



Dalhousie University

International Ocean  
Institute



*Proposal for the establishment of a United Nations Ocean Assembly (UNOA)*

The Year of the Ocean is entering its final phase, and I do believe, it should not be allowed to pass without leaving a concrete result for the future: Something to enhance the implementation and progressive development, not only of the Law of the Sea Convention but of all the Conventions, Agreements and Programmes adopted in the wake of the Rio Conference on Environment and Development, all of which have an important ocean dimension. At present, all these instruments are not properly coordinated.

There is now wide spread agreement that a forum is needed where the closely interrelated problems of ocean space (to use the language of the Law of the Sea Convention) can be considered as a whole. This forum can only be created at the level of the General Assembly of the United Nations of which all States parties to all the different Conventions are members.

However, the General Assembly itself, overloaded with work as it is already, cannot possibly devote the time that would be needed to fully discuss the problems involved and agree on a coherent policy which then should be implemented by the various specialized agencies in a coherent and consistent manner.

It is our suggestion, therefore that the General Assembly should institute a Committee of the Whole, which should be convened every second year for the necessary length of time -- probably at least one month if not two.

I am attaching a few pages, taken from my forthcoming Report to the Club of Rome, which explains this proposal in some more detail This Report will be published in November by the United Nations University Press, with an introduction by the ex-Prime Minister of the Netherlands, Dr. Ruud Lubbers, my colleague in the Club of Rome..

We think the proposal should be put forward in November/December, when the annual Law of the Sea Resolution is up for discussion -- just before the end of the Year of the Ocean.

But if this were to be done, one would have to start now to find allies and co-sponsors for the proposal.

I am sure one could mobilize wide spread support for it -- including the support of the Secretary-General.

I would be most grateful for your reaction.



*Policy Integration: The Ocean Assembly*

When, with the adoption and opening for signature of the Law of the Sea Convention, UNCLOS III came to its end in 1982, it was clear that there no longer existed a body in the UN system, capable of considering the closely inter-related problems of ocean space as a whole. During the decade and a half that has passed since then, the need for such a body became ever more glaring.

This problem arises from a lacuna in the Convention itself. In this respect, as in some others, the Convention is unfinished business, a process rather than a product. Unlike other Treaties, which provide for regular meetings of States Parties to review and, eventually, to revise such Treaties, the Law of the Sea Convention severely limits the mandate of the meetings of States Parties restricting it, after the establishment phase, to the periodic election of Judges to the International Tribunal for the Law of the Sea, the approval of the expenses of that institution, and amendments to the Statute thereof. The mandate of the Assembly of the International Sea-bed Authority, the only other body comprising all States parties, obviously is limited to sea-bed issues.

Theoretically, there would be three ways of dealing with the problem:

One could, perhaps first informally and later by amendment, broaden the mandate of the meetings of States Parties, enabling them to review the implementation of the Convention and to formulate an integrated ocean policy;

One could broaden the mandate of the Assembly of the International Sea-bed Authority, considering that, on the one hand, sea-bed mining is not going to require very much time for the foreseeable future, while, on the other, “the problems of ocean space are closely interrelated and need to be considered as a whole. “

The General Assembly of the United Nations could be given the responsibility for

examining, periodically, all the interrelated problems of ocean space and generating an integrated ocean policy.

The first two alternatives would have the advantage of utilizing existing and otherwise under-utilized bodies for a function for which they would be well prepared. Both would have the disadvantage of a membership that is less than universal. It should also be noted that "closely interrelated problems of ocean space" arise also within other, post-UNCED Convention regimes with a different membership. The first two alternatives would not be suitable for dealing with ocean-related interactions between various Convention regimes, e.g., the overlaps between the Biodiversity and Climate Conventions and the Law of the Sea

As emphasized in the Report of the Secretary-General of the United Nations<sup>1</sup> it is only the General Assembly, with its universal membership that has the capability of dealing with all the closely interrelated problems of ocean space, including those arising from the interactions of various Convention regimes. The disadvantage of the General Assembly, however, is that it cannot possibly devote sufficient time to these problems which would require several weeks, at least every second year.

To solve this problem, the General Assembly should establish a Committee of the Whole to devote the time needed for the making of an integrated ocean policy. Representatives of the upgraded Regional Seas Programmes, the Specialized Agencies of the UN system with ocean-related mandates, as well as the nongovernmental sector should participate in the sessions of this Committee of the Whole -- a sort of "Ocean Assembly of the United Nations," meeting every second year. The integrated policy should be prepared by DOALOS in cooperation with the CSD.

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<sup>1</sup> Doc.A/51/645

*are involved in one way or another in ocean affairs, and ways have to bound to harmonize and integrate their overlapping and often conflicting policies, Policy Integration: Specialized Agencies and Programmes*

*In analogy to what happens in the national “circle” where almost all Government Ministries almost all Specialized Agencies and Programmes of the United Nations are involved in one way or another in ocean affairs The International Maritime Organisation (IMO), the Intergovernmental Oceanographic Commission (IOC) and the International Sea-bed Authority (ISBA)<sup>2</sup> are exclusively devoted to ocean affairs (IMO for shipping; IOC for marine sciences, ISBA for sea-bed mining), while UNESCO, FAO, and UNEP have a broader mandate including divisions for ocean affairs (UNESCO for marine sciences, culture and education; FAO for fisheries and aquaculture; UNEP for Regional Seas and marine environment) and others are otherwise involved with the oceans, such as the World Meteorological Organisation (WMO) with ocean-atmosphere interaction and its implications; the International Atomic Energy Agency (IAEA) for nuclear marine pollution; the United Nations Industrial Development Organisation (UNIDO), with industrial marine technology; the International Labour Organization (ILO) for the protection of maritime workers; the World Health Organisation (WHO) for ocean-related*

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<sup>2</sup>ISBA is not a Specialized Agency but an independent intergovernmental Treaty-created body with “observer status” at the UN and at the International Tribunal for the Law of the Sea.

*health problems; etc.*

*Streamlining of the Agencies and Programmes for cost-effectiveness, elimination of overlaps and harmonisation of policies has long been on the agenda of the United Nations and has been entrusted to the Administrative Committee on Coordination (ACC). In the wake of UNCED, the Secretary-General established a subcommittee of the ACC to deal specifically with the ocean-related policies and activities of the Agencies and Programmes, the ACC Subcommittee on Oceans and Coastal Areas, with its Secretariat within the IOC. Progress thus far has been disappointing. It is in fact doubtful whether policies can be integrated at the inter-Secretariat level. It is only at the level of the General Assembly that an integrated ocean policy can be framed, and this policy, then, should become the basis for the efforts of the ACC Subcommittee on Oceans and Coastal Areas..*

If one wanted to compare intranational and international institutional arrangements, one could envisage the “Ocean Assembly” as the counterpart to a national parliament that determines policy. The Specialized Agencies and Programmes would execute this policy like the Ministries and Departments of a national government. The ACC subcommittee would act like an Inter-ministerial committee or council responding to the interdisciplinary and trans-sectoral challenges of ocean and coastal management.. Linkages between the upgraded Regional Seas Programmes and the decision-making process of the “Ocean

Assembly” must be as effective as the linkages between the Government and the governments of States/Provinces in a Federal State.

**S.K. SINGH**  
FORMER FOREIGN SECRETARY

July 6, 1998

Ms. Elisabeth Mann Borgese,  
Halifax, Nova Scotia,  
Canada

Fax:902 494 2034

Dear Elisabeth,

Many thanks for your fax message of July 5<sup>th</sup> received on my return from Cambridge. I have read the papers enclosed especially the extracts from the Report the Club of Rome wishes to project about the Ocean Assembly.

I hope to consult knowledgeable colleagues here about this idea, and shall revert after getting their focussed reactions.

An initiative like this from India just now, may not be welcomed by some developed countries. I would, therefore, suggest that it may be best if between Dr. Ruud Lubbers and yourself, you could speak to friendly & helpful member-states from Europe, to assess whether they will agree to co-sponsor an appropriate U.N. General Assembly Resolution, this year on this issue. Thereafter India could help in drumming up further support within G-77 states. Thus it will acquire the flavour of a cooperative and joint initiative of the developed and developing countries, who have a serious & abiding interest in matters Maritime, & Environmental, & who in the past have traditionally taken interest in the Law of the Seas.

Personally, I feel that this is a worthwhile suggestion and should have near universal support in the U.N. General Assembly, provided we are able to draft an attractive Resolution and start consultations early during the forthcoming session, helping the emergence of a broad list of co-sponsors and supporters.

Do please let me know what you & Dr. Lubbers can do to process the matter quickly.

*Warm regards*  
Yours sincerely,  
*SK*  
(S.K. Singh)





Dalhousie University

International Ocean  
Institute

**FAXED**



FACSIMILE TRANSMISSION

To: Dr. S.K. Singh  
Fax: 91 11 684 6302

From: Elisabeth Mann Borgese  
Fax: 1 902 868 2455

Date: July 5, 1998

Subject: Proposal

Dear S.K.,

We have to get something going, before this Year of the Ocean ends!

What do you think about the attached proposal? Do you think, India could support it? Could you help?

After all, it does not cost anybody very much. More than anything else, it is a question of political will. Are we serious about doing things differently? About "sustainable development"? Do we want words -- not deeds?

I would be most grateful if you could let me know.

Warm regards,

*Elisabeth*

P.O. Box 3  
GZIRA GZR 01  
MALTA



International  
Ocean  
Institute

Tel: +356 (-) 346528  
+356 (-) 346529  
Fax: +356 (-) 346502  
Tlx: 1407 HIEDUC MW  
Attention: IOI  
Cables: INTEROCEAN  
e-mail: ioimla@kemmnet.net.mt

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*Proposal for the establishment of a United Nations Ocean Assembly (UNOA)*

The Year of the Ocean is entering its final phase, and I do believe, it should not be allowed to pass without leaving a concrete result for the future: Something to enhance the implementation and progressive development, not only of the Law of the Sea Convention but of all the Conventions, Agreements and Programmes adopted in the wake of the Rio Conference on Environment and Development, all of which have an important ocean dimension. At present, all these instruments are not properly coordinated.

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I am attaching a few pages, taken from my forthcoming Report to the Club of Rome, which explains this proposal in some more detail. This Report will be published in November by the United Nations University Press, with an introduction by the ex-Prime Minister of the Netherlands, Dr. Ruud Lubbers, my colleague in the Club of Rome..

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*Policy Integration: The Ocean Assembly*

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The General Assembly of the United Nations could be given the responsibility for examining, periodically, all the interrelated problems of ocean space and generating an

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### *Policy Integration: Specialized Agencies and Programmes*

In analogy to what happens in the national “circle” where almost all Government Ministries are involved in one way or another in ocean affairs, and ways have to bound to harmonize and integrate their overlapping and often conflicting policies, almost all Specialized Agencies and Programmes of the United Nations are involved in one way or another in ocean affairs. The International Maritime Organisation (IMO), the Intergovernmental Oceanographic Commission (IOC) and the International Sea-bed Authority (ISBA)<sup>2</sup> are exclusively devoted to ocean affairs (IMO for shipping; IOC for marine sciences, ISBA for sea-bed mining), while UNESCO, FAO, and UNEP have a broader mandate including divisions for ocean affairs (UNESCO for marine sciences, culture and education; FAO for fisheries and aquaculture; UNEP for Regional Seas and marine environment) and others are otherwise involved with the oceans, such as the World Meteorological Organisation (WMO) with ocean-atmosphere interaction and its implications; the International Atomic Energy Agency (IAEA) for nuclear marine pollution; the United Nations Industrial Development Organisation (UNIDO), with industrial marine technology; the International Labour Organization (ILO) for the protection of maritime workers; the World Health Organisation (WHO) for ocean-related health problems; etc.

Streamlining of the Agencies and Programmes for cost-effectiveness, elimination of overlaps and harmonisation of policies has long been on the agenda of the United Nations and has been entrusted to the Administrative Committee on Coordination (ACC). In the wake of UNCED, the Secretary-General established a subcommittee of the ACC to deal specifically with the ocean-related policies and activities of the Agencies and Programmes, the ACC

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Dalhousie University

Fax Qin Li

International Ocean  
Institute

FAXED



FACSIMILE TRANSMISSION

To: Dr. Chen Bingxin  
Fax: 86 10 68 53 35 15 86 10 68 57 0941

From: Elisabeth Mann Borgese  
Fax: 1 902 868 2455

Date: July 6, 1998

Dear Dr. Chen,

It is my strong feeling that something concrete ought to be done, before the Year of the Ocean ends. Public awareness certainly has been heightened during this year, and I do believe, a proposal such as the attached could find wide support. After all, it does not cost anybody very much. More than anything else, it is a question of political will.

Do you think China could support this proposal at the UN General Assembly?

I would be most grateful for your reaction and suggestions.

Looking forward to seeing you soon in Jamaica,

With all good wishes,

Yours sincerely,

*Elisabeth Mann Borgese*

PS I just received a glowing report about your participation in our training programme! Many thanks!

Elzav





Dalhousie University

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FAXED

FACSIMILE TRANSMISSION

To: Dr. Klaus Toepfer  
 Fax No. 254-2-623928

From: Elisabeth Mann Borgese  
 Fax No. 1 902 868 2455

Date: July 6, 1998

Subject: cooperation

Lieber, verehrter Herr Doctor Toepfer,

Ich habe mich sehr ueber Ihren Brief gefreut, und unsere Zusammenarbeit mit UNEP nimmt staendig zu.

Vielleicht koennten wir etwas Nuetzliches zur Vorbereitung von CSD 7 beitragen. Wir koennten einen Beitrag diesbezuglich fuer Ihr Govening Council Meeing im Februar 1999 vorbereiten. Ueber den Inhalt koennten wir noch korrespondieren-- vielleicht ueber *technology cooperation* wo man etwas sehr schoenes Neues machen koennte, im Rahmen der Med.CSD, -- etwas, das die Beduerfnisse aller UNCED und post-UNCED Konventionen, Abkommen und Programme auf regionaler Ebene decken koennte...

Heute moechte ich Ihnen einen anderen Voschlag unterbreiten. Ich faende es so wichtig, dass noch vor Ende des Internationalen Ozean Jahres etwas Konkretes getan wird: Etwas, was klar machen soll, dass wir es ernst meinen mit unseren Theorien ueber *ocean governance*, und von *ocean governance* haengen doch all die Dinge, wie "anhaltende Entwicklung," ab.

Der Voschlag, den ich hier beilege, ist eigentlich ganz einfach und direkt, und kostet niemanden viel. Er ist mehr eine Frage des politischen Willens. Der Vorschlag wird uebrigens auch von der Independent World Commission on the Ocean aufgenommen.

Meine Idee waere, dass dieser Vorschlag in die UNGA Resolution des Ozean Jahres aufgenommen werden sollte.

Waeren Sie einverstanden? Koennten Sie helfen?

Das waers fuer heute.

Mit allen guten Wuenschen.

Stets Ihre

  
Elisabeth Mann Borgese

End  
Proposal for the establishment of a UN Oceans Assembly



Dalhousie University

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July 4, 1998

FAXED

H.E. Ambassador Juan Somavia  
Permanent Mission of Chile to the United Nations  
FAX No. 212 ~~972-9875~~  
**832 9714**

My dear Juan

It was so very nice seeing you in New York -- and I hope we will have many occasions to see each other in Geneva!

Here now is the proposal I mentioned to you. We should not let the Year of the Ocean pass without doing something that really makes a difference. I am aware of a certain "Law of the Sea fatigue" at the UN in New York, and a tendency to shove it off to the Specialized Agencies. This means to put asunder again what UNCLOS III, for the first time, has put together!

The proposal I am making here does not really cost anybody anything. More than anything else, it is a question of political will.

In New York they say, now we have established four new institutions relating to the Law of the Sea: The International Sea-bed Authority, the International Tribunal for the Law of the Sea, the Continental Shelf Commission, and the Meeting of States Parties -- and none of them functions very well. *BASTA!!!* The fact, however, is that they all will function better if we have a forum where the closely interrelated problems of ocean space can be considered as a whole -- to use the language of the Convention -- at the policy-making level. This is what is proposed here, in the most simple and direct way.

It would be wonderful if Chile could co-sponsor this initiative, together with a group of like-minded States. I have in mind the Netherlands, Malta, Italy, Japan, Brazil, India, China and a few others.

Do let me know what you think.

Much love,

Encl. Proposal for the establishment of a UN oceans Assembly

FAXED



Dalhousie University

International Ocean  
Institute

## FACSIMILE TRANSMISSION

To: H.E. Ambassador Helmut Tuerk  
Austrian Embassy  
Washington, DC

Fax No 202 895 6750

From: Elisabeth Mann Borgese  
Fax No. 1 902 868 2455

Date: July 5, 1998

Subject: A proposal

Dear Helmut,

long time no see....

I hope this note finds you well and active as always.

It is my strong feeling that something concrete should be done before the end of this Year of the Ocean, and so I thought of the proposal which I am attaching. After all, it is very simple and direct, and does not really cost anybody very much. It is, above all, a question of political will.

Do you think Austria could support such a proposal at the GA? Could you help? Could you suggest to me what I should do to promote the idea in New York or in the capitals?

Here, otherwise, things are going extremely well. The IOI is quite a power-house now. With important projects all over the place. We also have been extremely fortunate in finding a private donor in Switzerland who has given us an endowment of SF ten million. It is being administered by a Foundation in Zurich which we have established for this purpose. That now guarantees the continuity and independence of our work in perpetuity! However, I am trying to double this endowment during the next couple of years!

Would you be interested in coming to Pacem in Maribus on November 29-December 3 in Halifax? I think it is going to be really good.

All the very best, and it would be great to hear from you -- by fax or phone or e-mail!

Yours as ever,

*Ehrlich*

Encl. Proposal for the establishment of a UN Oceans Assembly



Dalhousie University

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FACSIMILE TRANSMISSION

To: H.E. Minister Alassane Dialy Ndiaye  
Fax No 221 823 87 20

From: Elisabeth Mann Borgese  
Fax No. 1 902 868 2455

Date: July 6, 1998

Subject: A proposal

Excellency,

Thank you very much for your letter of 23 June. We will be happy indeed to have you with us at Pacem in Maribus XXVI, November 29-December 3.

Today I want to submit to you another matter: It seems to me we should not let the Year of the Oceans pass without doing something concrete: manifesting that we are serious about ocean governance and all the things, like sustainable development, that depend on it.

The attached proposal seems to me straightforward. Who could be against it? As you are aware, it has been endorsed -- albeit a bit vaguely -- by the Independent World Commission on the Ocean. So we are in accord with them if now we propose practical action.

I would like to see the proposal incorporated in the UNGA Resolution of the Year of the Ocean.

Do you think Senegal could support the proposal? Can you help to get Senegal to do that?

I would be most grateful for your reaction.

With all good wishes,

Yours sincerely,



Dalhousie University

International Ocean  
Institute



**FAXED**

FACSIMILE TRANSMISSION

To: Professor Robin South  
Fax No 679 301 490

From: Elisabeth Mann Borgese  
Fax No. 1 902 868 2455

Date: July 6, 1998

Subject: A proposal

Dear Robin,

We have started a major initiative, and I wonder whether you could help? Something concrete ought to be done before the Year of the Ocean ends!

Could you discuss it with Esekia and/or the Minister for Foreign Affairs? I think the timing is really good. Everybody knows that something will have to be done. This does not really cost anybody very much. More than anything else it is a question of political will. Incidentally, this proposal has been endorsed also by the Independent Commission, so Esekia would be in a fine position to do something practical about it!

It would be great if this could be included in the UNGA Resolution of the Year of the Ocean!

All the best and much love,

*Elisabeth*



Dalhousie University

**FAXED**

International Ocean  
Institute



To: H.E. Minister José Israel Vargas  
Fax No 55 61 225 74 96

From: Elisabeth Mann Borgese  
Fax No. 1 902 868 2455  
Date: July 5, 1998

Subject: A proposal

My dear José Israel,

It is my strong conviction that something concrete should be done, indicating to the world that we are serious about ocean governance and all the things, like sustainable development, that depend on it! Words are words, but deeds are deeds!

The attached proposal seems to me to be straightforward -- who could really disagree? And it would not cost anybody very much. It is a question of political will. Incidentally, you will note that the ICWO does endorse the proposal. -- but what is needed now is action!

Do you think Brazil could support the proposal at the UNGA? Could you help? Is there anything that you think I could do -- besides trying to mobilize some good friends?

I am sad about missing opportunities to see you: I am of course not coming to Lisbon for the unveiling ceremony. I have not even been invited!

It would be good to hear from you.

With all good wishes,

Yours very cordially,

*Elisabeth*





Dalhousie University

International Ocean  
Institute



FAXED

To: H.E. Minister Kader Asmal  
Fax No 27 21 453 362

From: Elisabeth Mann Borgese  
Fax No. 1 902 868 2455

Date: July 5, 1998

Subject: A proposal

My dear Kader,

It is my strong conviction that something concrete should be done, indicating to the world that we are serious about ocean governance and all the things, like sustainable development, that depend on it! Words are words, but deeds are deeds!

The attached proposal seems to me to be straightforward -- who could really disagree? And it would not cost anybody very much. It is a question of political will. Incidentally, you will note that the ICWO does endorse the proposal -- in its own way: a little wishy-washy.

Do you think South Africa could support the proposal at the UNGA? Could you help? Is there anything that you think I could do -- besides trying to mobilize some good friends?

I am sad about missing opportunities to see you: I am of course not coming to Lisbon for the unveiling ceremony. I have not even been invited!

It would be good to hear from you.

With all good wishes,

Yours very cordially,



Dalhousie University

**FAXED**

International Ocean  
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FACSIMILE TRANSMISSION

To: Dr. Alejandro Gutierrez  
Fax No. 506v260 2546

From: Elisabeth Mann Borgese  
Fax No. 1 902 868 2455

Date: July 5, 1998

Subject: A proposal

Dear Alejandro,

I wonder whether you can help in the following matter:

It is my strong conviction that something concrete should be done before the end of this Year of the Ocean: Something that shows to the world that we are serious about ocean governance and all the things, like sustainable development, that depend on it.

I think the attached proposal is straightforward, and does not really cost anybody very much. It is above all a question of political will.

Do you think you could take it up with your Minister of Foreign Affairs and see whether you could convince him to support this proposal at the UNGA?

Do let me know. It would be formidable if we could get it done, and Costa Rica, I think would be in an excellent position to push it!

All the best,

Yours as ever,

*Elisabeth*



Dalhousie University

International Ocean  
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**FAXED**



FACSIMILE TRANSMISSION

To: H.E. Ambassador Francesco Paolo Fulci  
Fax: 212 486 1036

From: Elisabeth Mann Borgese  
Fax: 1 902 868 2455

Date: July 5, 1998

Subject: A proposal

Mr. Ambassador,

It was a real pleasure meeting you and Mrs. Fulci at Tono Eitel's party the other day. It was a nice party altogether.

As I mentioned to you, I feel very strongly that something concrete ought to be done before the Year of the Ocean ends.

The proposal I am attaching is rather simple and direct; and basically, I think, almost everybody would agree. It is just a question of political will.

Do you think Italy could support such a proposal at the GA?

If your reaction were to be positive, I know you could get it done! I know you can get anything done at the GA! You would be a formidable ally!

I would be most grateful to have your reaction.

With all good wishes, and please remember me to Mrs. Fulci.

Yours sincerely,

*Elisabeth Mann Borgese*



Ottawa, Canada K1A 0E6

Mr. Lawrence MacDonald  
24 Hillcrest Drive  
Rothesay, New Brunswick  
E2E 5P5

JUL - 7 1998

Dear Mr. MacDonald:

Thank you for your electronic message of March 30, 1998 in which you raise questions regarding Canada's ratification of the UN Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement ("UN Fisheries Agreement"). I apologize for the delay in responding to your message.

You are correct in pointing out that Canada played an important and key role in the Conferences leading up to the adoption of the Agreement. I would like to assure you that the Government of Canada is committed to ratifying the UN Fisheries Agreement. It has been determined that legislative amendments to the *Coastal Fisheries Protection Act* are required to implement the enforcement provisions of the Agreement.

To this effect, implementation legislation (Bill C-96) was tabled in the Spring of 1997 by my predecessor, the Honourable Fred Mifflin. The Bill unfortunately died on the order paper, due to the call for elections. I have renewed the exercise by tabling Bill C-27 on December 4, 1997. I have enclosed a copy of Bill C-27 for your convenience. Bill C-27 was the subject of second reading debate on April 29 and 30 and is in the process of being reviewed by the Standing Committee on Fisheries and Oceans of the House of Commons. Canada hopes to ratify the UN Fisheries Agreement shortly after the coming into force of Bill C-27.

I hope that these actions reassure you that Canada is committed to ratifying the UN Fisheries Agreement and thank you for bringing this matter to my attention.

Yours sincerely,

David Anderson, P.C., M.P.

Att.

Canada



RECEIVED DEC 15 1998

MEMORANDUM

ANALYSIS OF CANADIAN BILL C-27 ON FISHERIES

I. GENERAL COMMENTS

Before analysing the provisions of Canadian Bill C-27 (hereinafter referred to as the Bill) from the strictly legal viewpoint, reference should be made to the context in which it was tabled, with particular regard to the fact that, although the Canadian authorities clearly link it to the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks (1995 New York Agreement), they ignore the UN Convention on the Law of the Sea of 1982 in spite of the following considerations:

(a) the New York Agreement has not yet come into force, since only 15 States have ratified it (under Article 40 of the Agreement, 30 ratifications are necessary), while the UN Convention on the Law of the Sea of 1982 entered into force in 1994 and currently has 122 signatories. Canada has not yet ratified the Convention and does not appear likely to do so in the near future;

(b) although the Canadian authorities treat the Agreement as an international instrument separate from the Convention, this is not in fact the case, as is obvious from the Agreement's official title: 'Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks'. It is thus surprising that Canada should be attempting to ratify an agreement which has not yet entered into force, while being one of the few members of the international community which has not ratified the Convention which provides the 'basic framework' for that agreement and which has been in force for more than three years;

(c) the link between the two instruments is clearly indicated in Article 4 of the Agreement, which states that:

'Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention'.

II. ANALYSIS OF PROVISIONS

Without prejudice to the remarks which follow, it must first be acknowledged that the new Bill removes some of the most legally objectionable provisions of Bill C-96. However, this is not the same as saying that the new Bill fully complies with current international law, since it contains various provisions of doubtful legality:

(a) Firstly, one of the instruments which Bill C-27 seeks to amend is the Canadian Coastal Fisheries Protection Act. That Act - which was amended on 12 May 1994 and the regulations

relating to which were amended on 24 May 1994 and 3 March 1995 - was used by the Canadian authorities as the legal basis for the seizure of a vessel flying the flag of a Member State which was fishing 245 miles off the Canadian coast (on the high seas, which do not come under any national jurisdiction) with a permit from the fisheries organisation which has jurisdiction over the area (NAFO) and of which Canada itself is a member.

The clearly illegal articles of that Act which permitted the extraterritorial application of Canadian national law and which empowered Canadian officials to use force on the high seas are not repealed by Bill C-27, and must therefore be assumed to remain in force.

(b) Furthermore, Article 6(e)(ii) of Bill C-27 gives the Canadian Government the power of:

'designating any area of the sea regulated by the regional fisheries management organisation or arrangement'.

Given the wording of this provision and the Canadian authorities' past behaviour, there is good reason to suspect that the Canadian Government may, when it suits it, use this Article as the basis for applying its own national law to part of the high seas area adjacent to its EEZ.

A regional fisheries cooperation organisation with jurisdiction over the area already exists (NAFO) and the territorial scope of its powers in that area are clearly laid down in the agreements under which it was set up. It is therefore difficult to see how the Canadian authorities can take it upon themselves unilaterally to designate the areas of the sea regulated by that organisation.

Furthermore, the rest of new Article 6(e), which deals with the powers conferred on the Canadian authorities, makes the possibility of extraterritorial application even more likely.

(c) The above comments are borne out by the fact that Bill C-27 confers further powers on the Canadian authorities in the areas unilaterally designated on the basis of the aforementioned Article 6(e)(ii), such as those laid down in new Articles 5.3 (prohibition on fishing vessel of a participating state) or 16.2 (inspections by protection officers).

(d) Another provision whose wording implies that Canadian national law may be applied extraterritorially is Article 6(f)(ii), which confers on the Canadian Government the power to implement other international fisheries treaties or arrangements to which Canada is party, which includes

'designating any area of the sea regulated by the treaty or arrangement'.

(e) Also worthy of note is new Article 16.2, which stipulates that:

(1) After boarding a fishing vessel of a participating state, a protection officer who believes on reasonable grounds that the vessel has contravened Section 5.3 shall without delay inform that state.

(2) A protection officer may, with the consent of the participating state, exercise the powers as provided for in Section 16.1. If, within the period prescribed by regulation, the state has not responded, or has responded and is not fully investigating the alleged contravention by the vessel, the officer is deemed to have received the consent of the state'.

Firstly, this bears out what was said at point (a) above, given that new Article 16.2(1) refers to the violation of Article 5.3, which itself expressly refers to vessels 'in an area of the sea designated under subparagraph 6(e)(ii)'. Here again, therefore, we are confronted with the possibility of Canadian national law being applied extraterritorially.

Secondly, the procedure for the inspection of vessels without prior authorisation from the flag State is in fact provided for in Article 21 of the New York Agreement. However, the Canadian legislative authorities have not included in their national legislation three of the basic features of the system laid down in the New York Agreement:

(1) The inspection system applies only in areas where no fisheries organisation exists or the relevant fisheries organisation has not made provision for an inspection procedure. On the basis of this rule, the procedure laid down in Bill C-27 would never be applicable in the NAFO area, given that in that area the NAFO inspection procedure would apply at all times.

(2) There are several major discrepancies between the system laid down in Article 21 of the New York Agreement and that laid down in Article 16.2 of Bill C-27, including:

(i) the fact that, while Article 21(5) of the New York Agreement comes into operation when there are 'clear grounds' for believing that a vessel is guilty of a violation, Bill C-27 lays down the less stringent requirement of 'reasonable grounds';

(ii) the fact that, while Article 21(6) of the New York Agreement gives the flag State three working days in which to respond and thus prevent itself from being deemed to have given its tacit 'consent', no such time limit is laid down in the Canadian Bill, thus creating legal uncertainty.

(3) Bill C-27 ignores another important provision of the New York Agreement - namely, Article 21(15) - which stipulates that:

'Where a subregional or regional fisheries management organisation or arrangement has established an alternative mechanism which effectively discharges the obligation under this Agreement of its members or participants to ensure compliance with the conservation and management measures established by the organisation or arrangement, members of such organisation or participants in such arrangement may agree to limit the application of paragraph 1 as between themselves in respect of the conservation and management measures which have been established in the relevant high seas area'.

(f) Another provision of Bill C-27 which could be seen as an example of extraterritorial application of national legislation is Article 18.2(3), which stipulates that certain powers conferred on the Canadian authorities by the Coastal Fisheries Protection Act 'may not be exercised outside Canada with respect to that act or omission without the consent of the Attorney General of Canada'.

When one turns this provision around, it may be interpreted as meaning that, if the consent of the Attorney General is forthcoming, those powers may be exercised outside Canada.

(g) Lastly, Article 6 of the Canadian Act is amended so as to authorise the government to adopt measures to implement the New York Agreement without having to go through parliament, thus

giving it ample opportunity to adopt rules amending the subjective or objective scope of that Act. It should be remembered that this procedure was used in the past to harass Community vessels in the NAFO area.

### **III. CONCLUSION**

Despite the changes made by the Canadian legislative authorities and the removal of some of the provisions contained in earlier Bills which were clearly contrary to current international law, there can be no doubt that some of the provisions of Bill C-27 could lead to the extraterritorial application of Canadian law - which would be extremely damaging to Community interests in the NAFO area - and that other provisions of the Bill are contrary to the provisions of the New York Agreement itself.

In view of the extraterritorial nature of some of its provisions, the Bill is clearly contrary to the spirit and letter of the EU-Canada political declaration and action plan and, in any case, the European Union cannot accept the discretionary use by Canada of powers to inspect and impose penalties on Community vessels in the NAFO area.

Lastly, there would appear to be no doubt that implementation of this legislation would sooner or later lead to the emergence of new disputes such as that which arose between Canada and the EU in the recent past and would also be extremely likely to have a negative impact on the process of ratifying the New York Agreement.



**C-27**

First Session, Thirty-sixth Parliament,  
46 Elizabeth II, 1997

**THE HOUSE OF COMMONS OF CANADA**

**BILL C-27**

An Act to amend the Coastal Fisheries Protection Act and the Canada Shipping Act to enable Canada to implement the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and other international fisheries treaties or arrangements

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First reading, December 4, 1997

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**C-27**

Première session, trente-sixième législature,  
46 Elizabeth II, 1997

**CHAMBRE DES COMMUNES DU CANADA**

**PROJET DE LOI C-27**

Loi modifiant la Loi sur la protection des pêches côtières et la Loi sur la marine marchande du Canada afin de mettre en oeuvre, d'une part, l'Accord aux fins de l'application des dispositions de la Convention des Nations Unies sur le droit de la mer du 10 décembre 1982 relatives à la conservation et à la gestion des stocks de poissons dont les déplacements s'effectuent tant à l'intérieur qu'au-delà de zones économiques exclusives (stocks chevauchants) et des stocks de poissons grands migrateurs et, d'autre part, d'autres ententes ou traités internationaux en matière de pêche

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Première lecture le 4 décembre 1997

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THE MINISTER OF FISHERIES AND OCEANS

LE MINISTRE DES PÊCHES ET DES OCÉANS

## SUMMARY

This enactment amends the *Coastal Fisheries Protection Act* and the *Canada Shipping Act* to enable Canada to implement the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks adopted by the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks in New York on August 4, 1995.

The enactment also enables the implementation of other international fisheries treaties and arrangements.

## SOMMAIRE

Le texte modifie la *Loi sur la protection des pêches côtières* et la *Loi sur la marine marchande du Canada*. Les modifications visent à mettre en oeuvre, d'une part, l'Accord aux fins de l'application des dispositions de la Convention des Nations Unies sur le droit de la mer du 10 décembre 1982 relatives à la conservation et à la gestion des stocks de poissons dont les déplacements s'effectuent tant à l'intérieur qu'au-delà de zones économiques exclusives (stocks chevauchants) et des stocks de poissons grands migrateurs, adopté à New York le 4 août 1995, et, d'autre part, d'autres ententes ou traités internationaux en matière de pêche.

1987, 2e session, 1er Parliament  
40 Elizabeth II, 1987

CHAMBRE DES COMMUNES DU CANADA

PROJET DE LOI C-27

BILL C-27

Loi modifiant la Loi sur la protection des pêches côtières et la Loi sur le régime des pêches du Canada afin de mettre en œuvre, à une part l'Accord sur les pêches, l'application des dispositions de la Convention des Nations Unies sur le droit de la mer du 10 décembre 1982 relatives à la conservation et à la gestion des stocks de poissons dont les déplacements effectuent dans l'océan, au-delà des zones économiques exclusives (zones économiques) et des stocks de poissons (stocks migratoires) et d'autre part, d'autres mesures en matière d'activités internationales en matière de pêche.

En conséquence, j'ai eu l'honneur de convoquer le Sénat et de le présenter des communes du Canada, à savoir :

LOI SUR LA PROTECTION DES PÊCHES CÔTIÈRES

1987, 2e session  
40 Elizabeth II, 1987  
Chambre des communes du Canada

1. L'article 3 de la Loi sur la protection des pêches côtières est modifié par l'ajout de la section 3(1) de la Loi sur la protection des pêches côtières, à savoir :

1987, 2e session, 1er Parliament  
40 Elizabeth II, 1987

THE HOUSE OF COMMONS OF CANADA

BILL C-27

PROJET DE LOI C-27

An Act to amend the Coastal Fisheries Protection Act and the Canada Shipping Act to enable Canada to implement the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and other international fisheries matters or management.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

COASTAL FISHERIES PROTECTION ACT

1987, 2e session  
40 Elizabeth II, 1987  
Chambre des communes du Canada

1. (1) Section 3 of the Coastal Fisheries Protection Act is amended as subsection 3(1) of the Act to read as follows:

## BILL C-27

## PROJET DE LOI C-27

An Act to amend the Coastal Fisheries Protection Act and the Canada Shipping Act to enable Canada to implement the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and other international fisheries treaties or arrangements

Loi modifiant la Loi sur la protection des pêches côtières et la Loi sur la marine marchande du Canada afin de mettre en oeuvre, d'une part, l'Accord aux fins de l'application des dispositions de la Convention des Nations Unies sur le droit de la mer du 10 décembre 1982 relatives à la conservation et à la gestion des stocks de poissons dont les déplacements s'effectuent tant à l'intérieur qu'au-delà de zones économiques exclusives (stocks chevauchants) et des stocks de poissons grands migrants et, d'autre part, d'autres ententes ou traités internationaux en matière de pêche

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

### COASTAL FISHERIES PROTECTION ACT

### LOI SUR LA PROTECTION DES PÊCHES CÔTIÈRES

R.S., c. C-33;  
R.S., c. 31 (1st  
Suppl.), c. 39  
(2nd Suppl.);  
1990, c. 44;  
1992, c. 1;  
1994, cc. 12,  
14; 1996, c.  
31

L.R., ch.  
C-33; L.R.,  
ch. 31 (1<sup>er</sup>  
suppl.), ch.  
39 (2<sup>e</sup>  
suppl.); 1990,  
ch. 44; 1992,  
ch. 1; 1994,  
ch. 12, 14;  
1996, ch. 31

1. (1) Section 2 of the *Coastal Fisheries Protection Act* is renumbered as subsection 2(1).

(2) The definition "straddling stock" in subsection 2(1) of the Act is repealed.

(3) The definitions "government vessel" and "protection officer" in subsection 2(1) of the Act are replaced by the following:

"government vessel" means, subject to subsection 17(2), any vessel that belongs to or is in the service of Her Majesty in right of Canada;

1. (1) L'article 2 de la *Loi sur la protection des pêches côtières* devient le paragraphe 2(1).

(2) La définition de « stock chevauchant », au paragraphe 2(1) de la même loi, est abrogée.

(3) Les définitions de « bateau de l'État » et « garde-pêche », au paragraphe 2(1) de la même loi, sont remplacées par ce qui suit :

« bateau de l'État » Sous réserve du paragraphe 17(2), tout bateau qui appartient à Sa Majesté du chef du Canada ou est à son service.

1994, ch. 14,  
art. 1

« bateau de l'État »  
"government vessel"

1994, c. 14,  
s. 1

"government vessel"  
« bateau de l'État »

EXPLANATORY NOTES

*Coastal Fisheries Protection Act*

*Clause 1:* (2) and (3) The definitions "government vessel", "protection officer" and "straddling stock" in subsection 2(1) read as follows:

"government vessel" means any vessel that belongs to or is in the service of Her Majesty in right of Canada;

"protection officer" means

- (a) a fishery officer within the meaning of the *Fisheries Act*,
- (b) an officer of the Royal Canadian Mounted Police, or
- (c) any person authorized by the Governor in Council to enforce this Act;

"straddling stock" means a prescribed stock of fish.

NOTES EXPLICATIVES

*Loi sur la protection des pêches côtières*

*Article 1, (2) et (3).* — Texte des définitions de « bateau de l'État », « garde-pêche » et « stock chevauchant » à l'article 2 :

« bateau de l'État » Bateau qui appartient à Sa Majesté du chef du Canada ou est à son service.

« garde-pêche » Font office de garde-pêche :

- (a) les agents des pêches au sens de la *Loi sur les pêches*;
- (b) les agents de la Gendarmerie royale du Canada;
- (c) les personnes autorisées par le gouverneur en conseil à exercer des pouvoirs de police dans le cadre de la présente loi.

« stock chevauchant » Stock de poissons déterminé par règlement.

“protection officer”  
« garde-pêche »

“protection officer” means, subject to subsection 17(2),

- (a) a fishery officer within the meaning of the *Fisheries Act*,
- (b) a member of the Royal Canadian Mounted Police, or
- (c) any person authorized by the Governor in Council to enforce this Act;

« garde-pêche » Sous réserve du paragraphe 17(2), font office de garde-pêche :

- a) les agents des pêches au sens de la *Loi sur les pêches*;
- b) les membres de la Gendarmerie royale du Canada;
- c) les personnes autorisées par le gouverneur en conseil à exercer des pouvoirs de police dans le cadre de la présente loi.

« garde-pêche »  
“protection officer”

**(4) Subsection 2(1) of the Act is amended by adding the following in alphabetical order:**

“Agreement” means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks adopted by the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks in New York on August 4, 1995;

“fishing vessel of a participating state” means a foreign fishing vessel that has been issued, under the laws of a participating state, a registration number, licence or other document granting it the right to fly the flag of that state or that is otherwise entitled to fly the flag of that state;

“fishing vessel without nationality” means a fishing vessel that

- (a) has not been issued, under the laws of any state, a registration number, licence or other document granting it the right to fly the flag of that state,
- (b) sails under a flag that it is not entitled to fly,
- (c) does not sail under the flag of any state,
- (d) sails under the flag of two or more states, using them according to convention, or
- (e) sails under the flag of a state that is not recognized by the international community;

“Agreement”  
« accord »

“fishing vessel of a participating state”  
« bateau de pêche d'un État assujéti à l'accord »

“fishing vessel without nationality”  
« bateau de pêche sans nationalité »

**(4) Le paragraphe 2(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

« accord » L'Accord aux fins de l'application des dispositions de la Convention des Nations Unies sur le droit de la mer du 10 décembre 1982 relatives à la conservation et à la gestion des stocks de poissons dont les déplacements s'effectuent tant à l'intérieur qu'au-delà de zones économiques exclusives (stocks chevauchants) et des stocks de poissons grands migrateurs, adopté à New York le 4 août 1995 par la Conférence des Nations Unies concernant les stocks de poissons chevauchants et les stocks de poissons grands migrateurs.

« bateau de pêche d'un État assujéti à l'accord » Bateau de pêche étranger auquel a été attribué, sous le régime des lois d'un État assujéti à l'accord, un numéro d'immatriculation ou un permis ou autre document lui permettant de battre le pavillon de cet État ou qui navigue sous un tel pavillon en y étant autorisé.

« bateau de pêche sans nationalité » Bateau de pêche :

- a) soit auquel n'a été attribué, sous le régime des lois d'un État, aucun numéro d'immatriculation ou permis ou autre document lui permettant de battre le pavillon de cet État;
- b) soit qui navigue sous le pavillon d'un État sans y être autorisé;
- c) soit qui ne navigue sous le pavillon d'aucun État;

« accord »  
“Agreement”

« bateau de pêche d'un État assujéti à l'accord »  
“fishing vessel of a participating state”

« bateau de pêche sans nationalité »  
“fishing vessel without nationality”

<p>(4) and (5) New.</p>	<p>(4) et (5). — Nouveau.</p>	<p>Provisional basis of the Agreement</p>
<p>(5) section 2 of the Act is amended by adding the following after subsection (1):</p> <p>(2) In section 2.4, subparagraphs 6(D)(v) and (vi), section 6.3, paragraph 17(2)(b), sections 18.01 and 18.02 and paragraph 18.1(2), "state" includes an organization of foreign states.</p> <p>2. The act is amended by adding the following after section 2.3:</p>	<p>(5) section 2 of the Act is amended by adding the following after subsection (1):</p> <p>(2) In section 2.4, subparagraphs 6(D)(v) and (vi), section 6.3, paragraph 17(2)(b), sections 18.01 and 18.02 and paragraph 18.1(2), "state" includes an organization of foreign states.</p> <p>2. The act is amended by adding the following after section 2.3:</p>	<p>Provisional basis of the Agreement</p>
<p>2.3 No fishing vessel of a participating state shall in an area of the sea designated under subparagraph 6(v)(ii),</p> <p>(a) contain a measure designated under subparagraph 6(K);</p> <p>(b) conceal, transport, with or dispose of a quantity that may affect evidence of a commission of a measure designated under subparagraph 6(I) or</p> <p>(c) conceal its identity or registration, including displaying a false marking, from-30 list of registration.</p>	<p>2.3 No fishing vessel of a participating state shall in an area of the sea designated under subparagraph 6(v)(ii),</p> <p>(a) contain a measure designated under subparagraph 6(K);</p> <p>(b) conceal, transport, with or dispose of a quantity that may affect evidence of a commission of a measure designated under subparagraph 6(I) or</p> <p>(c) conceal its identity or registration, including displaying a false marking, from-30 list of registration.</p>	<p>Prohibition on fishing vessels in areas of sea party</p>
<p>2.4 No fishing vessel of a state that is party to a treaty or arrangement described in paragraph 6(v) shall in an area of the sea designated under subparagraph 6(v)(ii), con-32 tain a measure set out or designated under subparagraph 6(K).</p>	<p>2.4 No fishing vessel of a state that is party to a treaty or arrangement described in paragraph 6(v) shall in an area of the sea designated under subparagraph 6(v)(ii), con-32 tain a measure set out or designated under subparagraph 6(K).</p>	<p>Prohibition on fishing vessels in areas of sea party</p>

“participating state”  
« État assujéti à l'accord »

“participating state” means a foreign state or an organization of foreign states that

- (a) is party to the Agreement,
- (b) has notified the Secretary-General of the United Nations in writing of its intention to apply the Agreement on a provisional basis, or
- (c) has entered into a reciprocal arrangement with Canada that includes the application of Part VI of the Agreement;

d) soit qui navigue sous les pavillons de plusieurs États, dont il fait usage à sa convenance;

e) soit qui navigue sous le pavillon d'un État dont la collectivité internationale ne reconnaît pas l'existence officielle.

« État assujéti à l'accord » État ou organisation d'États étrangers qui est partie à l'accord, qui a notifié par écrit au Secrétaire général de l'ONU son intention de l'appliquer sur une base provisoire ou qui a convenu de l'application réciproque de sa partie 6 avec le Canada.

« État assujéti à l'accord »  
“participating state”

**(5) Section 2 of the Act is amended by adding the following after subsection (1):**

**(5) L'article 2 de la même loi est modifié par adjonction, après le paragraphe (1), de 15 ce qui suit :**

Meaning of “state”

(2) In section 5.4, subparagraphs 6(f)(iv) and (vi), section 16.3, paragraph 17(2)(b), sections 18.01 and 18.02 and paragraph 18.1(a.2), “state” includes an organization of foreign states.

(2) L'État visé à l'article 5.4, aux sous-alinéas 6f)(iv) et (vi), à l'article 16.3, à l'alinéa 17(2)b), aux articles 18.01 et 18.02 et à l'alinéa 18.1a.2) s'entend également d'une organisation d'États étrangers.

Sens de « État »

**2. The Act is amended by adding the following after section 5.2:**

**2. La même loi est modifiée par adjonction, après l'article 5.2, de ce qui suit :**

Prohibition on fishing vessel of a participating state

**5.3** No fishing vessel of a participating state shall, in an area of the sea designated under subparagraph 6(e)(ii),

- (a) contravene a measure designated under subparagraph 6(e)(i);
- (b) conceal, tamper with or dispose of anything that may afford evidence of a contravention of a measure designated under subparagraph 6(e)(i); or
- (c) conceal its identity or registration, including displaying a false marking, identity or registration.

**5.3** Il est interdit au bateau de pêche d'un État assujéti à l'accord se trouvant dans un espace maritime délimité au titre du sous-alinéa 6e)(ii) :

- a) de contrevenir aux mesures désignées au titre du sous-alinéa 6e)(i);
- b) de dissimuler, d'altérer ou de faire disparaître des éléments de preuve afférents à la contravention de ces mesures;
- c) de porter une marque, un nom ou une immatriculation falsifiés ou dissimulés.

Infractions sanctionnant l'accord

Prohibition on fishing vessels of states party to treaties or arrangements

**5.4** No fishing vessel of a state that is party to a treaty or arrangement described in paragraph 6(f) shall, in an area of the sea designated under subparagraph 6(f)(ii), contravene a measure set out or designated under subparagraph 6(f)(i).

**5.4** Il est interdit au bateau de pêche d'un État assujéti à un traité ou une entente visés à l'alinéa 6f) se trouvant dans un espace maritime délimité au titre du sous-alinéa 6f)(ii) de contrevenir aux mesures visées au sous-alinéa 6f)(i).

Infractions sanctionnant d'autres traités ou ententes



100-101

2.2 Il est interdit au patron de pêche sans nationalité se trouver dans un espace maritime délimité en vertu de sous-articles 2(1) ou 2(2) de la Convention dans le but de pêcher, sans mesure désignée en vertu de sous-articles 2(1) ou 2(2) de la Convention, un poisson vivant ou sous-produit d'un poisson.

2.3 (1) Le patron de l'article 2 de la Convention est tenu de respecter l'article 2 de la Convention par le biais de la Convention.

2.4 Le gouvernement en conseil peut, par règlement, prendre toute mesure d'application de la Convention.

(2) L'article 2(1) de la Convention est remplacé par ce qui suit :

Clause 2: New.

(1) Incipit per... (2) Incipit per... (3) Incipit per... (4) Incipit per... (5) Incipit per... (6) Incipit per... (7) Incipit per... (8) Incipit per... (9) Incipit per... (10) Incipit per... (11) Incipit per... (12) Incipit per... (13) Incipit per... (14) Incipit per... (15) Incipit per... (16) Incipit per... (17) Incipit per... (18) Incipit per... (19) Incipit per... (20) Incipit per... (21) Incipit per... (22) Incipit per... (23) Incipit per... (24) Incipit per... (25) Incipit per... (26) Incipit per... (27) Incipit per... (28) Incipit per... (29) Incipit per... (30) Incipit per... (31) Incipit per... (32) Incipit per... (33) Incipit per... (34) Incipit per... (35) Incipit per... (36) Incipit per... (37) Incipit per... (38) Incipit per... (39) Incipit per... (40) Incipit per... (41) Incipit per... (42) Incipit per... (43) Incipit per... (44) Incipit per... (45) Incipit per... (46) Incipit per... (47) Incipit per... (48) Incipit per... (49) Incipit per... (50) Incipit per... (51) Incipit per... (52) Incipit per... (53) Incipit per... (54) Incipit per... (55) Incipit per... (56) Incipit per... (57) Incipit per... (58) Incipit per... (59) Incipit per... (60) Incipit per... (61) Incipit per... (62) Incipit per... (63) Incipit per... (64) Incipit per... (65) Incipit per... (66) Incipit per... (67) Incipit per... (68) Incipit per... (69) Incipit per... (70) Incipit per... (71) Incipit per... (72) Incipit per... (73) Incipit per... (74) Incipit per... (75) Incipit per... (76) Incipit per... (77) Incipit per... (78) Incipit per... (79) Incipit per... (80) Incipit per... (81) Incipit per... (82) Incipit per... (83) Incipit per... (84) Incipit per... (85) Incipit per... (86) Incipit per... (87) Incipit per... (88) Incipit per... (89) Incipit per... (90) Incipit per... (91) Incipit per... (92) Incipit per... (93) Incipit per... (94) Incipit per... (95) Incipit per... (96) Incipit per... (97) Incipit per... (98) Incipit per... (99) Incipit per... (100) Incipit per...

2.2 No fishing vessel without nationality shall... (a) in an area of the sea designated under subparagraph 2(1)(i) contains a non-designated under subparagraph 2(1)(i) or (b) in an area of the sea designated under subparagraph 2(1)(ii) contains a non-designated under subparagraph 2(1)(ii).

2.3 (1) The patron of section 2 of the Act before paragraph 2(1) is required to follow the following:

2.4 The Governor in Council may make regulations for carrying out the purposes and provisions of this Act including, but not limited to, regulations:

(2) Section 2 of the Act is amended by striking out the word "and" at the end of paragraph (b) and by replacing paragraph 2(1) with the following:

Article 2. — Nouveau.

(1) Incipit per... (2) Incipit per... (3) Incipit per... (4) Incipit per... (5) Incipit per... (6) Incipit per... (7) Incipit per... (8) Incipit per... (9) Incipit per... (10) Incipit per... (11) Incipit per... (12) Incipit per... (13) Incipit per... (14) Incipit per... (15) Incipit per... (16) Incipit per... (17) Incipit per... (18) Incipit per... (19) Incipit per... (20) Incipit per... (21) Incipit per... (22) Incipit per... (23) Incipit per... (24) Incipit per... (25) Incipit per... (26) Incipit per... (27) Incipit per... (28) Incipit per... (29) Incipit per... (30) Incipit per... (31) Incipit per... (32) Incipit per... (33) Incipit per... (34) Incipit per... (35) Incipit per... (36) Incipit per... (37) Incipit per... (38) Incipit per... (39) Incipit per... (40) Incipit per... (41) Incipit per... (42) Incipit per... (43) Incipit per... (44) Incipit per... (45) Incipit per... (46) Incipit per... (47) Incipit per... (48) Incipit per... (49) Incipit per... (50) Incipit per... (51) Incipit per... (52) Incipit per... (53) Incipit per... (54) Incipit per... (55) Incipit per... (56) Incipit per... (57) Incipit per... (58) Incipit per... (59) Incipit per... (60) Incipit per... (61) Incipit per... (62) Incipit per... (63) Incipit per... (64) Incipit per... (65) Incipit per... (66) Incipit per... (67) Incipit per... (68) Incipit per... (69) Incipit per... (70) Incipit per... (71) Incipit per... (72) Incipit per... (73) Incipit per... (74) Incipit per... (75) Incipit per... (76) Incipit per... (77) Incipit per... (78) Incipit per... (79) Incipit per... (80) Incipit per... (81) Incipit per... (82) Incipit per... (83) Incipit per... (84) Incipit per... (85) Incipit per... (86) Incipit per... (87) Incipit per... (88) Incipit per... (89) Incipit per... (90) Incipit per... (91) Incipit per... (92) Incipit per... (93) Incipit per... (94) Incipit per... (95) Incipit per... (96) Incipit per... (97) Incipit per... (98) Incipit per... (99) Incipit per... (100) Incipit per...

(i) designating any area of the sea regulated by the regional fisheries management organization or management; (ii) setting out the circumstances in which a person engaged or employed in the administration or enforcement of this Act may exercise in a manner consistent with the Agreement and the measures incorporated by reference under sub-paragraph (i) the power conferred by or under this Act and setting out any procedures to be followed in doing so.

Prohibition on fishing vessels without nationality

**5.5** No fishing vessel without nationality shall

(a) in an area of the sea designated under subparagraph 6(e)(ii), contravene a measure designated under subparagraph 6(e)(i); or

(b) in an area of the sea designated under subparagraph 6(f)(ii), contravene a measure set out or designated under subparagraph 6(f)(i).

**3. (1)** The portion of section 6 of the Act before paragraph (a) is replaced by the following:

**6.** The Governor in Council may make regulations for carrying out the purposes and provisions of this Act including, but not limited to, regulations

**(2)** Section 6 of the Act is amended by striking out the word "and" at the end of paragraph (d) and by replacing paragraph (e) with the following:

(e) for the implementation of the Agreement, including regulations

(i) incorporating by reference any conservation or management measures of a regional fisheries management organization or arrangement established by two or more states, or by one or more states and an organization of states, for the purpose of the conservation or management of a straddling fish stock or highly migratory fish stock, and designating from amongst the measures those the contravention of which is prohibited by paragraph 5.3(a),

(ii) designating any area of the sea regulated by the regional fisheries management organization or arrangement,

(iii) setting out the circumstances in which a person engaged or employed in the administration or enforcement of this Act may exercise, in a manner consistent with the Agreement and the measures incorporated by reference under subparagraph (i), the powers conferred by or under this Act and setting out any procedures to be followed in doing so,

**5.5** Il est interdit au bateau de pêche sans nationalité se trouvant dans un espace maritime délimité au titre du sous-alinéa 6e)(ii) ou 6f)(ii) de contrevenir, dans le premier cas, aux mesures désignées au titre du sous-alinéa 6e)(i) ou, dans le deuxième cas, à celles visées au sous-alinéa 6f)(i).

**3. (1)** Le passage de l'article 6 de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

**6.** Le gouverneur en conseil peut, par règlement, prendre toute mesure d'application de la présente loi, et notamment :

**(2)** L'alinéa 6e) de la même loi est remplacé par ce qui suit :

e) mettre en oeuvre l'accord, et plus particulièrement :

(i) incorporer par renvoi les mesures de conservation ou de gestion établies par une organisation régionale ou aux termes d'un arrangement régional constituée ou établi, selon le cas, par au moins deux États ou une organisation d'États pour conserver ou gérer des stocks de poissons chevauchants ou des stocks de poissons grands migrateurs, et désigner parmi ces mesures celles visées par l'interdiction de l'alinéa 5.3a),

(ii) délimiter les espaces maritimes tombant sous la compétence de ces organisations ou régis par ces arrangements,

(iii) préciser les circonstances dans lesquelles les personnes chargées du contrôle ou de l'application de la présente loi peuvent exercer, en conformité avec l'accord et les mesures incorporées par renvoi au titre du sous-alinéa (i), les pouvoirs que celle-ci leur confère et préciser la procédure à suivre,

(iv) habiliter le ministre à autoriser les mesures d'exécution que peut prendre

Infractions : bateaux sans nationalité

Règlements

Regulations

Clause 3: (1) and (2) Paragraph 6(f) is new. The relevant portion of section 6 reads as follows:

- 6. The Governor in Council may make regulations
  - ...
  - (e) generally for carrying out the purposes and provisions of this Act.

Article 3, (1) et (2). — L'alinéa 6f) est nouveau. Texte des passages visés de l'article 6 :

- 6. Le gouverneur en conseil peut, par règlement :
  - ...
  - e) prendre toute autre mesure d'application de la présente loi.

- (iv) empowering the Minister to authorize a participating state to take enforcement action in respect of a Canadian fishing vessel,
- (v) respecting the manner of service and the giving and sending of summonses, notices, statements and other documents, and 5
- (vi) permitting Her Majesty in right of Canada to recover any reasonable costs incurred as a result of the detention in port of a fishing vessel of a participating state; and 10
- (f) for the implementation of the provisions of any other international fisheries treaty or arrangement to which Canada is party, including any conservation, management or enforcement measures taken under the treaty or arrangement, including regulations 20
- (i) setting out any of those measures the contravention of which is prohibited by section 5.4 or incorporating by reference any of those measures and designating from amongst them those the contravention of which is prohibited by section 5.4, 25
- (ii) designating any area of the sea regulated by the treaty or arrangement,
- (iii) setting out the circumstances in which a person engaged or employed in the administration or enforcement of this Act may exercise, in a manner consistent with the treaty or arrangement and the measures set out or incorporated by reference under subparagraph (i), the powers conferred by or under this Act and setting out any procedures to be followed in doing so, 35
- (iv) empowering the Minister to authorize a state that is party to the treaty or arrangement to take enforcement action in respect of a Canadian fishing vessel, 40
- (v) respecting the manner of service and the giving and sending of summonses, notices, statements and other documents, and 45
- l'État assujetti à l'accord à l'égard d'un bateau de pêche canadien,
- (v) régir la remise, l'envoi et la signification des citations, avis, déclarations et autres documents, 5
- (vi) permettre à Sa Majesté du chef du Canada de recouvrer les frais raisonnablement exposés pour la rétention portuaire d'un bateau de pêche d'un État assujetti à l'accord; 10
- f) mettre en oeuvre d'autres ententes ou traités internationaux en matière de pêche auxquels le Canada est partie, dont les mesures de préservation, de gestion ou de contrôle d'application prises sous le régime de tels traités ou ententes, et plus particulièrement :
- (i) préciser les mesures dont la contravention constitue une infraction à l'article 5.4 ou les incorporer par renvoi, et désigner, parmi ces mesures, celles dont la contravention constitue une infraction à cet article,
- (ii) délimiter les espaces maritimes visés par ces traités ou ententes, 25
- (iii) préciser les circonstances dans lesquelles les personnes chargées du contrôle ou de l'application de la présente loi peuvent exercer, en conformité avec les traités ou ententes et les mesures précisées au sous-alinéa (i) ou incorporées au titre de ce sous-alinéa, les pouvoirs que celle-ci leur confère et préciser la procédure à suivre, 30
- (iv) habiliter le ministre à autoriser les mesures d'exécution que peut prendre l'État assujetti à tel traité ou entente à l'égard d'un bateau de pêche canadien, 35
- (v) régir la remise, l'envoi et la signification des citations, avis, déclarations et autres documents, 40
- (vi) permettre à Sa Majesté du chef du Canada de recouvrer les frais raisonnablement exposés pour la rétention portuaire d'un bateau de pêche d'un État assujetti à tel traité ou entente. 45

	(vi) permitting Her Majesty in right of Canada to recover any reasonable costs incurred as a result of the detention in port of a fishing vessel of a state that is party to the treaty or arrangement.	5			
	<b>4. The Act is amended by adding the following after section 7:</b>		<b>4. La même loi est modifiée par adjonction, après l'article 7, de ce qui suit :</b>		
Enforcement against unauthorized fishing in Canadian fisheries waters	<b>7.01</b> (1) A protection officer who believes on reasonable grounds that a fishing vessel of a participating state found in an area of the sea designated under subparagraph 6(e)(ii) has engaged in unauthorized fishing in Canadian fisheries waters may, with the consent of the participating state, take any enforcement action that is consistent with this Act.	10 15	<b>7.01</b> (1) Le garde-pêche qui a des motifs raisonnables de croire qu'un bateau de pêche d'un État assujetti à l'accord se trouvant dans un espace maritime délimité au titre du sous-alinéa 6e)(ii) s'est livré, en eaux de pêche canadiennes, à une pêche non autorisée peut, avec l'agrément de cet État, prendre toute mesure d'exécution de la présente loi.	5 10	Application de la loi : pêche illégale en eaux de pêche canadiennes
Right of pursuit not affected	(2) Subsection (1) does not affect any rights the protection officer may have to continue pursuit that began while the vessel was in Canadian fisheries waters.		(2) Le paragraphe (1) n'a pas pour effet de porter atteinte aux pouvoirs du garde-pêche en cas de poursuite d'un bateau entamée dans les eaux de pêche canadiennes.		Cas de poursuite
	<b>5. Section 8 of the Act is replaced by the following:</b>		<b>5. L'article 8 de la même loi est remplacé par ce qui suit :</b>		
Arrest	<b>8.</b> A protection officer may arrest without warrant any person who the officer believes on reasonable grounds has committed an offence under this Act.	25	<b>8.</b> Le garde-pêche peut arrêter sans mandat toute personne dont il croit, pour des motifs raisonnables, qu'elle a commis une infraction à la présente loi.	20	Arrestation
	<b>6. The portion of section 9 of the Act before paragraph (a) is replaced by the following:</b>		<b>6. Le passage de l'article 9 de la même loi précédant l'alinéa a) est remplacé par ce qui suit :</b>		
Seizure	<b>9.</b> A protection officer who believes on reasonable grounds that an offence under this Act has been committed may seize	30	<b>9.</b> S'il croit, pour des motifs raisonnables, qu'il y a eu infraction à la présente loi, le garde-pêche peut saisir :	25	Saisies
	<b>7. The portion of section 14 of the English version of the Act before paragraph (a) is replaced by the following:</b>		<b>7. Le passage de l'article 14 de la version anglaise de la même loi précédant l'alinéa a) est remplacé par ce qui suit :</b>		
Forfeiture	<b>14.</b> When a person or a fishing vessel is convicted of an offence under this Act, the convicting court or judge may, in addition to any other punishment imposed, order that	35	<b>14.</b> When a person or a fishing vessel is convicted of an offence under this Act, the convicting court or judge may, in addition to any other punishment imposed, order that	30	Forfeiture
	<b>8. The Act is amended by adding the following after section 16:</b>	40	<b>8. La même loi est modifiée par adjonction, après l'article 16, de ce qui suit :</b>	35	
Powers of protection officer re: fishing vessel of participating state	<b>16.1</b> Subject to any regulation made under subparagraph 6(e)(iii) and to section 16.2, any power conferred on a protection officer by or under this Act may be exercised by the officer in respect of a fishing vessel of a participating state found in an area of the sea designated under subparagraph 6(e)(ii).	45	<b>16.1</b> Le garde-pêche peut, sous réserve des règlements pris au titre du sous-alinéa 6e)(iii), exercer, en conformité avec l'article 16.2, les pouvoirs que lui confère la présente loi à l'égard de tout bateau de pêche d'un État assujetti à l'accord se trouvant dans un espace		Pouvoirs du garde-pêche à l'égard du bateau de l'État assujetti à l'accord

*Clause 4:* New.

*Article 4.* — Nouveau.

*Clause 5:* Section 8 reads as follows:

**8.** A protection officer may arrest without warrant any person who the officer suspects on reasonable grounds has committed an offence under this Act.

*Article 5.* — Texte de l'article 8 :

**8.** Le garde-pêche peut arrêter sans mandat toute personne qu'il soupçonne, pour des motifs raisonnables, d'avoir commis une infraction à la présente loi.

*Clause 6:* The relevant portion of section 9 reads as follows:

**9.** Where a protection officer suspects on reasonable grounds that an offence under this Act has been committed, the officer may seize

*Article 6.* — Texte du passage visé de l'article 9 :

**9.** S'il soupçonne, pour des motifs raisonnables, qu'il y a eu infraction à la présente loi, le garde-pêche peut saisir :

*Clause 7:* The relevant portion of section 14 reads as follows:

**14.** Where a person is convicted of an offence under this Act, the convicting court or judge may, in addition to any other punishment imposed, order that

*Article 7.* — Texte du passage visé de l'article 14 :

**14.** Sur déclaration de culpabilité de l'auteur d'une infraction à la présente loi, le tribunal ou le juge peut prononcer, en sus de toute autre peine, la confiscation immédiate au profit de Sa Majesté du chef du Canada :

*Clause 8:* New.

*Article 8.* — Nouveau.

Notification of participating state

**16.2** (1) After boarding a fishing vessel of a participating state, a protection officer who believes on reasonable grounds that the vessel has contravened section 5.3 shall without delay inform that state.

maritime délimité au titre du sous-alinéa 6e)(ii).

**16.2** (1) Le garde-pêche qui a des motifs raisonnables de croire qu'un bateau de pêche d'un État assujéti à l'accord a contrevenu à l'article 5.3 en informe l'État sans délai après l'arraisonnement du bateau.

Avis à l'État assujéti à l'accord

Consent of participating state

(2) A protection officer may, with the consent of the participating state, exercise the powers as provided for in section 16.1. If, within the period prescribed by regulation, the state has not responded, or has responded and is not fully investigating the alleged contravention by the vessel, the officer is deemed to have received the consent of the state.

(2) Le garde-pêche autorisé par l'État peut exercer les pouvoirs visés à l'article 16.1; faute par ce dernier de répondre et d'enquêter à fond sur l'infraction reprochée dans le délai réglementaire, le garde-pêche est réputé avoir reçu l'autorisation.

Mesures autorisées ou réputées autorisées

Powers of protection officer re: fishing vessels under other treaties or arrangements

**16.3** Subject to any regulations made under subparagraph 6(f)(iii), any power conferred on a protection officer by or under this Act may be exercised by the officer in respect of a fishing vessel of a state party to a treaty or arrangement described in paragraph 6(f) that has been found in an area of the sea designated under subparagraph 6(f)(ii).

**16.3** Le garde-pêche peut, sous réserve des règlements pris au titre du sous-alinéa 6f)(iii), 15 exercer les pouvoirs que lui confère la présente loi à l'égard de tout bateau de pêche d'un État assujéti à un traité ou une entente visés à l'alinéa 6f) se trouvant dans un espace maritime délimité au titre du sous-alinéa 20 6f)(ii).

Pouvoirs du garde-pêche à l'égard du bateau assujéti à un traité ou entente

**9. Section 17 of the Act is renumbered as subsection 17(1) and is amended by adding the following:**

**9. L'article 17 de la même loi devient le paragraphe 17(1) et est modifié par adjonction de ce qui suit :**

Meaning of government vessel and protection officer

(2) In subsection (1), "government vessel" also includes a vessel that belongs to or is in the service of, and "protection officer" also includes an enforcement official of,

(2) Les termes « garde-pêche » et « bateau de l'État », au paragraphe (1), s'entendent également, lorsqu'ils agissent dans l'exercice de leurs fonctions en application :

Sens de « garde-pêche » et de « bateau de l'État »

(a) a participating state if the vessel or official, as the case may be, is acting in the performance of their duties in relation to the Agreement; or

a) de l'accord, du garde-pêche relevant d'un État assujéti à l'accord et du bateau qui appartient à l'État ou qui est à son service;

(b) a state that is party to a treaty or arrangement described in paragraph 6(f) if the vessel or official, as the case may be, is acting in the performance of their duties in relation to the treaty or arrangement.

b) d'un traité ou entente visés à l'alinéa 6f), du garde-pêche relevant d'un État qui y est assujéti et du bateau qui appartient à l'État ou qui est à son service.

1994, c. 14, s. 6(2)

**10. The portion of subsection 18(2) of the Act before paragraph (a) is replaced by the following:**

**10. Le passage du paragraphe 18(2) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

1994, ch. 14, par. 6(2)

Clause 9: New.

Article 9. — Nouveau.

Clause 10: The relevant portion of subsection 18(2) reads as follows:

(2) Every person who contravenes any of paragraphs 4(1)(b) to (e), section 5 or the regulations is guilty of an offence and liable

Article 10. — Texte du passage visé du paragraphe 18(2) :

(2) Quiconque contrevient à l'un des alinéas 4(1)(b) à (e), à l'article 5 ou aux règlements commet une infraction et encourt, sur déclaration de culpabilité :



Offence and  
punishment

(2) Every person who contravenes any of paragraphs 4(1)(b) to (e), section 5 or the regulations and every fishing vessel that contravenes any of sections 5.3 to 5.5 or the regulations is guilty of an offence and liable

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(2) Quiconque contrevient à l'un des alinéas 4(1)b) à e), aux articles 5, 5.3, 5.4 ou 5.5 ou aux règlements commet une infraction et encourt, sur déclaration de culpabilité :

Infraction et  
peine

**11. The Act is amended by adding the following after section 18:**

Proof of  
offence by a  
fishing vessel  
of a  
participating  
state

**18.01** (1) In a prosecution of a fishing vessel of a participating state or a state that is party to a treaty or arrangement described in paragraph 6(f) for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by a person on board the vessel, whether or not the person is identified or has been prosecuted for the offence.

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**11. La même loi est modifiée par adjonction, après l'article 18, de ce qui suit :**

**18.01** (1) La preuve qu'une infraction à la présente loi a été commise par une personne se trouvant à bord d'un bateau de pêche d'un État assujéti à l'accord ou à un traité ou entente visés à l'alinéa 6f) suffit pour établir la responsabilité de celui-ci, que cette personne soit ou non connue ou poursuivie.

Responsabi-  
lité du bateau  
de pêche  
d'un État  
assujéti à  
l'accord

Appearance  
of vessel

(2) A fishing vessel of a participating state on which a summons is served must appear by counsel or agent.

(2) Le bateau de pêche cité comparaît par avocat ou représentant.

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Comparution

Trial if vessel  
does not  
appear

(3) If a fishing vessel of a participating state does not appear, the court may, on proof of service of the summons, proceed with the trial in the absence of the vessel.

(3) En cas de non-comparution du bateau de pêche, la juridiction saisie peut, sur preuve de la signification, procéder par défaut.

Défaut de  
comparaître

Proceedings  
on indictment

(4) For greater certainty, subsection (3) applies in respect of a trial on an indictment.

(4) Il est entendu que le paragraphe (3) s'applique aux procédures engagées par mise en accusation.

Procédure  
engagée par  
mise en  
accusation

Fines

**18.02** The amount of the fine imposed on a fishing vessel of a participating state or a state that is party to a treaty or arrangement described in paragraph 6(f) that is convicted of an offence under this Act is a debt due to Her Majesty in right of Canada owed by the person who, at the time the offence was committed, was lawfully entitled to possession of the vessel, whether as owner or as charterer.

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**18.02** L'amende infligée à un bateau de pêche d'un État assujéti à l'accord ou à un traité ou entente visés à l'alinéa 6f) par suite de sa déclaration de culpabilité pour infraction à la présente loi constitue une créance de Sa Majesté du chef du Canada contre quiconque avait droit, au moment de la perpétration de l'infraction, à la possession légitime du bateau en tant que propriétaire ou affrèteur.

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Amende

**12. Section 18.1 of the Act is amended by striking out the word "or" at the end of paragraph (a) and by adding the following after paragraph (a):**

(a.1) in an area of the sea designated under subparagraph 6(e)(ii) on board or by means of a fishing vessel of a participating state;

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(a.2) in an area of the sea designated under subparagraph 6(f)(ii) on board or by means of a fishing vessel of a state that is party to

**12. L'article 18.1 de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :**

a.1) soit dans un espace maritime délimité au titre du sous-alinéa 6e)(ii), à bord ou au moyen d'un bateau de pêche d'un État assujéti à l'accord;

a.2) soit dans un espace maritime délimité au titre du sous-alinéa 6f)(ii), à bord ou au moyen d'un bateau de pêche d'un État

Clause 11: New.

Article 11. — Nouveau.

Clause 12: Paragraphs 18.1(a.1) and (a.2) are new. The relevant portion of section 18.1 reads as follows:

18.1 An act or omission that would be an offence under an Act of Parliament if it occurred in Canada is deemed to have been committed in Canada if it occurs, in the course of enforcing this Act,

Article 12. — Les alinéas 18.1a.1) et a.2) sont nouveaux. Texte du passage introductif de l'article 18.1 :

18.1 Tout fait — acte ou omission — qui constituerait au Canada une infraction à une loi fédérale est réputé y avoir été commis s'il est survenu, au cours de l'application de la présente loi :

a treaty or arrangement referred to in that subparagraph; or

assujéti à un traité ou une entente visés à ce sous-alinéa;

1994, c. 14, s. 7

Attorney General of Canada

**13. Subsection 18.2(3) of the Act is replaced by the following:**

**13. Le paragraphe 18.2(3) de la même loi est remplacé par ce qui suit :**

1994, ch. 14, art. 7

(3) If an act or omission that is an offence by virtue only of paragraph 18.1(a) or (b) is alleged to have been committed on board or by means of a vessel that is registered or licensed under the laws of a state other than Canada, the powers referred to in subsection (1) may not be exercised outside Canada with respect to that act or omission without the consent of the Attorney General of Canada.

(3) Dans le cas où un fait qui ne constitue une infraction qu'aux termes des alinéas 18.1(a) ou b) est présumé survenu à bord d'un bateau immatriculé ou titulaire d'un permis délivré sous le régime des lois d'un État autre que le Canada, les pouvoirs mentionnés au 10 paragraphe (1) ne peuvent être exercés à l'extérieur du Canada à l'égard de ce fait sans le consentement du procureur général du Canada.

Procureur général du Canada

1994, c. 14, s. 7

Attorney General of Canada

**14. Section 18.4 of the Act is replaced by the following:**

**14. L'article 18.4 de la même loi est 15 remplacé par ce qui suit :**

1994, ch. 14, art. 7

**18.4** No proceeding in respect of

**18.4** La poursuite d'une infraction visée à la présente loi consistant dans la contravention d'un des articles 5.2 à 5.5, d'une infraction visée à l'article 18.1 ou d'une infraction visée 20 à l'alinéa 17(1)d) pour avoir résisté à un garde-pêche agissant dans l'exercice de ses fonctions ou entravé son action dans les circonstances prévues à l'un des articles 5.2 à 5.5 ne peut être engagée sans le consentement 25 écrit du procureur général ou du sous-procureur général du Canada et exercée que par le procureur général du Canada ou en son nom.

Procureur général du Canada

(a) an offence under this Act consisting of a contravention of any of sections 5.2 to 5.5,

(b) an offence referred to in section 18.1, or

(c) an offence under paragraph 17(1)(d) consisting of resistance to or obstruction of a protection officer in the execution of the officer's duty in relation to any of sections 5.2 to 5.5

may be commenced without the personal consent in writing of the Attorney General of Canada or the Deputy Attorney General, and such a proceeding may be conducted only by the Attorney General of Canada or counsel acting 30 on his or her behalf.

*Clause 13:* Subsection 18.2(3) reads as follows:

(3) Where an act or omission that is an offence by virtue only of section 18.1 is alleged to have been committed on board or by means of a vessel that is registered or licensed under the laws of a state other than Canada, the powers referred to in subsection (1) may not be exercised outside Canada with respect to that act or omission without the consent of the Attorney General of Canada.

*Clause 14:* Section 18.4 reads as follows:

**18.4** No proceeding in respect of

- (a) an offence under this Act consisting of a contravention of section 5.2,
- (b) an offence referred to in section 18.1, or
- (c) an offence under paragraph 17(d) consisting of resistance to or obstruction of a protection officer in the execution of the officer's duty in relation to section 5.2

may be commenced without the personal consent in writing of the Attorney General of Canada or the Deputy Attorney General, and such a proceeding may be conducted only by the Attorney General of Canada or counsel acting on his or her behalf.

*Article 13.* — Texte du paragraphe 18.2(3) :

(3) Dans le cas où un fait qui ne constitue une infraction qu'aux termes de l'article 18.1 est présumé survenu à bord d'un bateau immatriculé ou titulaire d'un permis délivré sous le régime des lois d'un État autre que le Canada, les pouvoirs mentionnés au paragraphe (1) ne peuvent être exercés à l'extérieur du Canada à l'égard de ce fait sans le consentement du procureur général du Canada.

*Article 14.* — Texte de l'article 18.4 :

**18.4** La poursuite d'une infraction visée à la présente loi consistant dans la contravention de l'article 5.2, d'une infraction visée à l'article 18.1 ou d'une infraction visée à l'alinéa 17d) pour avoir résisté à un garde-pêche agissant dans l'exercice de ses fonctions ou entravé son action dans les circonstances prévues à l'article 5.2 ne peut être engagée sans le consentement écrit du procureur général ou du sous-procureur général du Canada et exercée que par le procureur général du Canada ou en son nom.

R.S., c. S-9;  
R.S., cc. 27,  
31 (1st  
Suppl.), cc. 1,  
27 (2nd  
Suppl.), c. 6  
(3rd Suppl.), c.  
40 (4th  
Suppl.); 1989,  
cc. 3, 17;  
1990, cc. 16,  
17, 44; 1991,  
c. 24; 1992,  
cc. 1, 27, 31,  
51; 1993, c.  
36; 1994, cc.  
24, 41; 1995,  
cc. 1, 5; 1996,  
cc. 21, 31;  
1997, c. 1

## CANADA SHIPPING ACT

## LOI SUR LA MARINE MARCHANDE DU CANADA

L.R., ch. S-9;  
L.R., ch. 27,  
31 (1<sup>er</sup>  
suppl.), ch. 1,  
27 (2<sup>e</sup>  
suppl.), ch. 6  
(3<sup>e</sup> suppl.),  
ch. 40 (4<sup>e</sup>  
suppl.); 1989,  
ch. 3, 17;  
1990, ch. 16,  
17, 44; 1991,  
ch. 24; 1992,  
ch. 1, 27, 31,  
51; 1993, ch.  
36; 1994, ch.  
24, 41; 1995,  
ch. 1, 5;  
1996, ch. 21,  
31; 1997, ch.  
1

**15. Subsection 504(1) of the *Canada Shipping Act* is replaced by the following:**

**504.** (1) The Minister may cause an inquiry to be held if the Minister believes on reasonable grounds that any master, mate or engineer

(a) is unfit to discharge their duties because of incompetency or misconduct;

(b) has failed to render any assistance or give any information that is required under sections 568 and 569; or

(c) while on board a vessel that has contravened any of sections 5.3 to 5.5 of the *Coastal Fisheries Protection Act*, had knowledge of the contravention at the time it occurred.

**16. Section 505 of the Act is amended by adding the following after paragraph (a):**

(a.1) that any master, mate or engineer on board a vessel that has contravened any of sections 5.3 to 5.5 of the *Coastal Fisheries Protection Act* knew, at the time that the contravention occurred, that the vessel was committing the contravention,

**15. Le paragraphe 504(1) de la *Loi sur la marine marchande du Canada* est remplacé par ce qui suit :**

**504.** (1) Le ministre peut faire tenir une enquête lorsqu'il a des motifs raisonnables de croire qu'un capitaine, un lieutenant ou un mécanicien, selon le cas :

a) est, pour cause d'incapacité ou d'inconduite, inapte à exercer ses fonctions;

b) n'a pas prêté l'assistance ni donné les renseignements exigés aux articles 568 et 569;

c) se trouvant à bord d'un bateau déclaré coupable d'une infraction aux articles 5.3, 5.4 ou 5.5 de la *Loi sur la protection des pêches côtières* savait, au moment du fait reproché, que le bateau était en état d'infraction.

**16. L'article 505 de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :**

a.1) un capitaine, un lieutenant ou un mécanicien se trouvant à bord d'un bateau déclaré coupable d'une infraction aux articles 5.3, 5.4 ou 5.5 de la *Loi sur la protection des pêches côtières* savait, au moment du fait reproché, que le bateau était en état d'infraction;

Inquiry into  
conduct of  
certificated  
officer

Enquête sur  
la conduite  
d'un officier  
breveté

*Canada Shipping Act*

*Clause 15:* Subsection 504(1) reads as follows:

**504.** (1) Where the Minister believes on reasonable grounds that any master, mate or engineer is from incompetency or misconduct unfit to discharge his duties, or that in a case of collision he has failed to render such assistance or give such information as is required under sections 568 and 569, the Minister may cause an inquiry to be held.

*Clause 16:* Paragraph 505(a.1) is new. The relevant portion of section 505 reads as follows:

**505.** Where on any inquiry held pursuant to section 504 the Minister is satisfied

...

he may, with respect to either a certificate granted in Canada or a certificate granted in any other Commonwealth country in so far only as concerns its validity in Canada, suspend or cancel the certificate of competency or service of the master or mate or the certificate of the engineer.

*Loi sur la marine marchande du Canada*

*Article 15.* — Texte du paragraphe 504(1) :

**504.** (1) Lorsque le ministre a des motifs raisonnables de croire qu'un capitaine, un lieutenant ou un mécanicien est, pour cause d'incapacité ou d'inconduite, inapte à exercer ses fonctions ou que, dans le cas d'un abordage, le capitaine, le lieutenant ou le mécanicien n'a pas prêté l'assistance ni donné les renseignements exigés aux articles 568 et 569, il peut faire tenir une enquête.

*Article 16.* — L'alinéa 505a.1) est nouveau. Texte du passage introductif de l'article 505 :

**505.** Lorsque le ministre, à la suite d'une telle enquête, est convaincu que, selon le cas :

COMING INTO FORCE

ENTRÉE EN VIGUEUR

Coming into force

17. This Act, or any provision of this Act, comes into force on a day or days to be fixed by order of the Governor in Council.

17. La présente loi ou telle de ses dispositions entre en vigueur à la date ou aux dates fixées par décret.

Entrée en vigueur

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# *News Release*

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NR-HQ-97-46E

December 4, 1997

## **BILL TO ENABLE CANADA TO RATIFY THE UNITED NATIONS AGREEMENT INTRODUCED IN HOUSE OF COMMONS**

**OTTAWA--** David Anderson, Minister of Fisheries and Oceans, today announced the introduction in the House of Commons of a Bill to amend Canadian legislation to pave the way for Canada to ratify the United Nations Fisheries Agreement (UNFA) on the conservation and management of straddling fish stocks and highly migratory fish stocks.

“We resolved to introduce this Bill before the end of the year because of the importance of the U.N. Fisheries Agreement and the need to build momentum towards its ratification by others so that it enters into force quickly,” said Mr. Anderson. “We are committed to securing a sustainable future for these stocks which in the long run will ensure that Canada’s fishing communities have a future resource on which they can depend.”

Among other things, UNFA establishes a set of rules for enforcement on the high seas of international measures that protect straddling stocks (eg. flounder and turbot) and highly migratory fish stocks (eg. tunas and swordfish).

UNFA will be instrumental in ending the overfishing of straddling and highly migratory fish stocks that takes place on the high seas and benefit fisheries in both Canada and the rest of the world.

The Agreement goes into effect when 30 states have ratified; fifteen states, including the United States, Russia and Norway, have ratified so far. Canada will be in a position to ratify after the legislation is passed.

- 30 -

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The backgrounder related to this announcement is available on the automated Fax-On-Demand service of Fisheries and Oceans. It is immediately retrievable -- to users with a touchtone phone and a fax machine -- 24 hours a day, 7 days a week.

To retrieve, dial **1-416-362-1447** and follow the voice prompts.

<b>NUMBER</b>	<b>BACKGROUNDER</b>
50	UNITED NATIONS FISHERIES AGREEMENT (UNFA) (Highlights)

**FOR MORE INFORMATION:**

Amos Donohue  
Senior Counsellor, Bilateral Relations  
International Directorate  
Department of Fisheries and Oceans  
(613) 993-1899

This news release and related backgrounder are available on our web site at  
<http://www.dfo-mpo.gc.ca/communic/newsrel/newsrel.htm>

# *Background*

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**B-HQ-97-46E**

## **UNITED NATIONS FISHERIES AGREEMENT (UNFA)**

*The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 10, 1982, Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the Agreement), was adopted by consensus in August 1995 by a UN Conference and opened for signature at the UN in New York City on December 4, 1995.*

Straddling fish stocks straddle or migrate across the outer limit of national fisheries waters of a coastal state and the adjacent high seas. Highly migratory fish stocks migrate through the high seas and in some cases through the exclusive economic zone (EEZ) of coastal states. Both categories of fish stocks have been subject to unregulated overfishing on the high seas.

The problem exists in several parts of the world: on the Challenger Plateau off the coast of New Zealand, off Argentina's Patagonian Shelf, off the coasts of Chile and Peru, in the Barents Sea off the coast of Norway, in the Bering Sea, in the Sea of Okhotsk, in the South Pacific Ocean and on the Grand Bank of Newfoundland outside Canada's 200-mile zone.

Overfishing by foreign vessels outside 200 miles has been a factor in declines in Northwest Atlantic straddling groundfish stocks of cod, flounder and turbot. These declines have devastated many Canadian coastal communities economically, leaving thousands of fish harvesters and fish plant workers unemployed.

The 1982 United Nations Convention on the Law of the Sea (UNCLOS), which entered into force in November 1994, clearly allows coastal states -- that is, states that border on oceans -- exclusive rights to control fisheries within 200 nautical miles (370.4 kilometres) of their shores. But it is not clear about the legal rights and obligations of states regarding highly migratory fish stocks and straddling fish stocks on the high seas. The Agreement helps fill this gap in the Law of the Sea Convention.

Canada played a leading role in the lengthy negotiations leading to the convening of the UN conference that developed the Agreement.

The Agreement will come into effect following 30 ratifications or accessions. Fifty-nine states signed the Agreement and 15, including the United States and Russia, have ratified so far.

The new agreement is good news not only for Canada but for the whole world. A new legal system for high seas fisheries will provide for effective control and enforcement to protect straddling fish stocks and highly migratory fish stocks on the high seas. Proper conservation and management of these stocks could make a significant contribution to ensuring the sustainability of this important food source for future generations.

**DECEMBER 1997**

# *Backgrounder*

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B-HQ-97-46E

## UNITED NATIONS FISHERIES AGREEMENT (UNFA)

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DECEMBER 1997

# *Communiqué*

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C-AC-97-46F

Le 4 décembre 1997

**PRÉSENTATION À LA CHAMBRE DES COMMUNES  
D'UN PROJET DE LOI VISANT À PERMETTRE AU CANADA DE RATIFIER  
L'ACCORD DE PÊCHE DES NATIONS UNIES**

**OTTAWA** -- David Anderson, ministre des Pêches et des Océans, a annoncé aujourd'hui la présentation, à la Chambre des communes, d'un projet de loi modifiant des lois canadiennes afin de permettre au Canada de ratifier l'Accord de pêche des Nations Unies (APNU) sur la conservation et la gestion des stocks de poissons chevauchants et fortement migrateurs.

« Nous avons décidé de présenter ce projet de loi avant la fin de l'année en raison de l'importance de l'Accord de pêche des Nations Unies et de la nécessité d'insuffler un élan pour le faire ratifier par d'autres États de sorte qu'il entre en vigueur rapidement », a dit M. Anderson. « Nous sommes avants pris l'engagement d'assurer un avenir durable pour ces stocks pour que, à long terme, les collectivités de pêcheurs du Canada puissent compter sur une ressource viable. »

L'APNU établit entre autres une série de règles pour l'application en haute mer de mesures internationales destinées à protéger les stocks chevauchants (p. ex. les poissons plats et le flétan noir) ainsi que les stocks de poissons grands migrateurs (p. ex. le thon et l'espadon).

L'APNU constituera un instrument très efficace pour faire cesser en haute mer la surpêche sur les stocks chevauchants et grands migrateurs. Il sera profitable pour les pêches du Canada ainsi que pour celles du reste du monde.

L'Accord entrera en vigueur une fois que trente États l'auront ratifié; à ce jour, quinze États, dont les États-Unis, la Russie et la Norvège, l'ont fait. Le Canada sera en mesure de ratifier l'Accord quand ce projet de loi aura été adopté.



La fiche d'information qui a trait à ce communiqué est disponible par le truchement du service de télécopie automatisée du ministère des Pêches et des Océans. Elle est accessible immédiatement, pour les utilisateurs munis d'une ligne *Touchtone* et d'un télécopieur, 24 heures par jour, 7 jours par semaine.

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NUMÉRO	FICHE D'INFORMATION
50	L'ACCORD DE PÊCHE DES NATIONS UNIES (Sommaire des amendements)

**POUR DE PLUS AMPLES RENSEIGNEMENTS :**

Amos Donohue  
Conseiller principal, Relations bilatérales  
Direction générale des affaires internationales  
Ministère des Pêches et des Océans  
(613) 993-1899

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# *Fiche d'information*

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## **L'ACCORD DE PÊCHE DES NATIONS UNIES**

*L'Accord des Nations Unies relatif à l'application de la partie XI de la Convention des Nations Unies sur le droit de la mer du 10 décembre 1982, concernant la conservation et la gestion des stocks chevauchants et grands migrants a été conclu en août 1995 par une Conférence des Nations Unies convoquée pour traiter le problème de la surpêche sur ces stocks en haute mer. L'Accord a été ouvert pour signature à l'ONU, à New York, le 4 décembre 1995.*

Pendant une partie de leur vie, les stocks chevauchants migrent au-delà des limites territoriales des États côtiers pour se rendre en haute mer. Les stocks fortement migrants, quant à eux, migrent en haute mer et traversent, dans certains cas, le territoire marin des États côtiers. Ces stocks ont été soumis à une surpêche effrénée en haute mer.

Le problème se pose dans plusieurs régions du monde : sur le plateau Challenger au large de la Nouvelle-Zélande, au large de la plate-forme argentine de Patagonie, au large des côtes du Chili et du Pérou, dans la mer de Barents au large de la Norvège, dans la mer de Bering, dans la mer d'Okhotsk, dans le Pacifique sud et sur le Grand Banc de Terre-Neuve, à l'extérieur de la zone de 200 milles du Canada.

La surpêche des navires étrangers à l'extérieur de la zone de 200 milles du Canada a été responsable en partie de l'appauvrissement des stocks chevauchants de morue, de plie et de flétan noir dans l'Atlantique nord-ouest. Cette décimation des stocks a eu un effet dévastateur sur l'économie de nombreuses localités côtières du Canada, où des milliers de travailleurs de la pêche et du secteur de la transformation ont perdu leur emploi.

L'actuelle Convention des Nations Unies sur le droit de la mer, qui est entrée en vigueur en novembre 1994, accorde sans équivoque aux États côtiers - c'est-à-dire les États qui ont une frontière sur l'océan - des droits exclusifs de contrôle de la pêche à l'intérieur de la zone de 200 milles nautiques (370,4 kilomètres) de leur littoral. Cependant, elle reste vague quant aux droits légaux et aux obligations des États en ce qui concerne les stocks chevauchants et fortement migrants. Le nouvel Accord de l'ONU sur la pêche contribue à combler cette lacune de la Convention sur le droit de la mer.

Le Canada a joué un rôle de premier plan à la Conférence de l'ONU qui a élaboré l'Accord et lors des longues négociations qui ont précédé son adoption.

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L'Accord entrera en vigueur lorsque les 30 ratifications requises auront été recueillies. Cinquante-neuf États avaient signé l'Accord sur la pêche et 15, y compris les États-Unis et la Russie, l'avaient ratifié.

L'Accord sur la pêche de l'ONU est porteur de bonnes nouvelles non seulement pour le Canada, mais pour le monde entier. Une nouvelle législation pour les pêches en haute mer procurera un meilleur contrôle et une série de règles améliorée pour protéger les stocks chevauchants et fortement migrateurs en haute mer. Une conservation et gestion appropriées de ces stocks pourrait avoir une contribution significative afin d'assurer la durabilité de cette source de nourriture pour les générations à venir.

**DECEMBRE 1997**