures.

### ***Proposing Joint Management***

The division of fisheries-related authorities and responsibilities between the provinces and the federal government is complex. The Parliament of Canada has legislative authority for seacoast and inland fisheries under section 91(12) of the *Constitution Act, 1867*. The Government of Canada exercises this jurisdiction in part through its *Fisheries Act*, which provides for the federal minister's significant authority and discretion over virtually all resource and harvesting matters. Provincial constitutional authority is conferred by section 92 of the *Constitution Act, 1867*, which relates to property and civil rights in the province. By virtue of this power the province regulates all aspects of fish processing. Unfortunately, conflicting policy interests have placed detrimental pressures on fish stocks. Newfoundland and Labrador's proposal of joint management seeks to eliminate policy duplication and conflict. It also seeks to bring appropriate balance to national and provincial interests in the management of stocks adjacent to provinces.

Since the late 1970s successive Governments of Newfoundland and Labrador have sought joint fisheries management with the Government of Canada in order to ensure effective and sustainable management of our living marine resources.

Between 1979 and 1986, the Government of Newfoundland and Labrador proposed concurrent jurisdiction over fisheries management. Concurrent jurisdiction would have required a new division of powers through an amendment to the Canadian Constitution. Agreement was not reached on this matter during the constitutional negotiations.

In 1986 the *Fisheries Policy and Community Development: Proposal for a Revised Approach to Managing the Inshore Fisheries in Newfoundland* established by Newfoundland's Royal Commission on Employment and Unemployment recommended that a Canada - Newfoundland Fishery Policy Board, similar to the Canada - Newfoundland Offshore Petroleum Board, be established. "*Building on our Strengths: Report of the Royal Commission on Employment and Unemployment in Newfoundland*" also recommended establishing a Canada - Newfoundland Fisheries Policy Board. During the 1987 - 1989 period, the Province revised its policy position to support this recommendation.

From 1990 - 1996, the Government of Newfoundland and Labrador maintained this position. Joint management was pursued with vigor, particularly following the moratorium on the Northern cod fishery in 1992. The position was supported on various occasions by independent panels commissioned by either the federal or the provincial government.

In 1989 the DFO commissioned the Harris Review Panel on Northern cod. Its 1990 "*Independent Review of the State of the Northern Cod Stock*" recommended that the Governments of Canada and Newfoundland establish a Board or Commission to manage the fishery. The recommendation has never been acted upon by the Government of Canada, although it received the support of the Government of Newfoundland and Labrador.

In 1990 the Maloney Commission's "*Report of the Commission of Enquiry into the Alleged Erosion of the Newfoundland Fishery by Non-Newfoundland Interests*" recommended the establishment of a joint management board or commission.

In 1991 the province released *Effective Fisheries Management: Joint Management and Government Cooperation in the Newfoundland and Labrador Fishery* as further evidence of the province's continuing commitment in pursuit of this goal.

Similarly, in 1992 the Strategic Economic Plan "*Change and Challenge: A Strategic Economic Plan for Newfoundland and Labrador*" was released, stating: "The Province will aggressively pursue the implementation of a joint fisheries management board (modeled on the Canada-Newfoundland Offshore Petroleum Board) whereby a comprehensive development plan can be put into effect." In 1993 the Government of Newfoundland and Labrador expressed continued commitment to the establishment of a Canada - Newfoundland Fisheries Management Board in its report "*Changing Tides: A Consultative Document on the Fishery of the Future.*"

From 1996 to 2001, the Province pursued increased cooperation and coordination with the federal government. Several important agreements were signed, including the *Agreement on Interjurisdictional Cooperation* and the *Canada - Newfoundland MOU on Emerging Fisheries Development*.

This approach has also met with some measure of support within the federal government. In 1998 DFO released its Panel study on *Partnering in Canada's Fishing Industry*. It recommended against going forward with partnering legislation in favour of pursuing co-management.

In 2001 the Government of Newfoundland and Labrador again called for joint management, in response to DFO's release of "*The Management of Fisheries on Canada's Atlantic Coast: A Discussion Document on Policy Directions and*

*Principles*”, as part of the Atlantic Fisheries Policy Review. This position was echoed in the province’s March 2001 final report on the *Renewal of Jobs and Growth*. Again, the province committed to vigorous pursuit of a Canada-Newfoundland Fisheries Management Board.

In November 2001 the province released the *Report of the Special Panel on Corporate Concentration in the Fishing Industry*. The panel called for the establishment of a Canada - Newfoundland and Labrador Fisheries Policy Coordination Council.

These reports clearly demonstrate that the pursuit of joint fisheries management is not a whim or simple fancy on the part of this province or its people. The need for a new way - a joint and collaborative way - of managing the fishery has been a long-standing priority. Building on this large body of work, the later sections of this report lay out the basic elements of joint management and the principles that should guide this arrangement.

### **3.0 The Current Decision-making Process**

Canada’s fisheries management and administration occur within a distinct legal framework. The authority of the federal government in fisheries matters is embodied primarily in two statutes: the *Department of Fisheries and Oceans Act*, R.S.C. 1985, c.F-15 and the *Fisheries Act*, R.S.C. 1985, c.F-14. The province’s jurisdiction over fish processing matters is exercised mainly through the *Fish Inspection Act*, R.S.N. 1990, c.F-12 and the *Fish Inspection Regulations*, C.N.R. 1141/96.

The current system is flawed. The federal minister’s complete authority opens the access and allocation process to pressure from interest groups and effectively prevents establishment of an open and transparent access and allocation process. In practice, federal criteria for resource allocation are applied inconsistently,

discrediting management planning and consultation, as well as creating unpredictable demands on the resource.

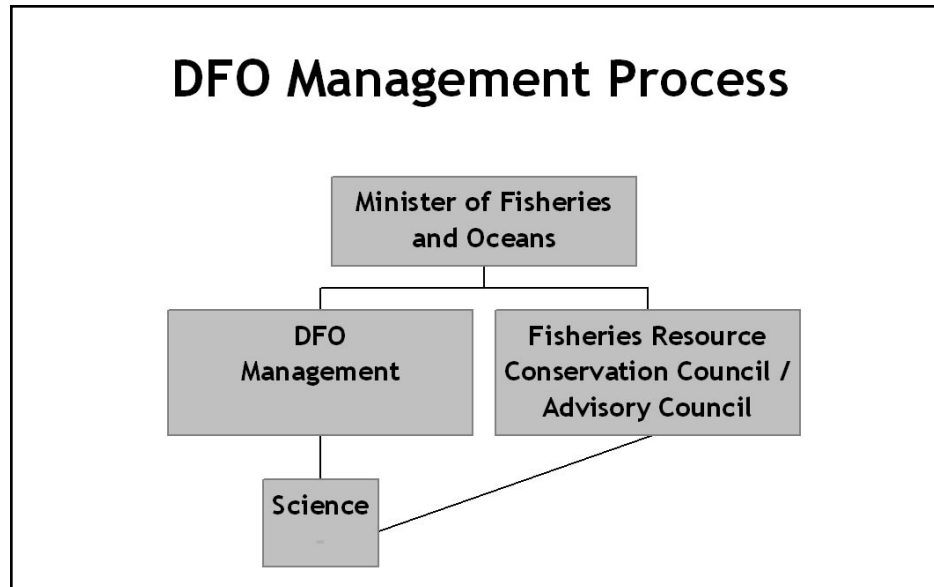


Figure 2

Lack of a single policy framework to guide decision-making in the areas controlled by each separate order of government impedes coordinated industry development. Integration of federal and provincial responsibilities would enable a joint management authority to align harvesting and processing decisions, replacing conflict with consistency. A joint management system would institute coherence and cooperation in implementation of all fisheries management decisions.

## 4.0 Moving Forward

### *Advantages of an Open and Transparent System*

A transparent fisheries management system will provide a predictable policy and regulatory environment. Clear rules that are consistently applied would

assist stakeholders in making business and investment decisions. While the federal government has attempted to bring a degree of transparency to fisheries management through the establishment of advisory committees and the FRCC. The Minister of Fisheries and Oceans has no obligation to follow advice provided through this process. Fair, predictable and transparent decision-making is essential to the future of the fishery. This can be achieved only by ensuring that decision-making policies and procedures are laid out in legislation and that regulations are available for all to see.

Of particular concern are the rules related to access to resources. Decisions relating to access to resources must be clear and transparent. If they are made without justification or advisory committee support, they encourage individuals or special interest groups to demand similar treatment. This can create a confrontational atmosphere. Such confrontation leads to wasted time and energy, leaving important conservation and management issues insufficiently attended.

### ***Respect for the Rights of Adjacency and Historic Interest***

It is the long-standing position of the Government of Newfoundland and Labrador that respect for historic interests and adjacency must form the foundation of fisheries management. The province advocated these principles to the Independent Panel on Access Criteria that was established by the Minister of Fisheries and Oceans in 2001. In the absence of a federal commitment to these principles, the Government of Newfoundland and Labrador is relegated simply to the status of a special interest group, in the management of fisheries immediately adjacent to its shores, and has no voice, despite the critical impact that management decisions have on the provincially-managed processing sector. Joint management would remedy this by ensuring that the province has a direct say in the decisions taken on its adjacent fisheries.

Joint management would establish basic rules and procedures for stock allocation, protecting access for adjacent and traditional resource users. Affirmation of this basic principle is essential for all those who depend upon the resources in the waters adjacent to Newfoundland and Labrador.

A new joint management regime would protect allocations in waters adjacent to the Newfoundland and Labrador coastline where non-Newfoundland and Labrador interests have historical dependence. Joint management would bring greater fairness and certainty in the decision-making process.

This measure of protection is important: it would provide consistency and thus support industry investment; it will also enable more productive economic development planning in rural areas of Canada in greatest need of economic growth and diversification.

## **5.0 Joint Management**

As noted above, the goals of joint management would be to establish a more predictable and open system, to improve industry efficiency and stability, to coordinate federal and provincial economic and social policy related to the fishing industry, and to protect the health of fish stocks while ensuring that people dependent on marine resources can derive a living from them.

A more predictable system would enable governments and industry to properly plan their activities. Uncertainty increases the business risk associated with harvesting and processing fish resources; decreasing the stability of the industry can increase the cost of doing business. Large investments can be placed at risk if new entrants can access the resource at any time, potentially requiring operators to recoup capital investments over a shorter period than in other industries.

Current fisheries management practices, combined with inconsistent federal and provincial policies, have created a high degree of uncertainty in relation to resource health and availability of raw material. From year to year, harvesters and processors seldom can predict with certainty the amount of product that will be harvested and sold. Additionally, new entrants are often added to the system, and often in a haphazard manner, thereby reducing the certainty that existing players in the industry should enjoy and upon which they have based their investments.

## **5.1 A New and Clear Approach**

The foundation of the Government of Newfoundland and Labrador's position on joint management may be found in the resolution adopted by the House of Assembly on May 14, 2003. This position combines past approaches into a single integrated plan. The plan would make both governments equal partners by putting them on an equal constitutional footing and would establish a joint management board, through an amendment to the Terms of Union, by which these partners could exercise their authorities.

However, joint management is not simply about a division of powers - "who does what" and "who has a say" in the fishery. It is about ensuring a more effective and transparent conservation strategy for guiding and rebuilding fish stocks. Core priorities for any joint management regime must include:

- *development and implementation of a conservation and re-building plan aimed at the achievement of long-term sustainability of the fisheries in the waters adjacent to Newfoundland and Labrador and in particular a plan that would achieve the recovery of the ground fish stocks;*



- *development and implementation of fisheries harvesting plans, including the establishment of Total Allowable Catches, based on the principles of conservation, sustainability, adjacency and the long-term well-being of the fishing communities of rural Newfoundland and Labrador;*
- *establishment of programs in Newfoundland and Labrador to enhance knowledge and understanding of the ocean ecosystems adjacent to Newfoundland and Labrador through the encouragement and support of scientific research and the utilization of customary and experiential knowledge of the fisheries possessed by fish harvesters.*

## **5.2 Shared and Equal Authority**

As previously stated, the constitutional division of powers allocates authority to Parliament for seacoast and inland fisheries and to the province for all aspects of fish processing. Over the past 50 years, however, the need for coordination of policies and increased responsibility for the province has been clearly recognized in successive independent reports. Effective coordination of policies would reduce federal-provincial conflict.

The approach proposed by Newfoundland and Labrador is consistent with international convention. Had the province remained an independent nation, it would now have the right to manage its fishing resources to 200 miles. Newfoundland and Labrador reluctantly gave up its right to fisheries management when it joined Canada, under assurance that the resources would be managed for the benefit of the province. This has not been the case. Therefore, it is important that appropriate authority for the resource on which its main industry is based be returned to Newfoundland and Labrador, so that it has an equal say in fisheries management.

Under this proposal shared jurisdiction would include:

1. **All fisheries in the territorial sea - that is, within 12 miles of land as defined for national jurisdiction;**
2. **All fisheries for sedentary species on the continental shelf in adjacent areas; and,**
3. **Within 200 miles, all fisheries in adjacent areas where Newfoundland and Labrador historically has a preponderance of the total allowable catch.**

These definitions follow from the United Nations Convention on the Law of Sea (UNCLOS). Under the Convention, coastal states hold complete control over the territorial sea, over sedentary species on the continental shelf and over all fisheries within 200 miles. While Canada is not a signatory to UNCLOS, it accepts its principles as part of customary international law. Indeed, these general definitions are for the most part contained in the federal *Oceans Act*.

UNCLOS uses the adjacency principle as its first criterion in establishing state boundaries at sea. Twelve-mile territorial limits (Article 2-16), 24-mile contiguous zones (Article 33) and Exclusive Economic Zones [EEZ] (Articles 55-75) are defined with reference to waters adjacent to coastal states. Thus, coastal states have the right to use for their benefit the living and nonliving resources in adjacent waters within these boundaries (Article 56).

UNCLOS gives priority resource access to adjacent states and denies access, even if there is a surplus, to other interests when an adjacent state's coastal communities are heavily dependent on the resource. Under UNCLOS, community dependence can be further interpreted as dependence on the living resources in general, rather than dependence on any single species. This is important when resource use changes from one species to another.

UNCLOS obliges coastal states to properly manage resources within their jurisdictions (Article 61). Conservation is central to proper management, on the principle that the coastal state holds stewardship of the resource not only for its own people but for successive generations of humankind. The importance of conservation is reaffirmed in the 1995 *Agreement on Conservation and Management of Straddling Fish Stocks and Highly Migratory Species*, which recognizes the importance of proper resource management and the potential impact of fisheries outside a state's 200-mile limit on resources within the EEZ.

The possible areas that could be covered by a Canada - Newfoundland and Labrador Fisheries Management Board would be determined through negotiation between the two orders of government. On a preliminary basis, it is assumed that this would include the current NAFO area designations immediately adjacent to the Newfoundland and Labrador coastline.

Some of the fisheries in these adjacent waters are prosecuted by other Canadians. As noted previously, their access to marine resources would be respected under this proposal for joint management.

### **5.3 The Canada/Newfoundland and Labrador Fisheries Management Board**

In order to administer shared and equal joint management of adjacent fish stocks, a Canada/Newfoundland and Labrador Fisheries Management Board (CNLFMB) should be established. The resolution for establishment of this Board also requires that the Board and its authority be enshrined in the Terms of Union. Enabling legislation would have to be passed by both orders of government with respect to its operations. This would necessitate reopening a section of the Canadian Constitution. As part of this process, appropriate consultations and negotiations with other provinces will be initiated and will likely take an extended period.

The proposed Canada/Newfoundland and Labrador Fisheries Management Board would promote long-term sustainability of adjacent fisheries, conservation of fish resources and habitat, and understanding of ocean ecosystems. A council would be established to provide scientific and management advice in support of this function. The CNLFMB would also promote recognition of the historical and current socio-economic dependence of communities on fisheries.

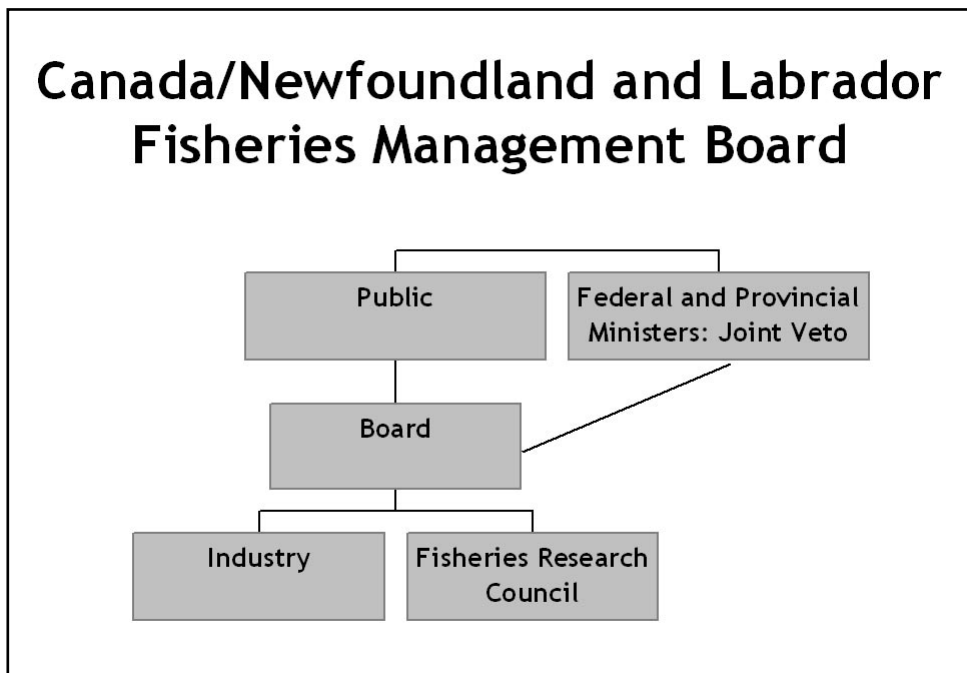


Figure 3

A key function of the Board would be to implement fair and equitable principles to govern the management of resources. These would recognize the traditional and internationally-used principles of adjacency and historical dependency, as well as the economic dependency of resource users on fish stocks.

The Board's responsibility would include but not be limited to conservation and rebuilding plans, harvesting plans, consultation and fisheries management, and fisheries science. Authorities resting with the Board would include authority to establish Total Allowable Catches (TAC), as well as issuance, renewal

or cancellation of harvesting and processing licenses. Currently, the first authority rests with the federal government and the second with the provincial government.

In general terms, the Board would be responsible for all aspects of management of adjacent fisheries, including regulatory management and development of policy regarding inspection and enforcement responsibilities of the provincial and federal governments.

Specific responsibilities would include:

- (a) establishing and implementing integrated fisheries management, conservation harvesting and recovery plans for fish stocks;*
- (b) establishing total allowable catches for fish stocks;*
- (c) distributing allocations within the allowable catch;*
- (d) opening and closures of fisheries;*
- (e) conservation and habitat preservation measures;*
- (f) issuing, renewing, transferring and cancelling licenses to harvest fish;*
- (g) issuing, renewing, transferring and cancelling licences to process fish;*
- (h) enhancing knowledge and understanding of the ocean ecosystems supporting adjacent fisheries; and*
- (i) integrating scientific research with knowledge and data gathered by resource users.*

The criteria and policy directions for the Board in relation to licensing of processing would be established by both orders of government through the initial Board design.

Enforcement functions could remain within each government department, but with general policy coordinated by the Board. The Department of Fisheries and Aquaculture would be responsible for the enforcement of processing regulations and quality standards. The Department of Fisheries and Oceans would maintain its current enforcement role.

While the province is requesting authority to manage its fisheries jointly with the federal government, there are many aspects of oceans management that should appropriately remain within the federal purview. Canada has international commitments and obligations, which the province recognizes must be fulfilled at the national level. The federal government would retain jurisdiction over international negotiations, international surveillance, enforcement, port access, transport and international trade, among other critical responsibilities.

### ***Newfoundland and Labrador Fisheries Research Council***

It is proposed that the current scientific function of the Department of Fisheries and Oceans be moved to a new entity: the Newfoundland and Labrador Fisheries Research Council. The Council would report directly to the Board and would be responsible for all scientific research currently undertaken by DFO in adjacent waters. The level of research would be determined by the Board, operating under consensus guidelines and policies developed by both orders of government.

The Council would be responsible for scientific research on all stocks, including groundfish, shellfish, pelagics and marine mammals. Its research would provide the scientific basis for conservation and sustainable use of fishery resources. This would include advice on conservation objectives and marine ecosystem issues.

The Council would report to the Board, and the information provided would be used as the basis for fisheries management decisions. The Board would have authority to request particular research; however, conventional peer review processes would remain in place. It is important that scientists remain independent from management, while vested with a degree of accountability.

### ***Board Decision Making***

The Board would follow management policies and principles established by both governments. These policies or guidelines would provide a system of accountability and would guide the actions of the Board. The Chairperson would have the deciding vote. Should either government disagree with a decision of the Board, both governments would have to agree to veto or refuse a decision.

One of the difficulties associated with shared and equal jurisdiction lies in dealing with decisions that may be contrary to the positions of either government. The proposed model will require that fundamental decisions of the Board would stand, unless both responsible ministers agree to overturn them. Any fundamental decision could be reversed only by the Board or a joint decision of both governments.

The Board would remain at arms-length from both governments. Governments would not make decisions in relation to the day-to-day operations of the Board, rather input would be provided in the development of guiding principles and policies in the initial design of the Board. These policies would define conservation requirements, criteria for harvesting, license allocation and TACs, and other Board operations.

All decisions of the Board would be made public, and the Board would be required to provide, in writing, reasons for its decisions. This would ensure that the Board operates in an open and transparent manner.

### ***Board Composition***

It is proposed that the Board consist of seven members, with three representatives appointed by the Minister of Fisheries and Oceans and three appointed by the Minister of Fisheries and Aquaculture. The Chairperson would be appointed jointly by both orders of government. In the event that the governments cannot agree on a Chairperson, a three-person panel would be established to select the Chairperson. All members on the Board would be required to have experience and or knowledge of the fishing industry. No members of the Board could be government employees.

The Board would meet at least once a month. Other meetings could be called to review a specific issue at the discretion of the Board, at the request of at least two members or at the request of either the federal or the provincial minister.



## **6.0 Conclusion**

Clearly, unilateral federal management has not worked in the best interest of this province or the adjacent fish stocks. The Government of Newfoundland and Labrador is of the strong view that recovery of resources and sustainable fisheries will not be achieved under the existing management approach or structure. Lack of transparency and openness in the current system creates undue pressure and conflict among those involved in the industry, too often resulting in decisions and actions that compromise rather than promote conservation. Nowhere has the impact been greater than in Newfoundland and Labrador. Changes must occur, so that the people of this province and this country can be assured that future decisions will be made with their best interests in mind.