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Fishing in the Cold War: Canada, Newfoundland and the International Politics of the Twelve-Mile Fishing Limit, 1958-1969

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Résumé de l'article

L'intensification de la pêche côtière par les chalutiers européens dans le nord-ouest de l'Atlantique dans les années 1950 et 1960 eut de nombreuses répercussions sur la pêche terre-neuvienne. Comme une limite de pêche de seulement trois milles séparait les Terre-Neuviens des Européens, qui disposaient d'une technologie avancée, de nombreuses personnes travaillant dans les pêcheries terre-neuviennes réclamèrent au gouvernement fédéral qu'il étende leur droit de pêche à douze milles des côtes. Cependant, le débat international sur les droits de pêche étendus et sur les limites des eaux territoriales se compliqua du fait qu'il se télescopa aux politiques de la Guerre froide. En effet, par suite de l'échec des conférences de 1958 et de 1960 sur la Convention des Nations Unies sur le droit de la mer, le gouvernement canadien tenta de trouver des solutions, mais il se heurta aux priorités de défense de la Marine américaine. Dans un tel contexte, le Canada ne pouvait prendre les mesures appropriées pour protéger ses ressources sans risquer de provoquer la colère de son voisin et plus important partenaire commercial.

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Fishing in the Cold War: Canada, Newfoundland and the International Politics of the Twelve-Mile Fishing Limit, 1958-1969

MIRIAM WRIGHT

UNDENIABLY, THE ARRIVAL EN MASSE OF EUROPEAN FACTORY FREEZER TRAWLERS off Newfoundland's coast in the 1950s and 1960s set off a string of events that forever changed the fishery of Canada's newest province. In the postwar years, countries like Spain, Portugal and France, which had fished off the Newfoundland coast for centuries, replaced their side trawlers, pair trawlers and dory schooners with the new technology. Along with relative newcomers, the Soviet Union, East and West Germany, Norway and Iceland, these fleets began fishing the waters with an intensity not known in the nearly 500-year history of the international fishery off the coast of Newfoundland. Between the mid-1950s and the late 1960s, total Canadian and foreign landings tripled, reaching an all-time high of 810,000 tonnes in 1968.[1] Newfoundland inshore landings, on the other hand, steadily declined.

The international political debate, which the introduction of this more invasive harvesting technology engendered, however, would have significant repercussions for the Newfoundland fishery in this period. Countries with significant coastal fisheries began questioning the old international three-mile territorial (and fishing) limit. Increasingly, the debate came to focus not only on whether or not coastal countries could extend their territorial limit, but also whether they could claim jurisdiction over fishing rights from three to twelve miles from shore. Two international Law of the Sea Conferences, in 1958 and 1960, however, ended without reaching an agreement on changes to the existing three-

I would like to thank Gregory Kealey and Rosemary Ommer who supervised my doctoral thesis, from which this article is derived. I acknowledge the financial assistance of the Social Sciences and Humanities Research Council of Canada and the Institute of Social and Economic Research, Memorial University of Newfoundland.

1 Jeffrey A. Hutchings and Ransom A. Myers, "The Biological Collapse of Atlantic Cod off Newfoundland and Labrador: An Exploration of Historical Changes in Exploitation, Harvesting and Management," in Ragnar Arnason and Lawrence Felt, eds., *The North Atlantic Fishery: Successes, Failures and Challenges* (Charlottetown, 1995), 58.

mile limit. Canada eventually unilaterally declared a partial twelve-mile fishing limit in 1964, but did not implement it fully until 1969. Only in 1977, after a third Law of the Sea Conference, did the international community finally agree on the 200-mile fishing limit in place today.

Scholars and those involved in the fishery industry have criticised the Canadian government for appearing to do little to prevent the onslaught of foreign fishing in the 1960s. At a time when the much smaller Iceland was aggressively defending its coastal fisheries from British vessels, historian David Alexander complained that "Canada was not even a 'paper tiger'" on the fishing-limit issue.[2] Deeper investigations into the period, however, reveal that the international territorial-waters/fishing-limit issue was complicated by its entanglements in Cold War politics. More specifically, the Canadian government's attempts to find a solution in the aftermath of the failed Law of the Sea conferences came face-to-face with the defence agenda of the United States Navy. In such a volatile atmosphere, the Canadian government felt it could do little to stop the onslaught of fishing by the foreign fleets. Ultimately, the federal government adopted an "if you can't beat'em, join'em" approach to fisheries development, and set the wheels in motion to expand Canada's own offshore sector.

Within a few years of the arrival of the first European trawlers, people involved in the Newfoundland fishery began to notice changes. Certainly, Newfoundland-based scientists with the Canadian government's fisheries research organisation, the Fisheries Research Board, realised that the Newfoundland fishery was at a crossroads in the early 1960s. Dr. Wilfred Templeman, director of the Newfoundland Biological Station, documented the changes in the Newfoundland fishery, which he believed was a result of the intensified offshore effort.[3] By the mid-1960s, he claimed that all commercial species, including cod, redfish, haddock and American plaice showed signs of diminution. Both Newfoundland inshore and offshore operations were affected, he argued. Although the small Newfoundland offshore fleet had been able to increase its total landings since the early 1950s, the catch per unit of effort declined, as did the average size of the fish (a good indicator that declines were a result of overfishing). The inshore fishery, Templeman suggested, was even more vulnerable because fishers did not have the technological capacity to compete in the new environment. He and other fisheries scientists based in Newfoundland recorded a steady decrease in the average catch per person in the period from 1956 to 1964, despite the introduction of new, more efficient technologies such as the gill net.

2 David Alexander, *The Decay of Trade: An Economic History of the Newfoundland Saltfish Trade, 1935-1965* (St. John's, 1977), 164.

3 Wilfred Templeman, *Marine Resources of Newfoundland*, Bulletin No. 154 (Ottawa, 1966).

While Canadian fisheries scientists recorded the changes in the resource, the people in the Newfoundland fishery directly affected by offshore fishing began lobbying the federal government for a twelve-mile fishing limit.[4] Frozen-fish company owners, who had invested heavily in new harvesting and processing technology in the 1950s, were among the most vocal proponents of extended fisheries jurisdiction.[5] All claimed that in just a few years since the arrival of the European trawlers, the catch per unit of effort in their own vessels had declined. Their primary concerns were economic; they feared that they did not have the financial resources to invest in new equipment to compete with the more technologically endowed European fleets.[6] Without corresponding increases in prevailing market prices for fish, Newfoundland operators claimed fishing would become an economic hardship. A few Newfoundland fishing company owners worried that ultimately the resource itself was in danger of depletion, or at least so compromised that fishing would no longer be economically viable. Argued Bonavista Cold Storage owner Hazen Russell:

> Nothing short of a miracle is going to prevent the depletion of the fishing areas in Newfoundland and on the Grand Banks to a point where private enterprise will not be able to operate and everyone will have to be subsidized or get out of business.[7]

The people of the Newfoundland inshore fishery also expressed concerns about foreign offshore fishing.[8] Newspaper accounts of the period recorded the complaints about the offshore trawlers, especially their interference with gear

4 Although fishers and industry people believed a twelve-mile limit would offer them some protection, fisheries scientists at the time questioned the effectiveness of such a measure as migratory stocks would still be vulnerable to offshore vessels at various times of the year.

5 For background on the role of the Newfoundland fish company owners in the twelve-mile limit debate, see Miriam Wright, "Newfoundland and Canada: The Evolution of Fisheries Development Policies, 1940-1966," Unpublished PhD thesis, Memorial University of Newfoundland, 1997, pp.190-200.

6 Templeman, *Marine Resources*, Table I, 148. This table indicates the total gross tonnage of fishing vessels 51 tons and over owned by each country fishing annually in the North Atlantic between 1952 and 1962. In 1962, Canada's gross tonnage was 34,525 gross tons (Newfoundland's was 7,959). Canada fell far behind other countries such as the Soviet Union (198,196), Portugal (72,958), and the Federal Republic of Germany (66,110).

7 Maritime History Archives, Harold Lake Papers, Box 1, File H. Lake, Halifax Talk and Moncton Board of Trade, "Fisheries – offshore and inshore, and particularly the Newfoundland fisheries" by H.A. Russell, February 1961.

8 For background on the fishers' concerns about the impact of offshore fishing on the resource and their demands for a twelve-mile limit, see Wright, "Newfoundland and Canada," 200-6.

in inshore waters and the impact they were believed to have on landings.[9] A frequent criticism was that the federal government was not taking seriously its role in patrolling the territorial waters, thus allowing foreign vessels to slip inside the three-mile limit at night. The sheer number and size of foreign vessels alarmed many fishers who claimed that the trawlers looked like "floating cities" lit up at night in the bays. One man attending a provincial fisheries conference in 1962 declared:

> We know quite well what is happening on the Grand Banks with the increasing number of trawlers which the Russian have . . . . I rather think that in the light of what is happening on Georges Bank off Boston that the Grand Banks will be certainly depleted in a few years unless pressure and representation is made to Ottawa in a much stiffer vein than has been made heretofore.[10]

Through the Newfoundland Federation of Fishermen, inshore fishers made numerous petitions to the federal government to implement a twelve-mile fishing limit.

Another contentious issue in Newfoundland regarding foreign trawlers was whether or not the three-mile limit was measured from the coastline, or from straight baselines drawn from the tips of the bays, or from "headland-to-headland." When Newfoundland joined Confederation in 1949, members of the Newfoundland delegation assumed that the "headland-to-headland" principle applied to the waters off the coast of the island, based on an agreement made between Great Britain and the United States in 1912.[11] A few years later, however, the Canadian government, after receiving legal council from the Depart-

9 Provincial Archives of Newfoundland and Labrador (PANL) GN 34/2, Vol. 1, File 25/2/1. This file contains dozens of newspaper clippings from local papers relating to the foreign fishing issue. These include: "Foreign boats hurt longliner fishery," *Evening Telegram*, 28 April 1960; "Foreigners, stay out," *Evening Telegram*, 27 April 1960; "Foreign trawlers again hamper local fishermen," *Evening Telegram*, 12 June 1959; "Foreign trawlers still interfering," *Daily News*, 25 April 1959; "Draggers damaging gear, Bonavista residents say," *Evening Telegram*, 27 July 1958; "Foreign trawlers hamper fishing," *Evening Telegram*, 17 July 1957; Vol. 2, File 25/2/1, "Trawlers in, reports vary," *Evening Telegram*, 15 November 1962; "Growing piracy by foreigners dooms fishery," *Evening Telegram*, 26 April 1962; "Resent Foreign Draggers," *Daily News*, 28 February 1962; "Complain of large Spanish trawlers," *Daily News*, 21 April 1961; "Fishermen will fight warns south coast man," *Evening Telegram*, 2 March 1961.

10 PANL MG 644, File 287, "Fisheries Convention, St. John's, Thursday September 27, 1962," 5. According to Margaret Dewar, *Industry in Trouble: The Federal Government and the New England Fisheries* (Philadelphia, 1983),108-11, approximately 100 Soviet vessels were fishing on Georges Bank. The New England fishers, like their counterparts in Newfoundland, also made the comparison between the offshore trawlers and floating cities (or more specifically in the American case, "New York City".

11 Raymond Gushue, "Territorial Waters of Newfoundland," *Canadian Journal of Economics and Political Science*, 15 (August 1949): 344-52.

ment of Fisheries legal advisor as well as independent opinions from the legal community, decided not to recognise the "headland-to-headland" principle for Newfoundland.[12] This was a source of tension within the Newfoundland fishing industry, as many felt the long, deep bays of Newfoundland, the traditional grounds of the inshore fishery, had little protection from encroachments from foreign trawlers.

Although loathe to address directly the larger and more difficult question of overfishing, the federal government was cognizant of the need, for political purposes at least, to secure a twelve-mile fishing limit. The extension of coastal fishing rights was never a major policy initiative; Prime Minister Lester B. Pearson only mentioned it in passing in his memoirs.[13] Despite the lack in Canada of a high profile of fisheries issues, there was enough pressure coming from both Atlantic and Pacific coasts to merit some attention.[14] In the decade of negotiations, the Canadian government found balancing domestic demands for increased protection of the coastal fisheries with the interests and expectations of the international community difficult, to say the least.

The international twelve-mile fishing-zone debate originated in 1949 when the International Law Commission began to compile information and existing laws regarding the high seas, territorial seas, continental shelves, contiguous zones and conservation.[15] Complicating the debate was the fact that a number of overlapping issues were involved, such as fishing rights, exploitation of mineral resources on the continental shelf, sovereignty on the high seas, navigation and coastal-zone management.[16] The Commission drafted 73 articles and recommended that a conference be held through the United Nations to sort through them and arrive at a consensus that could lead to an international agreement on ocean issues. The recommendations of the International Law Commission,

12 NA RG 23, Vol. 1983, File 721-87-1 [13], memo re: Interdepartmental Committee on Territorial Waters by S. V. Ozere, 9 September 1953.

13 Lester B. Pearson, *Mike: The Memoirs of the R. Hon. Lester B. Pearson*, Vol. 3, John A. Monroe and Alex I. Inglis, eds. (Toronto, 1975), 112.

14 Fishers' unions in British Columbia and industry organisations in British Columbia also lobbied for a twelve-mile fishing limit in this period. A major concern for the British Columbia fishery was the presence of American vessels in the Hecate Strait, as well as intensified fishing by the Soviet Union and Japan. See National Archives of Canada (NA), RG 23, Vol. 1986, File 721-87-1 [22], Homer Stevens to J. Angus MacLean, 3 June 1960; NA RG 23, Vol. 1987, File 721-87-1 [31], "Submission by the General Executive Board and Standing Committee on Fisheries of the United Fishermen and Allied Workers' Union regarding extension of Canada's territorial waters . . . , 21 June 1963.

15 NA RG 23, Vol. 1985, File 721-87-1 [13], memo to Deputy Minister of External Affairs from J.S. Nutt, Under Secretary of State for External Affairs, 15 August 1958.

16 For background on the various issues dealt with at the 1958 and 1960 law of the Sea Conferences, see Francis T. Christy, Jr. and Anthony Scott, *The Common Wealth in Ocean Fisheries* (Baltimore, 1965), 167-74; 177-91.

simple enough in theory, proved difficult in practice. From the outset, the territorial waters and fishing-zone issue became intertwined with the larger political agendas of the nations involved, specifically the United States' attempts to contain the activities and political influence of the Soviet Union.[17] Indeed, the United Nations in this period was often a forum for political sparring between the two "superpowers," and the territorial waters and fishing-zone issue was no exception.[18] Although there appeared to be two issues – territorial waters and fishing rights – politically, they proved difficult to separate.

In 1958 the first United Nations Law of the Sea Conference took place in Geneva. Not unexpectedly, the extension of the territorial-waters/fishing-zone issue dominated the agenda. Early in the proceedings, a number of competing factions made their presence known.[19] At one end of the spectrum were the "extreme twelve-milers" – the Soviet Union, East Bloc countries and Iceland – who favoured a twelve-mile territorial and fishing limit. At the other end were the European fishing nations – France, Italy, Spain and Portugal – who opposed any extension of either the territorial sea or fishing zones. Initially, the United States and the United Kingdom, under the banner, "Freedom of the Seas," were among the latter.

Having been warned of potential difficulties from the Americans and British (earlier the Canadian government had considered a twelve-mile territorial sea and fishing zone), the Canadians tried to find a middle ground. Led by George Drew, former federal Progressive Conservative party leader and Canada's High Commissioner to London, the Canadian delegation proposed that the original three-mile territorial sea be retained, but an exclusive twelve-mile fishing zone be added. The Canadian effort, however, was upstaged by a surprising new proposal offered by the United States and the United Kingdom consisting of a six-mile territorial sea, plus an extra six-mile fishing zone (the "six-plus-six" formula). The Canadian delegation found the new proposal problematic as it allowed for nations with a "tradition" of fishing in the waters off the coast of another state the right to continue fishing there in perpetuity, despite the introduction of the new fishing zone. In Canada's case, the US-UK proposal would have allowed fishing vessels from Spain, Portugal, Great Britain, France, Iceland, to name a few, to fish in the area between six and twelve miles from

17 See Thomas G. Patterson, *Meeting the Communist Threat: Truman to Reagan* (Oxford, 1988) for background on the "Truman Doctrine," the United States' postwar policy of containment of communism.

18 Lynn H. Miller, "The United States, the United Nations, and the Cold War," in Lynn H. Miller and Ronald W. Pruessen, eds., *Reflections on the Cold War* (Philadelphia, 1974). Although Miller does not specifically discuss the Law of the Sea issue, he suggests that the preoccupation with East-West conflict curtailed the ability of the UN to deal effectively with world problems.

19 NA RG 23, v. 1985, file 721-87-1 [14], "Law of the Sea Background Reference Paper for the Prime Minister's World Tour."

shore. This proposal also failed, with Canada and Iceland, among others, voting against it. Canada offered another plan, backed by India and Mexico, which provided for a six-mile territorial sea, with an exclusive fishing zone extending a further six miles. It, too, failed to garner enough support for acceptance.

Although the first Law of the Sea Conference ended without an agreement on the fishing-zone issue, progress was made on a number of related marine issues. The Conference adopted several major conventions on the Law of the Sea, including the right of coastal states to exploit the resources under the continental shelf, to take measures to conserve the resources in high seas adjacent to the coast, and to draw new territorial limits using straight baselines (the "headland-to-headland" principle). The straight baselines convention was supported by the fact that, in 1951, the International Court at the Hague recognised the right of Norway to draw straight baselines across its fjords. Besides the adoption of the conventions, the delegates agreed to hold another Law of the Sea Conference in 1960.

Although the United States had shown some willingness to compromise during the conference, the chair of the American delegation, Arthur H. Dean, clearly remained suspicious of the Soviet Union's position. In fact, he saw the failure of the Soviet Union's proposal as a moral victory for the Americans.[20] Dean, who had served as Special Ambassador to Korea in 1953-54 and acted as negotiator after the armistice, undoubtedly had already formed his own opinions about the motivations of the Soviet Union in world affairs. Dean maintained:

> At a time when there are many doubts about whether we have any friends and whether our policies and concepts are surviving, it is refreshing to examine the extent of the achievements of the United States and the free world at the United Nations Conference on the Law of the Sea held in Geneva.[21]

He saw the Law of the Sea Conference not as a failure to reach an agreement on the protection of the world's fisheries resources, but rather as a triumph for the United States in its quest to prevent the Soviet Union from controlling international waters. The possibility of war with the Soviet Union was uppermost in his mind and he saw any proposal on its part as a means of gaining advantage for its own naval and submarine fleets; fisheries were only a secondary concern. While expressing some consternation that extension of fishing rights in Canada and Mexico would curtail interests of American fishers, defence of the "free world" remained his overriding preoccupation.[22]

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20 NA RG 23, v. 1985, file 721-87-1 [13], "Foreign Policy Report: The Law of the Sea," by Arthur H. Dean.

21 Ibid.

22 He duly noted Canada's opposition to the US proposal, but argued that Canada's opposition derived from economic differences, rather than fundamental ideological differences.

With such rhetoric circulating, Canadian officials keenly felt the precariousness of Canada's position on the Law of the Sea in relation to the United States. Norman Robertson, long-time Under-Secretary of State for External Affairs, warned of the possible political and economic repercussions of Canada taking a position without the support of the United States and the United Kingdom.[23] He claimed that American trade retaliations against Canadian fish exports were a distinct possibility. Even more damaging was the potential threat to Canadian-American relations generally. At the same time, however, he maintained that the joint US-UK proposal put forward at the last Law of the Sea Conference would give the Canadian government trouble domestically. Canada's priority, as Robertson saw it, was securing a twelve-mile fishing zone to restrict access by the large number of foreign vessels that had been rapidly growing over the last decade. He recommended that the government consider seriously the adoption of the conventions passed at the Law of the Sea Conference, particularly the "straight baselines" convention. Re-drawing the territorial waters from "headland-to-headland," Robertson asserted, would extend Canadian jurisdiction considerably and would enclose bodies of water such as Hecate Strait, the Gulf of St. Lawrence, the Bay of Fundy and the bays of Newfoundland.

Robertson predicted that if Canada and the United States went to the next Law of the Sea Conference with separate proposals, the results would be disastrous for future relations between the two countries. He reasoned that, considering the closeness of the two positions, neither Canadian nor American proposals would win sufficient support to pass. In that case, Canada would have no alternative but to vote with the Soviets on a twelve-mile territorial sea to secure protection for coastal fisheries. Robertson painted a rather frightening scenario:

> Canada would be standing entirely opposed to the position of its NATO allies on a military question and would be likely to face the strongest US resentment for having contributed to a rule of law which is regarded as favourable to Soviet interests and detrimental to Western defence interests.[24]

Robertson advised that the only way to avoid such an outcome was for Canada to reach an agreement with the US before the 1960 Law of the Sea Conference.

The Interdepartmental Committee on Territorial Waters, which was formed to deal with this issue, heeded his advice and recommended that Canada stick to the proposal put forth at the end of the last Law of the Sea Conference: a six-mile territorial limit, with an extended exclusive six-mile fishing zone (the "six-

23 NA RG 23, Vol.. 1985, File 721-87-1 [15], memo to Minister of External Affairs from N.A. Robertson, 21 September 1959.

24 Ibid.

plus-six" formula).[25] Instead of giving those with "traditional" fishing rights (which under the US/UK proposal remained undefined) to fish in the outer six-mile zone forever, the Committee recommended that the proposal contain a provision for the coastal country to negotiate "phasing-out" periods with those states that could demonstrate a history of fishing in the area. To ensure its success, the Committee recommended that Canada enlist the support of Great Britain and the United States.

Later that year, Canadian officials met with representatives from the US State Department to discuss the Canadian proposal.[26] Among this group were William Herrington, Special Assistant for Fisheries to the Under Secretary of the Department of State and Raymond Yingling, Assistant Legal Advisor for the Department of State, both of whom most frequently represented the American government at Law of the Sea meetings. Unlike Arthur L. Dean, chair of the 1958 Law of the Sea delegation, Herrington had some sympathy for US fishers and the problems of offshore fishing by foreign countries.[27] In a speech delivered to the National Fisheries Institute Convention earlier in the 1950s, he argued that the changing technology of the high-seas fishery made the old three-mile fishing limit inappropriate.[28] In this somewhat less antagonistic environment, the talks ended with the Americans agreeing to support the Canadian position. The State Department officials suggested that Canada take the lead in campaigning for, and promoting, the proposal, in the hopes of attracting more of the "neutral" countries.[29]

Despite the combined efforts of Canada and the United States, the differences evident at the first Law of the Sea Conference could not be surmounted at the second held in 1960. The 1960 conference, however, came closer to

25 NA RG 23, Vol.. 1985, File 721-87-1 [16], memo re: Law of the Sea, 24 March 1959.

26 NA RG 23, Vol.. 1985, File 721-87-1 [20], "Summary of Discussions of the Law of the Sea, Friday, Oct. 23, 1959," 27 October 1959.

27 Herrington was the author of a number of articles on fisheries management issues in the 1950s, including the following, co-authored with J.L. Kask: "International Conservation Problems and Solutions in Existing Conventions," Papers Presented at the International Technical Conference on the Conservation of the Living Resources of the Sea, Rome, 1955. United Nations Doc. No. A/conf. 10/7, 344-439. Ironically, Kask was, at the time, Director of the Fisheries Research Board of Canada. Before his appointment, however, Kask had spent some time working in the United States Fisheries and Wildlife Division.

28 NA RG 23, Vol.. 1983, File 721-87-1 [1], "United States Policy on Fisheries and Territorial Waters," by William Herrington, Special Assistant for Fisheries and Wildlife for the Under Secretary of the Department of State. Speech made to the National Fisheries Institute Convention, Los Angles, California.

29 PANL GN 34/2, File NFDA Territorial Waters, "The Law of the Sea: A Canadian Proposal." This pamphlet, prepared before the 1960 Law of the Sea Conference, appears to be an example of the promotion that the Canadian government did for the conference. Not only does it provide the content of the Canadian proposal, but it also gives background information on the issues that arose at the 1958 conference.

reaching an agreement, as the joint Canadian-American proposal failed by only one vote to reach the required 2/3 majority. The Soviet Union and East Bloc countries, as well as the United Arab Emirates were among the nations that opposed the move. Although at the 1960 Law of the Sea conference the vote was close, the delegates left Geneva without plans for further talks.

Shortly after the second failed Conference, a memo to the Canadian cabinet laid out possible courses of action.[30] The author began by arguing that because of national interests, the Canadian government should not drop the matter. At the same time, however, a unilateral declaration of a twelve-mile fishing limit (without offering "phasing-out" periods for countries with a history of fishing off the Canadian coast) could lead to many negative repercussions. The action could be challenged in the international courts by countries opposed, such as the United States, the United Kingdom, France, Spain or Portugal. The United States had a strong fisheries lobby, and it could fight to protect its interests, particularly in the salmon fishery off the coast of Western Canada. The author cited many of the arguments raised after the failure of the 1958 Conference, such as fears of US trade retaliation and loss of a general "goodwill" in international relations. A unilateral action by Canada could also set a precedent, paving the way for other countries to declare even larger territorial limits, thus causing problems for the NATO alliance. In light of such consequences, the author recommended that the Canadian government try to organise a multilateral agreement on fishing rights and territorial waters instead of seeking further action through the United Nations. The joint Canadian-US proposal at the 1960 Law of the Sea Conference could form the basis of the agreement, which was less likely to be challenged in the international courts, they reasoned. Getting US support for such an arrangement, however, was critical, and State Department officials had already shown some support for the idea. The author suggested that quietly surveying potential signers of a multilateral agreement should be the next step.

The author also suggested that it was time the government drew a new territorial limit based on straight baselines, as outlined in the conventions from the 1958 Law of the Sea Conference.[31] There was some support for this measure from the Department of Fisheries, even though a few years earlier the department had argued against Newfoundland's claim that the "headland-to-headland" principle applied to it after it joined Confederation. S.V. Ozere, Assistant Deputy Minister of Fisheries and Department Legal Advisor, concurred, arguing

30 NA RG 23, Vol.. 1985, File 721-87-1 [21], memo to Cabinet: Law of the Sea – Possible Courses of Action," 13 May 1960.

31 Ibid. NA RG 23, Vol. 1986, File 721-87-1 [23], draft memo to Cabinet, "Desirability of Ratifying the Convention of the Law of the Sea," 6 January 1961.

for the enclosure of bodies of water important to Canadian fishing interests.[32] Despite the support from the Department of Fisheries, a draft memo to cabinet in 1961 suggested that such a move could cause problems with the fishing lobby in the United States, which might push for retaliatory trade legislation if Canada took action.[33] At the critical juncture when Canada was trying to enlist American support for a multilateral agreement on fishing rights and territorial waters, this Canadian action might lead to more problems. Despite the importance of the issue for fishing interests in Canada, the author recommended the matter not be pursued until after American support for the multilateral agreement had been secured.

American support for a multilateral agreement, however, was not forthcoming. By the summer of 1961, the United States government had backed away from its support of the "six-plus-six" formula. The Canadian government realised something was wrong when the Americans failed to respond to its survey asking who would support a multilateral agreement on fishing zones and territorial seas.[34] The author of a draft memo to cabinet written in July 1961 argued that in the likely event of American rejection of the multilateral agreement, Canada would have little choice but to take unilateral action and declare a twelve-mile fishing zone. Such action, however, had serious drawbacks, destroying the tradition of the friendly handling of disputes between the two countries. The author suggested that, whatever Canada decided to do, the US government should first be notified and offered a chance to negotiate regarding fishing rights and disputed areas.

In September 1961, Under Secretary of State Norman Robertson and other members of the Interdepartmental Committee on Territorial Waters travelled to Washington to find out why the Americans opposed a multilateral agreement.[35] Robertson remarked he suspected that American officials were divided on the issue. The Canadian delegation decided to meet with the three departments involved in the matter (State, Interior - Fisheries and Wildlife Division, and Defense) separately. Robertson's suspicions about the source of the problem were confirmed. They found the State Department generally supportive of the Canadian proposal, but representatives from the Department of the Interior (Fisheries and Wildlife) and Defense, opposed. Ironically, however, Robertson noted that both Fisheries and Defense blamed each other for causing the problems.

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32 NA RG 23, Vol. 1986, File 721-87-1 [28], memo to Minister of Fisheries from S.V. Ozere, Department of Fisheries, 13 September 1962.

33 NA RG 23, Vol. 1986, File 721-87-1 [23], draft memo to Cabinet, "Problems connected with implementation of the straight baseline system," 9 January 1961.

34 NA RG 23, Vol. 1986, File 721-87-1 [27], draft memo to the Cabinet, "Law of the Sea – Possible Courses of Action," 11 July 1961.

35 Ibid., memo for the Minister, "Law of the Sea: Discussions in Washington," 12 September 1961, by Norman Robertson.

The US Department of Defense outlined its concerns more specifically in a meeting with a representative from the Canadian Department of Defence, Lt-Commander H.D.W. Bridgeman of the Royal Canadian Navy.[36] Led by Rear Admiral Robert Powers, Jr., the American group told the Canadians that the US Navy was against extending the territorial limit. Powers outlined the main security concerns. He said he feared that the Canadian action could set a precedent for other nations to extend their territorial limits unilaterally. Hostile (i.e. Soviet) submarine fleets could then take refuge in the territorial waters of "neutral" countries, he argued, and US ships would not be able to patrol those areas. Unilateral extensions of territorial waters by other countries could also close off straits and passages important for navigation on the high seas, he explained. As well, Powers complained that American warships sailing along the coasts of foreign countries would lose their powers of intimidation if forced to stay beyond the horizon. Bridgeman remarked that he believed the American Defense Department greatly feared the consequences of a Canadian unilateral extension, adding "The multilateral convention is being considered in the light of the Cold War."[37]

Bridgeman's comment about the impact of the Cold War on the territorial waters issue offers a clue to the American's less-conciliatory attitude in the early 1960s. Although there was strong suspicion about the motivations of the Soviet Union in proposing a twelve-mile fishing and territorial limit during the two Law of the Sea Conferences, more moderate factions within the American delegation prevailed and they showed a willingness to compromise with the "six-plus-six" formula. Sometime between the spring of 1960 when the last Law of the Sea took place, and the summer of 1961, the official American position changed. The sheer timing of this shift suggests that the answer must partly lie with the election of John F. Kennedy as President of the United States in November 1960. In the American popular imagination, Kennedy was a great humanitarian who pushed America to new heights of human achievement. With the passage of time (and more importantly, the opening up of government documents for that period) historians have come to see Kennedy as one of the more aggressive "Cold Warriors."[38] They point to the large number of diplomatic

36 Ibid., letter to Marcel Cadieux, External Affairs from H.D.W. Bridgeman, Lt.-Commander, RCR, DND Representative, Interdepartmental Committee on Territorial Waters, "Law of the Sea – Report of Discussions with USA Department of Defense, Sept. 8, 1961," 13 September 1961.

37 Ibid.

38 See Patterson, *Meeting the Communist Threat*, Chapter Ten. Patterson points to the fact that most of the earlier studies of the Kennedy years were written by his former advisors such as Arthur Schlesinger Jr. and Kenneth O'Donnell, who sang his praises. Another historian, Thomas J. McCormick, *America's Half Century: United States Foreign Policy in the Cold War and After*, 2nd ed. (Baltimore, 1995), characterised Kennedy's foreign policy as being both "hawkish" and "dovish." He noted that Kennedy presented a tough front to countries that were politically unacceptable (i.e. communist or socialist), but provided assistance with organisations such as the Peace Corps to nations deemed politically friendly.

crises in the few short years of the Kennedy presidency, such as the Bay of Pigs incident, the escalation of the arms race, increased involvement in Vietnam, and the Cuban Missile Crisis, among others, as evidence of an administration taking a more active role in fighting communism. Considering the stance of the Kennedy administration, the greater emphasis on security appearing in the territorial-waters/fishing-rights negotiations was hardly surprising.

In 1963, sensing the lack of willingness on the part of the US administration to compromise further, the Canadian government abandoned plans for a multilateral agreement and decided to take unilateral action. According to the original plan, Canada would extend its fishing zone to twelve miles, effective May 1964.[39] For those countries which could demonstrate historic attachment to fishing off the Canadian coastline, either through actual treaty or "tradition," Canada would make bilateral agreements to establish "phasing-out" periods. As well, the Canadian government would draw a new territorial limit, based on the straight baseline system. In an effort to appease the Americans, the new territorial limit would only extend three miles, rather than six. In addition to drawing new baselines, Canada would enclose certain bodies of waters along its coasts, including the Newfoundland bays, Bay of Fundy, Gulf of St. Lawrence, the Arctic Archipelago, Hudson Bay, Hudson Strait, Hecate Strait and the Dixon Entrance.

Before announcing this decision to the Canadian public, the Pearson government informed the US administration. Within days, Alexis Johnson, American Deputy Under Secretary of State for Political Affairs, along with Raymond Yingling and William Herrington, summoned Canadian Ambassador to the US, Charles Ritchie, to a meeting.[40] Johnson, who did most of the talking, asked Ritchie if the Canadian government would reconsider its position on fishing rights and territorial waters. He said the actions would "not be helpful" to Canadian-American relations. Of particular concern to Johnson was Canada's intention to draw a new territorial limit using straight baselines. Johnson described the dangerous precedent Canada could set for archipelago countries such as Indonesia and the Philippines which had already announced their intentions to declare the waters between their islands as internal territory. As well, Ritchie noted Johnson's fears that the

> USA would be . . . in an extremely poor position to protest Soviet expansionism of this kind if the USA were to acquiesce in the action contemplated by Canada as a neighbour, friend and ally.[41]

39 NA RG 23, Vol. 1986, File 721-87-1 [30], telegram to Washington, 4 June 1963 from Department of External Affairs, Canada.

40 NA RG 23, Vol. 1986, File 721-87-1 [28], telegram to External Affairs from C.S.A. Ritchie, 1 March 1963.

41 Ibid.

Ritchie acknowledged that the American officials were not threatening in any way, but they clearly "made no effort to hide their agitation."[42]

American opposition to Canada's position continued during a meeting between Canadian Prime Minister Lester B. Pearson and US President Kennedy at Hyannis Port in May 1963.[43] Pearson confirmed Canada's intention to declare a twelve-mile fishing zone and new territorial limit drawn from straight baselines. Kennedy, on his part, advocated the status quo, the three-mile limit drawn following the sinuosities of the coast. Notwithstanding Kennedy's opposition, Pearson announced plans to implement the new territorial limit and fishing zone in May 1964. Although Pearson's declaration may have sounded like a bold move, the Canadian government decided not to ban nations with a demonstrated history of fishing in the region until bilateral agreements had been made. Since most of the nations fishing off the coast of Newfoundland, except for the Soviet Union and East Bloc countries, had been fishing there for centuries, 1964 saw little difference in the patterns of offshore fishing. The drawing of the new baseline system, measured from "headland-to-headland," was also delayed.

At the request of President Kennedy, the Canadian government began a series of talks with the US.[44] A first round of meetings took place in Ottawa in August 1963, followed by a second round in early December in Washington. Paul Martin Sr., Secretary of State for External Affairs, attended the meetings, along with fellow department member Marcel Cadieux, Department of Fisheries representatives Hedard J. Robichaud and S.V. Ozere, Assistant Deputy Minister and Legal Advisor, as well as members of the Canadian Department of Defence. The American delegation consisted of Alexis Johnson, William Herrington and Raymond Yingling of the State Department, along with representatives from Fisheries and Wildlife of the Department of the Interior and the Department of Defense.[45] According to Martin, the Americans objected to the extension of the fishing zone on grounds that it restricted the fishing activities of Americans.[46] The US also opposed the drawing of straight baselines for security and strategic reasons, particularly contesting Canada's wish to enclose the Gulf of St. Lawrence. These issues proved insurmountable. Canada and the United States failed to come to an agreement during those first two rounds of talks.

42 Ibid.

43 NA RG 23, Vol. 1987, File 721-87-1 [32], memo to Cabinet, Law of the Sea Negotiations with the US from Secretary of State for External Affairs, Paul Martin, 19 December 1963.

44 Ibid.

45 Ibid., draft minutes of Second Round of Law of the Sea Discussions in Washington, 4 December 1963. This document lists those who attended the meetings. The contents of this document, however, were exempted under the Access to Information Act.

46 Ibid., memo to Cabinet, Law of the Sea Negotiations with the US from Secretary of State for External Affairs, Paul Martin, 19 December 1963. Martin's report summarizes the meeting that was restricted in the document noted above.

The following year, Canadian External Affairs officials learned that the Department of the Interior (Fisheries and Wildlife Division) had dropped its opposition to the plan. Marcel Cadieux of External Affairs told Paul Martin that officials from their department attending a social function in Washington had learned from US State Department member William Herrington that, at that time, only the Defense Department – specifically the US Navy – was resisting Canada's proposal.[47] Explained Cadieux,

> While I think we have guessed that the strong stand being taken by the US is primarily on security grounds, this is the first time that we have had it confirmed, albeit privately, that our proposals on fishing are generally acceptable to the US.[48]

By September 1964, defence issues had taken a new prominence in American foreign policy. In August, North Vietnamese aircraft allegedly attacked American warships in the Gulf of Tonkin. This incident heightened tensions, and escalation of American involvement in Vietnam eventually followed.[49] Marcel Cadieux remarked on the events in southeast Asia, speculating on their impact on future negotiations:

> As far as security arguments are concerned, presumably recent events in the Gulf of Tonkin will have strengthened, if anything, the US Navy's resolve to endeavour to have the US government oppose claims which might be taken as a precedent by countries such as Indonesia in support of their claim to enclose the entire archipelago by straight baselines.[50]

By the end of December 1965, Canada and the US had reached a stalemate.[51] Marcel Cadieux noted that "[American government representatives] continue to oppose strongly our baselines and have served their notice of their intention to make their views known to other countries."[52]

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47 NA RG 23, Vol. 1988, File 721-87-1 [30], memo for the Minister from M. Cadieux, 21 September 1964.

48 Ibid.

49 For background on the Gulf of Tonkin incident, see Michael Maclear, *The Ten Thousand Day War, Vietnam: 1945-1975* (London, 1981), 112-13.

50 NA RG 23, v. 1988, file 721-87-1 [30], Memo for the Minister from M. Cadieux, 21 September 1964.

51 NA RG 23, Vol. 1988, File 721-87-1 [35], memo to Secretary of State for External Affairs and Minister of Fisheries from M. Cadieux, 18 December 1964; Vol. 1988, File 721-87-1 [40], "Draft Statement for Use by the Secretary of State for External Affairs in the External Affairs Committee," 18 June 1965.

52 NA RG 23, Vol. 1988, File 721-87-1 [35], memo to Secretary of State for External Affairs and Minister of Fisheries from Marcel Cadieux, 18 December 1964.

Not all Americans, particularly those representing the fishing industry, supported their government's hard-line position on territorial waters and fishing rights. Margaret Dewar noted that fishing interests in New England, the Pacific Northwest and Alaska all campaigned for a twelve-mile fishing limit in the early 1960s.[53] Senator E.L. Bartlett (Democrat - Alaska) demanded that the US follow Canada's example and declare a twelve-mile fishing limit to restrict entry by Soviet and Japanese vessels in the fishing areas off Alaska.[54] As well, a Seattle lawyer and American representative on the International North Pacific Fisheries Commission, Edward Allen, launched a campaign to encourage the US government to stop letting defence concerns impede fisheries conservation.[55] He maintained that the US government had conflated the defence and fisheries issues in its handling of the territorial-limit/fishing-zones affair. Although he claimed he had sympathy for the navy's concerns, particularly in light of events in Vietnam and Indonesia, it was time for the government to deal with fisheries and defence issues separately. Through an American Bar Association committee on territorial waters, Allen and others drafted a list of resolutions asking the US government to take a new approach to handling fisheries concerns. This lobbying by the various groups had some impact, in that the US government finally declared a twelve-mile fishing zone in 1966.[56] The territorial limit, however, remained unchanged.

In addition to the Americans, the Canadian government also had to appease the countries with a history of fishing in the waters off the Canadian coast. Indeed, the Canadians had an obligation to negotiate with France which held legal fishing rights off the coast of Newfoundland through the Treaty of Utrecht.[57] These negotiations with the United Kingdom, Norway, Denmark,

53 Dewar, *Industry in Trouble*, 132-4.

54 NA RG 23, Vol. 1986, File 721-87-1 [30], copy of Congressional Record, 15 May 1961, "Extension of Territorial Waters to Protect Fishery Resources"; Vol. 1986, File 721-87-1 [30], telegram to External Affairs, Ottawa, 25 June 1963, text of statement made by Senator Bartlett urging straight baselines and fishing zones for the US.

55 NA RG 23, Vol. 1988, File 721-87-1 [42], letter to members of the Seattle Council of the Navy League from Edward Allen, 17 August 1964; letter to Under Secretary of State for External Affairs from Canadian Consulate General, 19 June 1965 (attached is a copy of an article written by Allen and published in *The American Journal of International Law*, Vol. 58, "Freedom of the Sea").

56 Dewar, *Industry in Trouble*, 133.

57 NA RG 23, Vol.. 1988, File 721-87-1 [35], memo to Minister of Fisheries from S. V. Ozere, Re: Law of the Sea, Arrangements with France, 16 November 1964. The Canadian government, because of the complications involved with France's claims, decided to postpone negotiations with that country until after deals with the US and others had been settled. For background on the historic relationship between Newfoundland and France, see Rosemary Ommer and J.K. Hiller, "Historical Background on the Canada France Maritime Boundary Arbitration," Government of Canada, Departments of Justice and External Affairs, 1990.

Spain, Italy and Portugal, however, lacked the same urgency as those with the United States. Except for the United Kingdom, none of these countries were major trading partners or significant political allies. The subsequent difficulties that arose over the Canadian declaration did not hold the same political or economic consequences as did American displeasure over the move.

The Canadian government, however, duly began negotiating with each country in turn after notifying them of the plans for the twelve-mile fishing limit. Before negotiations began, the cabinet decided to offer these countries a phasing-out period for fishing inside the Gulf of St. Lawrence of five years, and ten years for fishing within the six-to-twelve mile line.[58] Several, including the United Kingdom, Norway and Denmark, had no problem with the terms and accepted Canada's position: by this time, these countries were in the process of declaring twelve-mile limits of their own. Until deals had been reached with the other fishing nations, however, Canada had to wait before signing with the more amenable countries.[59]

Some states, particularly those with significant investments in their offshore fisheries, such as Spain, Portugal and Italy, threatened to cause more difficulties. Spain and Italy protested Canada's declaration and, as External Affairs official Marcel Cadieux noted, they "barely went through the motions of negotiating."[60] Indeed, the Canadian representatives feared they might challenge Canada's actions in the International Courts.[61] The Spanish argued that the 1922 Anglo-Spanish treaty, which was later extended to include Canada, gave them "most-favoured nation" status, entitling them to fish in Canadian waters.[62] Some Canadian officials suspected that the United States, still unhappy with Canada's position on declaring straight baselines, was encouraging these protests by Spain.[63] The Canadian Ambassador to Spain, Benjamin Rogers,

58 NA RG 23, Vol.. 1988, File 721-87-1 [35], Memo to Secretary of State for External Affairs and Minister of Fisheries from Marcel Cadieux, 18 December 1964.

59 Ibid. Cadieux noted that although these three countries accepted the five-year plan for fishing in the Gulf of St. Lawrence, and ten-year plan for other areas, Canada had to wait until they had finalised deals with Spain, Portugal and Italy. He said the UK, Denmark and Norway would want the same deal as the other fishing countries.

60 Ibid., memo to Secretary of State for External Affairs and the Minister of Fisheries from M. Cadieux, 18 December 1964.

61 Ibid., memo to Secretary of State for External Affairs and the Minister of Fisheries from M. Cadieux, 6 October 1964.

62 NA RG 23, Vol. 1988, File 721-87-1 [30], memo to Canadian High Commission, London, from Under Secretary of State for External Affairs, 17 August 1964. The treaty was the Treaty of Commerce and Navigation of 1922.

63 NA RG 23, Vol. 1988, File 721-87-1 [35], memo to Secretary of State for External Affairs and the Minister of Fisheries from M. Cadieux, 6 October 1964.

reported that the head of Canadian and American Affairs for Spain, Senor Sagas, indicated that the Spanish had been discussing the matter with the US.[64]

Portugal, like Spain, had problems with Canada's intentions. Unlike Spain, however, the Portuguese government showed a willingness to negotiate. During the second round of talks with that country, the Portuguese delegation argued that their 400-year history of fishing off the Canadian coast bestowed the same rights to fish as if they had an actual treaty.[65] Calvet de Magalhaes, Head of the Economic Division, Ministry of External Affairs, explained that Canada's actions would hurt Portugal's extensive investment in the overseas cod fishery. His country was trying to improve its economy and standard of living, and a twelve-mile fishing limit would put a considerable dent in its offshore landings. A prosperous country such as Canada, he reasoned, should not hinder the development of a struggling country like Portugal. Despite this rhetoric, however, the Portuguese eventually accepted Canada's declaration.

Progress on negotiations with each individual country continued slowly over the next few years.[66] In the meantime, the federal government increasingly focussed its attention on expanding the Canadian offshore fleets to "compete" with the multiplying foreign vessels. The Fisheries Development Act of 1966 provided for two main areas of fisheries development.[67] First, it formalised federal-provincial cost-shared programmes on exploratory fishing, and on experiments with new gear, equipment and vessels. Second, and more significantly, the Act allowed the federal government to provide financial assistance to individuals or groups of individuals for the construction or expansion of commercial frozen fish plants and fishing vessels. Before, the Newfoundland frozen-fish companies had relied completely on the provincial government for loans and subsidies.[68]

Federal Minister of Fisheries Hedard J. Robichaud talked about the Canadian government's plans in 1965 at the launching ceremony for a 53' vessel owned by the Union Trading Company of Port Union in Newfoundland.

64 NA RG 23, Vol. 1988, File 721-87-1 [35], letter to Under Secretary of State for External Affairs from Canadian Ambassador for Spain, Benjamin Rogers, 4 December 1964. Rogers said that the Spanish official claimed that the US feared that if Canada enclosed the Gulf of St. Lawrence, the North Vietnamese would follow suit and enclose the Gulf of Tonkin. Rogers was sceptical that the Americans would make such a comparison, but thought that Sagas' comments indicated that the two countries had been discussing Canada's position.

65 NA RG 23, Vol. 1988, File 721-87-1 [35], "Law of the Sea, Second Round of Talks Between Portugal and Canada, Oct. 20-21, 1964."

66 NA RG 23, Vol. 1988, File 721-87-1 [40], Draft Statement for Use by the Secretary of State for External Affairs in the External Affairs Committee, 18 June 1965. By June 1965, none of the final agreements had been signed.

67 PANL GN 34/2, File 24/63, copy of "An Act to provide for the development of the commercial fisheries of Canada," 12 May 1966.

68 Wright, "Newfoundland and Canada," Chapter Four.

Robichaud told the crowd about the upcoming Fisheries Development Act and the plans to double the harvesting capacity of the Canadian offshore fleet.[69] Arguing that Canada could not simply sit idly by while foreign vessels took most of the fish, he explained:

> to compete with them, *indeed to outfish them* [Robichaud's emphasis], we must modernize both our inshore and our offshore fishing fleets so that we may exploit the resources of the Northwest Atlantic more effectively than any other nation, and so provide greatly increased earnings for our fishermen.[70]

Failure of the fisheries negotiations was not the only reason for the federal government's sudden interest in financing the industrialisation of the Atlantic fishery at this particular time. Several factors, including the increased level of state intervention in the economy generally, the rise of regional development programmes in the 1960s, and growing demands from the fishing regions for assistance, contributed to the creation of these programmes.[71] The intensification of foreign offshore fishing, and the subsequent failure to curtail that fishing through political means, merely pushed the government's hand to help it happen more quickly. By the time Canada declared a full twelve-mile limit with a new territorial limit drawn from straight baselines in 1969, the federal government was already committed to providing direct support to the Canadian offshore sector.[72]

Conclusion

Knowing what we know now of the degree of devastation to the Northern cod populations in the 1960s and 1970s, it is easy enough for us to criticise politicians and others in an earlier time for failing to protect the resource. Although I would be the last to suggest that the federal government was a model in its treatment of the Canadian fisheries in the 1960s, we need to be aware of the Cold War climate that impinged on the government's ability to deal with the problem. With the conflation of fisheries and defence issues in the international debates, the Canadian government could not take a bolder stand without alienating its most important trading partner and the most politically powerful country in the world. Fisheries, apparently, were never worth that risk to the federal

69 PANL GN 34/2, File 11/4/17, speech by H.J. Robichaud at Port Union, Newfoundland, 12 October 1965.

70 Ibid.

71 Wright, "Newfoundland and Canada," Chapter Six, provides the context for the escalation of federal involvement in the Atlantic fisheries in the 1960s.

72 See William E. Schrank, "Extended Fisheries Jurisdiction, Origins of the Current Crisis in Atlantic Canada's Fisheries," *Marine Policy*, 19 (1995): 285-299, on the move to extend fisheries jurisdiction further in the 1970s

government. Instead, the government preferred to help build the Canadian Atlantic offshore fleet to beat the foreign vessels at their own game, heightening the technological build-up in the east coast fishery. At the time, it seemed the easier option, but in the long term, the practice of turning to technology to solve the problems of the Newfoundland fishery would eventually have tragic consequences.