

INTERNATIONAL COURT OF JUSTICE
PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

**CASE CONCERNING DELIMITATION
OF THE MARITIME BOUNDARY
IN THE GULF OF MAINE AREA**

(CANADA/UNITED STATES OF AMERICA)

VOLUME I
Special Agreement; Memorial of Canada

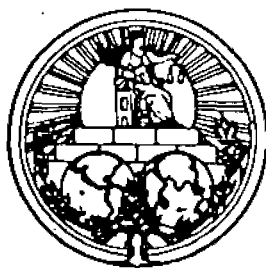


COUR INTERNATIONALE DE JUSTICE
MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

**AFFAIRE DE LA DÉLIMITATION
DE LA FRONTIÈRE MARITIME
DANS LA RÉGION DU GOLFE DU MAINE**

(CANADA/ÉTATS-UNIS D'AMÉRIQUE)

VOLUME I
Compromis; mémoire du Canada



MEMORIAL OF CANADA

MÉMOIRE DU CANADA

SPECIAL AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA TO SUBMIT TO A CHAMBER
OF THE INTERNATIONAL COURT OF JUSTICE THE DELIMITATION OF THE
MARITIME BOUNDARY IN THE GULF OF MAINE AREA

[See supra, pp. 10-16]

MEMORIAL SUBMITTED BY CANADA

INTRODUCTION

1. This Memorial is filed in accordance with the Court's Order of 1 February 1982¹, as varied by an Order of 28 July 1982² extending to 27 September 1982 the time-limit for the filing of the Memorials of both Parties in this case, which was brought before the Court on 25 November 1981 by the notification of a Special Agreement.

The Dispute

2. The subject of this dispute is the course of the single maritime boundary dividing the continental shelf and fishing zones of Canada and the United States in the Gulf of Maine area. The dispute centres primarily on the rich fishing grounds and potential hydrocarbon resources of Georges Bank, a large detached bank seaward of the Gulf of Maine, off the coasts of Nova Scotia and Massachusetts.

① 3. The maritime boundary claims of the Parties, as they stood upon the conclusion of the Special Agreement on 29 March 1979, are illustrated in *Figure 1*. Point "A" in this illustration, where the two claims first intersect, is situated at 44° 11' 12" N, 67° 16' 46" W and is the point at which the adjudicated boundary is to begin in accordance with the question set out in Article II of the Special Agreement. From Point "A" to Point "B", the second point of intersection, there is an area of just over 1,000 square nautical miles between the two lines that has not been claimed by either Party. The United States has exercised fisheries jurisdiction over this unclaimed area since 1977, pending establishment of the maritime boundary³.

② 4. *Figure 2* shows the two claimed lines with the addition of bathymetric features that illustrate certain contours of Georges Bank. It will be noted that this Bank lies at some distance to seaward of Point "B", where the two claimed lines diverge to create a broad area of ocean space that is subject to competing claims by the Parties. Beyond Point "B", the nearest distance between the United States claimed line and Canadian land is 62 nautical miles; the nearest distance between the Canadian claimed line and United States land is 94 nautical miles.

¹ *I.C.J. Reports 1982*, p. 15.

² *I.C.J. Reports 1982*, p. 557.

³ See "Maritime Boundaries Between the United States and Canada". United States Department of State, Public Notice No. 506. Published in *Federal Register*, Vol. 41, No. 214, 4 Nov. 1976, p. 48620. This notice contained in its Footnote 1 the following statement:

"In view of the fact that the claimed boundaries published by the United States and Canada would leave an unclaimed area within the Gulf of Maine, the United States will exercise its fisheries management jurisdiction to the Canadian-claimed line where that line is situated eastward of the United States-claimed line, until such time as a permanent maritime boundary with Canada is established in the Gulf of Maine."

See Annexes to the Memorial Submitted by Canada, Vol. II, Annex 30.

① ② 5. The claims illustrated in both *Figures 1* and *2* are those that were defined and published by the Parties in connection with the creation of their 200-mile fishing zones, in circumstances explained in paragraphs 223 to 245 of this Memorial. These claims, however, are applicable to the continental shelf as well.

③ 6. *Figure 3* shows how the Canadian line has been constructed. It is an equidistance line on which every point is an equal distance from basepoints on the coasts of the two Parties⁴. The landward portion of the line is controlled throughout by the nearest point of land on each coast, including a number of off-lying islands and low-tide elevations. In its outer reaches, however, for reasons which are fully explained in paragraphs 342 to 356, a basepoint located at the north end of Cape Cod Canal has been used instead of the attenuated coastal projection of Cape Cod and the offlying islands of Nantucket and Martha's Vineyard.

7. The Canadian line allocates less than half of Georges Bank to Canada. The United States line, on the other hand, would allocate the entire Bank to the United States. That line appears to follow certain superficial features of the seabed topography, proceeding from basin to basin in the Gulf of Maine itself and hooking around the northeastern rim of Georges Bank. It then crosses over a sill near the edge of the physical continental shelf and extends beyond that point to where it meets a short segment of an arc that defines the seaward limit of the 200-mile fishing zone as claimed by the United States.

④ 8. The present dispute, whose evolution is more fully outlined in Part I, Chapter IV, first began to emerge in the context of the continental shelf. Both Canada and the United States are parties to the 1958 Continental Shelf Convention. Canada first issued offshore oil and gas exploratory permits for the Gulf of Maine area in the mid-1960s. The equidistance method which Canada applied in issuing these permits was accepted by the United States authorities with respect to this area, and the permits remained in effect without challenge for a substantial period of time. The United States, however, ultimately changed its position and took issue with the jurisdiction exercised by Canada. Late in 1969 the United States "reserved" its position in regard to the area that is now in dispute and had formally claimed it by the mid-1970s. *Figure 4* depicts the outstanding continental shelf hydrocarbon permits and leases granted by Canada and the United States. Canadian permits are shown in blue, United States leases in green.

9. The dispute took on a new dimension in 1977 when the two Parties extended their fisheries jurisdiction to 200 nautical miles in accordance with the consensus reached at the Third United Nations Conference on the Law of the Sea. The 200-mile zone established by each Party at that time gives effect to the essential provisions negotiated at the Conference with respect to the conservation and utilization of the living

⁴ These basepoints are described in paragraphs 334-341 and 352-356.

- resources of the exclusive economic zone⁵. The manner in which the seaward limits of these zones have been established is depicted in *Figure 5*. Both Canada and the United States have used arcs of circles for this purpose, drawn with a radius of 200 miles from control points on the coast. *Figure 5* also shows the location of these control points, as well as the arcs defining the seaward limit of each zone; those of Canada are depicted in red and those of the United States in black.

10. Beginning in 1969, a number of attempts were made to settle this dispute through negotiations, first in its initial phase and later in its current form encompassing both the continental shelf and the 200-mile fishing zones of the Parties. These attempts were unsuccessful. Accordingly, on 29 March 1979, the Parties signed a treaty providing for the judicial settlement of the dispute. The treaty originally formed part of a broader settlement that included a permanent agreement on the management and equitable sharing of the living resources of the Gulf of Maine area: the Agreement on East Coast Fishery Resources, also signed on 29 March 1979. The original intention, reflected in the provisions of both instruments, was that the boundary adjudication treaty and the fisheries agreement would enter into force together or not at all. The United States, however, failed to ratify the fisheries agreement. It was withdrawn from the United States Senate by President Reagan in early 1981. Canada subsequently agreed to ratify the adjudication treaty despite its separation from the fisheries agreement by the unilateral action of the United States. Instruments of ratification of the treaty, amended in order to omit any reference to the fisheries agreement and to make certain other technical changes, were exchanged on 20 November 1981 and the Special Agreement annexed to the treaty was duly notified to the Court on 25 November 1981.

The Question Before the Court

11. Under Article II of the Special Agreement the Court is requested to decide, in accordance with the principles and rules of international law applicable in the matter as between the Parties —

“... the course of the single maritime boundary that divides the continental shelf and fisheries zones of Canada and the United States of America from a point in latitude 44° 11' 12" N, longitude 67° 16' 46" W to a point to be determined by the Chamber within an area bounded by straight lines connecting the following sets of geographic coordinates: latitude 40° N, longitude 67° W; latitude 40° N, longitude 65° W; latitude 42° N, longitude 65° W”.

⁵ Both Canada and the United States entered into a series of bilateral agreements with States engaging in distant-water fisheries off their respective coasts, establishing an agreed basis for the implementation of the new regime of extended jurisdiction. Each series of bilateral agreements incorporated the basic framework for the management of the living resources of the 200-mile zone that was set out in the negotiating texts of the Law of the Sea Conference, and that is now contained in the Convention on the Law of the Sea. This framework includes, in particular, the authority of the coastal State with respect to the management of living resources, the setting of the allowable catch by the coastal State, the coastal State's determination of its harvesting capacity, and the allocation of the surplus of the allowable catch to foreign fleets.

① As already noted, the starting point for the determination of the single maritime boundary as specified in this provision of the Special Agreement is Point "A" in *Figure 1*. Because this point is over 20 nautical miles from land, the delimitation of the territorial sea is not at issue in the present case.

① ② 12. The Court in its discretion may fix the seaward terminal point of the single maritime boundary at any point in the triangle defined in Article II of the Special Agreement and illustrated in *Figures 1* and *2*. There is no other significance in the use of this device or in the configuration of the triangle itself; it was chosen simply as a convenient, neutral technique that accomplishes the task of indicating clearly where the adjudicated boundary is to end. The triangle encompasses the terminal points of the published boundary claims of both Parties, as well as the arcs of circles defining the seaward limit of the 200-mile fishing zone of each Party between the two terminal points. It thus provides a ready means of permitting a boundary to be established throughout these 200-mile zones beyond Point "A".

13. The terminal points of the 200-mile boundary claims of the Parties lie at a water depth of about 3,000 metres. The continental shelf, however, extends beyond the seaward limits of the triangle to the outer edge of the continental margin as defined either in purely physical terms or according to Article 76 of the new Convention on the Law of the Sea⁶. It is primarily for this reason that Article VII of the Special Agreement contemplates a further extension — "as far seaward as the Parties may consider desirable" — of the maritime boundary to be decided by the Court and also provides for binding third-party settlement if the course of such a seaward extension cannot be fixed through negotiation.

14. In purely juridical terms, the special character of this case lies primarily in the concept of a "single maritime boundary" posited in Article II of the Special Agreement. This boundary will reflect the geographical unity of the fisheries and continental shelf jurisdiction that the Parties now exercise beyond the territorial sea to the 200-mile limit. Its determination accordingly requires consideration of some of the most fundamental concepts that have emerged from recent developments in the law of the sea.

15. The Special Agreement, moreover, looks beyond the status quo. By the terms of Article III, the single maritime boundary to be established will be applicable as well to other forms of sovereign rights and jurisdiction in this area: rights and jurisdiction that could encompass any further matters brought within coastal State authority under the new regime of the exclusive economic zone, but that may not necessarily form part of the jurisdiction now exercised in the Gulf of Maine area by

⁶ United Nations, *Draft Convention on the Law of the Sea*, A/Conf.62/L.78, 28 August 1981. The convention was adopted by the Third Conference on the Law of the Sea on 30 April 1982. The final text, however, is not available at this time.

Canada or the United States⁷. This factor too confers a special significance upon these proceedings.

16. In more concrete terms, the range of factors in issue gives this case a unique human immediacy and economic importance. For the first time, the Court is asked to direct its attention to the full panoply of sovereign rights and jurisdiction that coastal States may now exercise in the area beyond and adjacent to the territorial sea with respect to the living and non-living natural resources of the seabed and subsoil and the superjacent waters. The case thus brings together the promise of the continental shelf and the known abundance of the fishery; the economic prospects that the shelf may offer in years to come and the present livelihood of coastal fishermen and the welfare of the communities they sustain.

⁷ Canada already exercises jurisdiction for the protection of the marine environment within the 200-mile zone, under, for instance, the *Ocean Dumping Control Act*, Statutes of Canada 1974-75-76, chap. 55. The United States *Clean Water Act* of 1977, Public Law No. 95-217, 91 U.S. Statutes at Large 1566, 1593-94, declared United States policy that there should be no discharges of oil or hazardous substances that might affect "natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the *Fishery Conservation and Management Act* of 1976)". The legislation authorized measures to prohibit harmful discharges that may affect United States resources, including those of the 200-mile zone. See 33 United States Code, Section 1321(b)(2)(A), (b)(3) and (c)(1).

PART I. THE FACTS

CHAPTER I. GEOGRAPHY

Section I. Physical Geography

17. The Special Agreement of 29 March 1979 refers in its title and preambular paragraphs to the "Gulf of Maine area". It is clear from the question put to the Court in Article II of the Special Agreement that this "area" encompasses the Gulf of Maine itself and an outer area that includes Georges Bank.

⑥ 18. The Gulf of Maine area is bordered by the two regions represented by the Maritime Provinces¹ of Canada and the New England States² of the United States. As shown in *Figure 6*, the essential juxtaposition of these regions is east-west and the land boundary between them runs generally in a north-south direction. The longest part of the land boundary in this sector follows this course for 152 kilometres.

⑦ 19. The macrogeographic context is illustrated in *Figure 7*, which utilizes the Lambert conformal projection³. Although the Atlantic coast of North America has a general northeast to southwest orientation, there are two distinct directional trends. The first trend may be approximately defined by a line from Cape Race, Newfoundland, through Cape Sable and Cape Cod to Long Island, New York. The second trend may be approximately defined by a line from Long Island, through the eastward protrusion of the United States mainland in the vicinity of Cape Hatteras, to the southeastern extremity of the Florida peninsula at Miami. It can be seen that the North American landmass northeast of Long Island faces in a south-southeasterly direction onto the Atlantic Ocean, while southwest of Long Island the continental landmass faces east-southeast.

⑧ 20. The Gulf of Maine is a great anvil-shaped indentation of the coast between the province of Nova Scotia on the northeast and the state of Massachusetts on the southwest. It is surrounded on more than three sides by land and on its seaward side by relatively shallow submarine banks. *Figure 8* shows the coasts of the Gulf of Maine area and the major geographic features that characterize it:

- (a) on the Canadian side — the coasts of New Brunswick and Nova Scotia on the Bay of Fundy and the coast of Nova Scotia, fringed by islands and facing southwest, south, and southeast onto the Gulf of Maine and the Atlantic Ocean;
- (b) on the United States side — the coast of Maine, fringed by islands and facing southeast onto the Gulf of Maine, and the coasts of New

¹ Nova Scotia, New Brunswick and Prince Edward Island.

² Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and Vermont.

³ The Lambert conformal projection is a conic projection where meridians appear as straight lines converging at the apex of a cone. A straight line on this projection closely approximates the line described by a great circle, which is the shortest distance, along the surface, between any two points on a sphere. To a large degree this projection eliminates the scale distortion inherent in a chart based on the Mercator projection.

Hampshire, Massachusetts and Rhode Island facing east and south-east onto the Gulf of Maine and the Atlantic Ocean;

- (c) on the seaward side — the shoal areas off the southwestern coast of Nova Scotia, including Browns Bank, and the Nantucket Shoals off the southeastern coast of Massachusetts, with Georges Bank between them.

21. The Canadian coastline within the Gulf of Maine extends in a general northeasterly direction from the Canada-United States boundary in Passamaquoddy Bay, along the southern shore of New Brunswick within the Bay of Fundy, to a point near the New Brunswick-Nova Scotia border at the head of Chignecto Bay, the northeastern extremity of the Gulf of Maine. It then runs southwest until it rounds Cape Chignecto and turns eastward to the head of Minas Basin. The coastline then extends generally southwestward, along the smooth shore of Nova Scotia inside the Bay of Fundy to Brier Island. There it turns and runs southeast to Cape Sable. At Cape Sable the coastline turns and extends in a northeasterly direction along the Atlantic shore of the Nova Scotia mainland and Cape Breton Island to Cape Breton, following the general directional trend of the North American coast. The coastline of Nova Scotia from Brier Island to Cape Breton is rocky, deeply indented and fringed with numerous islands and rocks.

22. The United States coastline in the Gulf of Maine extends southwestward from the Canada-United States boundary in Passamaquoddy Bay, along the shore of Maine to Cape Elizabeth. While this stretch of coast is deeply indented and fringed with many islands and rocks extending well offshore, its general configuration follows a straight line. At Cape Elizabeth the coastline turns somewhat to the south and curves southwestward along the shores of southern Maine, New Hampshire and Massachusetts, passing around Cape Ann and along the shore of Massachusetts Bay to Boston, at the southwestern extremity of the Gulf of Maine. It then turns to the southeast and passes along the shore of Cape Cod Bay to the isthmus of the hook-shaped protrusion of Cape Cod, where it turns sharply to the east. After rounding the elongated point of the hook, it falls away to the southwest along the underside of Cape Cod, through Nantucket Sound and along the southern shores of Massachusetts, Rhode Island and Long Island, New York, following the general northeast to southwest orientation of the North American coastline. The United States coastline from Cape Elizabeth to Cape Cod, although marked by several headlands and shallow embayments, presents a generally smooth front to the sea.

23. On the seaward side of the Gulf of Maine is a shallow rim which lies off the coasts of Nova Scotia and Massachusetts, between Cape Sable and Cape Cod. This rim is formed by a series of banks and shoals, pierced by two relatively shallow depressions on either side of Georges Bank: the Northeast Channel, about 250 metres deep, separating Georges Bank from Browns Bank and the shoal areas off southwestern Nova Scotia; and the Great South Channel, about 80 metres deep, separating Georges Bank from the Nantucket Shoals off southeastern Massachusetts. Georges Bank is a large, detached, oval-shaped bank defined by the Great South Channel and the Northeast Channel and variously by

either the 50-fathom (91.4 metres) or 100-fathom (182.8 metres) contours to the north and south.

24. The Atlantic continental shelf of North America from Nova Scotia to the Florida Keys has been described in terms of four physiographic "provinces" in a paper published by the United States Geological Survey in 1968:

"Along most coasts the continental shelf is a broad and fairly smooth platform extending from shore to the top of the continental slope. In the area from Nova Scotia to the Florida Keys, however, the shelf is more complex and displays a great diversity of topographic forms. On the basis of relief and depth of water, the shelf has been divided into the following provinces: Scotian Shelf, a complex surface of shallow banks and deep basins, off the coast of Nova Scotia; Georges Bank, an area characterized by parallel shoals and troughs and separated from the Scotian Shelf by Northeast Channel and from the East Coast Shelf by Great South Channel; Gulf of Maine, a rectangular depression off the New England coast; and the East Coast Shelf, a shallow platform extending from Nantucket Island to the Florida Keys⁴."

Browns Bank and the shoal areas off southwestern Nova Scotia form part of the "Scotian Shelf" province, while the Nantucket Shoals off southwestern Massachusetts form part of the "East Coast Shelf" province. Thus the province of Georges Bank is framed on two sides by these two provinces, and on the third side by the province of the Gulf of Maine. (See *Figure 13*.)

25. The Gulf of Maine itself has an average depth of 150 metres. Its floor consists of a series of shallow basins separated by low sills and flat-topped banks. The deepest of these basins, Georges Basin, has a maximum depth of 377 metres below sea level.

26. Apart from Nantucket Shoals and shoals on the western and northern parts of Georges Bank, the seabed topography of most of the Gulf of Maine area presents no hazards to navigation. Browns Bank and the eastern half of Georges Bank are freely navigable. Vessels approaching Boston and Portland from the north and east cross Browns Bank and the Northeast Channel on their final course to port. Vessels approaching Saint John from the north and east pass close to Cape Sable and then proceed to the Bay of Fundy. Vessels approaching Boston or Portland from the south utilize the Great South Channel, where the traffic separation scheme illustrated in *Figure 9* is in effect. Vessels approaching Saint John from the south have the choice of utilizing the Great South Channel or traversing the northeastern portion of Georges Bank on a direct course to the Bay of Fundy, where a traffic separation scheme is also in effect.

27. On its northwestern side the Gulf of Maine measures 288 nautical miles from the Nova Scotia-New Brunswick border at the head of Chignecto Bay to Cape Elizabeth on the coast of Maine. From Brier

⁴ Elazar Uchupi: *Atlantic Continental Shelf and Slope of the United States — Physiography*. United States Department of the Interior, Geological Survey Professional Paper 529-C. Washington, U.S. Government Printing Office, 1968, pp. C3, C5.

Island on the coast of Nova Scotia to Cape Ann on the coast of Massachusetts, where the inner Gulf begins to merge with the open Atlantic, is a distance of 206 nautical miles. On its seaward side, from Cape Sable to Cape Cod, the Gulf is 213 nautical miles wide.

28. The length of the Canadian coastline from the Canada-United States boundary in Passamaquoddy Bay, around the Bay of Fundy and along the southwestern coast of Nova Scotia to Cape Sable is 287 nautical miles. The length of the United States coastline from the international boundary to Cape Cod Canal is 299 nautical miles⁵. There is thus an approximate equivalence between them.

29. The coast of Maine and the Bay of Fundy coasts of New Brunswick and Nova Scotia face the inner part of the Gulf of Maine and are relatively distant from Georges Bank. These physical facts are reflected in the economic relationship of the coastal communities to specific marine areas. The fishermen of Maine, New Brunswick and of the Fundy coast of Nova Scotia (except Digby county) do virtually no fishing on Georges Bank. Instead they fish in nearby areas within the Gulf.

30. The coasts of New Brunswick and Maine follow a generally straight line as they diverge to the northeast and to the southwest from the Canada-United States boundary in Passamaquoddy Bay. Moving seaward, the relationship of the coasts takes on elements of oppositeness as between Grand Manan Island (New Brunswick) and Maine and then as between Nova Scotia and Maine.

31. Still further seaward, Nova Scotia and Massachusetts face each other directly across the Gulf of Maine. The relationship of the Nova Scotia coast from Brier Island to Cape Sable, on the one side, and the Massachusetts coast from Cape Ann to Cape Cod, on the other side, is therefore clearly one of oppositeness. From Cape Sable and Cape Cod respectively the Canadian and United States coasts diverge to the northeast and to the southwest.

32. Georges Bank lies off the relatively nearby coasts of Nova Scotia, both northwest and northeast of Cape Sable, and of Massachusetts, both northwest and southwest of Cape Cod. The adjacency of these coasts to Georges Bank is reflected in the relationship between the fishery resources of the Bank and the coastal communities shown in *Figure 10*. Virtually all Canadian fishing on Georges Bank is conducted from communities on the coast of Nova Scotia between Digby and Lunenburg. Virtually all United States fishing on Georges Bank is conducted from communities on the coasts of Massachusetts and Rhode Island from Gloucester to Newport.

33. The general symmetry of the coasts of Nova Scotia and Massachusetts relative to each other and to Georges Bank is broken by the aberrant protrusion of Cape Cod and the offlying islands of Martha's Vineyard and Nantucket. Cape Cod protrudes some 57 kilometres eastward into the Gulf of Maine from the southeast corner of Massachusetts.

⁵ Coastal lengths have been calculated "according to their general direction" on the basis of straight baselines and notional straight baselines constructed in a parallel fashion on both coasts in keeping with the provisions of Article 4 of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone. See *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 52, para. 98.

Its area is 1,063 square kilometres. The outer arm of Cape Cod runs almost north-south and is about 53 kilometres long, with an average width of only 5 kilometres. The inner Cape Cod arm runs east-west and is about 50 kilometres long and 12 kilometres wide, but increases in width to the west, where it forms the head of Buzzards Bay. The Cape Cod Canal cuts across the neck for a distance of 15 kilometres, connecting Buzzards Bay with Cape Cod Bay. This salt-water canal has a minimum bottom width of 146 metres and represents an important corridor for navigation. Cape Cod is largely formed of glacial deposits; it has been modified by marine erosion and is still under attack by the sea.

34. The island of Martha's Vineyard, which has an area of 261 square kilometres, lies 3 nautical miles south of the western part of Cape Cod. The island of Nantucket, which has an area of 123 square kilometres, lies 15.75 nautical miles south of the outer Cape Cod arm. Like Cape Cod, these islands are largely formed of glacial deposits.

35. In summary, the essential juxtaposition of the Maritime Provinces and the New England States is east-west and the land boundary between them runs generally in a north-south direction. The Atlantic coast of North America runs in a general northeast to southwest direction, and northeastward of Long Island the continental landmass faces south-southeast onto the Atlantic Ocean. The "Gulf of Maine area" encompasses the Gulf of Maine itself, as well as Georges Bank and the nearby coasts of the Parties facing the Atlantic. The coasts of New Brunswick and Maine face the inner part of the Gulf of Maine. The relative distance of these coasts from Georges Bank is reflected in the absence of any significant economic link to the fisheries of the Bank. The coasts of Nova Scotia and Massachusetts face each other from opposite sides of the Gulf of Maine and also face the Atlantic Ocean northeast of Cape Sable and southwest of Cape Cod. Georges Bank lies off these coasts between Cape Sable and Cape Cod. Its adjacency to these coasts is reflected in the economic connection between the fishery resources of the Bank and the coastal communities of Nova Scotia and Massachusetts. The general symmetry of the coasts of Nova Scotia and Massachusetts relative to each other and to Georges Bank is broken by the exceptional protrusion of Cape Cod and its offlying islands.

Section II. Political Geography

36. The territorial boundary that separates New Brunswick and Maine has had a long and difficult evolution but has always followed an essentially north-south line. It is the oldest portion of the present Canada-United States boundary and derives from the exploration of the mouth of the St. Croix River by de Monts in 1604-1605⁶.

37. Seventeenth-century French settlement in Acadia (the present-day provinces of Nova Scotia, New Brunswick and Prince

⁶ Article 5 of the Jay Treaty of 1794 between Great Britain and the United States established a commission to identify the River St. Croix which the Treaty of Paris of 1783 had fixed as the boundary between Nova Scotia and the United States. It was the remains of a settlement built by de Monts in the early seventeenth century that enabled the St. Croix Commission to confirm the true identity of the river in 1798.

Edward Island), which resulted from expeditions by de Monts, Champlain, Poutrincourt and others, was accompanied or soon followed by the abutting and conflicting territorial claims of Great Britain. In 1606, James I of England granted a charter to the Plymouth Company which allowed it to form settlements on the Atlantic coast of North America, including present-day New England. In 1621, under the Seal of Scotland, he issued a grant of Nova Scotia to Sir William Alexander. The territorial extent of this grant coincided roughly with that of Acadia. Its western boundary, the establishment of which had a profound effect on the eventual determination of the line dividing Canada and the United States, is described in the 1621 charter as —

“... the river generally known by the name of St. Croix, and to the remotest springs, or source, from the western side of the same, which empty into the first mentioned river; thence by an imaginary straight line which is conceived to extend through the land, *or run northward* to the nearest bay, river, or stream emptying into the great river of Canada [St. Lawrence]; and going from that eastward along the low shores of the same river of Canada⁷...”.
(*Italics added.*)

The grant to Sir William Alexander did not lead to the establishment of permanent British settlements in the territory, which was restored to France by the Treaty of St. Germain-en-Laye of 1632.

38. Great Britain and France were in dispute over their territorial possessions in North America during the seventeenth and eighteenth centuries. For much of this period the two countries were at war and the more populous New England colonies, particularly Massachusetts, pursued an aggressive policy against Acadia. From 1654 to 1755 they undertook eight military expeditions against the capital at Port Royal and the major fortifications at Louisbourg on Cape Breton Island.

39. In 1713, by the Treaty of Utrecht which ended the War of the Spanish Succession, France yielded up the whole of Acadia, except Cape Breton Island and Prince Edward Island. The scope of this cession was disputed when France later argued that Acadia did not extend to the mainland portion of its Atlantic territories that lay outside the Nova Scotia peninsula. The British maintained that the ancient limits of Acadia extended to both sides of the Bay of Fundy and southwestward along the coast of the Gulf of Maine. It was their view that all this territory had therefore been ceded by France under the treaty.

40. The final disposition of French territorial interests in this part of North America was made by the Treaty of Paris of 1763 under which all of Canada and its dependencies, including Nova Scotia and Cape Breton, were ceded to Great Britain. In the same year, 1763, a commission was issued to Montagu Wilmot as Governor of Nova Scotia. It defined the western limit of his jurisdiction as follows:

“... although our said Province has anciently extended and does of right extend as far as the River Pentagoet or Penobscot, it shall be

⁷ E. F. Slafter: *Sir William Alexander and American Colonization*. Boston, The Prince Society, 1873, p. 129.

bounded by a line drawn from Cape Sable across the entrance of the Bay of Fundy to the mouth of the River St. Croix, by the said River to its source, and *by a line drawn due north* from thence to the southern boundary of our Colony of Quebec⁸. (*Italics added.*)

41. The use of a due north line was perpetuated in the Treaty of Paris of 1783, which marked the end of the War of American Independence. Article II described the boundary between the British and United States territories as being, in part —

“... From the north-west angle of Nova Scotia, viz. that angle which is formed *by a line drawn due north*, from the source of Saint Croix River to the Highlands, along the said Highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean ... a line to be drawn along the middle of the river St. Croix, from its mouth in the bay of Fundy to its source ...”. (*Italics added.*)

42. At this same time thousands of American colonists loyal to the British crown settled the St. John River Valley. Because of the arrival of the Loyalists, the British Government divided the colony of Nova Scotia in 1784 and created a new colony of New Brunswick on the northern shores of the Bay of Fundy. The exact location of the boundary between New Brunswick and the United States was still not identified and differences soon arose over the interpretation of Article II of the 1783 Treaty of Paris. These differences were slowly resolved by bilateral commissions established under the Jay Treaty of 1794, the Treaty of Ghent of 1814, the Webster-Ashburton Treaty of 1842, and the Treaties of Washington of 1908, 1910 and 1925.

43. As the foregoing account demonstrates, the French colony of Acadia and the British colonies of Nova Scotia and New Brunswick, on the one hand, and the British colonies in New England, on the other, have always had an east-west juxtaposition, divided by an essentially north-south line intersecting the source of the St. Croix River. The present boundary between Canada and the United States resulting from this early history is illustrated in *Figure 6*.

44. It should be recalled here that both Canada and the United States are federal States, with constitutions that apportion law-making powers between two levels of government. Nova Scotia was one of the four self-governing colonies that joined to form the Canadian federation in 1867. It was the first of these colonies to obtain its own representative assembly, in 1758, and the first to achieve responsible government, in 1848.

45. In the case of the United States, the continental shelf and fishery resources beyond the territorial sea are subject to federal rather than state jurisdiction. In Canada jurisdiction over fisheries lies with the federal government. Although the issue of jurisdiction over the resources of the continental shelf has not been finally resolved between Canada and Nova Scotia, the federal government and the provincial government

⁸ J. White: *Boundary Disputes and Treaties*. Toronto, Glasgow, Brook & Company, 1914, p. 755.

reached a political settlement on 2 March 1982 with a 42-year agreement on offshore oil and gas resource management and revenue sharing⁹.

Section III. Social Geography

46. The "Maritime Provinces" are aptly named. Here, in the converse of the legal maxim, the sea dominates the land. Nowhere is this more true than along the Canadian coasts that border the Gulf of Maine area, where the economy and the way of life are irrevocably tied to the resources of the sea.

47. Halifax is the major Canadian city of the area. With a population of about 265,000, including its suburbs and sister city of Dartmouth, it is Atlantic Canada's largest urban centre and leading port, and serves as headquarters for the Canadian Forces Maritime Command and the Maritime Air Group. Not far down the coast from Halifax lies southwest Nova Scotia, the area most heavily dependent upon the resources of Georges Bank. This area comprises the five counties shown in *Figure 11*: Lunenburg, Queens, Shelburne, Yarmouth and Digby.

48. The most striking aspect of the pattern of settlement in southwest Nova Scotia is its overwhelmingly coastal character and the emptiness of the hinterland. It is very largely a rural area; the population is strung out in a multitude of small communities interrupted only occasionally by slightly larger towns like Lunenburg, Yarmouth and Digby. Well over a hundred of these settlements are historically linked to and currently dependent upon the fishery — often to the exclusion of virtually any other source of economic sustenance. The transportation network reflects this coastal orientation: the major highways and all-season roads seldom venture far from the sea, and only two of the highways cut through the interior to link the southwestern shores to the Annapolis Valley. (See *Figure 11*.)

49. It is nature as much as history that has dictated this pattern of development in southwest Nova Scotia. The deeply indented coastline is ideal for small fishing harbours, but the land itself is stony and poor, and most of the soils in the five-county region are unsuitable for agricultural purposes. While the greater part of the region is covered with coniferous forest, the glacier-scraped terrain severely restricts productivity and forestry potential is limited. Only in eastern Digby county and parts of Lunenburg county does the land begin to offer greater agricultural promise.

50. The rural character of southwest Nova Scotia is borne out by the statistics. About 70 percent of the population is classified as rural, and almost 95 percent of this rural population was further classified as "non-farm" in the 1976 census results¹⁰. The total population of the five counties is about 120,000 and only about a quarter of the population resides within the nine small towns of the region. Yarmouth, with about 7,800 inhabitants, is the largest of these.

⁹ *Canada-Nova Scotia Agreement on Offshore Oil and Gas Resource Management and Revenue Sharing*, 2 March 1982. See Annexes, Vol. II, Annex 48.

¹⁰ See Annexes, Vol. IV, Section III, Annex 27.

51. Two signs of the general impact which the post-war expansion of the offshore fishery has had on the area may be found in the population statistics. First, there has been a rise in the young adult population — people in their twenties — from a level of about 10 percent in 1961 to over 15 percent in 1976. The change suggests that greater numbers of young people are pursuing their livelihoods and establishing their families in the five counties; unlike earlier generations, they are less inclined to leave the area in search of work. Secondly, between the years 1951 and 1971, while there was a dramatic decline in the already small farm population, the non-farm population residing in rural areas increased by almost 58 percent, reversing the population outflow of earlier years.

52. What industrial employment exists, apart from the fishery and forestry and activities dependent upon those two sectors, is mainly to be found at the large Michelin Tire plant in Bridgewater, Lunenburg county. The rapid industrial expansion generated by the tire plant at Bridgewater (currently the most rapidly growing community in Nova Scotia) is the major exception to the generally maritime and resource-based character of the regional economy. The only other significant departure from the pattern is a textile plant at Yarmouth.

53. Lunenburg county is perhaps the single area most dependent upon the Georges Bank fishery in terms of the volume and value of its landings. The general character of the industry here is relatively concentrated and capital-intensive, though not by any means to the exclusion of smaller-scale undertakings. The county has the largest fleet of offshore vessels exceeding 30 metres in length, many of them owned and operated by National Sea Products Ltd. to supply its large and modern plant at Lunenburg town. Further to the southwest — particularly in Shelburne county, the area closest to Georges Bank, whose economic base is almost totally dedicated to the fishery — the industry is dominated by small vessels and plants dispersed throughout the many small fishing villages scattered along the coast. Digby, Queens and Yarmouth counties fall somewhere between these two extremes in the size of the fishery undertakings they accommodate.

54. But even with the comparatively high degree of concentration in Lunenburg county's fishing industry, the employment benefits are distributed throughout a radius of 50 to 75 kilometres from Lunenburg town. The labour is mobile, but the families stay put. The trawlermen and plant employees continue, by and large, to maintain their family homes in the smaller communities throughout the area. Thus the industry depends upon a regional labour market rather than on one localized in the trawler ports. It is a pattern that lends stability and cohesion to dozens of villages with no apparent interest in the fishery.

55. The ethnic character of the southwestern counties is far more varied than in most other areas of Nova Scotia. Only Shelburne county is homogeneous, with the vast majority of its population claiming ethnic affiliation to the British Isles. In Queens and especially in Lunenburg, a large segment of the population is of German origin, descendants of German soldiers who received land grants from the British in the eighteenth century. Acadians constitute upwards of 40 percent of the population in Yarmouth and Digby counties, concentrated at the extreme western end

of the province. According to the 1971 census, over a quarter of Yarmouth county residents and well over one-third of the Digby county population reported French as the language most often spoken at home.

56. East of Digby county on the Fundy shore (and outside the five-county area), there is a gradual change in the character of the land and its economy. The Annapolis Valley provides some of the best farm acreage in Nova Scotia, and the economy is far less dependent on the sea. But the maritime character of the area is by no means lost. A series of fishing villages along the western two-thirds of the Annapolis coast provides harbours for a substantial number of fishing vessels. These vessels, like those of Maine and of New Brunswick, concentrate their efforts upon the fisheries of the inner Gulf of Maine, including the Bay of Fundy. They do not now habitually resort to Georges Bank, although there is evidence that fisheries were conducted on the Bank from Parker's Cove in the early part of this century. Further up the coast in the eastern Annapolis Valley, Kings county, and along the Minas Basin and Chignecto Bay, the tide-swept reaches of the upper Bay of Fundy provide a less hospitable environment for the fishery; but even here an inshore fishery is maintained.

57. The Fundy coast of New Brunswick is limited in its agricultural productivity. The local economy is dominated by forestry, fishing and the industry and trade of the port city of Saint John. Charlotte county, facing Passamaquoddy Bay at the western end of New Brunswick, has the most substantial fishery of the area, with about 40 percent of the province's offshore vessels and a sizeable inshore fleet as well. The New Brunswick fishing industry of the Passamaquoddy and Fundy coasts relies primarily upon the resources of the inner Gulf of Maine — especially the herring and lobster that typify the commercial fisheries of the inner Gulf on both sides of the border. Although Georges Bank does not figure prominently in the New Brunswick fishery, some vessels (especially those of Campobello Island and Grand Manan Island) make occasional trips to the Bank.

58. Saint John county, further to the east on the Fundy shore of New Brunswick, is dominated by Saint John itself, New Brunswick's largest city with a population of around 115,000. The county's contribution to the fishery is slight compared to that of Charlotte county, but it does maintain a fleet of well over a hundred boats that engage primarily in the inshore fisheries of the Bay of Fundy. The pattern of coastal development along the upper Bay of Fundy on the New Brunswick side is not dissimilar to that of the Nova Scotia coast across the Bay. The coastal waters with their powerful tides are limited in their productivity, but they do sustain a mixed inshore fishery.

59. There is a marked similarity between much of the coast of the state of Maine and the adjoining part of the New Brunswick coast; both areas (apart from the city of Saint John on the Canadian side and the cities of Rockland and Portland on the United States side) are largely rural and sparsely settled, and dependent mainly upon forestry and fishing. Neither Maine nor New Brunswick are significant centres for the Georges Bank fishery. Along this entire stretch of coastline, the prevailing character of the fishery is essentially the same in its reliance upon the relatively nearby waters of the Gulf of Maine itself.

60. The general patterns of fishing by vessels of the state of Maine have been described as follows by an American scholar:

"NMFS [National Marine Fisheries Service] 1975 statistics indicate that somewhat less than 1 percent of Maine's catch in both dollars and pounds was taken in the Georges Bank area. Traditionally, Maine fishermen work inshore grounds from small vessels and boats. Larger vessels, concentrated in the ports of Rockland and Portland, venture farther afield but Georges Bank contributes only some 5 percent to their catches . . . since offshore fishing in Maine usually means the Gulf of Maine and the smaller banks to the northeast of Georges¹¹."

61. At the southwestern end of the Maine coast the landscape begins to change, and with it the economy: the rocky and indented coast gives way to shelving beaches and the transition to the milder climate of southern New England begins. This part of Maine and the short coastal strip of New Hampshire are more industrialized and populous than eastern Maine and are supported by a highly developed tourist industry more than by the resources of the sea. Southwestern Maine and New Hampshire do not make any substantial use of Georges Bank.

62. It is only in Massachusetts, as the industrial conurbation of Boston is approached, that the Georges Bank fishery begins to take on any significance for the United States. But in contrast to the situation in Nova Scotia, where the Georges Bank fishery is dispersed among many coastal communities, the New England fishery on the Bank is concentrated in the ports of New Bedford, Gloucester and Boston. The Massachusetts fishery, again in contrast to that conducted across the Gulf in southwest Nova Scotia, is insignificant in the context of the dense and urbanized population of Massachusetts, with its industrialized and diversified economic base. On Cape Cod, the commercial fishery is dwarfed by a rich recreational and retirement-based economy. The New England coast with a direct interest in Georges Bank extends beyond Massachusetts only to a small portion of the Rhode Island coast, to Newport and, to a lesser extent, Point Judith¹².

63. In a sense, then, the social geography of the area underscores the purely physical configuration of the coasts. Those portions of the coastline that face upon the inner part of the Gulf of Maine are characterized by a fishery that is largely directed to the resources of that inner area. It is from the coasts of southwest Nova Scotia and Massachusetts in closer proximity to Georges Bank that the fishery on the Bank is largely conducted. But here the symmetry stops, for the contrast between the one-dimensional, fishery-based economy of southwest Nova Scotia and the diversified and highly urbanized character of Massachusetts could hardly be more pronounced.

¹¹ S. Olsen: *Fishing and Petroleum Interaction on Georges Bank*. Energy Program Technical Report 77-1. Boston, New England Regional Commission, 1976, p. 98.

¹² *Final Supplement to Environmental Statement, Proposed 1979 Outer Continental Shelf Oil and Gas Lease Sale Offshore the North Atlantic States*. (OCS Sale No. 42.) United States Department of the Interior, Bureau of Land Management. Washington, U.S. Government Printing Office, 1979, p. 116.

CHAPTER II. THE OFFSHORE ENVIRONMENT

Section I. The Continental Shelf

A. PHYSIOGRAPHY AND GEOMORPHOLOGY

64. The physical continental shelf of eastern North America fringes the continent and extends from Baffin Bay in the north to Florida in the south. Together with the continental slope and rise, it makes up the continental margin of eastern North America, which in the present Memorial is referred to as "the Atlantic continental margin". This Atlantic continental margin is a continuous, uniform and uninterrupted physiographic structure, marked of course by certain secondary features as a result of glacial and fluvial action, and constituting the submerged natural prolongation of the North American landmass into and under the Atlantic Ocean.

65. The continental shelf descends gently seaward from the Canadian and United States coastlines all along the eastern coast of North America (at an average inclination of about 2 metres per kilometre) until the seaward limit of the shelf is reached at an approximate ocean depth of 200 metres. The seaward limit of the shelf is marked by an abrupt change in gradient — the shelf edge or shelf break — where the slope begins to descend more steeply (at an inclination of about 75 metres per kilometre or 4 degrees). This shelf edge is located well within the 200-mile limit of the Parties. It is the most pronounced physical feature of the submerged landmass making up the Atlantic continental margin, including, of course, the margin in the Gulf of Maine area, and is an important unifying feature from northeast to southwest. The continental slope continues to depths of approximately 2,000 metres, where it merges with the continental rise. From the base of the slope, the continental rise descends at a more gradual rate to merge with the abyssal plain of the deep ocean floor beyond the seaward limits of the Parties' 200-mile zones.

66. The abrupt change in gradient at the shelf break separates the continental shelf from the continental slope. The slope is steepest in its upper part and together the slope and rise form an escarpment-like feature all the way along the Atlantic continental margin. This bold frontal face is best revealed by vertical exaggeration, as *Figure 12* illustrates. It must be understood, however, that such visual aids are necessary to permit appreciation of this continuous and important physiographic feature. In reality, if the ocean were drained, the continental shelf would appear as flat as the Canadian prairies. Even the continental slope, or frontal face of the margin, descends at a gradient barely noticeable to a cyclist.

67. Although the continental shelf is relatively flat, it is not completely featureless, and it is possible to recognize certain broad "provinces" or areas within which there is a fair degree of physical similarity. As noted in paragraph 24, four such physiographic provinces can be identified off the mid-Atlantic coast of North America (illustrated in *Figure 13*):

- (a) the Scotian Shelf province, off the Canadian coast to the northeast of Georges Bank;
- (b) the East Coast Shelf province, off the United States coast to the southwest of Georges Bank;
- (c) the Georges Bank province;
- (d) the Gulf of Maine province, to the north of Georges Bank.

These provinces have been influenced by the extent of glaciation and fluvial erosion of the Atlantic continental margin, the shelf to the northeast being scoured into basins and banks, while the shelf to the southwest, beyond the Nantucket Shoals-Great South Channel area, consists largely of an unglaciated offshore plain of low relief.

68. The topography of the continental shelf in the Gulf of Maine area is characterized by banks and basins that represent secondary features produced very late in geological time. The most important of these, Georges Bank, is separated from the East Coast Shelf province to the southwest by the Great South Channel and from the Scotian Shelf province to the northeast by the Northeast Channel. Both these depressions are superficial features produced on the uppermost layers of the sedimentary wedge by recent (in geological time) fluvial and glacial erosion. Shoal areas of Georges Bank are other surface features that have resulted from glacial deposition and subsequent marine erosion in recent geological time.

69. The geomorphic processes that produced the present-day topography of the Gulf of Maine area are both complex and difficult to explain fully in terms of cause and effect, given the changes that have occurred over the course of millions of years as a result of the periodic rising and withdrawal of the sea in relation to the shore-line. What follows is a brief summary of the major geomorphic events during the very late geological stages that came after the basic evolution of the Atlantic continental margin, including the Gulf of Maine area. These and other significant elements in the geological evolution of the area are summarized in Table 1.

70. In the Pliocene epoch (5.5 to 1.8 million years ago) the sea level of the Atlantic dropped and river systems draining the landmass in the present Gulf of Maine area cut their way across the exposed Atlantic Coastal Plain — the broad sedimentary structure that now constitutes the Atlantic continental margin. One of these systems incorporated the waters of the Merrimack and Kennebec Rivers in present-day New Hampshire and Maine and flowed to sea through a valley that is now the Great South Channel. A second system incorporated the Penobscot River of Maine, the St. Croix and St. John Rivers of New Brunswick, and drainage from the Bay of Fundy and parts of Nova Scotia, such as the Shubenacadie River, and was discharged through a second valley that is now the Northeast Channel¹. The emerged area between these valleys formed what was to become Georges Bank. Other early drainage systems appear to have crossed the Atlantic Coastal Plain off Long Island (the

¹ See R. N. Oldale and E. Uchupi: *The Glaciated Shelf Off Northeastern United States*. United States Department of the Interior, Geological Survey Professional Paper 700-B. Washington, U.S. Government Printing Office, 1970, pp. B167-B173.

ancestral Hudson River) and near the junction of the Grand Banks and Scotian Shelf (the ancestral St. Lawrence River).

71. Beginning in the Pleistocene epoch (about 2 million years ago), massive glacial ice sheets ground down across the North American continent from northern Canada in several cyclical waves of advance and retreat, the last advance culminating about 20,000 years ago. In its furthest advance the glacial mass reached the edge of the continental shelf off the coast of Nova Scotia and at least the northern portion of Georges Bank, scouring the seafloor of the Gulf of Maine, which had already been eroded by fluvial systems in the Pliocene epoch. The present depth and U-shape of the Northeast Channel resulted from modification of the river valley by such glacial erosion. Evidence suggests that another lobe of ice scoured the area of the Great South Channel². Sand, gravel and mud scooped by glaciers out of depressions inside the Gulf of Maine were deposited under and in front of the leading edge of the ice mass and were left behind when the glaciers receded.

72. Each time an ice sheet formed on land, it required water to be withdrawn from the sea, with the result that sea level fell, exposing much of the shelf to fluvial and subaerial activity and, eventually, to the possibility of glaciation. When the glaciers melted and retreated, water was returned to the sea, which advanced over the shallow areas of the shelf once more. When the last ice sheet began serious retreat 15,000 to 16,000 years ago, sea level rose along the Atlantic margin, covering Georges Bank and other adjacent banks in the Gulf of Maine area. The Great South Channel (and to a lesser extent the Northeast Channel) was partially filled with sediment washed in off the adjacent banks by the rising waters³. On the tops of the banks, the sand, gravel and mud dumped in front of the glaciers were reworked and redistributed as gravel deposits and sand waves by the inundation of the Atlantic Ocean. The coarser materials were concentrated on the northern half of Georges Bank. Gravels and sands are about equally represented in the surface sediments covering Browns Bank, while Nantucket Shoals southwest of Georges Bank have proportionally less gravel and more sand. In other words, there is a gradual reduction in the coarseness of surface materials, from gravel in the northeast to sand in the southwest, throughout the Gulf of Maine area.

73. This pattern of fluvial and glacial erosion, with subsequent inundation by the sea during interglacial times, affected the whole of the continental shelf from the area off Cape Cod and Nantucket Shoals northeastward to Baffin Bay. The last inundation in postglacial times has left the most recent imprint. Thus the Pleistocene epoch has been largely responsible for the creation of the small-scale features that characterize the seafloor topography of the Gulf of Maine area and the shelf farther north off the coast of Nova Scotia.

² S. T. Knott and H. Hoskins: "Evidence of Pleistocene Events in the Structure of the Continental Shelf off the Northeastern United States." (*Marine Geology*, Vol. 6, 1968, pp. 5-43.)

³ S. T. Knott and H. Hoskins, "Evidence of Pleistocene Events in the Structure of the Continental Shelf off the Northeastern United States", pp. 5-43.

TABLE 1

GEOLOGICAL AGE			Million Years Ago	GEOLOGICAL EVENTS — GULF OF MAINE AREA
CENOZOIC	Quaternary	Recent (Holocene)	.002	Nova Scotia-New England margin assumes present form. Glaciers retreat, sea waters rise over Georges Bank and rework surficial sediments.
		Pleistocene	.01	Continental glaciers further scour out Gulf of Maine and Northeast Channel.
	Tertiary	Pliocene	1.8	Fluvial erosion carves out Gulf of Maine and removes most of Coastal Plain cover; Northeast and Great South Channels form as water gaps.
		Miocene	5.5	Shallow marine to non-marine deposition continues on Gulf of Maine Platform and Scotian Shelf.
		Oligocene	22	Sea level drops; shelf and slope build out; submarine canyons form.
		Eocene	38	Continued marine deposition.
		Paleocene	54	Renewed subsidence and marine deposition.
			65	
MESOZOIC	Cretaceous	Late Cretaceous		Margin uplifted; LaHave Platform and Gulf of Maine Platform eroded; Sea rises and spreads back across area; Dawson Canyon and Wyandot formations deposited; Transverse movements along Kelvin Fault zone result in New England Seamount chain.
		Early Cretaceous	100	LaHave Platform and Yarmouth Arch uplifted and eroded. Sea level drops, deltas form; Missisauga and Logan Canyon formations deposited.
	Jurassic	Late Jurassic	135	Continued development of carbonate bank with back bank Mic Mac formation behind.
		Middle Jurassic	160	Eastern North American margin subsides; Abenaki carbonate bank forms close to the hinge zone. Nova Scotia and New England decouple from NW Africa to form Central Atlantic Ocean; Mohican formation deposited.
		Early Jurassic	176	Crust subsides along basement hinge zone; Yarmouth Arch forms; Georges Bank and Scotian Basins expand; shallow salt pan occupying the depression results in Argo formation.
	Triassic	Triassic	192	Tensional crustal forces cause formation of grabens filled by continental sediments, including evaporites and volcanics; Georges Bank and Scotian Basins form.
			225	
PALEOZOIC		Permian	280	Continental sediments laid down in Bay of Fundy, Boston Basin.
		Carboniferous	345	Acadian granites intrude Appalachian, Avalon and Meguma belts.
		Devonian	395	Meguma Seaway closes — Meguma sediments folded and faulted.
		Silurian	430	Appalachian (Iapetus) Seaway closes; Appalachian sediments folded, faulted, intruded.
		Ordovician	500	Deep water sediments laid down in Appalachian and Meguma Seaways.
		Cambrian	570	
			600-700	Avalon Platform rocks folded and intruded by granite, followed by seafloor spreading.
PRECAMBRIAN			1000	Avalon Platform rocks laid down in shallow sea.

B. GEOLOGY

74. The geological history of the Gulf of Maine area is of interest to the extent that it helps to demonstrate the essential continuity and integrity of the Atlantic continental margin as it appears today. An examination of the process can give a better understanding of the result. The Court, of course, is already familiar with the concepts of the theory of plate tectonics⁴ and will be aware that from a dynamic viewpoint there are three kinds of tectonic boundaries where lithospheric plates interact. These boundaries are: *translational* or *transform*, where the plates are moving in opposite directions but parallel to their common boundary; *divergent*, where the plates are moving away from a spreading centre (mid-ocean ridge); and *convergent*, where one plate dips beneath another and is re-melted by the extremely high temperatures found in the earth's mantle beneath the lithospheric plates. The western side of North America is an active margin lying close to the edge of a lithospheric plate. The eastern side of the continent, on the other hand, is a passive margin in which the continental crust remained attached to the adjoining oceanic crust following the initial rifting. The *Tunisia-Libya Continental Shelf* case concerned a continental terrace that had been built on a passive margin but had in part been folded into the Atlas Mountain chain as a result of the destruction of the pre-Mediterranean (Tethys) ocean basin following a collision between Africa and Europe. Such complications do not occur in the area now under consideration; the Atlantic coast of North America is generally considered as the classic example of a passive margin.

75. The important fact about the Atlantic continental margin in the Gulf of Maine area is that it has been produced by tectonic forces that are common, in terms of time and type, from Nova Scotia to the Blake Plateau off Florida⁵. The entire margin was formed on the North American plate by successive stages of continental rifting, crustal stretching and thinning, and associated seafloor spreading, as molten rock rose at the mid-Atlantic ridge to build the new ocean floor, while the North American and African plates slowly but progressively separated.

76. The internal (or subsurface) geological structure of the margin in the Gulf of Maine area is of scientific interest. The basement block, consisting of continental crust, provides the foundation upon which the present-day continental margin was later built by sedimentary deposition. The rocks making up this continental basement block are extremely old in terms of geological time, the oldest having been formed in the Precambrian era (at least 600-1,000 million years ago)⁶. There are three distinct zones of ancient basement rock in the Gulf of Maine area:

⁴ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 50 ff., paras. 52 ff.

⁵ A good description of the common tectonic forces that produced the Atlantic continental margin is found in A. W. Bally, A. B. Watts, J. A. Grow, W. Manspeizer, D. Bernoulli, C. Schreiber and J. M. Hunt: *Geology of Passive Continental Margins. History, Structure and Sedimentologic Record (With Special Emphasis on the Atlantic Margin)*. Prepared for the American Association of Petroleum Geologists Eastern Section Meeting and Atlantic Margin Energy Conference, Education Course Note Series No. 19, Tulsa, Oklahoma, AAPG, 1981.

⁶ See W. H. Poole: "Plate Tectonic Evolution of the Canadian Appalachian Region." (*Geological Survey of Canada, Report of Activities Part B*, Paper 76-1B, 1976, pp. 113-126); P. E. Schenk: "Southeastern Atlantic Canada, Northwestern Africa, and Continental Drift." (*Canadian Journal of Earth Sciences*, Vol. 8, 1971, pp. 1218-1251.)

- (a) the Appalachian geosyncline;
- (b) the Avalon platform; and
- (c) the Meguma geosyncline.

These zones or geological belts (as shown in *Figure 14*) run closely parallel to one another in a southwest-trending arc from Newfoundland to New England, extending offshore where they become buried beneath the sedimentary wedge. The two most relevant zones for present purposes are the Avalon platform and the Meguma geosyncline. Rocks that appear to be part of the Avalon platform sequence were encountered at the bottom of one of the stratigraphic test wells drilled by a consortium of United States companies in the central part of Georges Bank in 1976, providing evidence of the seaward extension of the Avalon platform from the Canadian landmass to the area of Georges Bank⁷. Moreover, some leading geologists consider that the basement rocks beneath at least the eastern portion of Georges Bank are probably part of the Meguma belt extending seaward from Nova Scotia⁸.

77. To complete the geological picture of the basement block, it is necessary to return to the concept of plate tectonics. As the North American and African continents began to separate due to tensional forces associated with Atlantic seafloor spreading, the continental block supporting the continental land masses was stretched and thinned while being pulled outward in a direction roughly perpendicular to the contemporary North American Atlantic coastline. A prominent zone where subsidence, or downfaulting, of the continental crust occurred as a result of these outward-pulling tectonic forces has been identified by geophysicists. In the Atlantic offshore area this feature is known as the "Basement Hinge Zone", shown in *Figure 15*. This is a generally continuous structural feature from northeast to southwest, all through the Atlantic continental margin.

78. A second geological feature associated with the basement block structure is the "East Coast Magnetic Anomaly", a linear trend of high magnetic intensity, also shown in *Figure 15*. This trend extends without any major interruption from the coastal area off Nova Scotia southwestward to the margin seaward of Florida. The geological evidence points to the Anomaly being related to the structural zone where continental crust was stretched and where there is a transition to oceanic crust. The important point here is that, as in the case of the Basement Hinge Zone, the East Coast Magnetic Anomaly is evident as a geological trend all through the Gulf of Maine area, extending from northeast to southwest through Georges Bank. It is also pertinent that the Anomaly and the Basement Hinge Zone parallel each other throughout this portion of the Atlantic margin, and both run parallel to the general direction of the present-day Atlantic coastline and shelf edge from northeast to southwest.

⁷ R. V. Amato and J. W. Bebout, eds.: *Geologic and Operational Summary, COST G-1 Well, Georges Bank Area, North Atlantic O.C.S.* United States Department of the Interior, Geological Survey Open File Report. Washington, U.S. Government Printing Office, 1980, pp. 80-268.

⁸ L. K. Schultz and R. L. Grover: "Geology of Georges Bank Basin." (*American Association of Petroleum Geologists Bulletin*, Vol. 58, No. 6, Part 2, 1974, pp. 1159-1168); J. A. Wade: "The Mesozoic-Cenozoic History of the Northeastern Margin of North America." (*Proceedings of 10th Annual Offshore Technology Conference*, Vol. 3, 1978, pp. 1849-1858.)

79. As tectonic forces pulled the continental blocks apart, depressions or breaks in the crustal structure appeared. These "grabens" and "half-grabens" (separated by structurally higher blocks, or "horsts") were produced in the basement block and were later filled with Triassic red beds, salts and volcanics⁹. The grabens show a marked northeast-southwest orientation, crossing the Gulf of Maine and Georges Bank, roughly parallel to the present Atlantic coast of North America. They are lasting evidence of the direction of the tensional forces at the commencement of continental rifting.

80. A feature of the basement block in the Gulf of Maine area is a horst structure that has been named the "Yarmouth Arch". This is a ridge of ancient basement rock extending southwest from Nova Scotia, plunging underneath Georges Bank in a direction transverse to the Northeast Channel (as shown in *Figure 16*). The Arch was formed about 200 million years ago when the continents rifted and when the continental crust was correspondingly stretched outward by tensional forces. It is part of the basement block that did not subside in response to the outward pull of those forces. On each flank of the Yarmouth Arch there are deep downwarped and downfaulted subsurface basins, the Georges Bank Basin to the west and the Scotian Basin to the east. These two basins, each some 10 kilometres deep, have been filled by a complex of Triassic and Jurassic sediments, linked around the southwestern "nose" of the Arch. In the later Jurassic period the Arch was overtopped by the accumulating sediment and is now buried by more than 4 kilometres of Cretaceous and Tertiary strata that run continuously from northeast to southwest through the Gulf of Maine area, as shown in cross-section BB' in *Figure 17*. Other similar horst blocks occur to the west of the Georges Bank Basin, separating a series of lesser sedimentary basins.

81. The most distinct geological discontinuity evident in the Gulf of Maine area is the "New England Seamount Chain", a row of extinct volcanoes extending seaward off Cape Cod in the vicinity of the Great South Channel. Geological evidence suggests that the seamounts are associated with a zone of crustal weakness that developed after the formation of the underlying seafloor. The line of the seamounts interrupts the northeast to southwest trend of the East Coast Magnetic Anomaly in the area southwest of Georges Bank off Cape Cod. Scientists are not certain whether the seamounts are associated with an east-west basement fault south of Cape Cod (known as the "40th parallel wrench fault"), or whether there is a relationship between the seamounts and a belt of seismicity that extends northwestward from the area seaward off Cape Cod through the White Mountains of New Hampshire and into western Quebec. What is significant here is that this chain of seamounts, disturbing the structural integrity of the basement block, is found on the southwest extremity of the Gulf of Maine area off the United States coast. (See *Figures 15 and 16*.)

⁹ R. D. Ballard and E. Uchupi: "Carboniferous and Triassic Rifting: A Preliminary Outline of the Tectonic History of the Gulf of Maine." (*Geological Society of America Bulletin*, Vol. 82, 1972, pp. 2285-2302); M. M. Given: "Mesozoic and Early Cenozoic Geology of Offshore Nova Scotia." (*Bulletin of Canadian Petroleum Geology*, Vol. 25, No. 1, 1977, pp. 63-91.)

82. Overlying the basement structures of Georges Bank is the sedimentary wedge that actually constitutes the Atlantic continental margin. From the northeast to the southwest the wedge is marked by the same basic structural characteristics: a series of sedimentary layers made up of saline evaporites, carbonate deposits and detrital material washed off the continental landmass and covering the continental and oceanic basement structure. Although internal, local geological complexities are evident, in its essential aspects this wedge is continuous and similar in composition along the entire east coast of North America, thickening as it progresses seawards to the shelf edge (see *Figure 17*, cross-sections AA' and CC'). An enormous amount of material was carried by drainage systems to build the sedimentary wedge through age-long processes covering some 200 million years. In the Gulf of Maine area, as has been described above, the youngest of these river systems in the Pliocene epoch drained through what today are known as the Great South Channel and the Northeast Channel.

83. Quite obviously, it is not possible to demonstrate absolute internal geological unity and symmetry in the geological structure of the sedimentary wedge throughout the extent of the Atlantic continental margin. Geological history did not leave so perfect a picture. Nevertheless, the wedge was constructed by a single ocean system and it displays very important similarities of structure and stratigraphy throughout the Gulf of Maine area from northeast to southwest. These similarities attest to the essential continuity and integrity of the present-day Atlantic continental margin, consisting of shelf, slope and rise, which constitutes the natural prolongation of the North American landmass into and under the sea.

C. CONCLUSION

84. In summary, the Atlantic continental margin is a continuous, uniform and uninterrupted structure, characterized by superficial topographic features resulting from glacial and fluvial action. The geological history of the Gulf of Maine area began with the formation of the basement structure in the Precambrian age over 1,000 million years ago. The massive formation that is the present day Atlantic continental margin is the result of 200 million years of sedimentation. The topographic features etching the surface of the continental shelf were produced only in recent geological time, between 5.5 million to less than 5,000 years ago. They are mere markings on the shelf, not interruptions or discontinuities, and can be revealed for illustrative purposes only with the aid of multiple vertical exaggeration.

Section II. Hydrocarbon Potential

85. Oil and gas potential is often closely related to the thickness of the sediments available for hydrocarbon generation and entrapment. The rocks of the Atlantic margin sedimentary wedge extend across Georges Bank and the Northeast Channel, reaching 10 kilometres in thickness in places. In contrast, the inner portion of the Gulf of Maine contains only thin remnants of these sedimentary rocks, generally less than 50 to 100 metres in thickness. Because of its thick sedimentary

layer, Georges Bank is considered to offer reasonable potential for oil and gas, while the inner part of the Gulf of Maine is thought to have virtually none.

86. It has already been noted in paragraph 80 that two major subsurface sedimentary basins — Georges Bank Basin and Scotian Basin — are found beneath Georges Bank, partially separated by the subsurface geological feature of the Yarmouth Arch. These subsurface basins are geologically similar to the Sable Island area off Nova Scotia — also part of the Scotian Basin — where several significant oil and gas fields have been identified. Based on a comparison with the known geological parameters in the Sable Island area, the eastern half of Georges Bank is estimated by the Geological Survey of Canada to offer a 40 percent chance of yielding at least 1,100 million barrels of oil and about 5.3 million million cubic feet of gas¹⁰. While these amounts represent only a small fraction of the proven reserves of the North Sea, for example, they are nonetheless significant. The oil estimates amount to approximately one-sixth of Canada's remaining conventional reserves. The gas would also be a valuable resource, given the proximity of markets. Almost all of this potential on the eastern half of the Bank is concentrated in the western extension of the Scotian Basin.

87. In 1980, the United States Geological Survey revised its assessment of undiscovered, recoverable hydrocarbon resources for the "North Atlantic Shelf" region, which included the entirety of Georges Bank. United States estimates for this area are now 4.44 million million cubic feet of gas and 890 million barrels of oil, with a 1 in 20 chance of recovering 13.2 million million cubic feet of gas and 2,500 million barrels of oil¹¹. These estimates are not incompatible with the Canadian figures noted in paragraph 86.

88. The petroleum industry's interpretation of the hydrocarbon potential west of the Canadian line on Georges Bank was shown by the results of the 18 December 1979 United States Department of the Interior Lease Sale No. 42, in which 63 tracts were awarded to the oil and gas industry, with total bids of U.S. \$816.5 million¹². This very high sum represents the total price that companies were prepared to pay for the right to explore and the option to exploit discoveries; additional taxes would be payable on the value of actual production. All these tracts are, of course, located in the undisputed United States portion of Georges Bank. While there has been some recent exploratory drilling by corporations on this portion of the Bank, the detailed results are not available to Canada.

¹⁰ These estimates have not been confirmed by exploratory drilling, which Canada has refrained from authorizing pending settlement of the maritime boundary.

¹¹ "Preliminary Revised Estimates of OCS Oil and Gas Resources." (United States Department of the Interior, Geological Survey. *News Release*, 7 March 1980.) Referred to in G. McLeod and J. Prescott, eds.: *Georges Bank. Past, Present and Future of a Marine Environment*. Boulder, Colorado, Westview Press, 1982, p. 140.

¹² "Interior Department Accepts High Bids Totaling \$816,516,546 for Offshore Oil and Gas Leases on Georges Bank in the North Atlantic." (United States Department of the Interior, Bureau of Land Management. *News Release*, 31 December 1979.) See Annexes, Vol. II, Annex 45.

Section III. The Water Column

A. OCEANOGRAPHY

89. Throughout the Gulf of Maine area, and particularly on Georges Bank, there is a complex interaction of bottom topography, current structure and biological processes. As a result of this interaction Georges Bank is an unusually productive area. In oceanographic terms, it is at one and the same time a semi-discrete marine ecosystem and part of a larger system with affinities to the northeast.

90. Georges Bank waters contain a high level of phytoplankton that provide food for the zooplankton and benthic animals that in turn serve as food for the various fish species abounding there¹³. An important factor contributing to this high level of biomass¹⁴ and productivity is the water turbulence on Georges Bank, which results from the interaction of strong tidal currents and the rough and shallow bottom. This vertical mixing ensures that nutrients (nitrates, phosphates and silicates) are relatively uniformly distributed throughout the water column from top to bottom. One of the world's richest fishing grounds, Georges Bank has been described as —

“... about twice as productive as the North Sea, four times more productive than the Grand Banks and five times more so than the Northeast Atlantic¹⁵”.

91. On a broad oceanographic scale, the colder and less saline waters carried by the Labrador and Nova Scotian currents pass across Georges Bank in their southwestward course, inside or landward of the northeastward flows of the warm Gulf Stream. The transportation of colder, northern waters onto Georges Bank creates thermal conditions that are conducive to the production of micro-organisms and fish life with northerly orientations — i.e., the boreal species that dominate plant and animal life on the Bank. When these colder waters reach the Cape Sable area off Nova Scotia in their southwestward flow, part of the current enters the embayment of the Gulf of Maine and is “trapped” for a time inside the Gulf, where it circulates in a counter-clockwise direction, returning to the principal southerly-flowing body of the current by way of the Great South Channel and the Northeast Channel. This pattern of circulation in the inner Gulf is separate from the clockwise current circulation that is present on Georges Bank itself.

92. In addition to these large-scale oceanographic features, there are important driving forces that operate in the Gulf of Maine area in smaller scales of space and time. Paramount among these are the tides, with their rhythmic to and fro motion and the associated rise and fall of

¹³ The oceans support a vast population of organisms that either swim or float in the various water layers and are independent of the bottom. Although they may have some power of independent movement, they cannot perform any effective horizontal migrations against the set of tides and currents. These *pelagic* organisms comprise the *phytoplankton* (plants) and the *zooplankton* (animals). The animals and plants on the bottom of the ocean comprise the *benthos*.

¹⁴ Biomass is the living weight of a part (or the whole) of a biotic community. Production, or productivity, is the growth of biomass over time.

¹⁵ *Final Supplement to Environmental Statement. Proposed 1979 Outer Continental Shelf Oil and Gas Lease Sale Offshore the North Atlantic States.* (OCS Sale No. 42.) United States Department of the Interior, Bureau of Land Management. Washington, U.S. Government Printing Office, 1979, p. 113.

sea level. The shape, size and bathymetry of the Gulf of Maine, including the funnel shape and the extent of the Bay of Fundy, are such that the tidal amplitude in the Gulf of Maine area is greatly augmented. This results in the well-known powerful tides of the Bay of Fundy, which are among the highest in the world. The area off southwest Nova Scotia, the Nantucket Shoals and Georges Bank itself, together with the Bay of Fundy, constitutes a single region of greatly enhanced tidal currents. (See *Figures 18 and 19.*) Research has shown that the entire Gulf of Maine area responds as a single, integrated tidal regime¹⁶. This produces extremely important localized effects: the tidal current coursing over the rough and shallow bottom of Georges Bank ensures that nutrients are well distributed and is probably the single most important factor supporting the biological abundance and high productivity of Georges Bank.

93. Tidal current patterns also interact with bottom features to produce a semi-permanent gyre on Georges Bank. This gyre is not perfect in its completeness and there is seasonal variation in its intensity¹⁷. But it presents a definable pattern, following a clockwise direction around the Bank, separate from the counter-clockwise water circulation in the inner part of the Gulf, and separate from the circulation on Nantucket Shoals to the southwest and on Browns Bank to the northeast. The gyre helps to set Georges Bank off from immediately surrounding waters, as illustrated in *Figure 20*.

94. "Georges Bank water", while similar to and probably formed from contiguous water masses, exhibits temperature and salinity characteristics that are more temporally uniform and more vertically homogeneous¹⁸. This homogeneity is largely attributable to the extensive mixing of the waters on the Bank that results from the combination of strong tidal currents and relative shallowness.

95. The rivers emptying into the Gulf of Maine make an important contribution in oceanographic terms. Canada's St. John River alone pours some 32 cubic kilometres into the Gulf each year — nearly 33 percent of the total inflow. The Merrimack, Androscoggin-Kennebec and Penobscot rivers, flowing from the United States, add another 35 cubic kilometres. The Saco (United States), the St. Croix (Canada-United States) and other smaller rivers make up the balance¹⁹.

¹⁶ C. Garrett: "Tidal Resonance in the Bay of Fundy and Gulf of Maine." (*Nature*, Vol. 238, 25 August 1972, pp. 441-443); C. Garrett: "Normal Modes of the Bay of Fundy and Gulf of Maine." (*Canadian Journal of Earth Sciences*, Vol. 11, 1974, pp. 549-556); D. A. Greenberg: "A Numerical Model Investigation of Tidal Phenomena in the Bay of Fundy and Gulf of Maine." (*Marine Geodesy*, Vol. 2, No. 2, 1979, pp. 161-187.)

¹⁷ A gyre normally comprises a semi-enclosed current system. In the case of Georges Bank, there is a continual exchange between Georges Bank water (within the semi-enclosed current) and surrounding waters; this exchange is associated with tidal, wind-induced and other motions, such as Gulf Stream incursions and resulting eddies.

¹⁸ If, for a given location at which observations have been made at various depths the temperature and salinity corresponding to each depth are plotted, the points thus plotted may be joined to form a fairly smooth curve. This is called the temperature and salinity curve for that location. The T-S curve, or a portion thereof, representing a continuum of water types, describes a "water mass". The term water mass may be applied to a body of water throughout a region in which minor modifications of the characteristic T-S curve may take place. The Georges Bank water mass is one example. See T. S. Hopkins and N. Garfield: "Physical Origins of Georges Bank Water." (*Journal of Marine Research*, Vol. 39, No. 3, 1981, p. 465.)

¹⁹ D. Merriman: "The History of Georges Bank", in G. McLeod and J. Prescott, eds.: *Georges Bank. Past, Present and Future of a Marine Environment*, p. 18; S. Appolonio: *The Gulf of Maine*. Rockland, Maine, Courier of Maine Books, 1979, p. 30.

96. Micro-organisms (phytoplankton, zooplankton) and benthic species found on Georges Bank are distributed both to the northeast and to the southwest. Nevertheless, the phytoplankton and zooplankton biomass in the Gulf of Maine area, including Georges Bank, is dominated by species having primarily boreal or northern distributions. These species are dominant on Georges Bank as a result of the environment produced by the southerly flows of colder, northern waters along the Canadian continental shelf across the Bank. Such species are less evident in the warmer waters to the southwest of the Bank beyond the Cape Cod area.

97. Because of their sedentary nature, benthic animals reveal a range of geographical distribution that is more restricted than that of the phytoplankton and zooplankton, the benthos patterns being dependent on water temperature and to a large degree on bottom sediment texture. The species composition of the benthos on Georges Bank is similar to that observed in areas to the northeast, in the Bay of Fundy and on the banks of the Scotian Shelf²⁰. Southwest of the Cape Cod-Nantucket Shoals area, on the other hand, the benthic composition becomes increasingly dominated by species having southerly distributions. This differentiation in benthic species composition reflects the fact that the Cape Cod-Nantucket Shoals area off the United States coast is a recognized faunal and floral boundary, constituting a transition zone between northern cold-water benthic species of the Nova Scotian biogeographic province and southern warm-water benthic species of the Virginian biogeographic province²¹. (See Figure 21.)

²⁰ For example, in relation to benthic communities on Georges Bank dominated by dense beds of horse mussels (*Modiolus modiolus*), the same community composition and structure can be found in the Bay of Fundy where a similar combination of currents and sediments exists. Eighteen of the 20 benthic species reported as occurring on Georges Bank also occur on similar deposits in the Bay of Fundy. See R. L. Wigley: "Benthic Invertebrates of the New England Fishing Banks." (*Underwater Naturalist*, Vol. 5, No. 1, 1968, pp. 8-13); and D. Peer, D. J. Wildish, A. J. Wilson, J. Hines and M. Dadsell: *Sublittoral Macro-Infauna of the Lower Bay of Fundy*. Canadian Technical Report of Fisheries and Aquatic Sciences, No. 981. Dartmouth, Department of Fisheries and Oceans, 1980, p. 74.

²¹ See for example *Final Environmental Statement. Proposed 1977 Outer Continental Shelf Oil and Gas Lease Sale Offshore the North Atlantic States*. (OCS Sale No. 42.) United States Department of the Interior, Bureau of Land Management. Washington, U.S. Government Printing Office, 1977, Vol. 1, p. 321, where it is stated with respect to benthic flora:

"Nantucket Shoals-Cape Cod, Massachusetts, forms a distinctive geographical boundary between northern species of benthic algae with subarctic tendencies and a southern boreal flora adapted to warmer waters."

The same point is made with respect to benthic fauna later in the document (at p. 329):

"The geographic area within the North Atlantic area may be separated into two distinct temperature or climatic zones, with the boundary at Cape Cod. From Cape Cod northward, the region is boreal, while southward, the region is warm-temperature."

Scientific study of one zooplankton group — the ostracods (a small, shrimp-like animal) — has revealed, however, that for this species the transition zone between northern and southern forms may be the Northeast Channel. See J. E. Hazel: *Atlantic Continental Shelf and Slope of the United States — Ostracode Zoogeography in the Southern Nova Scotia and Northern Virginian Faunal Provinces*. United States Department of the Interior, Geological Survey Professional Paper 529-E. Washington, U.S. Government Printing Office, 1970.

B. FISHERY RESOURCES

98. The fishery resources of Georges Bank can best be considered at several levels. First there is the matter of fish distributions at the level of *species* along the entire Atlantic coast of North America. Secondly, there is the matter of separate *stocks* — relatively discrete populations of given species — linked to Georges Bank itself. And thirdly, there is the matter of general distribution of *biomass* — the living weight of the fish community — from east to west on Georges Bank.

99. At the level of *species*, the pattern of fish distributions along the Atlantic coast of North America indicates that Georges Bank is part of a larger oceanographic system. To the extent that discontinuities can be identified, however, they are to the southwest of the Great South Channel-Nantucket Shoals area. Distributions may be considered for three categories of commercially-exploited species:

- (a) Widely-distributed species found in the waters of the continental shelf and slope from the northeast along the Canadian coast to the southwest of Georges Bank along the United States coast. Major fishes and invertebrates in this group are *Illex* (short-finned) squid, lobster, sea scallops, herring, mackerel, red hake, silver hake, swordfish, tuna and yellowtail flounder. A number of these species are highly migratory.
- (b) Species whose distribution along the North American coast generally does not extend northeast of the Great South Channel-Nantucket Shoals area. Species in this second group, while occasionally observed on Georges Bank and in the Gulf of Maine, do not spawn north of the Great South Channel-Nantucket Shoals area and are generally confined in their range to the southwest of Georges Bank along the United States coast. Major fishes and invertebrates in this group are bay scallop, black sea bass, bluefish, butterfish, menhaden, scup, summer flounder and weak fish.
- (c) Species whose distribution along the North American coast does not extend southwest of the Great South Channel-Nantucket Shoals area. Species in this third group, while occasionally observed south of the Great South Channel-Nantucket Shoals area, are only found in significant concentrations to the northeast of this area, off and along the Canadian coast — that is, on Georges Bank and further north. They do not spawn in significant quantities south of the Great South Channel. Fish in this group include American plaice, argentine, cod, cusk, haddock, halibut, pollock and redfish.

100. There are only two major species for which the northern limit of distribution in the Gulf of Maine area appears to be the Northeast Channel: *Loligo* (long-finned) squid and sea robin.

101. On the basis of the distribution patterns discussed above, it has been concluded that the Great South Channel-Cape Cod-Nantucket Shoals area is an important transition zone for many commercially exploited species. This conclusion has been recently stated by United States biologists in the following terms:

"... there is an abrupt general division between the biological and physical properties of water east and west of Cape Cod... The offing of Cape Cod also appears to be a definite transition zone (probably thermal) for some northern and southern species of fish and invertebrates, both pelagic and benthic (Colton 1964). The species composition and abundance of fishes vary markedly between the two regions, with boreal, non-migratory species dominating the Gulf of Maine and warmwater migratory species prevailing in the Middle Atlantic Bight²²."

102. The transition zone described above coincides with the coastal zone "boundary" (the Cape Cod to Long Island area) between the two well-described biogeographic provinces, the Nova Scotian and the Virginian, referred to in paragraph 97. These biogeographic provinces relate to benthic plants and animals in the intertidal and contiguous coastal waters of eastern North America. The marked change in distribution of marine plants and animals in the area off Cape Cod coincides with the differences between the glaciated and unglaciated Atlantic continental shelf, the continental shelf to the southwest consisting largely of a smooth offshore plain. To the degree that the biogeographic province concept can be extended to include the marine area beyond coastal waters, and so embrace the waters of the continental shelf as well, the Gulf of Maine area — and hence Georges Bank — can be said to correspond with the Nova Scotian province.

103. At the second level under consideration, within the broad distribution patterns described above, several important fish species maintain relatively discrete *stocks* on Georges Bank²³. The species for which separate Georges Bank stocks have been identified are haddock, cod, yellowtail flounder and Atlantic herring. To the extent that these four species show mixing at the stock level beyond Georges Bank, cod and haddock show evidence of a greater exchange between stocks across the Northeast Channel than across the Great South Channel. Yellowtail flounder and herring, on the other hand, show more mixing between stocks across the Great South Channel than across the Northeast Channel.

104. The highly valuable scallop resources of Georges Bank are of prime interest to Canadian fishermen. While it is not possible to state definitely that there is a discrete Georges Bank scallop stock, there are well identified discontinuities in the concentrations of scallops in the Gulf of Maine area. Following the pattern of these areas of concentration, major fisheries for scallops have developed on Georges Bank proper, in

²² J. B. Colton, W. G. Smith, A. W. Kendall, P. L. Berrien and M. P. Fahay: "Principal Spawning Areas and Times of Marine Fishes, Cape Sable to Cape Hatteras." (*Fishery Bulletin*, Vol. 76, 1979, p. 913.) The Gulf of Maine is defined in this study as including Georges Bank and Browns Bank. The Middle Atlantic Bight is southwest of the Cape Cod-Nantucket Shoals transition zone that separates boreal or northern species and warmer water species. This separation is also described in *Final Environmental Statement. Proposed Outer Continental Shelf Oil and Gas Lease Sale Offshore the North Atlantic States*, Vol. 1, at pp. 345, 351 and 352.

²³ Within the overall limits of the range of distribution of a species, there are relatively discrete populations that show limited exchange (in the genetic sense) with contiguous populations. These populations are termed *stocks* by fisheries scientists.

the Great South Channel-Nantucket Shoals area, and in the waters off southwest Nova Scotia.

105. No marine mammals evident in Georges Bank waters are actually confined to the Bank year-round or even on a seasonal basis, although the Bank may play a role in their life histories. For several important species of whales, for example, the whole continental shelf from Cape Cod and Georges Bank northeast to Newfoundland is a summer feeding area. Other marine mammals show similar wide-ranging migratory feeding patterns. Young grey seals, for example, tagged after birth on Sable Island off Nova Scotia, have been recorded feeding from Labrador south to Cape Cod²⁴.

106. Turning finally to the level of the *biomass*, Georges Bank is characterized by an unusually high density of fish. As already noted, the Bank offers a habitat for both "resident" stocks — cod, haddock, yellowtail flounder and scallops — and for migrant species that concentrate there during part of their life histories or on a seasonal basis. Certain other commercial species are found in abundance both on Georges Bank itself and along its northern edge and its seaward edge near the shelf break. When the biomass of all species is considered in the aggregate, it shows a fairly even pattern of distribution from east to west across the Bank and in its immediately contiguous waters²⁵, although this pattern is not entirely perfect when seasonal variations and migratory patterns of individual species are looked at. Nevertheless, the general evenness of biomass distribution holds true for such species as cod and haddock (which tend however to be more available on the eastern part of the Bank) and for other species, such as the hakes (which tend to have a more westerly orientation). Yellowtail flounder are more concentrated on the central part of the Bank, with indications of a westerly orientation

²⁴ Sea bird distributions are also of interest. While there are no endemic species on Georges Bank, there is a marked concordance between sea birds known to occur on the Bank and off the eastern coast of Nova Scotia. Moreover, Georges Bank is an extremely important feeding and wintering area for many species that breed along the eastern Canadian seaboard. Out of 25 sea bird species recorded on Georges Bank, 22 are also found to be present on a regular basis along the adjacent Nova Scotia coast. Of the 25 species occurring on the Bank, only four breed on the adjacent coast of Massachusetts. Data taken from: James Fisher and R. M. Lockley: *Sea-birds. An Introduction to the Natural History of the Sea-birds of the North Atlantic*. London, Collins, 1954; Ralph Simon Palmer, ed.: *Handbook of North American Birds*. Vol. I. New Haven, Connecticut, Yale University Press, 1962; William S. Butcher, Anthony P. Reed and Jonathan B. Butcher: *Distribution Charts of Oceanic Birds in the North Atlantic*. Woods Hole Reference No. 68-69. Woods Hole, Massachusetts, Woods Hole Oceanographic Institution, 1968; R. G. B. Brown, D. N. Nettleship, P. Germain, C. E. Tull and T. Davies: *Atlas of Eastern Canadian Seabirds*. Ottawa, Canadian Wildlife Service, 1975; Stanley Cramp and K. E. L. Simmons, eds.: *Handbook of the Birds of Europe, the Middle East and North Africa*. Vol. 1. Oxford, Oxford University Press, 1977; R. L. Grayce: "Summer Sea Birds on Georges Bank." (*Bulletin of the Massachusetts Audubon Society*, Vol. 39, 1955, p. 367.) M. S. Gordon: "Summer Ecology of Oceanic Birds off Southern New England." (*Auk*, Vol. 72, 1955, p. 138); K. D. A. Lamb: "Sea Birds at the Confluence of the Gulf Stream and the Labrador Current east of New York." (*Sea Swallow*, Vol. 16, 1963, p. 654); J. Lein and L. Grimmer: "Manx Shearwater Breeding in Newfoundland." (*The Osprey*, Vol. 9, 1978, p. 50.)

²⁵ This conclusion is based on plots produced by the Bedford Institute of Oceanography, Dartmouth, Nova Scotia, from data from groundfish research trawl surveys done in the spring and fall from 1963 to 1978 by the United States National Marine Fisheries Service, Northeast Fisheries Centre, Woods Hole Laboratory, Woods Hole, Massachusetts. See Annexes, Vol. IV, Section II, Annex 2.

towards the Great South Channel area²⁶. Scallops are concentrated on both the northeastern and southwestern parts of Georges Bank, and on the south-central part²⁷. Lobster are found in concentrations on the shelf edge along the outer part of Georges Bank, from northeast to southwest.

C. CONCLUSION

107. In summary, Georges Bank is in certain respects a semi-discrete ecosystem in oceanographic and biological terms. Both the Northeast Channel and the Great South Channel have a role in defining the limits of the Bank and hence the oceanographic and biological extent of its "separation" from contiguous areas.

108. At the same time, it is clear that Georges Bank is part of a larger system with important affinities to the areas to the northeast. It is the colder, less saline water from the more northerly coastal areas of Canada that creates the thermal conditions on Georges Bank that in turn are an important factor in determining the nature of the plant and animal life found there. Further, Georges Bank is part of an integrated and powerful tidal system, embracing the Bay of Fundy and the New Brunswick and Nova Scotia coasts to the north. Water characteristics in the Gulf of Maine area, including those of Georges Bank, are also affected by fresh-water outflows in the Gulf of Maine itself, with a major share of this fresh water coming from Canadian rivers. In biological terms, the dominant phytoplankton and zooplankton species on Georges Bank are of the boreal assemblage rather than of more southern origins.

109. Most important of all, Georges Bank is a habitat and area of concentration for important commercial species of fish comprising both "resident" stocks and wide-ranging and migratory species that gather there in abundance in season. It is the unusual, concentrated wealth of these living resources that has drawn Canadian fishermen to the Bank over the years.

²⁶ *Draft Environmental Impact Statement. Proposed 1982 Outer Continental Shelf Oil and Gas Lease Sale Offshore the North Atlantic States.* (OCS Sale No. 52.) Department of the Interior, Bureau of Land Management. Washington, U.S. Government Printing Office, 1981. On p. 108, it is stated:

"Yellowtail are abundant in the general region of Nantucket shoals, the Great South Channel and the western half of Georges Bank. Yellowtail are also found on the eastern end of the Bank but in lower concentrations. Southeast Georges Bank has been a consistently excellent producer of flounder including yellowtail and is a major yellow-tail fishing region."

²⁷ G. M. Hare: *Atlas of the Major Atlantic Coast Fish and Invertebrate Resources Adjacent to the Canada-United States Boundary Areas.* Technical Report No. 681. Ottawa, Department of the Environment, Fisheries and Marine Service, Research and Development Directorate, 1977, p. 8.

CHAPTER III. THE HUMAN DIMENSION

Section I. The Socio-Economic Setting

A. AN OVERVIEW

110. The fishing industry is a mainstay of the Atlantic Canada economy, more so than the bare economic data might suggest. The provinces of the region — Newfoundland and the three Maritime Provinces — have not yet attained a level of prosperity and development comparable to the rest of Canada¹. The region's thinly scattered population and its distance from the markets of central Canada and the United States have limited the growth of manufacturing, and the economy remains heavily committed to the export of natural resources — fish, minerals and forest products — in a raw or semi-processed form.

111. The fishing industry accounts for the largest share of employment of any industry in both the primary and secondary sectors in the regional economy of these four provinces². But what the statistics fail to convey about the industry is its pervasiveness. Some of the other major components of the regional economy are concentrated in a few massive developments or projects, especially in mining and to a lesser degree in certain sectors of the manufacturing industry as well. The fishing industry, by contrast, is dispersed throughout the hundreds of communities that line the Atlantic seaboard of Canada. It ranges in scale from small owner-operated boats to large corporate-owned offshore trawlers; and from scores of village processing plants scattered along the coast to a handful of "world-scale" establishments that use some of the most capital-intensive and advanced seafood production technology currently available.

112. Nova Scotia leads the Atlantic provinces in the value of its fish landings, ranking only a little behind Newfoundland in volume. It has by far the highest number of full-time fishermen of any province in the region, partly because of the strong offshore orientation of the provincial fleet: the larger offshore vessels more frequently operate throughout the year.

113. In Nova Scotia, as in Atlantic Canada as a whole, the fishery is the leading employer in both the primary and secondary industrial sectors. In a provincial economy that is very largely sustained by exports, fish lead all other product groups by a very considerable margin in export value — 30 percent of the total, over 10 percentage points ahead of the next export sector. Georges Bank is the most valuable fishing ground available to Nova Scotia fishermen. In 1978, for instance, fully one-third of the total value of provincial landings was accounted for by Georges Bank. By far the most important single component of this fishery is scalloping, representing an estimated two-thirds of the direct employment generated by the Canadian Georges Bank catch.

¹ See Annexes, Vol. IV, Section I-A (Economic Indicators: Atlantic Canada, Nova Scotia and Southwest Nova Scotia).

² The primary sector refers to agriculture, fishing and the production of raw materials; the secondary sector refers to manufacturing, including fish processing.

114. It is in the southwestern part of the province that Nova Scotia's fishing industry is most heavily concentrated, and it is from this area that the great bulk of the Canadian fishery on Georges Bank is conducted. The region accounts for well over half of the fishery-related employment in the province; it harbours 45 percent of the province's inshore vessels and close to 80 percent of the provincial fleet of large off-shore fishing vessels; and well over 70 percent by value of the provincial catch has generally been landed here in recent years. The region is, in sum, the heartland of the Nova Scotia fishing industry. It is no coincidence that this is the area that lies in closest proximity to Georges Bank.

115. Southwest Nova Scotia has a very narrow economic base, constituted primarily by the fishery. During the years immediately preceding the signature of the Special Agreement, Georges Bank was by far the most valuable source of fish landed in the largest ports of the area, contributing in the order of 65 to 80 percent of the total landed value at each of the five leading ports. Clearly, Georges Bank may be described as the keystone of the regional fishery. By the same token it is an indispensable ingredient in the general economy of southwest Nova Scotia in which the fishery plays so fundamental a role.

116. For many of the smaller ports of the region as well, Georges Bank makes an essential contribution. Many of the small offshore vessels based in the villages scattered along the extreme southwestern end of Nova Scotia — Shelburne, Yarmouth and Digby counties — rely on eastern Georges Bank for a significant proportion of their landings of cod, haddock and other groundfish species, especially during the summer months when the weather makes for relatively safe conditions on the off-shore banks. The processing of these groundfish landings is a labour-intensive activity, carried out locally at village fish plants that often provide the only available source of onshore employment.

117. It is not surprising, then, that Canada's vessels have established a position of strength in the Georges Bank fishery, one that compares favourably to that of the New England fleet. In the ten-year period preceding the conclusion of the Special Agreement, the average Canadian catches from Georges Bank as a whole represented at least half the combined Canada-United States catch in terms of landed value. In sharp contrast with the American fishery on Georges Bank, however, the Canadian catches are concentrated in the eastern portion of the Bank, the area under Canadian claim.

118. In assessing the relative importance of Georges Bank to each country, it is essential to bear in mind the different character of the largest sectors of the Canadian and American fisheries on Georges Bank. The leading component of the Canadian interest in Georges Bank is the scallop resource of the disputed area, a stationary resource that cannot be exploited outside this area. For the United States, the predominant traditional interest in the fisheries of Georges Bank, apart from the scallop beds found in its own undisputed zone, lies in the free-swimming species of the Bank. Many of these species range over large areas of the Bank and become available for capture in the undisputed waters of the United States zone. Thus, while the boundary will have a major impact upon the allocation of all the resources of the Bank, its effect will clearly be a far more absolute one with respect to the scallop fishery of the disputed area.

119. The position is aptly summed up in a 1978 American study on the Georges Bank and Gulf of Maine area, prepared by a Maine consulting group known as "TRIGOM". The study, which focused on Cape Cod and Nova Scotia, was sponsored by the Office of the Geographer of the United States Department of State. In this document, under the heading "The Economic Importance of the Georges Bank and Gulf of Maine to Nova Scotia", the following passage (with which Canada entirely concurs) appears:

"Nova Scotia has more to lose, in the short-run, in the present boundary dispute because it is more dependent upon the Georges Bank for its present income. In principle, it is harder to have an accustomed resource taken away than it is to lose a projected one⁴."

(In the longer term, the study simply noted the potential for growth in the Georges Bank fishery with careful management.) Similarly, the counsel to the "American Fisheries Defense Committee" set up to lobby against United States ratification of the 1979 East Coast Fishery Resources Agreement, put the same basic point very succinctly in his statement before a Congressional committee:

"... United States access to fish in the northeastern tip of Georges Bank is significantly less important to us than Canada's continued access in the area is to its fishermen".

120. While the Canadian coastal areas that rely upon Georges Bank and its fishery are rural and dominated by the fishing industry, the character of the corresponding United States coast presents a striking contrast. The American Georges Bank fishery is conducted mainly from Massachusetts — and within Massachusetts, primarily from the ports of Gloucester, Boston and especially New Bedford. Massachusetts, of course, is a highly urbanized area with a diversified economy in which the fishery forms a relatively insignificant part. While there are some Georges Bank landings in the state of Rhode Island, the coastal states of the inner Gulf of Maine — New Hampshire and Maine — are not significant participants in the fishery of Georges Bank.

121. In summary, Canada submits that two propositions are fundamental to the appreciation of the social and economic character of the Gulf of Maine area, as it relates to this case. The first is that Canada has a major and vitally important fishery on Georges Bank: a fishery that gives Canada no less than an equal interest with the United States in the living resources of the Bank as a whole, though the Canadian catches

³ *Georges Bank, Gulf of Maine, Cape Cod, Nova Scotia. Perspectives in Economics and History*. Portland, Maine, TRIGOM (Sponsored by the Office of the Geographer, United States Department of State), June 1978.

⁴ *Georges Bank, Gulf of Maine, Cape Cod, Nova Scotia. Perspectives in Economics and History*, p. 106.

⁵ United States, *Hearings Before the Committee on Foreign Relations United States Senate*. 96th Congress, 2nd Session, on Ex. U, 96-1: Maritime Boundary Settlement Treaty with Canada and Ex. V, 96-1: Agreement on East Coast Fishery Resources with Canada, 15 and 17 April 1980. Washington, U.S. Government Printing Office, 1980, p. 62.

have been concentrated in the portion of the Bank under Canadian claim. And the second, of equal if not greater importance, is that the dependence of Canadian coastal communities upon this fishery is profound and not even remotely approached in the United States.

B. THE CONTEMPORARY CANADIAN FISHERY ON GEORGES BANK

1. Introduction

122. The following description of the contemporary Canadian fishery on Georges Bank is based largely on catch statistics for the ten-year period preceding the conclusion of the Special Agreement: the years from 1969 to 1978. This period has been selected as one that is long enough to convey a representative picture that avoids distortions resulting from short-term fluctuations, yet short enough to focus attention upon the contemporary reality of the fishery. Its appropriateness is underscored by the fact that throughout almost all of this period, patterns of fishing on Georges Bank followed their natural course unconstrained by jurisdictional barriers.

123. A word in anticipation of the historical section of this chapter will help to place the statistics in context. The 1950s and 1960s were a period of growth and modernization in Canada's Atlantic fishery, reflected in the strengthening of the offshore sectors of the Canadian fleet — a fleet that in the immediately preceding decades had been more heavily weighted toward its inshore component. The revitalization of the offshore fleet meant that Georges Bank took on a gradually increasing importance for the Canadian fishery during the 1950s and 1960s, especially for the vessels of southwest Nova Scotia. The period of expansion was brought to a close in the early 1970s, and since then the size of Canada's fleet of large offshore vessels has remained stable. This has been largely the product of a scheme of management controls restricting both the entry of new vessels and the replacement of old vessels in the fleet.

124. While this account is mainly devoted to the contemporary fisheries of Canada and the United States on Georges Bank, it should be noted that a number of the commercial species of the Bank were heavily fished during most of the 1969-1978 period by distant-water fleets from both Eastern and Western Europe. This was most dramatically the case with herring, a resource that was virtually depleted during this period. As well, there were substantial (in some cases excessive) catches by the distant-water fleets of species like mackerel, hake, squid and Argentine. But for scallops, by far the most valuable single resource, the two coastal States remained the exclusive exploiters. And for the other species, a coastal State dominance short of exclusivity was maintained.

125. Fishery statistics are maintained on the basis of a grid established pursuant to the International Convention for the Northwest Atlantic Fisheries — the 1949 convention that constituted the International Commission for the Northwest Atlantic Fisheries, or ICNAF — a multilateral agency for the management and conservation of the fisheries of

- (11) this area⁶. This grid, apart from its more northern and eastern areas, is illustrated in *Figure 22*. Georges Bank, it will be noted, is entirely contained within subdivision 5Ze, a part of subarea 5⁷.

- (12) 126. Subdivision 5Ze as a whole comprises not only Georges Bank but also the area of the Great South Channel and Nantucket Shoals — grounds off the coast of Massachusetts in which Canada has no major traditional interest. Fortunately, the 5Ze area has been partitioned into the finer statistical units shown in *Figure 23*. It will be seen that units 5Zeh, 5Zen, 5Zej and 5Zem encompass Georges Bank; and while they extend beyond the Bank itself (especially on the seaward side), virtually all the commercial fishing within them is conducted on the Bank. The statistics compiled with respect to these four units therefore provide an essentially complete and accurate picture of Georges Bank fishing patterns. Similarly, units 5Zeo and 5Zeg correspond in terms of fishing patterns to Nantucket Shoals and the Great South Channel area, and units 5Zej and 5Zem correspond in the same manner to the area claimed by Canada. The information given in this section is based largely upon the catch records that have been maintained for these statistical units⁸.

2. *The Basic Characteristics of the Canadian Fishery on Georges Bank*

127. The total annual value of the Canadian fishery on Georges Bank is impressive. Landed values for 1978, for example, totalled over \$65 million⁹.

128. Canadian landings from Georges Bank represented over *one-quarter* of the value of total Nova Scotia landings during the period from 1969 to 1978. At recent Canadian prices for unprocessed landings, the average yearly catches from this area by Canadian fishermen during the 1969-1978 base period would yield over \$64 million a year¹⁰. Even on a more conservative valuation, using the actual historical price for each species year by year, with no adjustment for inflation, the average annual Canadian catches from Georges Bank during the base period were worth about \$25.1 million per year. This comes to over 27 percent of the average province-wide total landings of \$92,400,000 during the same period.

⁶ ICNAF ceased to exist at the end of 1978. It was replaced by NAFO, the Northwest Atlantic Fisheries Organization, under a convention designed to reflect the new reality of 200-mile fisheries jurisdiction. This Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries is now in force. NAFO's headquarters are at Dartmouth, Nova Scotia, as were ICNAF's. The NAFO convention incorporates the ICNAF statistical grid, which was also to have been used in the 1979 Canada-United States Agreement on East Coast Fishery Resources. Canada is a party to the NAFO convention and its depositary government. The United States has not become a contracting party as of this time. See Annexes, Vol. I, Annex 1 and Annex 9, for the texts of these conventions.

⁷ Since 1968, fishing statistics for subdivision 5Ze have been segregated from those of subdivision 5Zw (off Rhode Island and the south shore of Cape Cod).

⁸ Basic statistical data from the records of the Department of Fisheries and Oceans upon which the calculations set out in this presentation have been made are given in the Annexes, Vol. IV, Section II, Annexes 3 and 4.

⁹ All values are given in Canadian dollars.

¹⁰ i.e., 1981 prices, the last full year for which annual average prices are available.

129. In dollar terms, it is the scallop resource that represents the single most important component of Canada's fishery on Georges Bank, generally accounting for well over 85 percent of the total landed value. In 1978 alone, Nova Scotia's scallop landings from the Bank were worth about \$58 million. Using unadjusted year by year landed values, the average Canadian scallop harvest from the Bank from 1969 to 1978 was worth about \$22 million per year. The Canadian fleet took over 95 percent of the total scallop catch in the disputed area during this period.

130. The other sectors of this fishery, amounting in the aggregate to several million dollars a year in landed value, have their own independent importance for the fishermen who take these catches and the plants that depend upon them¹¹. Although scallops clearly have a far greater landed value in the Canadian Georges Bank fishery than all other species combined, these other species generally require more processing than scallops and tend to create proportionally more employment in the onshore plants. Groundfish — cod, haddock, pollock and similar species — make up the bulk of Canada's non-scallop landings from the Bank. Most of these groundfish landings have been taken by large offshore trawlers. However, Georges Bank also figures significantly in the fishing patterns of the small boat fishery of southwest Nova Scotia, whose special characteristics are dealt with separately in paragraphs 143 to 148.

131. Finally, the Canadian lobster fishery on the Bank is quite distinct from both the scallop and the trawler fleets. It is a trap fishery largely conducted in Corsair Canyon, on the southern edge of the disputed part of Georges Bank. A number of specialized offshore vessels rely on this resource in whole or in part. It is worth in the order of \$1 million per year at current prices.

132. The contemporary Canadian fishery on Georges Bank has always been concentrated in the eastern portion of the Bank, the area under Canadian claim. Indeed, during the 1969-1978 period well over 95 percent of Canada's Georges Bank catches by value were taken in this area. While these catches have generally been taken in the more northerly portions of the disputed area, from the tip of the Bank to the Canadian line, there have been significant catches to the south as well.

3. The Canadian Fishery on Georges Bank Compared with that of the United States

133. The statistical record indicates that Canada's demonstrated interest in the fishery resources of Georges Bank as a whole (both the disputed and the undisputed portions) is at least equal to, and by some measures substantially greater than that of the United States in terms of economic value. In terms of weight alone — not the most revealing indicator because of the wide discrepancies in the value of the various species — Canada took a very substantial proportion of the coastal State catches from Georges Bank during the 1969-1978 period. Just how great

¹¹ At recent Canadian prices, the average 1969-1978 Canadian catches of species other than lobsters are worth in the order of \$3 million per year (without processing), or \$2,863,000 using unadjusted year by year prices prevailing during that period. Cod and haddock are the two leading species (roughly \$1 million a year each at recent prices), and average pollock landings come to about \$450,000 on the same basis.

a proportion depends in part upon how scallop catches are measured, having regard to the importance of this species in the Canadian fishery. When scallops are measured in terms of meat weight without their shells (as they are in the statistical system currently in use), Canada took over one-third by weight of the average coastal State harvest of all species from Georges Bank during the 1969-1978 period. If, on the other hand, scallops are measured like all other species of fish in terms of "round weight" — i.e., in the form in which they are taken from the sea — the Canadian share of the coastal State fishery on the Bank during this period amounts to over 60 percent of the total by weight¹².

134. The scallop is by far the most valuable single fishery resource on Georges Bank, representing at least half the total *value* of landings made by the fishermen of both countries from Georges Bank during 1969-1978¹³. The Canadian scallop fishery (conducted almost entirely in the portion of the Bank claimed by Canada) accounted for the overwhelming majority of the Georges Bank scallop catches during this period. There were no scallop catches by countries other than Canada and the United States. The United States took the larger portion of the aggregate coastal State catches of the remaining species on the Bank; though in the disputed area itself the coastal State harvest of these various other species was far more evenly divided, with Canada taking the greater share of a number of important stocks¹⁴.

135. The most significant measure of the importance of each country's stake in the Georges Bank fishery is in the actual value of the total harvest. The *Figures* that appear in the following paragraph show that by even the most conservative valuation, the average Canadian harvest on the Bank in the decade preceding the signature of the Special Agreement represented fully half the total coastal State fishery; and if the catches of both countries are valued according to a common measure, the Canadian share of the coastal State fishery on Georges Bank as a whole accounted for substantially more than one-half of the total during this ten-year period.

136. The first of the three graphic illustrations set out below (*Figure 24*) shows the comparative value of the average 1969-1978 catches of each country calculated according to United States prices, using the actual historic prices in each year as applied to the volume of landings

¹² When scallops are measured in terms of meat weight, the Canadian share of the average coastal State fishery on Georges Bank (all species) from 1969 amounts to an average of 18,817.90 metric tons per year of a total of 54,715.90, or 34.4 percent. When scallops are measured in terms of round weight (unshelled), the average Canadian share is 67,308.88 metric tons out of a total of 108,389.15, or 62 percent.

¹³ At year by year United States prices (applied to the actual volume of landings in each year) scallops represent about 50 percent of the total Georges Bank Canada/United States fishery averaged over the 1969-1978 period.

¹⁴ Canada took about 90 percent of the Georges Bank scallops in the decade 1969-1978, and almost all of the scallop catch in the disputed area itself. The United States took about three-quarters by volume of the coastal State catch of the other species combined from the Bank as a whole; but within the disputed area itself the United States share represented only about 58 percent of the total coastal State catch of the species other than scallops. Recorded Canadian and United States catches of cod and haddock in the disputed area were about evenly divided, while Canada took by far the greater share of pollock, cusk and herring in this part of the Bank, and the United States took almost all the yellowtail flounder.

for each species in that year¹⁵. Here, it will be seen, the Canadian share represents about 58 percent by value of the coastal State fishery on Georges Bank. The second illustration (*Figure 25*) applies exactly the same method using *Canadian* prices; and here the Canadian share of the Georges Bank fishery is substantially higher at 71 percent. These two methods of valuation have the merit of valuing the catches of both countries according to the same prices, establishing a common denominator that eliminates price variations in different markets. The third illustration (*Figure 26*), however, uses Canadian prices for Canadian landings¹⁶ and United States prices for United States landings — again calculated according to the actual historic prices in each year applied to the volume of landings in that year — and here, though the Canadian share is smaller, it still represents fully one-half of the total coastal State fishery on the Bank during the 1969-1978 base period¹⁷. The essential point conveyed by all these comparisons is that by *any* reasonable economic measure, the Canadian harvest of the fishery resources of Georges Bank was equal to or greater than that of the United States in the decade leading up to the signature of the Special Agreement. Accordingly, though the Canadian fishery is centred in the portion of the Bank that is claimed by Canada, its strength is such that Canada's stake in the resources of Georges Bank as a whole is at least on a par with that of the United States.

137. Since the Special Agreement and the 1979 East Coast Fishery Resources Agreement were signed, United States catches on Georges Bank have attained higher levels than those that prevailed in the years before the extension of jurisdiction and the conclusion of these agreements. The origins of this development, which emerged in the late stages of the evolution of the dispute, are outlined in paragraph 233. These increased United States catches, it will be seen, made attempts to settle the dispute more difficult and have posed a conservation threat to the stocks. But it is to the prevailing trends before the conclusion of the agreements, in the Canadian submission, that attention should properly be directed. And the Canadian fishery on Georges Bank has in any event maintained its basic economic importance; indeed it attained a level as high as \$79.6 million in 1981 at Canadian prices.

138. The United States fishery in subdivision 5Ze as a whole (see

¹⁵ The value of landings information is based on the landings data for statistical units 5Zej, 5Zem, 5Zeh and 5Zen of ICNAF subdivision 5Ze. The values have been calculated by multiplying the annual volume of landings by the applicable prices on a species by species basis. These annual values have then been aggregated and divided by 10 to give the annual average of landings for the ten-year period. See Annexes, Vol. IV, Section II, Annexes 3 and 4.

¹⁶ Canadian values have been converted to United States dollars at prevailing average annual exchange rates in order to allow a direct comparison to be made. For a few species not caught by the Canadian fleet (not among the important commercial stocks of the Bank), there is no Canadian price of record; in these cases United States prices are used in the calculation depicted in *Figure 25*.

¹⁷ The differences between the three comparisons are mainly attributable to the fact that groundfish landings generally attract higher prices in the United States market. (There is much less difference between scallop prices in the two countries.) Because groundfish landings form a comparatively higher proportion of the United States catch than of the Canadian catch, the use of United States prices increases the relative United States share in the fishery in terms of value — particularly when Canadian prices are used to value the Canadian catches as in *Figure 26*.

- (11) *Figure 22*) has been predominantly centred in the undisputed fishing grounds adjacent to the Massachusetts coast: the waters of western Georges Bank, the Great South Channel area and Nantucket Shoals — units 5Zeh and 5Zen, and 5Zeg and 5Zeo respectively in *Figure 23*. The Great South Channel and Nantucket Shoals are productive fishing areas. Not surprisingly, in view of the proximity of these two grounds to the Massachusetts coast, the bulk of the United States landings from subdivision 5Ze of many of the more important commercial species — cod, scallops and pollock for example — have been taken from those areas. During the 1969-1978 period, close to three-quarters of the United States landings from the 5Ze area as a whole were attributable to the undisputed area west of the Canadian claim¹⁸.

139. This description of the Canadian and United States shares in the Georges Bank fishery tells the full story for the scallop resource on the Bank during the decade from 1969 to 1978, since there has never been a distant water fishery for that stock. As noted at the beginning of this section, however, there were major foreign fisheries during the same period for a number of the free-swimming species, and consequently the shares of the two coastal States in the harvest of the other species of Georges Bank represent only a part of the entire fishery during that period. Under the 200-mile regime, of course, the access of the distant-water fleets is restricted to the portion of the allowable catch for these stocks that is surplus to coastal State harvesting capacity¹⁹.

140. This factor points up a significant qualitative difference in the character of the two countries' respective interests in the Georges Bank fisheries. The Canadian interest has been centred primarily on the scallops of the area under Canadian claim: a resource that has always been an exclusively coastal State fishery. For the United States, on the other hand, the principal focus of interest in Georges Bank has generally been the free-swimming species whose availability is not as localized as the scallop resource, not as decisively tied to any particular fishing ground. And for these species, the preferential regime of the 200-mile zone creates new opportunities, especially in the longer term as the stocks are restored. These free-swimming species — including those that have traditionally been exploited mainly by distant-water vessels — are available to United States fishermen in that portion of Georges Bank, over half of the whole, to which Canada has no claim; and they are available without the intense foreign competition that prevailed until a very few years ago. Fish productivity is high throughout the Bank, and the undisputed part of Georges Bank gives the United States an ample resource base to sustain a healthy fishery and allow potential for future growth.

¹⁸ In terms of metric tons, 46,703.80 of 63,867.90 average annual United States 5Ze landings from 1969 to 1978 (73 percent).

¹⁹ Under a *modus vivendi* respecting the disputed area, foreign fishing vessels are not currently being granted access to the disputed area pending settlement of the boundary. Statistics for foreign catches by statistical areas within subdivision 5Ze — the units shown in *Figure 23* — are not available, and it is therefore not possible to provide exact data on the historical incidence of these catches on Georges Bank itself. Foreign catches for the 5Ze area as a whole include the following (as a proportion of the total catch, averaged for the 1969-1978 period): herring: 98 percent; mackerel: 99 percent; silver hake: 92 percent; redfish: 30 percent; squid: 99 percent; red hake: 99 percent; argentine: 100 percent; cod: 24 percent; pollock: 19 percent; haddock: 8 percent.

141. Georges Bank normally provides over 80 percent of Nova Scotia's entire scallop landings, sometimes rising to over 90 percent. The scallop is the province's most valuable fishery, and the remaining Nova Scotia grounds, obviously very secondary in their importance, are fully utilized and allow no room for expansion. In contrast, the United States has other scallop grounds to rely upon and it is these other areas — the undisputed western part of Georges Bank, the Great South Channel area, and the Mid-Atlantic Grounds — that have traditionally attracted the bulk of its fleet. Indeed, in the mid-1970s, the Mid-Atlantic Grounds accounted for almost two-thirds of the United States scallop catch, far more than both Georges Bank and the Great South Channel area, and almost half of this Mid-Atlantic catch was taken by New England vessels²⁰. As noted in paragraph 129, moreover, only a small portion of the scallop catches in the disputed area during the decade 1969-1978 were made by United States fishermen.

142. There is another distinction in kind between the Canadian and the United States scallop fleets. The American vessels have traditionally been designed for greater versatility and are accustomed to switching their operations from one species to another as opportunities arise. The Canadian fleet, on the other hand, is a specialized one equipped exclusively for scalloping. The United States scallopers, accordingly, have two kinds of flexibility — a greater availability of other grounds and an ability to switch to other species — that are without counterpart in Canada. Thus the special dependence of the Nova Scotia scallop fleet on Georges Bank is manifest not only in its overwhelmingly dominant share of the recent historical catch, but in these other important factors.

4. *The Offshore Fishery of the Small Vessel Fleet of Southwest Nova Scotia*

143. One important feature of the southwest Nova Scotia fishing industry is its substantial fleet of small vessels that fish the offshore banks²¹. Much of this fleet is harboured in the small villages strung out along the extreme southwestern coast of the province, a rural area that depends almost exclusively on the fishery for its livelihood. Though the larger vessels take the greater proportion of Canada's catches from Georges Bank in terms of volume and dollar values, the offshore fishery conducted by the small vessel fleet makes a contribution that is vital in the context of the one-dimensional economy of many of these rural communities; and Georges Bank figures significantly in the fishing patterns

²⁰ *Draft Environmental Impact Statement on the Agreement between the United States and Canada on East Coast Fishery Resources*. Washington, Department of State, April 1980. On p. 104, it is stated:

"In the 1975-77 period, 36 percent of the U.S. [scallop] catch came from the two areas on Georges Bank while 64 percent came from the Mid-Atlantic grounds. New England based vessels accounted for 100 percent of the Georges Bank catch and 48 percent of the Mid-Atlantic catch."

²¹ The expression "small" vessels is customarily used in the industry to refer to vessels under 19.8 metres in length (i.e., in traditional industry usage, 65 feet). The small vessels capable of fishing offshore (i.e., more than 12 miles from land) are mainly in the range of 11 to 20 metres in length (i.e., the 35 to 65 foot range). The offshore fleet, apart from this "small vessel" category, is customarily divided into two sectors: the large offshore vessels over 30.5 metres in length (100 feet) and an intermediate category between 19.8 and 30.5 metres in length (i.e., 65 to 100 feet).

of this fleet at certain times of the year. There are several hundred of these boats in southwest Nova Scotia.

144. It is from the extreme southwestern end of Nova Scotia — Shelburne, Yarmouth and Digby counties (shown in *Figure 11*) — that most of the small boat fishery on Georges Bank is carried out, largely because distance is of particular importance to vessels of this class. The small boat fishery on the Bank is mainly conducted in the summer because the area is unsafe for such boats in the winter. Cod is the most important single species taken by this fleet on the Bank, though other groundfish — haddock and cusk, in particular — rank not too far behind. Much of the cod is salted for export at the small local plants, a labour-intensive activity that provides employment during the winter months when the small-boat fishery is restricted in its operation.

145. The dependence of the small boat fleet of these three counties on Georges Bank is significant: according to the official statistics, for example, the Bank provided about one-quarter of the summer cod landings by the small offshore boats of the area in 1978. In Shelburne county, over 35 percent of the cod landed by this fleet from the offshore banks in the summer season that year came from Georges Bank²². Well over one-third of the Shelburne county small boat fleet involved in offshore groundfish operations, and almost one-quarter of this fleet in Digby county, made trips to Georges Bank in 1978²³.

146. The importance of access to Georges Bank for these vessels can only be fully appreciated in the larger context of the regional fishery. It is a seasonally crucial part of a set of fishing strategies the fishermen use, turning their efforts from one bank to another at different seasons in order to keep their boats operating for as much of the year as possible. Other fishing grounds in the area are already heavily used, and any displacement of small boats from the eastern Georges Bank fishery could lead to serious overcrowding on other banks in the summer months.

147. Not surprisingly, the part of Nova Scotia most strongly represented in the small boat Georges Bank fishery is the corner of the province in closest proximity to the Bank: Cape Sable Island and the adjacent mainland shores. (Indeed, the small boats used in the offshore fishery are generally of the famous "Cape Islander" design originally named for Cape Sable Island and still the stock-in-trade of the local boat builders of the area.) In 1978, well over half the small groundfish vessels fishing the offshore banks from this district reported at least one trip to Georges Bank during the year²⁴. The statistics indicate, moreover, that roughly 45 percent of the summer cod landings and over 30 percent of the

²² For 1978, the statistics indicate that 1,245,000 of 5,051,000 kilograms (25 percent) of cod landed in the summer months by this fleet in Digby, Yarmouth and Shelburne counties were taken on Georges Bank. In Shelburne county, the proportions were 743,000 out of 2,087,000 kilograms (35.6 percent). See Annexes, Vol. IV, Section II, Annex 5 for Tables relating to the offshore fishery of the small vessel fleet of Nova Scotia.

²³ In Shelburne county, 40 of 106 vessels (37.7 percent); in Digby county, 26 of 113 vessels (23 percent).

²⁴ In Nova Scotia fisheries district 32 (the Cape Sable Island area and the adjacent mainland), 28 of 49 vessels in this class were reported to have made trips to the Bank during 1978 (57.1 percent).

summer haddock landings made by the small offshore vessels of this district in 1978 were from Georges Bank²⁵.

148. The purely statistical record, however, omits one sector of this fleet and understates the full extent of the Canadian small boat fishery on Georges Bank. Many of the smaller vessels that use the offshore banks — those under 25.5 gross tons, traditionally classified as “inshore” — are exempt from the statistical reporting system maintained by the Canadian Department of Fisheries and Oceans, and as a result their catches are not recorded in the statistics compiled for the offshore banks.

C. THE ECONOMIC IMPORTANCE OF GEORGES BANK TO CANADA

149. The conventional economic distinction between the “primary” sector — agriculture and the initial production of natural resources — and the “secondary” or manufacturing sector provides a convenient point of departure for an appraisal of the economic impact of the Georges Bank fishery. In this context, of course, the primary sector means fishing itself, the harvesting of the resource at sea, while the secondary sector refers to the processing of the raw material after it has been landed. In the analysis that follows, these two activities will be examined in order and compared in their importance with other components of the primary and secondary sectors in the Nova Scotia and southwest Nova Scotia economy. The importance of the Georges Bank fishery for dependent industries like boat-building will then be considered; and finally, the cumulative impact of all these activities upon the broader economy will be assessed.

1. Fishing — The Primary Sector

150. Employment levels provide a basic measure of economic performance, in human terms the most important one. In 1978, fishing was the clear leader in primary sector employment in Nova Scotia as a whole:

TABLE 2

	Number of Man-years ²⁶ (1978)	Percentage of Provincial Primary Sector Employment (1978)
Fishing	6,377	36
Mining	4,900	28
Agriculture	3,550	20
Forestry	2,800	16
Total	17,627	100

Source: See Annexes, Volume IV, Section III, Annexes 8 and 22.

²⁵ In fisheries district 32, 680,000 of 1,500,000 kilograms (45.3 percent) of reported summer cod landings by this fleet in 1978 were from Georges Bank, and 340,000 of 1,100,000 kilograms (30.9 percent) of the reported summer haddock landings.

²⁶ Employment is expressed in terms of full-time “man-years” of employment to reflect the fact that some workers are part-time or occasional. See Annexes, Vol. IV, Section I-C (The Measurement of Primary Sector Employment) for a fuller explanation.

Well over half the fishermen in Nova Scotia are residents of the five southwestern counties.

151. Fishing and mining are the two main primary sector contributors to the gross domestic product of Nova Scotia as a whole. In some years fishing leads this sector of the provincial economy, as it did in 1978:

TABLE 3

	Share of Nova Scotia (1978) GDP (\$ millions)	Percentage of Total Primary Sector GDP (1978)
Fishing	139.0	38.3
Agriculture	89.4	24.6
Forestry	27.8	7.7
Mining	<u>106.5</u>	<u>29.4</u>
Total	362.7	100.0

Source: See Annexes, Volume IV, Section III, Annex 9.

Though mining often ranks ahead of fishing as a contributor to provincial gross domestic product in the primary sector (especially when fish prices are low), there are no significant mining developments in southwest Nova Scotia. Agriculture, moreover, is a marginal sector in this part of the province, mainly because of poor soils. Forestry, on the other hand, does make a significant contribution to the economy of the five southwestern counties (though largely through processing rather than primary production); but it is one that ranks far behind fishing in its regional importance.

152. It is the fishery, therefore, that holds an unchallenged position as the dominant force in the economic life of southwest Nova Scotia. ⁽¹³⁾ Figures 27 and 28 show the distribution of both inshore and offshore fish landings throughout the province, first in terms of scallops and lobster, and then in terms of the finfish — both groundfish and the pelagic species²⁷. Three points are immediately apparent. First, the industry is highly concentrated in southwest Nova Scotia²⁸. Secondly, there is a remarkable continuity in the fishery throughout the length of the southwest Nova Scotia coast. And finally, the illustrations bring out the strong offshore orientation of the provincial fleet (80 percent of total provincial landings), especially in the case of the southwest Nova Scotia scallop fishery.

153. It is not possible to depict the position of the fishery in the five-county economy of southwestern Nova Scotia with quite the statistical precision that is possible at the provincial level, since most of the published economic indicators are not broken down by county. Perhaps the main point is that if the fishery is a pivotal component of the provincial

²⁷ Groundfish are the bottom-dwelling species like cod and haddock. The pelagics (herring, mackerel, swordfish) frequent higher strata in the water column and are generally more migratory in their range.

²⁸ See Annexes, Vol. IV, Section I-D (The Regional Distribution of Fishing Activity in Nova Scotia).

economy as a whole, it obviously plays a far more decisive role in the area of its greatest concentration — an area without large cities and towns, and therefore without a strong service sector in its economic composition; without mines and of insignificant agricultural productivity; and an area whose forestry industry, though significant, pales in comparison with the fishery.

154. Though the full array of provincial economic data is not available at the five-county level, a very approximate indicator of the relative importance of the primary sector occupations in southwest Nova Scotia may be found in the census statistics. In 1971, fishing was reported as an occupation about three times as often as farming and over five times as often as logging by residents of these counties²⁹. In Shelburne and Yarmouth counties, on the extreme southwest coast, fishing was overwhelmingly predominant as a reported primary sector occupation — 95 percent and 78 percent respectively.

155. It is clear, then, that the fishery is the leading contributor to employment in the primary sector in the provincial economy as a whole, and that it has an especially pronounced role in the economy of the southwestern part of the province. The contribution of Georges Bank itself to this industry is an impressive one. Georges Bank landings, as a percentage of the Nova Scotia total, attained a level of nearly 20 percent in value in the mid-1960s and grew to account for over one-third of the total value of provincial landings in 1978, as shown in Table 4 below. The bulk of Canada's Georges Bank catches are landed in southwest Nova Scotia — about 45 percent by value of the landings in this region in 1978. Seldom in recent years has Georges Bank contributed less than one-third of the total annual value of fish landings in the five counties of southwest Nova Scotia.

TABLE 4

**The Relative Importance of the Value of
Georges Bank Landings (1978)**

	Total	Georges Bank (\$ millions)	Georges Bank as % of total
Atlantic Provinces	386.8	66.5	17.2
Nova Scotia	195.4	66.5	34.0
Southwest Nova Scotia	141.4	64.9	45.9

Source: See Annexes, Volume IV, Section III, Annex 11.

156. Tables 5 and 6 show the Nova Scotia ports that are dependent on Georges Bank for more than 10 percent of their landings, on the

²⁹ In the census statistics, "hunting, trapping and related" were included in the same category as fishing; but for this area these related categories may be regarded as insignificant. For the five-county area as a whole, the primary sector breakdown was as follows:

Farming, Horticulture & Animal Husbandry	1,275
Fishing, Hunting, Trapping & Related	3,830
Forestry & Logging	690
Mining & Quarrying	45

See Annexes, Vol. IV, Section II, Annex 10.

basis of 1978 figures, as well as five-year averages (in percentage terms) for the five ports that head the list. These 19 ports are all in southwest Nova Scotia except for Canso and Petit de Grat in eastern Nova Scotia. All the major ports of the area are represented, and it is precisely some of the most important that are the most heavily — in some cases overwhelmingly — dependent on Georges Bank.

TABLE 5

**Nova Scotia Ports Dependent on Georges Bank for 10
Percent or More of Total Value of Landings, 1978**

Port	Total Value (\$'000)	Georges Bank Value (\$'000)	Georges Bank as % of Total Value
Lunenburg	37,298	31,186	83.6
Riverport	14,337	11,279	78.7
Saulnierville	10,345	8,157	78.9
Liverpool	5,415	4,768	88.1
Yarmouth	8,022	4,554	60.7
Central Port Mouton	2,399	881	36.7
Canso	7,503	808	10.8
Lockeport	3,220	725	22.5
Digby	4,354	551	12.7
Sandy Point	2,220	447	20.1
Shelburne	1,231	389	31.6
Centreville	919	324	35.3
West Head	2,302	314	13.6
Petit de Grat	1,984	269	13.6
Newellton	1,364	214	15.7
Little River	1,565	155	10.0
South Side	859	131	15.3
Westport	744	131	17.6
Brier Island	62	12	19.4

Source: Department of Fisheries and Oceans, unpublished landings data, 1978.

TABLE 6

**Georges Bank Landings as a Percentage of Total
Landings (in Value) at the Five Leading
Georges Bank Fishing Ports in Southwest Nova Scotia,
1974-1978**

	1974 %	1975 %	1976 %	1977 %	1978 %	Five Year Average
Lunenburg	72.5	79.3	78.5	81.3	83.6	79.04
Riverport	66.2	70.0	72.2	77.0	78.7	72.82
Saulnierville	71.3	78.4	78.9	82.2	78.9	77.90
Liverpool	64.4	77.4	75.1	83.6	88.1	77.72
Yarmouth	79.4	66.6	71.4	58.9	60.7	67.40

Source: See Annexes, Volume IV, Section II, Annex 6.

157. The scallop fishery is Nova Scotia's principal cash crop from the sea³⁰; and, as noted in paragraph 141, Georges Bank generally provides upwards of 80 percent of Nova Scotia's scallop landings. In 1978, for example, the total value of scallop landings in Nova Scotia was almost twice as great as the value of landings of either lobster or cod, the next most valuable sectors of the fishing industry of the province. The scallop fishery is one that unlike many others operates through most of the year, providing regular employment in an industry fraught with instability. The Nova Scotia offshore scallop fleet, moreover, is designed and fitted especially to fish the Georges Bank resource. It is a fleet whose growth has been carefully controlled by the Government of Canada through a system of "entry limitation" licence requirements originally imposed in 1973. This specialized offshore scallop fleet now stands at around 70 vessels whose dependence on eastern Georges Bank is virtually absolute.

158. But the economic importance of the Georges Bank scallop harvest cannot be appreciated in isolation from its impact on the rest of the industry. It was largely on the strength of revenues from scallops — a product that provides relatively high returns — that the ten or so companies most active in Canada's Atlantic fishery were able to expand and diversify their operations during the 1960s and early 1970s. Today these companies continue to rely heavily on the profits generated by scallops to cover less profitable groundfish operations.

159. Though scallops represent the bulk of the Canadian catches on Georges Bank (over 85 percent by value), the economic value of landings of other species from this area is also significant. The importance of Georges Bank groundfish to the small boat fleet in the villages scattered along the coast has already been described in paragraphs 143 to 148. For the larger trawlers, groundfish catches on Georges Bank contribute to the maintenance of an essential margin of economic viability in this hard-pressed industry. These catches could not be replaced without adding to the pressure on the resources of the other Canadian grounds.

2. Processing — The Secondary Sector

160. In the province of Nova Scotia as a whole, fish processing led all other manufacturing industries in terms of employment in 1978, accounting for about 15 percent of total manufacturing employment — a level about twice as great as that of the provincial pulp and paper industry³¹. The provincial economy is heavily dependent upon external markets, and fish products are the leading export:

³⁰ See Annexes, Vol. IV, Section I-E (The Relative Importance of Scallops to the Nova Scotia Fishery).

³¹ In 1978, the shares of manufacturing employment in Nova Scotia were approximately as follows: fish products: 15.3 percent; rubber and plastic products: 8.3 percent; transportation equipment: 7.9 percent; paper and allied industries: 9.7 percent (including pulp and paper at 7.2 percent); other industries: 58.8 percent. See Annexes, Vol. IV, Section III, Annexes 12 and 14 (Source B).

TABLE 7
Distribution of Exports by Product Group, Nova Scotia, 1978

Product Group	Value (\$ millions)	% of Total
Fish Products (fish meal excluded)	263.9	30
Transportation Equipment	164.4	19
Paper and Paperboard	107.1	12
Wood Pulp	99.5	11
All Other	<u>250.8</u>	<u>28</u>
Total	885.7	100

Source: See Annexes, Volume IV, Section III, Annex 13.

161. In southwest Nova Scotia, the concentration of fish processing facilities parallels that of the provincial fleet: about 75 percent of the provincial processing industry is situated in this area³². *Figure 29* shows the distribution of fish processing plant facilities, and *Figure 30* shows the density of plant employment. It is significant that insets are required in each case in order to accommodate the clusters of processing facilities in the extreme southwest corner of the province, the coastal strip in closest proximity to eastern Georges Bank. The range in the scale of these plants is enormous: from the biggest, the modern National Sea plant at Lunenburg (contributing substantially to the largest "wedge" in *Figure 30*), to the smaller facilities found in many of the coastal villages.

162. Despite the obvious strength of the processing sector in this area, its size is limited by two factors. First, scallops require less processing than groundfish for conversion to marketable form³³. Secondly, the Nova Scotia industry is highly dependent upon exports, and the United States is the principal market. The United States tariff favours the entry of "raw" or semi-processed groundfish, and in consequence a substantial proportion of Canadian landings are exported as raw materials for New England plants (generally as frozen blocks) with very little Canadian value-added.

163. But even with these limitations, the fish products industry of southwest Nova Scotia has attained a considerable degree of importance. Although not all the statistical indicators are available at the sub-provincial level, there are two (compiled on the basis of 1976 data) that are indicative. Fish processing in that year accounted for almost one-third of wages and salaries in the manufacturing sector and over 40 percent of the total value of shipments from manufacturing establishments in the southwest of the province³⁴. These are substantial proportions by any standards, the more so in light of the statistical impact of the large Michelin Tire plant at Bridgewater.

164. Though much of the income generated by the fish processing industry is attributable to the industrial-scale plants of the area, smaller

³² To be exact, about 75 percent of the total number of plants, 79 percent of the filleting capacity, and 64 percent of the manpower requirements. (Department of Fisheries and Oceans, unpublished data.)

³³ See Annexes, Vol. IV, Section I-F (Processing Employment by Species).

³⁴ See Annexes, Vol. IV, Section I-G (Fish Processing in the Context of Total Manufacturing Activity in Southwest Nova Scotia).

facilities in dozens of coastal villages have a social and economic importance that is less easily quantified. Entire stretches of coastline, especially at the far southwestern corner of the province, are characterized by a rural economy that is totally dedicated to the fishery as a way of life. These coastal villages depend on their local plants — and the fish that provide their raw material — for their survival and social cohesion. The income the plants provide is widely dispersed and crucial to the undiversified rural economies of these coastal areas. The smaller plants are often economically marginal enterprises, however, and every source of fish supply that is available to them — including the Georges Bank landings from the small boat fleet described in paragraphs 143 to 148 — must be regarded as indispensable.

3. Dependent Industries and Indirect Effects

165. The fishing industry, like any other, is a buyer of goods and services. Throughout southwest Nova Scotia, the suppliers of the industry represent a pervasive feature of the regional economy. The nature of these undertakings — many of them small enterprises — can easily be surmised: boat builders and their suppliers, manufacturers of nets and other gear, electronic equipment for the boats, machine shops and equipment maintenance plants. It is estimated that in the manufacturing sector alone, businesses that are wholly or substantially dependent on the fishing industry account for roughly 5 percent of total area employment³⁵. As well (though the available statistical information does not permit a quantitative estimate), there is obviously a considerable amount of indirect employment generated in the many firms that sell supplies or provide services to the fishing industry.

166. In the town of Lunenburg, for example, about half the commerce is generated by the fishery, especially the scallop fishery³⁶. The average offshore scallop dragger costs in the order of \$150,000 to \$200,000 per year for refit and maintenance; \$130,000 per year for fuel; \$50,000 for crew supplies; and \$70,000 for fishing gear. Most of these goods and services are supplied by the local economy, and even those goods that are produced elsewhere, like fuel, are generally sold through local firms.

4. The Broader Impact on the Total Economy

167. Beyond the tangible quantity of the fishery itself and the firms and businesses that serve and depend upon the industry, there is the equally important factor of the impact of the revenues of these sectors upon the regional and provincial economy as a whole: what is commonly known as the multiplier effect. The money generated by the fishery is spent upon the whole spectrum of goods and services, public and private, that characterize a modern economy: on food and clothing and other consumer goods in the local stores; on houses and the construction and main-

³⁵ See Annexes, Vol. IV, Section I-H (Fishing Industry Share of Total Employment at the County Level).

³⁶ Shipbuilding alone — almost exclusively dependent on the fishery — employs 200 persons in Lunenburg town — over 20 percent of the town's manufacturing employees, including those at the National Sea processing plant.

tenance of plants; and as taxes to pay for education, roads, police and other public services. In the aggregate, this broader economy far outweighs any single contributing sector, including the fishery; but the important point is that the fishery provides the foundation without which the total economy would be gravely impaired.

168. In a resource-based and mainly rural economy like that of Nova Scotia, it is the goods-producing capacity of the economy, and especially the wealth created by the exploitation of its natural resources, that drives and sustains the whole. Fishing and fish processing together make up about 15 percent of gross domestic product in the goods-producing sector in the province³⁷.

169. Although gross domestic product figures are not available at the county level, records of employment in the fishing industry also provides a reasonable yardstick of economic performance. It is conservatively estimated that about 15 percent of the labour force in southwest Nova Scotia is employed in fishing and fish processing taken together, ranging to as high as 25 percent in Shelburne county in the extreme southwest. Related manufacturing industries, as already noted in paragraph 165, account for a further 5 percent³⁸. Thus, without even counting its role in sustaining the broader economy, including the dependence of non-manufacturing businesses that provide services and supplies to the industry, the fishery generates about one-fifth of all employment in southwest Nova Scotia. And what is of even greater importance is that, as the leading basic industry in an area with very little economic diversity, the fishery is the fundamental underpinning for the regional economy as a whole. It is the base upon which the economic superstructure must very largely rest.

170. The scale of the contribution that Georges Bank itself makes to the regional fishery has already been described in paragraphs 155 and 156: ranging to over 45 percent of the total value of southwest Nova Scotia landings, and seldom less than a third; and in the order of 65 to 80 percent of the total value of landings at the larger fishing ports of the area. Though the proportion of employment generated by Georges Bank as a percentage of the total industry labour force would be somewhat lower than these figures, partly because processing requirements for scallops are not as great as for groundfish³⁹, the relative importance of Georges Bank in the context of the southwest Nova Scotia fishery in its entirety is readily apparent.

171. The employment percentages given in this chapter have been calculated on a conservative basis, by converting employment into terms of full-time "man-years". Since there are substantial numbers of part-time and seasonal workers in the fishing industry, the number of individuals actually involved in the industry work force is higher than the percentages tend to suggest. Further, labour force participation rates are low in this part of the province — partly because work opportunities for women are largely restricted to the fish plants — and unemployment

³⁷ See Annexes, Vol. IV, Section III, Annex 14.

³⁸ See Annexes, Vol. IV, Section I-H (Fishing Industry Share of Total Employment at the County Level).

³⁹ The approximate estimates explained in the Annexes, Vol. IV, Section I-F (Processing Employment by Species) indicate that roughly one man-year per 75 metric tons is required for scallop processing, and one man-year per 40 metric tons for groundfish.

rates are high in comparison to the national average. In consequence, the number of non-working dependents supported by each worker is relatively high. Moreover, income from non-employment sources — government transfer payments and unemployment insurance — amounts to an estimated 31 percent of the total money income of area residents, 10 percentage points higher than the Canadian average. The importance of maintaining a strong base for the productive sector of the regional economy is evident.

172. A factor that lends a special importance to the fishery in the southwest Nova Scotia economy is that its benefits are widely distributed throughout the region. In the most rural areas of the region — above all in Shelburne county in the far southwest — the dependence of the local economy on the fishery is especially pronounced. For the smaller coastal villages of southwest Nova Scotia, the role of the fishery can only be properly appreciated in human rather than purely economic terms. In much of the area there is no other basic industry at all; and without the fishery dozens of villages and towns would simply cease to exist. Many of these villages rely on Georges Bank for at least some of their landings, often for a significant proportion in the summer months when the small boat fleet described in paragraphs 143 to 148 is most active on the off-shore banks.

173. Iceland and Norway, especially the former, are classic examples of countries where the fishery is of special importance to the economy⁴⁰. Though national and regional comparisons are never exact, they can provide a sense of scale. The importance of the fishing industry in Iceland far exceeds that of the Nova Scotia industry according to certain measures: in value of exports, for example, it amounts to over 75 percent. But in terms of employment generated, the Icelandic proportion — about 15 percent in fishing and fish processing combined — is roughly the same as in southwest Nova Scotia. The comparison, it is submitted, serves to show that dependence on a single industry to generate as much as 15 percent of total employment in an economy is a substantial degree of dependence.

174. In Norway, the fishing industry accounts for 2 to 3 percent of total employment, much less than the corresponding proportions for Nova Scotia. Offshore oil, of course, has had a major impact on the Norwegian economy, and a regional comparison may be more representative. The economy of northern Norway (the counties of Nordland, Troms and Finnmark) is considered to be heavily dependent on the fishing industry; and in that region, the fishing industry accounts for about 10 to 15 percent of total employment — a proportion in roughly the same range as the corresponding figure for southwest Nova Scotia, or perhaps somewhat less.

5. Hydrocarbon Development

175. Although only the future can tell what if any impact hydrocarbon resources may have on the regional economy in the Atlantic Provinces, two points may be noted. First, all hydrocarbon development in the

⁴⁰ Sources of the information presented in this and the succeeding paragraph are found in the Annexes, Vol. IV, Section III, Annex 15 (Iceland) and Annex 16 (Norway).

offshore areas adjacent to Nova Scotia will be jointly managed by the federal and provincial governments under an agreement concluded on 2 March 1982, and all or a major portion of the royalty revenues will accrue to the province under that agreement (already referred to in paragraph 45). Secondly, offshore hydrocarbon development poses environmental dangers along with the economic benefits it offers. In the case of eastern Georges Bank, the ocean currents prevailing in the spring could circulate any surface oil that might be spilled to the Canadian coast and the inshore waters off southwest Nova Scotia, according to scientific models produced at the University of Rhode Island⁴¹. Unless the hydrocarbon resources are developed by Canada, the fishermen of southwest Nova Scotia would find themselves exposed to a risk for which no commensurate benefits would accrue to Canada.

6. New England: A Brief Comparison

176. The basic facts have already been set out in paragraphs 59 to 62 and 133 to 142. There is a clear-cut distinction between the fisheries of the state of Maine and those of Massachusetts and Rhode Island. In Maine, inshore fishing patterns have traditionally prevailed, resembling those of the adjacent province of New Brunswick. There has been little reliance on Georges Bank, partly no doubt because of Maine's relatively greater distance from the Bank, and partly because of the availability of valuable fisheries closer to home. Accordingly, though eastern Maine has a significant dependence on fisheries, its fleet concentrates upon the herring, lobster and redfish of the inner Gulf of Maine.

177. It is from a very few ports of the states of Massachusetts and Rhode Island that most of the United States Georges Bank fishery is carried out — substantially, though not exclusively, in the undisputed area — and in the diversified industrial and tourist economy of those states, the fishery is no more than a drop in the proverbial bucket. For example, total employment in the fishing and processing industries in the state of Massachusetts would appear to be only about one-half of one percent of the labour force, roughly one-tenth the corresponding figure in Nova Scotia⁴².

178. Even in the handful of New England ports in which the Georges Bank fishery is concentrated, the industry lacks the importance it has for the Nova Scotia fishing ports. New Bedford, for example, is Massachusetts' leading fishing port in landed value, accounting for the bulk of its Georges Bank landings. Yet even here the fishery occupies a very secondary role in the diversified economy that one would expect in a mature New England city of about 100,000. In short, the contrast between the economy of those areas of New England from which the United States Georges Bank fisheries are conducted and the rural economy of southwest Nova Scotia, so highly dependent on the fishery, could hardly be greater.

⁴¹ Eric L. Anderson and Malcolm L. Spaulding: "Application of an Oil Spill Fates Model to Environmental Management on Georges Bank." (*The Environmental Professional*, Vol. 3, Nos. 1/2, 1981, pp. 119-132.)

⁴² See Annexes, Vol. IV, Section III, Annex 17. In 1978 the estimated Nova Scotia fishing industry share of employment was about 11,928 (man-years) of a total of about 254,827 or about 5 percent. See Annexes, Vol. IV, Section III, Annexes 8, 14 (Source B) and 22.

Section II. Historical Evolution of Canada's Presence in the Georges Bank Fishery

A. THE NINETEENTH CENTURY

179. The central position of Georges Bank in the Nova Scotia fishery is the product of a long evolutionary process. Canada's presence on the Bank had its beginnings in the nineteenth century and attained its present level of importance after World War II.

180. The extent of the early Canadian fishery is incapable of exact measurement. There are a number of factors that rule out any precision in the reconstruction of the early character of the fishery — the natural reticence of skippers on the location of their best fishing grounds, the absence of the mandatory reporting requirements and elaborate bureaucracies that exist today to monitor the industry, and the hazards to which local archives are inevitably exposed. The evidence is often sketchy until the systematic collection of statistics on the location and quantities of catches was first begun in recent years; but within these limitations, at least some of the broad historical patterns can still be discerned with reasonable clarity.

181. The New Englanders probably appeared first on Georges Bank in the 1830s, though it is not clear to what extent these initial efforts involved the eastern sectors of the Bank. Canadians also frequented Georges Bank in the nineteenth century. In 1867, the year of Confederation, a *Report on the Fisheries of Nova Scotia* by Thomas F. Knight indicated that "The most westerly bank to which our fishermen repair is St. George's Bank", a "favourite resort" of United States fishermen as well because of its large extent⁴³. At about the same time, on 19 February 1868, a report from the Department of Marine and Fisheries office in Halifax to the Minister of Marine and Fisheries in Ottawa gave a general overview of the state of the Nova Scotia fisheries. After reviewing the state of the river fisheries, the report went on to indicate that Nova Scotia occupied "the first place among the Provinces of the Dominion in the extent and value of the Sea Fisheries", and described the banks of Nova Scotia within 5 to 20 nautical miles of the coast. It then added: "Besides these there are others at a greater distance from the coast, among which the most important are St. George's, La Have, Sable, Sambro, and St. Pierre Banks"⁴⁴.

182. The southwestern fishing grounds of Nova Scotia, which include Western, La Have, Browns, and Georges banks, took on a growing importance for Canadian fishermen in the last quarter of the nineteenth century, as the southern mackerel fishery and the fresh fishery (centred largely on haddock and so called to distinguish it from the salt

⁴³ Thomas F. Knight: *Report on the Fisheries in Nova Scotia*. Halifax, A. Grant, 1867, p. 3. Georges Bank was often referred to at this time, at least in Nova Scotia, as St. George's Bank, an appellation that appeared on some of the early charts. See Annexes, Vol. II, Annex 1.

⁴⁴ Letter from Mr. H. W. Johnston, Department of Marine and Fisheries, Halifax, to the Honourable P. Mitchell, Minister of Marine and Fisheries, Ottawa, 19 February 1868, records of the Nova Scotia Department of Fisheries, Public Archives of Nova Scotia, RG 15, Vol. 26, No. 14647, p. 7. See Annexes, Vol. II, Annex 2.

cod fishery) became lucrative pursuits. The proximity of these fishing grounds to the ports of southwest Nova Scotia was an important factor. The Pubnicos, Yarmouth and Lockeport, for instance, are between 90 to 104 nautical miles from the northeastern part of Georges Bank. The relative proximity of southwest Nova Scotia to the major markets in the United States was also a factor, and the two nineteenth-century periods of free trade in fish products between Canada and the United States (1854-1866 and 1871-1885) provided a major stimulus to the development in Canada of a distinct offshore fleet for the southwestern banks⁴⁵. Nova Scotians gradually developed a pattern of fishing that involved not so much exclusive reliance on a single area, but a systematic ranging over a sequence of banks — Georges, Browns, La Have and others — in an effort to capitalize on the opportunities as they arose from season to season. These grounds were of major importance in the diversification of the Nova Scotia fishing industry in the late nineteenth century into products other than salt cod.

B. 1900 TO 1945

183. During the first quarter of the twentieth century, fleets of schooners and steam trawlers from the southwestern ports of Nova Scotia were engaged in the year-round exploitation of several major groundfish species on the same sequence of fishing banks, including Georges. The growth of the fresh fish market in Boston and New York during these years helped to stimulate the expansion of Canadian activity on Georges Bank. The southwestern banks met nearly all the requirements of a complete fishing economy. The range of species they offered over the fishing year, beginning with haddock in the fall and winter, halibut in the late winter and spring, and cod and mackerel in spring and summer, made it possible for the Canadian fleet, subject to the constraints of supply and demand, to satisfy its markets in the West Indies (for salt cod), central Canada (smoked haddock), and New York and Boston (haddock and halibut). Vessels from southwest Nova Scotia carrying lobsters to Boston took groundfish on Georges Bank on their return voyages.

184. Digby on the Fundy coast of Nova Scotia was one major centre of this fishery, especially the "finnan haddie" or smoked haddock trade that was aimed at both central Canadian and American markets. In 1914, the editor of the *Canadian Fisherman* described Digby's exploitation of the southwestern banks in the following terms:

"Digby's fishing skippers are celebrated for the big stocks in the fresh fishing and their 95 ton schooners, small enough for winter fishing compared with the big craft out of Boston and Gloucester, have made names for themselves among the trawlers from Georges to Western Bank⁴⁶."

⁴⁵ The Reciprocity Treaty of 1854 and the Treaty of Washington of 1871 provided for Canadian access to the United States market.

⁴⁶ F. William Wallace: "Haddocking on Brown's Bank." (*Canadian Fisherman*, Vol. I, No. 5, May 1914, p. 141.) See Annexes, Vol. II, Annex 3.

Again, in 1916, a report carried in both the *Canadian Fisherman* and the *Digby Weekly Courier* predicted:

"If the haddock have not already started, they will soon begin to move away from the shores and for the next landings of any importance we shall likely have to depend on the off-shore vessels fishing on Brown's, Georges and Western Banks⁴⁷."

The same reliance on Georges Bank was indicated in many contemporary newspapers and other documents. In 1922, a story in the *Canadian Fisherman* acknowledged that the Maritime Fish Corporation — one of the largest firms in the fishery of the day — had chosen Digby for one of its two branches because of its proximity to a number of prime fishing grounds, including Georges Bank⁴⁸.

185. The same pattern developed at other centres in southwestern Nova Scotia. The vessels of the Yarmouth and Pubnico fleets fished the sequence of southwestern banks, including Georges, Browns and La Have, as a matter of course, moving from one location to another to maximize their catch. This pattern is reflected in a casual newspaper notice from the *Yarmouth Times* in 1915, which reports on the annual dogfish runs encountered by a Yarmouth vessel, the *Eddie James*, on a ten-day trip during which she —

"... covered a good deal of ground but everywhere found the waters swarming with dogfish. She fished first on the southeast part of La Have Bank then had a try on George's, and again off Cape Sable, finishing up on the Grand Manan Bank⁴⁹."

It was a common practice in the Yarmouth and Pubnico fleets to fish on Georges Bank when the annual dogfish "pestilence" was particularly bad on the other southwestern banks.

186. Liberal trade policies in effect in the United States from 1913 to 1922⁵⁰ provided a major stimulus to the export of fresh and mildly cured fish from the ports of southwest Nova Scotia. Together with the Hazen-Redfield pact (1918-1921), which allowed direct landings by Canadian fishing vessels in United States ports, these liberal policies led to increased Canadian use of Georges Bank. Although the imposition of a new tariff by the United States in 1922 curtailed Canadian access to American markets, Nova Scotian fishing patterns on the southwestern banks persisted, albeit at reduced levels and lower profits⁵¹. The 1928

⁴⁷ "The Atlantic Fisheries, The Twelve Months' Tally: Digby, N.S." Special Correspondence. (*Canadian Fisherman*, Vol. III, No. 2, February 1916, p. 53.) See Annexes, Vol. II, Annex 5.

⁴⁸ Roy M. Whynacht: "Maritime Fish Corporation." (*Canadian Fisherman*, Vol. IX, No. 7, July 1922, p. 142.) See Annexes, Vol. II, Annex 6.

⁴⁹ "Shipping and Fishing." (*The Digby Weekly Courier*, Friday, 25 June 1915.) See Annexes, Vol. II, Annex 4.

⁵⁰ The Underwood Tariff of 1913 removed the three quarters of a cent per pound tariff on Canadian fish.

⁵¹ *Royal Commission Investigating the Fisheries of the Maritime Provinces. Proceedings.* Ottawa, King's Printer, 1927-1928, Vol. 9, p. 3432 and Vol. 10, p. 3476. See Annexes, Vol. II, Annex 7.

Report of the Royal Commission Investigating the Fisheries of the Maritime Provinces included Georges Bank in a list of what it described as "the principal fishing grounds of the North Atlantic, resorted to by fishing-vessels and steam trawlers from the Atlantic ports of Canada, and by vessels and steam trawlers from other countries"⁵².

187. During periods when United States markets were protected by a tariff barrier, some Nova Scotia entrepreneurs adopted a practice of acquiring American flag vessels and continuing their registration in the name of an American owner who often had little more than a nominal ownership interest. These vessels very often sailed out of Nova Scotia ports and were substantially if not entirely crewed by Canadian seamen, and thus conducted themselves in a manner largely indistinguishable from Canadian registered vessels. The use of an American registry became in effect a "flag of convenience" device allowing the direct marketing of the catch in the United States. At times, therefore, the *de facto* Canadian fleet significantly exceeded the *de jure* Canadian fleet, though the difference in size cannot now be precisely determined, so many years after the events in question⁵³.

188. The 1920s and 1930s were apparently marked by a decline in groundfish activity by Canadian schooners and trawlers on Georges Bank, though schooner-and-dory fishermen from Canada continued to operate on the Bank through these years. The reasons for this decline included the cancellation of the Hazen-Redfield pact in 1921 and the imposition of the prohibitive Fordney Tariff of 1922. At the same time, Canadian government policy itself sought to restrict the offshore steam trawler component of the Canadian industry. Regulations flowing from the recommendations of the 1928 Royal Commission on the Maritime Fisheries (which had concluded that the large catches of trawlers tended to glut fish markets and thus to depress the prices paid to inshore fishermen) had a severe impact on the offshore fleet. Canadian trawlers were subjected to prohibitive licence fees⁵⁴. Largely as a result of this legislation, the number of trawlers in Atlantic Canada declined progressively.

189. The contraction of world markets during the Great Depression affected United States as well as Canadian entrepreneurs, and the 1930s saw a general decline both in the supply of groundfish and in fishing activity on Georges Bank. During this period, more of Canada's offshore fishermen turned their attention to the swordfish fishery, which had been conducted on Georges Bank by Nova Scotian vessels from the early years of the present century. In the 1930s it became an important industry in which Canadian fishermen were the leading producers⁵⁵. It complemented the groundfish fishery, as these two activities were often pursued

⁵² *Report of the Royal Commission Investigating the Fisheries of the Maritime Provinces and the Magdalen Islands*. Ottawa, King's Printer, 1928, p. 7. See Annexes, Vol. II, Annex 8.

⁵³ Frederick William Wallace: *Roving Fisherman. An Autobiography Recounting Personal Experiences in the Commercial Fishing Fleets and Fish Industry of Canada and the United States 1911-1924*. Gardenvale, Quebec, Canadian Fisherman, 1955, pp. 12 and 101.

⁵⁴ *Steam Trawler Order*, P.C. 2196, 30 October 1929. See Annexes, Vol. II, Annex 9.

⁵⁵ S. N. Tibbo, L. R. Day and W. F. Doucet: *The swordfish (Xiphias Gladius L.). Its life-history and economic importance in the northwest Atlantic*. Ottawa, Fisheries Research Board of Canada, Bulletin No. 130, 1961, p. 20.

seasonally by the same vessels. Even after the outbreak of World War II, the swordfish fishery on Georges Bank continued: thus, for example, in 1942 the *Lucille M* of Yarmouth, with 1.6 metric tons of swordfish in its hold, was sunk on Georges Bank by a submarine⁵⁶. Some of the pioneers of the Canadian offshore scallop fishery in the post-war period were outfitted for swordfish as well, and the latter fishery may in a sense be regarded as a precursor of the present scallop industry.

C. THE POST-WAR PERIOD

190. In the late 1930s, Canadian fishermen became aware of a potentially lucrative scallop ground on Georges Bank. No significant development of a scallop fishery occurred at that time, however, because of the outbreak of World War II. In 1945, a concerted effort began with the pioneer voyage of the *Mary E. Kenny* under Captain John Beck. By 1947, Canadian scallop draggers were making regular trips to Georges Bank⁵⁷, and during the early 1950s the Bank's scallop grounds became a major engine of growth in the Nova Scotia fishery. At that time, large new draggers, built especially for the offshore scallop fishery, began to enter the fleet. In a few years, Nova Scotia completely dominated the scallop fishery on eastern Georges Bank. By 1966, in the words of a document prepared by the New England Fishery Management Council in March 1981, there had been a "virtual abandonment" of eastern Georges Bank by the United States scallop fleet, and "that area had become a traditional Canadian scallop ground"⁵⁸.

191. The growth of the Canadian Georges Bank scallop fishery was accompanied by a diversified interest in other fisheries on the Bank, both old and new. The Bank continued to be a primary location of the Canadian swordfish fishery which expanded and prospered until 1971⁵⁹, when Canada and the United States took regulatory action against swordfish exceeding specified levels of mercury content. Some of the vessels which had been employed in that fishery then turned to the development of an offshore lobster fishery focused on the Corsair Canyon area of Georges Bank⁶⁰. During the 1960s, Canadian vessels were active in developing a herring fishery on Georges Bank. This fishery prospered

⁵⁶ Wreck Report, File: East Coast *Lucille M*, 26 July 1942, Records of the Department of Transport, Public Archives of Canada, RG 12, Vol. 887. See Annexes, Vol. II, Annex 10.

⁵⁷ Some of the vessels involved were the *Elaine W* from Halifax, the *Nepsya*, *Dale Maxwell* and *Janet and Douglas* from Lunenburg, the *L.G.P.* from the Pubnico area and a number of the larger inshore scallop vessels from the port of Digby. See N. Bourne: *Scallops and the Offshore Fishery of the Maritimes*. Ottawa, Fisheries Research Board of Canada, Bulletin No. 145, 1964, p. 22.

⁵⁸ "Environmental Impact Statement Fishery Management Plan Regulatory Analysis North West Atlantic Sea Scallops." Boston, New England Management Council in Consultation with the Mid-Atlantic Management Council and South Atlantic Fishery Management Council, March 1981, pp. A2.2-A2.4.

⁵⁹ J. F. Caddy: *A Review of Some Factors Relevant to Management of Swordfish Fisheries in the Northwest Atlantic*. Technical Report No. 633. St. Andrews, New Brunswick, Department of the Environment, Fisheries and Marine Service, Research and Development Directorate, 1976, pp. 9-10, 21.

⁶⁰ D. G. Wilder and D. E. Graham: *Offshore Lobster Trap Fishing, July 10 to August 10, 1972*. Manuscript Report Series No. 1236. St. Andrews, New Brunswick, Fisheries Research Board of Canada, 1973, p. 2.

until the early 1970s⁶¹, when overfishing by distant-water fleets led to the virtual extinction of the Georges Bank herring stock. There have also been sporadic landings of mackerel, tuna and squid from the Bank by Canadian fishermen during the post-war period.

192. Apart from scallops, the most important Canadian fishery on Georges Bank in recent years has been for groundfish. The growing importance of the Bank to the Nova Scotia groundfish industry forms part of a broader development marking a major change in the character of the Canadian Atlantic fishery. Until the 1930s, Nova Scotia fishermen operated extensively in offshore areas, mainly with dory schooners. The inshore fishery, however, was also important, and it was precisely for the promotion and protection of this labour-intensive activity that measures were imposed between the wars to curtail the early expansion of the offshore trawler fleet. Events in the post-war period brought about a revitalization of the offshore fishery, and the growing demand for fish and increased competition for the resources lying off Canada's shores provided the impetus for the development of a modern offshore fleet. Thus an offshore fleet of modern vessels supplanted the dory schooners on which Nova Scotia had traditionally relied. The trend towards the offshore fishery in Atlantic Canada was most pronounced in Nova Scotia: by 1978 the province was home to more than one-half of the Atlantic offshore fleet, which accounted for 80 percent of the total provincial landings.

193. The growth of this modern offshore fleet has been reflected in growing Canadian groundfish landings from Georges Bank. Cod and haddock landings rose to record levels in 1966 and significant quantities of pollock, cusk, flounder and redfish were also taken. However, groundfish catch levels on Georges Bank and indeed throughout the Northwest Atlantic decreased after 1966 as a result of the activities of distant-water fleets. This trend has only been reversed with the extension of coastal State jurisdiction to 200 miles in 1977.

194. The Canadian groundfish fishery on Georges Bank in the post-war period has had two quite distinct components. In addition to the large trawlers, increasing use has been made of the Bank during the summer months by smaller vessels — in particular the "Cape Islanders" — from the ports on the extreme southwestern coast of Nova Scotia most proximate to Georges Bank. This represents the continuation of a local small boat fishery which can be dated from at least as early as the 1920s.

D. CANADIAN FISHERIES RESEARCH

195. Canada's participation in the Georges Bank fishery is manifested as well by its strong record of scientific research. Much of this research effort has been concentrated in the field of fisheries biology and to a lesser degree in oceanography, and almost all of it has been sponsored and funded by the Government of Canada to provide a scientific basis for the conservation and management of the living resources of Georges Bank. Research programs have been characterized throughout

⁶¹ R. G. Halliday: "A description of Canadian fisheries in Subarea 5 and Statistical Area 6, 1969-72." (ICNAF, Serial No. 3174, Research Document 74/27, 1974.)

by spirit of international scientific cooperation, principally between Canadian scientists and those of the United States, but extending as well to their counterparts from other countries whose vessels participated in the fishery in the years before the 200-mile limit. Thus there has been intensive collaboration over the years between Canadian and American scientists at specialized institutions such as the Fisheries Research Board of Canada Biological Station at St. Andrews, New Brunswick, and the Woods Hole Laboratory of the National Marine Fisheries Service in Massachusetts.

196. Research vessels owned or chartered by the Government of Canada have made numerous scientific cruises to the Georges Bank area from the 1950s on, complemented by visits of Canadian research workers on board ordinary commercial fishing vessels to observe their operations and to collect technical information. For entirely pragmatic reasons there has been a degree of international specialization in these efforts, with Canada generally taking the lead in research related to the scallops and large pelagic fishes of the Bank (especially swordfish and tuna), and playing an only slightly less decisive role with respect to herring. In the case of haddock, on the other hand, it has been the United States that has carried out most of the work at sea through its major program at Woods Hole, with Canadian scientists providing strong support in the equally important work of analyzing and interpreting the raw data.

E. ICNAF

197. Some Canadian scientific research has been translated into the purely domestic conservation measures Canada has imposed upon its fishermen operating on Georges Bank. For many years, however, much of it was dedicated to the work of the International Commission for the Northwest Atlantic Fisheries (ICNAF), as the multilateral organization charged with the conservation of the living resources of this area of the sea. The technical work for Georges Bank under the aegis of ICNAF was carried out within "panel 5", vested under the convention with responsibility for subarea 5, of which Georges Bank is a part. (See *Figure 22*.) Canada and the United States were the sole charter members of panel 5 under the convention as adopted in 1949, in contrast to the broader original membership of the other four panels.

198. This recognition of the special interest of Canada and the United States reflected the criteria set out in Article IV of the convention for membership in the panels; in brief, eligibility required either "current substantial exploitation" of the fisheries, or a "coastline adjacent to" the subarea concerned⁶². But what is of even greater significance in the process whereby ICNAF panel membership was established is the fact that it was the United States, in its "Draft International Convention for the Northwest Atlantic Fisheries" (dated 1 October 1948), that proposed both the principle of coastal State membership in subarea panels and the

⁶² See Annexes, Vol. I, Annex 1, for the text of the International Convention for the Northwest Atlantic Fisheries.

joint control of subarea 5 by Canada and the United States⁶³. Indeed, the United States looked upon the full participation of coastal States in panel decisions as an essential means of protecting the rights of small fishing vessels operating from countries adjacent to each subarea⁶⁴.

199. Both Canada and the United States, as the two coastal State partners in this area of the sea, played especially significant roles throughout the history of ICNAF in the development and implementation of conservation measures for the fisheries of Georges Bank. The nature of this cooperative relationship was equally apparent in the approach adopted within ICNAF for the establishment of national quotas for Georges Bank fish stocks. Again, the general trend was to treat both Canada and the United States without question as the coastal States for this area, especially as distant-water fleets became increasingly concentrated on Georges Bank during the 1960s and 1970s, creating problems of allocation that were both novel and acute. The application of the guidelines used to establish allocations for the Bank also saw the United States recognizing Canadian coastal status in arguing, as both countries often did before the commission, that nations with a coastal interest had a special concern that overrode the claims of distant-water fishing nations⁶⁵.

⁶³ International Northwest Atlantic Fisheries Conference, Proceedings, 26 January to 5 February 1949, Public Archives of Canada, RG 23, Vol. 1597, File 784-6-8[1], Document 1, 1 October 1948, p. 7, Article IV, p. 7, para. 6 and Annex, p. 24, para. 2, Subsection (D). (Subarea 4 in the draft convention was subsequently renumbered as subarea 5 consequent to the division of the original subarea 1 into two parts.) Also Document 15, pp. 5-6, paras. 29-36, and Document 16, pp. 10-12, paras. 72-82. For a statement of the Canadian view see Document 16, p. 9, para. 59, and Document 40, p. 2, para. 10. For United States views on the relative importance of the criteria for panel membership see Document 20, p. 5, paras. 51-53, and p. 6, paras. 54-56. For Documents 1, 15, 16, 20 and 40 see Annexes, Vol. II, Annexes 11, 12, 13, 14 and 15.

⁶⁴ *Ibid.*, Document 20, p. 5, paras. 52-53.

⁶⁵ Thus, for example, at the January 1973 special meeting of ICNAF, the United States submitted a paper proposing fishing effort reductions for various member States in sub-areas 5 and 6. The paper stressed that "coastal fishing interests should be given high priority". It exempted both Canada and the United States from any effort reductions and explicitly noted that "because Canada and the United States are coastal fishing nations, their effort was not reduced". (Special Meeting, January 1973, Proceedings No. 4, Appendix 1, reproduced in Annexes, Vol. II, Annex 26.) At the October 1973 special meeting, in a "Working Group on Catch Allocations for Subarea 5 and Statistical Area 6", Canada and the United States made several joint pronouncements indicative of their coastal State partnership in respect of these areas. For example:

"The delegates of the United States and Canada pointed out that reduction of catch to less than 900,000 tons is necessary to begin recovery of the biomass, and that coastal fishermen have already suffered economically through depletion of the stocks and are not mobile." (Special Meeting, October 1973, Proceedings No. 5, p. 1, reproduced in Annexes, Vol. II, Annex 27.)

At the January 1974 special meeting, in discussions on national allocations in panel 5 with respect to mackerel in subarea 5 and statistical area 6, the United States delegate "proposed that the needs of the coastal states be fixed first and the remainder of the TAC [total allowable catch] divided in some equitable manner among the other countries". The delegates of the United States and Canada agreed to proposed mackerel allocations "under reservation of their rights as coastal states". (Fourth Special Commission Meeting, January 1974, Proceedings No. 3, p. 3, reproduced in Annexes, Vol. II, Annex 28.)

Section III. Conclusion

200. As demonstrated in Section I of this chapter, the fishery is the main pillar of the southwest Nova Scotia economy, and the resources of Georges Bank are vital to its prosperity. The regional dominance of the fishing industry has endured since colonial times to become a stable feature of economic and social life. And a variety of powerful geographical and economic forces — the limited natural resources of southwest Nova Scotia, its maritime character and extensive coast, and its distance from the North American industrial heartland — all point toward a strong commitment to this industry in the years to come.

201. An industry of this importance cannot but have a profound impact on the entire social fabric of the area. Indeed, it was only in the 1960s, when the growth of Nova Scotia's modern offshore fleet had become an established reality, that the gradual exodus of the productive population from southwest Nova Scotia was finally arrested; and it is on the maintenance of a strong fishery that the area's future must very largely depend. Though by no means wealthy, the area today is far from depressed. The fishery has allowed its inhabitants to achieve a modest level of economic well-being and stability; but it is a fragile economic base, precisely because it is so heavily committed to this single industry. Against this background, eastern Georges Bank can only be described as crucial to the region most heavily dependent on its exploitation.

202. The historical evolution of Canada's presence in the fisheries of Georges Bank shows that the Canadian presence is a deeply rooted one — despite natural fluctuations in its intensity over the years — and that the trend since World War II has been one of growth. Moreover, in assessing the weight and importance of Canada's attachment to the Bank, it must be borne in mind that it is the eastern portion — the area claimed by Canada — that has been the focal point of the traditional Canadian interest. The patterns that emerged in the years before the assertion of exclusive jurisdiction express natural geographic factors and economic forces, and the strength of the Canadian fishery on the eastern part of Georges Bank may be said to reflect a natural division of the Bank between the two nations.

CHAPTER IV. HISTORY OF THE DISPUTE

Section I. The General Political and Diplomatic Record

A. CONTINENTAL SHELF ACTIVITIES PRIOR TO THE EXTENSION OF FISHERIES JURISDICTION

203. The Government of Canada first enacted regulations authorizing oil and gas operations in offshore areas in 1960¹. These regulations empowered the appropriate authorities of the Government of Canada to issue permits for exploratory work in areas defined in the regulations as "Canada Lands" — federal Crown lands, in other words, including submerged lands under the sea. The permits, granted upon application by an individual or corporation, could be converted at the option of the permittee into 21-year leases with oil and gas production rights. The areas under permit were illustrated upon maps that could be obtained for a small charge at offices of the Government of Canada.

204. The first offshore oil and gas exploratory permits in the vicinity of Nova Scotia and New Brunswick were issued not long after the 1960 regulations came into force². It was in 1964, in the context of the gradual implementation of the system established by these regulations, that a number of companies began to submit applications for permits in the Gulf of Maine-Georges Bank area, including the area now in dispute. And it was in that year that the Canadian Government began to issue permits for this area, up to a line of equidistance controlled throughout by the nearest point of land on each coast³.

205. From its inception in 1960, the Canadian oil and gas permit system has been based on the use of rectangular "grid areas". A number of permits granted at the beginning of 1965 covered rectangular grids

¹ *Canada Oil and Gas Regulations*, P.C. 1960-474, 13 April 1960, published in *Canada Gazette*, Part II, Vol. 94, No. 9, 11 May 1960, revoked and replaced by the *Canada Oil and Gas Land Regulations*, P.C. 1961-797, 6 June 1961, published in *Canada Gazette*, Part II, Vol. 95, No. 12, 28 June 1961.

² To Socony Mobil Oil of Canada Ltd., now Mobil Oil Canada Ltd., on 15 July 1960.

³ The first permits issued by Canada in the Gulf of Maine area were granted on 20 May 1964 to Texaco Exploration Company (now Texaco Canada Inc.). Further permits were issued on 30 December 1964, and on 13 and 14 January 1965 to the California Standard Company (now Chevron Canada Limited), and on 15 January 1965 to Socony Mobil Oil of Canada Ltd. (now Mobil Oil Canada Ltd.). Permits have been issued since the above dates to John I. Tavel on 16 July 1965 (transferred to Texaco Exploration Company, now Texaco Canada, Inc., on 14 September 1965); to Chevron Standard Limited (now Chevron Canada Limited) on 28 December 1966; to Ronald G. Belfoi on 26 October 1967 (transferred to Transalta Oil and Gas Ltd. on 21 November 1967 and now held by Chevron Canada Limited, Dome Petroleum Limited and Transalta Oil and Gas Ltd.); to Siebens Oil and Gas Ltd. on 6 and 10 November 1967, 21 November 1968, 3 February 1969, and 12 November 1971; and to J. François Lemieux on 24 November 1971 (transferred to Fairholme Development Limited on 4 April 1972). These offshore permits cover a total of 3.1 million hectares. See Annexes, Vol. II, Annex 49.

that straddled the equidistance line on Georges Bank, and similar permits were issued in subsequent years⁴. Because these particular grid areas extended beyond the equidistance line into a part of the continental shelf not then claimed by Canada, the permits were endorsed with the following "caveat" or cautionary statement:

"This permit is issued subject to the lands contained in the grid area being Canada Lands."

Only the permits covering areas extending beyond the equidistance line carried this clause, and the permits issued for other grid areas in portions of the Gulf of Maine and Georges Bank since claimed by the United States were not qualified by any such cautionary statement.

206. These Canadian administrative activities respecting the Gulf of Maine and Georges Bank led to an exchange of correspondence between the authorities of the two countries in 1965. A letter dated 1 April 1965 from the Bureau of Land Management of the United States Department of the Interior addressed to what was then the Canadian Department of Northern Affairs and National Resources, sought information on two Canadian permits issued for Georges Bank, at a location said to be "approximately 125 nautical miles east of Cape Cod⁵". The letter began by identifying the Bureau of Land Management as the agency "charged with the responsibility for mineral leasing on the Outer Continental Shelf pertaining to the United States of America", and went on to say that the bureau "would like to identify these two leases with reference to the median line as defined in Article 6 of the Convention on the Continental Shelf . . .". The letter forwarded a set of United States Outer Continental Shelf leasing maps, and noted that the United States leasing blocks did not cross the median line in the offshore area adjacent to Canada in the vicinity of the British Columbia-Washington state border on the Pacific coast. No United States leases⁶ had then been granted on the Atlantic coast.

207. The Canadian Department of Northern Affairs and National Resources replied by a letter dated 8 April 1965, enclosing the Canadian regulations and transmitting under separate cover maps showing oil and gas permits issued by Canada off both the east and west coasts⁷. This letter also indicated that these materials were available to the public at the offices of the Resources Division of the department.

⁴ Specifically, apart from the 15 January 1965 permits issued to Socony Mobil Oil of Canada Ltd. (now Mobil Oil Canada Ltd.), one of the permits issued to Ronald G. Belfoi on 26 October 1967, 11 of the permits issued to Siebens Oil and Gas Ltd. on 6 and 10 November 1967, two of the permits issued to the same company on 3 February 1969, and two of the permits issued to that company on 12 November 1971, covered grid areas straddling the then equidistance line.

⁵ See Annexes, Vol. III, Annex 1 for the full text of this letter.

⁶ There is a difference in terminology in Canadian and United States legislation and practice. Under Canadian regulations in force at the relevant time (the *Canada Oil and Gas Land Regulations*, P.C. 1961-797, 6 June 1961), the right of a person to explore the submerged lands adjacent to Canada's coasts is contained in an "exploratory permit". Under United States legislation (*Regulations pertaining to Mineral Leasing and Pipelines on the Outer Continental Shelf*, Title 43, Code of Federal Regulations, 23 July 1964), the corresponding right is contained in a "lease".

⁷ See Annexes, Vol. III, Annex 2.

208. This information elicited a response from the United States Bureau of Land Management on 14 May 1965, the substantive passages of which read as follows:

"As a matter of some concern to us, we believe that you have issued offshore permits on the Outer Continental Shelf pertaining to the United States. We believe this is the case in the Gulf of Maine, off the Straits of Juan de Fuca, and Dixon Entrance. We are unable to comment on the permits you have issued in the Arctic Ocean as we do not have a map showing their locations.

Inasmuch as the location of a median line might be subject to different interpretations, we suggest that you check the locations of your permits which approach submerged lands under United States jurisdiction to see if they are within Canadian jurisdiction under an application of Article 6 of the Convention on the Continental Shelf of the 1958 Geneva Conference.

This communication is being written solely in the interest of seeing if there is a basis for disagreement as to the location of a median line separating our respective jurisdictions on the Outer Continental Shelf. As an operating Bureau, we, of course, have no authority to enter into any formal discussion of the location of a median line in case of a dispute. However, we are hopeful that there could be a simple misunderstanding on either our part or yours, of the elements positioning a median line. If this is the case, then the matter could be amicably determined without resort to high authority⁸."

Shortly thereafter, on 16 June 1965, the Department of Northern Affairs and National Resources replied to this letter, assuring the United States authorities that a median line had indeed been used, and explaining the cautionary statement (that certain permits were subject to the lands being Canada Lands) attached to those permits covering rectangular grid areas that straddled the median line⁹.

(14) 209. There was no further reaction or response by the United States authorities to the information transmitted to them by the Canadian Government. *Figure 31* shows the permits issued by Canada in the Gulf of Maine area when this exchange took place. The "caveated" permits, under the grid system as explained in paragraph 205, are shown in red and the remainder in blue.

210. For 14 months following this initial exchange in 1965, the matter remained entirely dormant. On 16 August 1966, however, the United States Embassy in Ottawa sent a letter to the Canadian Department of Mines and Technical Surveys¹⁰ asking for information on Canadian exploration on the Pacific coast and in the Gulf of Maine area,

⁸ See Annexes, Vol. III, Annex 4.

⁹ See Annexes, Vol. III, Annex 6.

¹⁰ The two Canadian departments of government mentioned so far in this account — the Department of Northern Affairs and National Resources and the Department of Mines and Technical Surveys — were dissolved in 1966. Their functions, as they relate to this dispute, were then taken over by the newly-created Department of Energy, Mines and Resources, which still continues to exercise these functions.

and on the operational plans and schedules of oil companies holding permits¹¹. The letter was referred to the Department of External Affairs, and a reply from the Under-Secretary of that Department on 30 August 1966 outlined the Canadian practices and policies that have been described above¹². As before, a map was attached to the letter showing the seabed areas covered by the Canadian permits. Again, no reaction or response was received from the United States authorities.

211. It was nearly two years later, on 10 May 1968, that the matter was formally raised by the United States in an aide-mémoire, but not in a manner that in any way intimated that a major boundary dispute was in the making¹³. The accent, in fact, was on the protection of fishermen from threats of environmental harm that might result from oil and gas operations.

212. The United States aide-mémoire addressed itself without distinction to both the maritime area off the British Columbia-Washington state border on the west coast (where the United States has continued to advocate an equidistance boundary) and the Gulf of Maine area. It proposed that since mineral interests in both countries were "urgently" seeking to begin exploration, early discussions should be undertaken with a view to reaching agreement on the location of the dividing lines in both areas. At the same time, it was suggested that the two governments should consult on steps to protect the living resources of the sea against pollution, in order that some reassurance might be given to the fishing interests involved. Finally, it was suggested that there should be a "temporary suspension of exploration and exploitation activities with regard to mineral resources in the area of the northern half of Georges Bank to permit consultation to take place and to provide time to seek an agreement on the *exact* location of the boundary in this area". (*Italics added.*) When the aide-mémoire was handed to Canadian Embassy personnel in Washington, there was a supplementary discussion during which State Department officials stressed the need to allay the concerns of fishermen about the effect of offshore operations on their activities. No indication was given, however, of any divergence of views on the principles applicable to the boundary itself.

213. No steps appear to have been taken as an immediate result of this communication from the United States, although the Canadian Embassy did transmit copies of Canadian regulations on offshore exploration to the State Department in September of 1968¹⁴. The United States Government did not comment on these materials, and there were no further developments between the two governments in this matter until late 1969.

214. From 1965 on, therefore, the Canadian use of an equidistance line in the Gulf of Maine area was accepted by the United States authorities, who evidently shared the view that the maritime boundary was to be based upon the equidistance method. (The legal significance of this United States conduct is dealt with in Part II of this Memorial.) The

¹¹ See Annexes, Vol. III, Annex 7.

¹² See Annexes, Vol. III, Annex 8.

¹³ See Annexes, Vol. III, Annex 11.

¹⁴ See Annexes, Vol. III, Annex 12.

first clear signals that a dispute was in the making were received when the United States gave Canada an aide-mémoire dated 5 November 1969¹⁵.

215. This document, after referring to the oil spill off Santa Barbara in California earlier that year, again proposed a moratorium on all mineral exploration and exploitation in the entire Gulf of Maine area — or, “at a minimum”, a moratorium on all drilling — until agreement on the “exact location” of the shelf boundary could be reached and mutually acceptable regulations safeguarding the fisheries of the area from pollution could be formulated. The aide-mémoire went on to say that the United States would hold Canada completely liable for pollution resulting from activities authorized by Canada, and further set out a general reservation of United States interests in the following terms:

“Until the exact location of the United States-Canada continental shelf boundary in the Gulf of Maine is agreed upon, the United States cannot acquiesce in any Canadian authorization of exploration or exploitation of the natural resources of the Georges Bank continental shelf. The United States Government, therefore, cannot recognize the validity of Canadian permits for any part of the Georges Bank, reserves its rights and the rights of its nationals to this continental shelf area, and intends to make its position a matter of public record in the Federal Register so that individuals and companies concerned with exploration and exploitation in the area may be aware of this position.”

Beyond this reservation, however, no specific United States claim was put forward.

216. A Canadian reply dated 1 December 1969, recalled that the United States had never in the past protested against the issuance of Canadian oil and gas permits¹⁶. Canada welcomed the proposal for consultations concerning the protection of fisheries in the Gulf of Maine area, and agreed as well to consider dates for negotiations on continental shelf boundaries. It was again emphasized that Canada had not agreed to a moratorium on mineral exploitation on Georges Bank (as originally proposed by the United States on 10 May 1968), and that the Government of Canada was unable to accept the suggestion that a temporary suspension, pending agreement on the boundary line, should be imposed on all mineral exploration and exploitation activities in this area.

217. The Government of Canada on 8 March 1970 ratified the 1958 Convention on the Continental Shelf, to which the United States was already a contracting party. The Canadian ratification was accompanied by the following declaration concerning Article 1 of the convention:

“In the view of the Canadian Government the presence of an accidental feature such as a depression or a channel in a submerged area should not be regarded as constituting an interruption in the

¹⁵ See Annexes, Vol. III, Annex 13.

¹⁶ See Annexes, Vol. III, Annex 14.

natural prolongation of the land territory of the coastal state into and under the sea¹⁷."

The United States responded to that declaration on 16 July 1970 (approximately one week after the first set of bilateral talks on delimitation) in the following words:

"The Government of the United States does not find acceptable the declaration made by the Government of Canada with respect to Article 1 of the Convention on the Continental Shelf. The United States considers that Convention to be in force and applicable between it and Canada, but such application does not in any manner constitute any concurrence by the United States in the substance of the declaration made by Canada with respect to Article 1 of that Convention¹⁸."

Neither side has entered reservations to the convention and it remains in force as between the two Parties.

218. The timing of the Canadian ratification of the Continental Shelf Convention, although related in part to international developments, was equally a consequence of the evolution of certain federal-provincial disputes on offshore resources. It had originally been hoped that these differences could be resolved before ratifying the convention, and in 1967 the Supreme Court of Canada gave a decision upholding the federal claim to continental shelf ownership and jurisdiction off the Pacific coast¹⁹. The Canadian Government took the view that the principles of this decision were equally applicable to the Atlantic coast and, after further unsuccessful attempts to settle the issue with the provinces in 1969, determined to proceed with ratification.

④ 219. No United States exploration or production permits have ever been issued with respect to the disputed portion of the Gulf of Maine area; as shown in *Figure 4* in the Introduction to this Memorial, the only outstanding permits in this area are Canadian. Seismic surveys on Georges Bank, however, extending from the United States side into the Canadian-claimed portion of the Bank, were carried out in 1968, 1969 and 1975 by private United States companies. In each case, the company concerned was notified by the Canadian authorities of its obligations under Canadian law to obtain a federal exploratory licence, to submit a notice of its program, and to supply the results of that part of the survey undertaken in the Canadian portion of the Gulf of Maine area to the Canadian authorities²⁰.

220. In 1974 there was an exchange of diplomatic correspondence on this subject. In a reply of 16 October 1974²¹ to a protest by the Government of Canada respecting activities to be carried out in an area

¹⁷ United Nations, *Multilateral Treaties in Respect of which the Secretary General Performs Depositary Functions*, 452, Doc. ST/LEG/SER.D/13, 1980, p. 583.

¹⁸ United Nations, *Multilateral Treaties in Respect of which the Secretary General Performs Depositary Functions*, Doc. ST/LEG/SER.D/13, 1980, p. 586.

¹⁹ Canada, *Re: Offshore Mineral Rights of British Columbia*, [1967] Supreme Court Reports, p. 792.

²⁰ See Annexes, Vol. II, Annex 50.

²¹ See Annexes, Vol. III, Annex 21.

under Canadian permit²², the Department of State referred to its diplomatic note of 5 November 1969, and stated that it "continues to be the United States position that the exploration and exploitation of the natural resources of the areas of the Continental Shelf subject to the permit referred to by the Department of External Affairs are subject to the jurisdiction of the United States". Despite the suggestion that this was no more than the reaffirmation of an earlier position, this note was the first formal communication received by Canada setting forth anything resembling a positive and explicit claim of jurisdiction to what is now the disputed area. The earlier aide-mémoire of 5 November 1969 stopped short of the actual assertion of a claim, and was restricted in its terms to a general reservation of a potential United States interest.

221. When the United States first began its initial preparations for an auction of oil and gas leases in the Georges Bank area in 1975, Canada took the position that it could not acquiesce in acts by the United States intended to constitute an exercise of jurisdiction in respect of any part of the continental shelf under Canadian jurisdiction²³. In 1976, these United States preparations had advanced to the point where a number of tracts on Georges Bank, including 28 that were located in the area then claimed by Canada, were selected by the American authorities for "intensive study" in the process of preparing the draft environmental impact statement required before leasing could be carried out. Canada protested these plans in a diplomatic note dated 2 February 1976²⁴, and the United States ultimately withdrew the contentious tracts from the proposed sale of leases on 7 December 1976²⁵.

222. Although Canada declined to commit itself to an agreed moratorium respecting oil and gas operations in the disputed area, the boundary dispute has naturally had an inhibiting effect on exploration for and exploitation of the mineral resources of this area. In order to avoid any aggravation of the dispute that might have made a negotiated settlement more difficult (particularly if oil and gas were actually discovered), and taking into account the large investments of private capital that are required in order to carry out such operations, Canada has unilaterally exempted its permittees from the work requirements that are normally demanded by Canadian regulations. The result of this measure (originally taken in 1971) has been that no drilling has been carried out in the disputed area and the mineral resource potential of the area remains to be fully determined.

B. THE INTRODUCTION AND IMPLEMENTATION OF EXTENDED FISHERIES JURISDICTION

223. The nature of the dispute was at once expanded and transformed at the beginning of 1977 with the measures taken by both coun-

²² Canadian diplomatic note no. 1126 of 19 September 1974. See Annexes, Vol. III, Annex 20.

²³ United States diplomatic note of 15 May 1975 and Canadian note no. 180 of 3 June 1975. See Annexes, Vol. III, Annexes 22 and 23.

²⁴ See Annexes, Vol. III, Annex 25.

²⁵ See Annexes, Vol. II, Annex 31.

tries to create 200-mile fishing zones pursuant to the consensus on the exclusive economic zone reached at the Third United Nations Conference on the Law of the Sea.

224. In the United States, the *Fishery Conservation and Management Act* of 1976²⁶, enacted on 13 April 1976, provided for the creation of a 200-mile fishing zone on 1 March 1977. In Canada, the necessary legislative authority already existed in the *Territorial Sea and Fishing Zones Act*²⁷, which authorizes the creation of fishing zones in areas of the sea adjacent to the coast of Canada by Order in Council. The Act requires any such Order in Council to be published in the *Canada Gazette* at least 60 days before the final order is made. Accordingly, on 1 November 1976, the text of the proposed order (which included lists of geographical coordinates defining the limits of the future Canadian zone for the Gulf of Maine and Georges Bank and for the two west coast boundary regions) was published in the *Canada Gazette*²⁸. The notice referred to the Canada-United States boundary consultations and contained the following preambular statement:

"... the limits of the fishing zones of Canada as established in the annexed order are intended to be without prejudice to any negotiations or to any positions which may have been or may be adopted respecting the limits of maritime jurisdiction in such areas".

When the definitive Order in Council was actually made on 1 January 1977²⁹, the same coordinates were used³⁰.

225. The publication of this advance notice had been the subject of prior consultations with United States officials. In response, the Government of the United States published a notice in the *United States Federal Register* of 4 November 1976³¹, setting out, with respect to

²⁶ 16 United States Code, s. 1801 *et seq.* (1976).

²⁷ Statutes of Canada 1964-1965, chap. 22. (See Annexes, Vol. II, Annex 17.) Canada established a 9-mile fishing zone in 1964 and the United States did so in 1966. The 9-mile fishing zone was subsumed within the territorial sea in 1970, when Canada adopted the 12-mile limit for territorial waters. (See Annexes, Vol. II, Annex 23.) In 1971 Canada also enclosed certain bodies of water, including the Bay of Fundy, within "fishery closing lines". (See Annexes, Vol. II, Annex 24.) These initial extensions of jurisdiction by Canada and the United States were followed by reciprocal fishing privileges agreements that avoided problems arising from unsettled boundary questions. (See Annexes, Vol. I, Annexes 10 to 19.)

²⁸ *Proposed Fishing Zones of Canada (Zones 4 and 5) Order*, published in *Canada Gazette*, Part I, Vol. 110, Extra, No. 101, 1 November 1976. See Annexes, Vol. II, Annex 29.

²⁹ *Fishing Zones of Canada (Zones 4 and 5) Order*, P.C. 1977-1, 1 January 1977, published in *Canada Gazette*, Part II, Vol. 111, Extra, 1 January 1977. See Annexes, Vol. II, Annex 33.

³⁰ There are two Canada-United States offshore boundary areas on the west coast, one at the southern end of British Columbia, off Juan de Fuca Strait and Cape Flattery, and the other at the northern end in Dixon Entrance. As well, there is an offshore boundary area in the Beaufort Sea off Alaska and the Yukon; this area was not affected by the initial extension of Canadian jurisdiction on 1 January 1977 or by the *Canada Gazette* notice of 1 November 1976 but was the subject of a subsequent extension of 200-mile fisheries jurisdiction effective 1 March 1977.

³¹ "Maritime Boundaries of the United States and Canada." Department of State, Public Notice No. 506. Published in *Federal Register*, Vol. 41, No. 214, 4 November 1976, pp. 48619-48620. See Annexes, Vol. II, Annex 30.

coastal areas in proximity to Canada, the lateral limits of the 200-mile zone which the United States intended to claim as of 1 March 1977 pursuant to the *Fishery Conservation and Management Act* of 1976. This notice — which indicated that the published limits were applicable to the continental shelf as well as to the 200-mile fishing zones that were the immediate occasion of the publication — contained statements identical to the preambular recitals in the Canadian notice.

226. It was thus in the fisheries context that the Parties first officially promulgated precise coordinates for their respective zones in the boundary region, although Canada of course had used an equidistance line controlled throughout by the nearest point of land on each coast for the issuance of offshore oil and gas permits from 1964 on. Thus, a Canadian diplomatic note of 22 December 1976 pointed out that the coordinates in the published Canadian Order in Council "encompass areas of the continental shelf over which Canada has exercised jurisdiction for a number of years"³².

227. This diplomatic note set out the Canadian response to the limits published by the United States for the Gulf of Maine area as well as the other three Canada-United States offshore boundary regions. It outlined the essence of the Canadian position on each area and noted that "Canada has used the median or equidistance approach in each case except where the boundary has already been regulated by international agreement or international arbitral award". Charts were attached setting out the limits of more extensive Canadian claims that could be asserted, "based on the same principles as those on which the United States claims are based, and which would be relevant in the event of a reference of this question to third-party settlement". The note also reiterated the preambular statement from the notice published on 1 November 1976, namely, that the limits as then set out were to be without prejudice to current or future Canadian positions. The United States responded with a reaffirmation of its position on 18 February 1977³³.

228. The imminent prospect of an extension of fisheries jurisdiction to 200 miles had been a major consideration in the minds of Canadian and United States negotiators throughout 1976. The extension of fisheries jurisdiction threatened the disruption of established fishing patterns in both countries and carried with it the risk of a "cod war" in the disputed areas. Beyond these immediate concerns, there was a shared perception that a coordinated approach to the management and conservation of a number of fish stocks would be necessary — not only for those stocks that congregate in the general vicinity of the boundary claims, but also for those more widely ranging or migratory stocks that would necessarily have to be regarded as shared resources wherever the boundary line itself might be drawn. There would clearly be a need for some common ground in the application of conservation measures for these stocks, and jointly agreed quotas would be required in order to prevent competitive overfishing.

229. Negotiations on these fisheries questions were therefore undertaken in the latter half of 1976. However, when Canada brought its

³² See Annexes, Vol. III, Annex 46.

³³ See Annexes, Vol. III, Annex 51.

200-mile fishing zone into being on 1 January 1977, there was still no agreed regime in place. In order to avert the possibility of confrontation and to maintain an atmosphere conducive to further negotiations, the Government of Canada unilaterally passed a special regulation allowing United States fishing vessels to continue fishing throughout the new Canadian 200-mile zone pending the outcome of negotiations³⁴. Negotiations were resumed soon after the Canadian extension of jurisdiction with a view to concluding a one-year agreement as a transitional measure that would allow time to work out an agreement for the longer term. The negotiations were conducted in an atmosphere of urgency because of the impending extension of United States jurisdiction under the *Fishery Conservation and Management Act* of 1976, which did not permit an interim waiver of jurisdiction of the kind granted by Canada.

230. One particularly intractable issue that confronted the negotiators was how an interim fisheries agreement should deal with the boundary areas. The United States took the view that the disputed areas should be defined and identified in the agreement, with the implication that the jurisdiction of each Party beyond those areas would then be irrevocably recognized. Canada, on the other hand, recalled that both countries had expressly stated that their provisional fishing zone boundaries were "without prejudice" to whatever claims might thereafter be advanced in the course of negotiations. In the end, this problem was resolved by means of a deliberately ambiguous formula that avoided any final crystallization of the boundary claims.

231. An interim agreement on fisheries, which was applicable to both Atlantic and Pacific coasts, was signed on 24 February 1977³⁵. It was provisionally implemented between that date and its formal entry into force on 26 July 1977, following the signature by President Carter of the legislation necessary for its adoption in the United States³⁶. The basic objectives of the agreement were twofold: (a) to allow the fishermen of both countries to pursue their existing fishing patterns that had been established before the creation of the 200-mile zones; and (b) to avoid conflict in the boundary regions by providing, first, that there would be no fishing allowed by vessels of third countries in those areas, and secondly, that as between Canada and the United States there would be flag State enforcement — in other words, that the enforcement authorities of each country would exercise their powers only with respect to fishing vessels of their own flag.

232. The overriding principle of this agreement was to preserve the status quo — "existing patterns" of fishing in the language actually used in the agreement. On the Atlantic coast, this principle was given concrete expression in the interim agreement through the incorporation of 1976 ICNAF quotas as the ceiling applicable to transboundary fishing

³⁴ *Transitional United States Fishing Vessel Licence Exemption Regulations*, P.C. 1976-3179, 23 December 1976, published in *Canada Gazette*, Part II, Vol. 111, No. 1, 23 December 1976. See Annexes, Vol. II, Annex 32.

³⁵ See Annexes, Vol. I, Annex 18.

³⁶ In Canada it was implemented by a new version of the *Transitional United States Fishing Vessel Licence Exemption Regulations*, P.C. 1977-1148, 28 April 1977, published in *Canada Gazette*, Part II, Vol. 111, No. 9, 11 May 1977. See Annexes, Vol. II, Annex 34.

privileges³⁷. The implementation of this principle of the agreement gave rise to serious difficulties in 1977. In brief, the main problems were the threat to conservation posed by increased United States catches of certain species on Georges Bank, as well as the maintenance of Canadian salmon fishing rights on the Pacific coast at levels substantially equivalent to those prevailing before the agreement.

233. The sudden change in the intensity of United States fishing effort on Georges Bank, which plagued the negotiations until their conclusion, was largely attributable to a combination of two causes. The first was an influx of vessels into the New England fishery, triggered at least in part by expectations resulting from the extension of fisheries jurisdiction and given added impetus by an increase in the price of scallops. At the same time, the completely new regulatory system under the United States *Fishery Conservation and Management Act* of 1976, with its decentralized and participatory system of regulation under a number of Regional Fishery Management Councils, could apparently not be brought into effective operation until some considerable time after the extension of jurisdiction had taken place. With the withdrawal of the United States from ICNAF, the practical result was a virtually total regulatory vacuum in the New England fishery during the initial phases of the 200-mile zone regime.

234. It was the Canadian view that these higher levels of Georges Bank catches threatened the future health of the fishery, and that the United States had undermined at least the spirit of the interim agreement by disregarding its broad status quo objective as well as the ICNAF quotas referred to in paragraph 232. In sharp contrast to the situation prevailing in the United States, economic pressures toward any undue expansion of fishing effort in the wake of the 200-mile extension were at least partially countered in Canada by the application of strict licencing limitations on participation in the fishery (the size of the Georges Bank scallop fleet, in particular, had been frozen since 1973), and also by the comprehensive scheme of Canadian conservation regulations that had been in place long before 1977.

235. The interim agreement expired at the end of 1977. For the first few months of 1978, however, the terms and conditions of this agreement were maintained *de facto* pending negotiations on its renewal. On 11 April 1978, the 1977 agreement was renewed, subject to ratification, with a series of amendments designed to improve the west coast fishing regime and to provide a rudimentary basis for cooperative fisheries management³⁸. This 1978 renewal agreement, however, never entered into force. After it was signed, during the period of its provisional implementation, a number of serious disputes developed between the Parties with respect to its interpretation and application. These ultimately prevented the renewal agreement from entering into force and led to an interruption of reciprocal transboundary fishing.

236. Soon after the conclusion of the 1978 renewal agreement, it became increasingly apparent to the Government of Canada that the situation was deteriorating to the detriment of Canadian interests, and that

³⁷ The United States ceased to be a member of ICNAF at the end of 1976 and thus was not directly bound by these quotas.

³⁸ See Annexes, Vol. I, Annex 19.

there was no hope of an adequate and timely solution. As in the preceding year, it was the conservation threat posed by unregulated United States catches of a number of the most important commercial stocks found on Georges Bank — scallops, cod, haddock and pollock — that alarmed the Canadian Government and its fishing constituencies. Moreover, the position taken and the explanations given by the United States made it clear that the consultative procedures under the renewal agreement offered no prospect of effective relief within the time frame of the agreement. There were equally serious problems in the provisional implementation of the interim agreement on the Pacific coast.

237. This, then, was the situation that confronted the Parties in the spring of 1978. Because no solution was in sight, and because the agreement was operating in a manner that was increasingly damaging to Canadian interests, the Government of Canada found it necessary to suspend its provisional implementation on 2 June 1978³⁹. The United States Government reciprocated immediately and transboundary fishing ceased⁴⁰. It had been expected to resume upon the ratification of the 1979 Agreement on East Coast Fishery Resources, but that prospect obviously disappeared when the latter agreement was withdrawn from the United States Senate by President Reagan, as discussed in paragraph 257⁴¹.

238. Despite the 1978 suspension of reciprocal transboundary fishing privileges, the special boundary area fisheries regime originally established in the 1977 interim agreement — i.e., no third country fishing and flag State enforcement by each Party — was maintained by both Parties on an informal basis pending the expected ratification of the 1979 Agreement on East Coast Fishery Resources. This arrangement remained in place even after it had become clear that the United States would not ratify the 1979 agreement, and it continues to be observed by both Parties to this day.

C. THE REVISED CANADIAN CLAIM AND RELATED DEVELOPMENTS

239. As the dispute between the Parties began to emerge and it became clear that the United States no longer accepted a boundary line based on equidistance in the Gulf of Maine area, Canada grew increasingly vigilant in the protection of its rights. This, of course, was a dominant theme in the series of events surrounding the extension of fisheries jurisdiction as described in paragraphs 224, 227, 230 and 231: the express reservation of rights in the preamble to the notice of the Order in Council extending jurisdiction and in the diplomatic note of 22 December 1976, and above all the insistence on a strictly non-prejudicial formulation with respect to jurisdictional claims in the interim fisheries agreement of February 1977. The same care is evident in Canadian diplomacy respecting the continental shelf. Following the assertion of a United States claim in 1974 to areas of Georges Bank already subject to Canadian jurisdiction, the Government of Canada found it necessary to protect its interests by

³⁹ Canadian diplomatic note of 2 June 1978. See Annexes, Vol. III, Annex 65.

⁴⁰ United States diplomatic note of 2 June 1978. See Annexes, Vol. III, Annex 66.

⁴¹ 127 *Congressional Record* S 6430 (daily edition 17 June 1981), 97th Congress, 1st Session (1981).

protesting a number of exploratory continental shelf activities authorized by the United States on both sides of the equidistance line utilized by Canada in issuing exploratory permits, and by formally reserving its rights with respect to areas west of that provisional limit⁴².

240. New light was shed on the law of maritime boundary delimitation by the decision in the *Anglo-French Continental Shelf* award of 30 June 1977 — the first and as yet the only decision by an international tribunal to apply Article 6 of the 1958 Continental Shelf Convention. A major element in that decision was of course the adoption of an abated or modified equidistance line as between France and the United Kingdom in the southwestern approaches to the English Channel, in order to eliminate the distorting effect of the Scilly Isles. This application of the law was relevant to the situation in the Gulf of Maine area, where Cape Cod, Martha's Vineyard and Nantucket Island would produce a marked distorting effect on an equidistance line controlled throughout by the nearest point of land on each coast. Canada therefore adjusted its claim to reflect these legal developments of 1977.

241. As described in paragraphs 351 and 352, the adjusted Canadian line is calculated from a basepoint at the northern entrance to Cape Cod Canal, instead of from the basepoints on Cape Cod and Nantucket Island that had been used to delineate Canada's earlier line⁴³. The United States was formally notified of the adjusted Canadian line by a diplomatic note dated 3 November 1977, the operative passage of which reads as follows:

"The Government of Canada is of the view that the application of the principles of law enunciated and elucidated in the *Anglo-French Award* to the factual situation in the Gulf of Maine/Georges Bank area leads to the conclusion that the further projection seaward of the exceptionally long promontory of Cape Cod and of the islands of Nantucket and Martha's Vineyard, when superadded to the marked protrusion of the USA coastline south-east of Boston, constitute an element of inequity or distortion material enough to justify the delimitation of a boundary other than the strict equidistance line. In other words, these coastal projections constitute 'special circumstances' under Article 6 of the

⁴² See Annexes, Vol. III: Canadian aide-mémoires of 28 April 1976, Annex 31; 3 June 1976, Annex 33; 19 August 1976, Annex 39; and 26 May 1977, Annex 53. The United States responded by noting that the activities it had authorized were to be conducted "on the United States side of the line developed using the principle of equidistance", and that the United States Government could not be expected to take account of a Canadian reservation of interest in areas where Canada had not yet asserted a formal claim: United States aide-mémoire of 10 September 1976, Annex 40, and 7 July 1977, Annex 56.

⁴³ Apart from these important adjustments in respect of Cape Cod and Nantucket Island, certain other basepoints for the revised Canadian line vary slightly, for technical reasons, from those used in the construction of the first line. The limits of the Canadian claim as set out in *Fishing Zones of Canada (Zones 4 and 5) Order*, P.C. 1977-1, 1 January 1977, were derived from basepoints scaled from large-scale Canadian and United States nautical charts. The limits as set out in *Fishing Zones of Canada (Zones 4 and 5) Order, amendment*, P.C. 1979-184, 25 January 1979, published in *Canada Gazette*, Part II, Vol. 113, No. 3, 14 February 1979, were computed from basepoints scaled from large-scale field survey sheets of the Canadian coastline and large-scale United States charts. The overall effect of these minor technical changes amounted to no more than a few metres displacement of the Canadian claimed line.

1958 *Geneva Convention on the Continental Shelf*, the disproportionate and inequitable effects of which should be abated by an appropriate adjustment or modification of the strict equidistance line. It is the view of the Government of Canada that a line drawn without reference to these coastal projections constitutes an equitable equidistance line and, therefore, the lateral limits of Canada's continental shelf and fisheries jurisdiction in the Atlantic area seaward of the Gulf of Maine⁴⁴."

242. When the above notice was conveyed to the United States, negotiations were underway with a view to resolving the full spectrum of Canada-United States maritime boundary and resource issues. In order not to impede the progress of these negotiations, which are described in paragraphs 246 to 259, Canada adopted a policy of restraint with respect to the actual exercise of jurisdiction in the area between the new line of 3 November 1977 and its earlier line for reasons explained as follows:

"Nevertheless, in order not to prejudice in any way the conduct of the current negotiations referred to above, the Government of Canada has decided to forego the public assertion of the claim defined by the annexed coordinates and the exercise of its jurisdiction in areas beyond the published equidistance line, pending the outcome of these negotiations⁴⁵."

The United States rejected the Canadian claim of 3 November by a note dated 2 December 1977⁴⁶.

243. Not long after this exchange between the Parties, a potentially serious development took place. This was an announcement on 30 December 1977 in the United States *Federal Register* of "North Atlantic Continental Shelf Oil and Gas Lease Sale No. 42" to be held on 31 January 1978⁴⁷. Some of the tracts to be offered were in areas formally claimed by Canada on 3 November 1977, although west of the earlier line. A Canadian diplomatic note of 25 January 1978⁴⁸ requested the United States to withdraw these tracts from the proposed sale. The note indicated that should the United States proceed with the sale of leases pertaining to the areas claimed by Canada on 3 November 1977, the Government of Canada would be obliged to publish that claim in the *Canada Gazette* so that interested parties would be on notice before submitting bids for leases.

244. On 28 January 1978, the United States Department of the Interior announced the deletion of the tracts in question as being "within the area claimed by Canada to be subject to negotiations between the United States and Canada⁴⁹". The same day, a United States court granted a temporary injunction against the sale on environmental grounds and the entire sale was therefore postponed. After further envi-

⁴⁴ See Annexes, Vol. III, Annex 59.

⁴⁵ Canadian diplomatic note of 3 November 1977. See Annexes, Vol. III, Annex 59.

⁴⁶ See Annexes, Vol. III, Annex 60.

⁴⁷ *Federal Register*, Vol. 42, No. 251, 30 December 1977, pp. 65285-65290. See Annexes, Vol. II, Annex 37.

⁴⁸ See Annexes, Vol. III, Annex 61.

⁴⁹ See Annexes, Vol. II, Annex 38.

ronmental litigation in the United States courts, Outer Continental Shelf Oil and Gas Lease Sale No. 42 was finally held on 18 December 1979, and lease rights in the *undisputed* part of Georges Bank were auctioned for an amount of U.S. \$816.5 million. None of the tracts offered at the sale extend into any part of the Gulf of Maine area claimed by Canada. Thus the deletion of the tracts within the Canadian line remained in effect after the internal legal impediments that delayed the sale in the United States had been removed. *Figure 4* shows the extent of both Canadian and United States permit coverage after Outer Continental Shelf Oil and Gas Lease Sale No. 42.

245. By the late summer of 1978 it had become apparent that a negotiated settlement of the east coast maritime boundary would not be achieved, and that a public assertion of the Canadian claim of 3 November 1977 was now unavoidable. On 15 September 1978, therefore, the Government of Canada published in the *Canada Gazette* a proposed Order in Council extending the Canadian fishing zone in accordance with the line of 3 November 1977, together with a notice that the limits as set out in the proposed order also constituted the limits within which Canada exercised jurisdiction for continental shelf purposes⁵⁰. The final Order in Council, identical in its terms to the text published in the September notice, was made on 25 January 1979⁵¹.

D. THE NEGOTIATING HISTORY

246. Bilateral talks on continental shelf delimitation, dealing with both the west coast and the Gulf of Maine area, were conducted on 9 July 1970 without producing any substantive result. No further talks were held until a second exploratory phase, dealing largely with the Gulf of Maine area, was begun with a meeting on 15 December 1975, followed by four additional sessions in 1976. In addition to the purely legal elements, the 1976 talks addressed the topic of cooperative fisheries arrangements and the possibility of establishing zones in which hydrocarbon rights would be shared. While these talks provided an opportunity for a full exploration of the positions held by both sides, no basis for a solution to the location of the maritime boundary line was found.

247. The stalemate reached during the boundary negotiations in 1975 and 1976 seemed to call for an entirely fresh approach. Indeed, the broadening of the dispute into one that encompassed not only the continental shelf but also the more immediate interests of coastal communities in the Georges Bank fishery, inevitably led to a new emphasis on the specific issues of resource allocation and management. Further, not only was there a need in purely logical terms to consider all of the interrelated resource and delimitation factors together, but it was also hoped that the equitable allocation of fishery resources would make it easier as a political matter to reach agreement on the boundary itself.

248. Another fundamental change in the approach to the negotiations was a decision to appoint "Special Negotiators" to reach an early

⁵⁰ See Annexes, Vol. II, Annex 41.

⁵¹ See Annexes, Vol. II, Annex 42.

agreement on the interrelated resource and boundary issues in all four maritime boundary areas. Accordingly, the Canadian Secretary of State for External Affairs and the United States Secretary of State agreed, on 24 June 1977, on the appointment of these special representatives and on the essential elements of their mandate: to attempt the negotiation of a comprehensive maritime resource and boundary settlement for the Gulf of Maine area and the other three Canada-United States maritime boundary areas within a period of three months.

249. To underline their special character and importance, these appointments were made by the Prime Minister of Canada and the President of the United States respectively. Prime Minister Trudeau announced on 27 July 1977 that the Canadian special negotiator would be Mr. Marcel Cadieux, Canada's most senior diplomat, at that time Ambassador to the European Communities²². President Carter's choice was Mr. Lloyd Cutler, a Washington attorney and later Counsel to the President of the United States.

250. While the referral of the matter to special negotiators was an innovation, the fishery component of their mandate was carried out in the distinctive tradition of contemporary fisheries negotiations between Canada and the United States. Participation in the talks, rather than being restricted to diplomats and officials, extended to large and representative advisory groups from all sectors of the fishing and fish processing industries of both countries — unions, corporations, associations of fishermen and processors, members of the United States Fishery Management Councils — as well as officials from provincial and state governments. The negotiations, in consequence, were very much in the nature of a participatory process, with as much time and energy devoted to internal consultations with the advisory groups as to the bilateral negotiations themselves.

251. On 15 October 1977, the special negotiators submitted a joint report (approved by both governments on 21 October) setting out the agreed "principles of a comprehensive settlement encompassing delimitation of maritime boundaries, appropriate complementary fishery and hydrocarbon arrangements and other related matters"²³. This report described, in very considerable detail, the structure, procedures and principles that should form the basis of an agreement establishing a joint fisheries commission for the cooperative management of fish stocks of common concern. The subsequently concluded 1979 Agreement on East Coast Fishery Resources, discussed in paragraphs 260 to 276, faithfully reflected the essential elements outlined in this 1977 proposal. (While the October report had also set out proposals for shared access hydrocarbon zones in the boundary areas, the Parties later agreed that the implementation of this concept would be impracticable in the absence of agreed boundaries.)

252. Following the approval of the October report by the two governments, the negotiations proceeded slowly and with difficulty. The

²² Ambassador Cadieux had previously served as Under-Secretary of State for External Affairs and as Ambassador to the United States, and had been a member of the International Law Commission.

²³ For the full text of the Joint Report see Annexes, Vol. II, Annex 36.

mandate of the special negotiators was extended on a number of occasions, and it was only in early 1979, more than a year after the original deadline, that the substantive negotiations were finally brought to a successful conclusion.

253. Article V of the Special Agreement precludes any account of the boundary aspect of the negotiations, and it must suffice to say that by the end of the summer of 1978 it had become clear that a negotiated maritime boundary for the Gulf of Maine area would not be achieved. It is the intricacy of the negotiations on the east coast fisheries, on the other hand, that rules out anything beyond a very summary review of the most contentious issues. For Canada, the most important single resource in the negotiations was Georges Bank scallops. It became clear at an early stage that, for Canada, the price of an agreement would be a significant reduction in the percentage share to which Canadian fishermen would be entitled under the agreement, as compared to the share they had taken in the years preceding the extension of fisheries jurisdiction. This was a sacrifice that Canada was willing to make, however, in exchange for "compensation" in its entitlements for groundfish, and in anticipation that a negotiated boundary settlement reflecting the Canadian claim would eventually emerge. The outcome, it will be seen, fell substantially short of these expectations, and to this extent the agreement was less than fully satisfactory from the Canadian perspective.

254. Apart from the allocation of specific resources, the Parties had different views on what the duration of the fisheries agreement should be. Late in the negotiations, the United States formally proposed to Canada that it should continue for only ten years. The essence of the Canadian response to this proposal was that a less than permanent agreement would be acceptable only if the entitlements, particularly in respect of scallops, reflected the status quo prevailing before the extension of jurisdiction. Accordingly, it was the Canadian position that such an agreement would either have to incorporate a Canadian scallop quota commensurate with Canada's pre-1977 share, or that it would have to include concessions in other fisheries. These conditions were not acceptable to the United States, and the compromise eventually agreed upon was a permanent agreement with variable quotas in accordance with the scheme described in paragraphs 265 to 267.

255. Even when it had become clear that a Georges Bank boundary would not emerge from the negotiations, an agreement to submit the matter to third-party adjudication required extensive discussion between the Parties. One matter explored in these discussions was the relationship of a boundary adjudication treaty to the proposed fisheries agreement. Canada readily accepted the principle that the two agreements should be linked together; indeed, the basic premise of the Cadieux-Cutler negotiations was that the boundary and resource issues should be dealt with not in isolation but as an integrated whole.

256. Following the successful conclusion of the negotiations in January 1979, the Treaty to Submit to Binding Dispute Settlement the Delimitation of the Maritime Boundary in the Gulf of Maine Area and the Agreement on East Coast Fishery Resources were signed on 29 March 1979. The two agreements were linked, not only in substantive but in political and legal terms as well. According to their final clauses, they could only enter into force simultaneously. Signature of these agreements

marked the end of the negotiations between Ambassadors Cadieux and Cutler under the mandate given to them in 1977.

257. The final chapter in the history of these negotiations took place two years later, in 1981. In the interval Canada stood ready to exchange instruments of ratification and expressed concern about the United States' delay in ratifying the fisheries agreement, which the Canadian Secretary of State for External Affairs, in an interview with *The New York Times* on 11 June 1980, described as Canada's "most serious bilateral issue with any country"⁵⁴. Ratification, however, did not come about. President Reagan, advised that the fisheries agreement would not obtain the advice and consent of the United States Senate if put to a vote, but that a completely separate boundary adjudication treaty would be assured of passage, took the unilateral step of withdrawing the fisheries treaty from Senate consideration on 6 March 1981 and suggested consequential amendments designed to sever the two instruments⁵⁵ — despite the fact that both were linked by their express terms.

258. Ultimately, of course, the Canadian Government accepted this course of action, although it meant that without a prior negotiated resolution of fisheries allocations, these questions would now have to be resolved entirely through the third-party boundary settlement process. It was clear that further delay in resolving the Georges Bank situation could not be tolerated, particularly, in view of the dangers posed for the conservation of fish stocks in the absence of agreed management measures. Accordingly, the Government of Canada accepted the severed boundary settlement treaty in its new form, and instruments of ratification were exchanged bringing that treaty into force on 20 November 1981.

259. An essential condition of Canada's agreement to accept the amendments approved by the United States Senate was a change in the manner in which the United States had been implementing the boundary area *modus vivendi* with regard to fisheries prior to this time. The United States had previously refused to apply this policy of flag-State enforcement to the area claimed by Canada west of its first, provisional line — in contrast to the policy of restraint which the United States followed in respect of hydrocarbon operations in this same area. Canada found this situation to be inconsistent and obviously unsatisfactory: it meant that Canadian fishing vessels in areas claimed by Canada could be vulnerable to arrest and prosecution by the United States authorities. When proposing the "de-linkage" of the agreements to the Canadian Secretary of State for External Affairs, the United States Secretary of State conveyed President Reagan's assurances that, upon ratification, the United States would alter this practice and implement the fisheries *modus vivendi* throughout the whole disputed area. These assurances were consistent with an earlier understanding between the special negotiators. Subsequent to the exchange of instruments of ratification, the appropriate instructions were issued to the United States Coast Guard to give effect to this understanding⁵⁶.

⁵⁴ H. G. Giniger: "Treaty Delay Snags U.S. Ties to Canada," (*The New York Times*, Sunday, 15 June 1980, p. 12.) See Annexes, Vol. II, Annex 46.

⁵⁵ 127 *Congressional Record* S 4049-S 4050 (daily edition 29 April 1981), 97th Congress, 1st Session (1981).

⁵⁶ See Annexes, Vol. II, Annex 47.

Section II. The 1979 Agreement on East Coast Fishery Resources

A. INTRODUCTION

260. As the preceding account has indicated, the 1979 Agreement on East Coast Fishery Resources dealt in a very comprehensive way with the fisheries relationship of the Parties of the Atlantic coast, focusing on Georges Bank as the most crucial area of shared resource interest. To a limited extent, of course, the agreement dealt with fishery resources in undisputed waters and reciprocal rights of access to those resources; to a somewhat greater extent it dealt with migratory species that would require bilateral management wherever the boundary might be placed; but at its core the agreement was a regime for the cooperative management and sharing of the fishery resources of Georges Bank⁵⁷.

261. The agreement will never enter into force, and the effect it might have had upon fisheries cooperation between the two countries — or the model it might have established for other countries — must remain forever a matter of conjecture. Nevertheless, through the evidence that its terms and the circumstances of its negotiation can provide, the agreement sheds considerable light upon the equities of delimitation in this case.

262. As a treaty in force, the effect of the agreement would have been to protect the established rights of both Parties and “insulate” their fisheries interests from the full impact of the boundary decision. This it would have accomplished by ensuring that any effect the decision might have upon the allocation of shares in the fishery would be both limited and deferred, and that fishermen could continue to repair to at least some of their old grounds even where these might have passed to the exclusive jurisdiction of the other country. Non-ratification of the agreement means that the consequences of the boundary decision could now be more sweeping and immediate in their impact.

B. SUMMARY OF THE AGREEMENT

1. General Objectives

263. The 1979 fisheries agreement faithfully reflected the detailed principles of the October 1977 joint report of the special negotiators which, it will be recalled, had received the express approval of both governments. The agreement put meat on the bones of these abstract principles by specifying the treatment to be given to stocks of major species of fish in terms of quotas, access to fishing grounds, and regulatory authority. It is a lengthy instrument and only a few of the most significant points can be identified here.

264. In very general terms, the agreement had three major objectives. First, it would have established an elaborate regulatory system with a permanent fisheries commission and a dispute settlement procedure

⁵⁷ For the full text of the agreement, see Annexes, Vol. 1, Annex 20.

designed to ensure that shared fish stocks would be properly managed in accordance with agreed principles. Secondly, it would have established relatively permanent quotas or "entitlements" both for shared fish stocks and for certain stocks that occur entirely in the undisputed waters of each country. Finally, for a number of stocks, the agreement would have secured to the fishing vessels of each country continued rights of access to specified waters of the other country, wherever the boundary might ultimately be placed.

2. The Management System

265. The agreement divided the fish stocks of the area into three categories. Briefly, "Annex A" stocks were to be placed under *full* joint management by the fisheries commission, with each country participating in decisions on a footing of equality; "Annex B" stocks were to be under *qualified* joint management, with one country given the "lead role" in the preparation of regulations and the other assigned a "burden of proof" in dispute settlement proceedings concerning those regulations; and "Annex C" stocks, found largely in the undisputed waters of a single country, were to be placed under exclusive national management, with provision for consultation within the fisheries commission. Virtually every major Georges Bank fishery was placed under either full or qualified joint management; moreover, almost all the stocks that would have been subject to either of these two forms of joint management under the agreement are stocks that occur on Georges Bank.

266. For the most part, the intermediate category of "Annex B" was composed of stocks situated partly in the undisputed waters of one country and partly within the boundary area. It is for this reason that the majority — in purely numerical terms — of the stocks of ICNAF subdivision 5Ze (the management area, it will be recalled, that comprises the whole of Georges Bank as well as areas closer to the New England coast, such as the Great South Channel and Nantucket Shoals) were assigned to this category, with the United States designated as the country of primary interest. But in the case of scallops, unquestionably the prime commercial resource of Georges Bank, it was Canada, in view of its clear dominance in the utilization of the resource, that was made the country of primary interest for the whole of the Bank east of the Great South Channel area. A number of other stocks found on Georges Bank, including pollock, mackerel and cusk, were to have been placed under full joint management in accordance with the "Annex A" regime.

267. The other salient feature of the management system set out in the agreement was the mechanism for the determination of regulatory measures that were not established in the agreement itself. This mechanism involved a fairly typical fisheries commission, with the superimposition of a unique procedure for binding dispute settlement. This procedure was designed to ensure that, in contrast to the normal rule applicable to international fisheries organizations, disagreement on the allowable catch and other yearly conservation measures within the commission would not produce a regulatory vacuum; instead, the necessary measures would be imposed through a binding third-party decision. As well, a binding dispute settlement procedure was an essential ingredient of the "Annex B" concept of a management scheme midway between

unilateral national management on the one hand and full joint management on a footing of equality on the other. In the case of these "Annex B" stocks, it would have been incumbent on the country challenging the regulations proposed by the "party of primary interest" to show that these were "clearly inconsistent" with the detailed management criteria and standards set out in the agreement.

3. Entitlements and Access

268. The agreement would have conferred permanent rights on the fishing vessels of each Party to harvest specified shares of most of the important fishery resources of Georges Bank, and to fish for these resources throughout the Bank wherever the boundary might be placed. The entitlements set out in the agreement, while acceptable to Canada in the context of a negotiated settlement, tended on the whole to understate the true extent of the Canadian fishery on Georges Bank and did more than justice to the United States position. Thus the United States special negotiator, Mr. Lloyd Cutler, in a prepared statement given before a Congressional committee on 22 June 1979, made the following observation about the agreed shares for Georges Bank:

"With one minor exception, each U.S. entitlement to stocks found on Georges Bank exceeds the share of the total catch which the U.S. took over the 1965-77 period⁵⁸."

269. But even with this departure from contemporary patterns in favour of the United States, the entitlements set out in the agreement constitute a recognition that Canada along with the United States has a major and legitimate coastal State interest in the fisheries of the Bank. A few examples will suffice. In the case of the crucial scallop resource, Canada would have been entitled to nearly three-quarters of the annual catch for the whole of subdivision 5Ze, including the Great South Channel, Nantucket Shoals, and other grounds beyond the disputed boundary area. Substantial Canadian quotas were set for most of the "finfish" species like cod, haddock, and cusk, again defined in terms that comprised the whole of 5Ze or, in some cases, more extensive areas. And in the case of herring, where distant-water fishing vessels had taken most of the Georges Bank catch in the years leading up to the negotiations, Canada would have been phased into a one-third entitlement after a period of years. Moreover, in virtually all these cases, the Canadian fleet would have had a right in perpetuity to fish from one end of Georges Bank to the other⁵⁹.

⁵⁸ Prepared Statement of Lloyd N. Cutler submitted to the Subcommittee on Fisheries, Wildlife Conservation and the Environment, Committee on Merchant Marine and Fisheries, United States House of Representatives, 96th Congress, 1st Session on United States-Canadian Fishing Agreements, 22 June 1979. Washington, U.S. Government Printing Office, 1979, p. 41.

⁵⁹ Specifically, the annual Canadian scallop quota for 5Ze as a whole was 73.35 percent of the catch. Other Canadian quotas included: cod (for the whole of 5Ze and 5Zw to the southwest): 17 percent; haddock (for the whole of subarea 5): 21 percent; pollock (from northeast Nova Scotia to the southern end of New England): 74.4 percent; and cusk (5Ze as a whole): 66 percent.

270. These Canadian entitlements and those of the United States were to have been permanent, but subject to a significant degree of eventual adjustment in the light of the boundary decision yet to come. Essentially, the agreement provided for a review of the entitlements every ten years, with provision for arbitration if agreement could not be reached. The main criterion to be applied in this event was to have been the location of the boundary, but the arbitrator to be appointed under the agreement could have taken social and economic factors into account as well. There was, however, an important limitation on the arbitrator's authority: a reduction could never exceed one-third of the original entitlement, and there was to have been a more stringent restriction on the maximum reduction that could be imposed on any entitlement at the end of each individual ten-year period.

C. SIGNIFICANCE OF THE AGREEMENT

271. Both the 1979 agreement and the October 1977 joint report whose principles it reflected serve to demonstrate the reality and importance of each country's interest in the resources of Georges Bank taken as a whole. These instruments together constitute a persuasive demonstration of Canada's geographic relationship to and historic interest in Georges Bank, and underline the inconsistency and inequity of the attempt to appropriate this Bank to the United States. They do so in two ways. First, as noted above, the agreement was very largely a framework for the equitable sharing of the resources of Georges Bank, and its entire thrust supports the proposition that a substantial portion of this area properly appertains to Canada and, of course, runs directly counter to the contention that no part of it appertains to Canada. And secondly, the institutional structure the agreement would have established was conceived primarily as a mechanism for the cooperative management of Georges Bank as a shared fishing ground by two neighbouring coastal States.

272. It would not be appropriate to speculate on all the reasons that led the United States Senate to forego the carefully negotiated régime of sharing and joint management established by the fisheries agreement. Clearly, however, a most important factor was that the United States is in a favoured position in that access to fish in the eastern part of Georges Bank is significantly less important to the United States than to Canada (see paragraph 119). The larger part of Georges Bank is within the undisputed jurisdiction of the United States and gives the United States ample access to the resources upon which the economic well-being of its fishery depends.

273. The agreement was anything but novel in some of its fundamental principles. One of its major objectives was the maintenance of traditional fishing patterns in the face of a change in the jurisdictional status of the offshore fisheries. In this, the agreement was the direct descendant not only of the 1977 interim agreement adopted upon the implementation of the 200-mile limit, but also of an earlier reciprocal fisheries agreement in effect from 1970 to 1977⁶⁰, which allowed traditional fishing to con-

⁶⁰ For the text of the 24 April 1970 agreement, see Annexes, Vol. I, Annex 10. For the text of the 24 February 1977 interim agreement, see Annexes, Vol. I, Annex 18.

tinue in coastal waters (essentially those between the 3-mile and the 12-mile limits) that the Parties had then brought within their fisheries jurisdiction. In a sense, moreover, this whole series of reciprocal fisheries agreements can trace its ancestry back to the Treaty of Paris of 1783 that confirmed the independence of the United States and at the same time reinstated the American fishery in the territorial waters of Nova Scotia and the other remaining British possessions of North America⁶¹.

274. There is an even more fundamental respect in which the agreement reflects an established tradition of North American fisheries relations. It was an instrument for the cooperative management of shared fishery resources within an institutional framework designed for this specific purpose, and it was modelled on an impressive series of precedents. These precedents include the North Atlantic Council on Fisheries Investigations, set up by the two countries in 1920 along with France and Newfoundland; the International Pacific Halibut Commission (set up as a bilateral organization under the first treaty Canada ever signed as a sovereign state); the Canada-United States International Pacific Salmon Fisheries Commission; and — with Japan as a third partner — the International North Pacific Fisheries Commission.

275. By far the most important antecedent of all, however, was ICNAF, the International Commission for the North Atlantic Fisheries. For over a quarter of a century, from 1949 until 1977, Canadian and United States scientists and fisheries managers collaborated as coastal State partners — largely although by no means exclusively within the ICNAF framework, and in particular within panel 5 of that commission — in the cooperative management of the fisheries of Georges Bank and the Gulf of Maine area.

276. The 1979 Agreement on East Coast Fishery Resources was accordingly no historical aberration: it was rather the continuation of a long bilateral tradition. It cannot be resurrected. It can, however, be taken into account as evidence of Canada's status as a coastal State in relation to Georges Bank, of Canada's established share in the Georges Bank fishery, and of the fundamental justice of a maritime boundary that will maintain this Canadian presence on the Bank.

⁶¹ See Annexes, Vol. I, Historical Introduction.

PART II. THE LAW

CHAPTER I. THE LAW OF MARITIME DELIMITATION AND ITS APPLICATION TO THE PRESENT CASE

Section I. The Legal Framework for the Determination of a Single Maritime Boundary

A. EQUITABLE PRINCIPLES: THE BASIC RULE OF LAW

277. The Court is requested "to decide, in accordance with the principles and rules of international law applicable in the matter as between the Parties . . . the course of the single maritime boundary that divides the continental shelf and fisheries zones of Canada and the United States of America . . .". It is the first time that an international tribunal has had to deal with a maritime boundary of this character: a boundary that will divide the areas in which each Party may exercise sovereign rights and jurisdiction with respect to the natural resources of both the water column and the continental shelf, and that will apply to any other forms of jurisdiction that might be claimed or exercised by either of the Parties in these areas.

278. What, then, are the legal principles governing the determination of a single maritime boundary? In Canada's submission, the answer to this question is as follows: there is an underlying and fundamental norm or rule of law to be applied to all maritime delimitations and therefore to the single maritime boundary in the Gulf of Maine area. This single rule of law is that maritime boundaries are to be determined in accordance with equitable principles, taking account of all the relevant circumstances, in order to achieve an equitable result. And it is Canada's further submission that in the application of equitable principles as a fundamental norm or rule of law, equidistance is the method of delimitation that will bring about an equitable solution in the circumstances of this case.

279. Canada's view of the fundamental rule of law to be applied to all maritime delimitations is consistent with the jurisprudence of the Court on continental shelf boundaries; it is consistent with the *Anglo-French Continental Shelf* award¹; and it is consistent with the provisions of the new Convention on the Law of the Sea.

280. The central role of equitable principles has been incontrovertibly established in relation to the continental shelf. The Court recently reaffirmed the "cardinal importance" of this doctrine in the *Tunisia-Libya Continental Shelf* case². There are, however, two fundamental legal differences between the present case and the other maritime boundaries that have been adjudicated by the Court. The first and most funda-

¹ *Arbitration between the United Kingdom of Great Britain and Northern Ireland and the French Republic on the Delimitation of the Continental Shelf, Decisions of the Court of Arbitration dated 30 June 1977 and 14 March 1978*. London, H.M.S.O., Cmd. 7438.

² *I.C.J. Reports* 1982, p. 47, para. 44.

mental difference — that the object of the present case is a single maritime boundary rather than one restricted to the continental shelf — is a factor whose implications will be touched upon repeatedly in this chapter. The second difference is that here, in contrast to the *North Sea Continental Shelf* cases and the *Tunisia-Libya Continental Shelf* case, the Parties are bound by Article 6 of the Geneva Convention on the Continental Shelf.

281. The application of the Geneva convention in no sense derogates or departs from the fundamental norm that continental shelf boundaries are to be determined on equitable principles, for Article 6 has been placed firmly within the context of this norm. Thus, in the *Anglo-French Continental Shelf* award, the Court of Arbitration characterized Article 6 as a single, combined equidistance and special circumstances rule, with neither branch dominating the other, whose aim is to bring about an equitable result³.

282. If the rule set out in Article 6 were no more than an *ad hoc* rule of conventional law, its application would obviously be restricted to the continental shelf. But the rule has a much broader relevance. The Court of Arbitration in the *Anglo-French Continental Shelf* award construed Article 6 not as a special or narrow rule but rather as a particular expression of a general norm:

"In short, the rôle of the 'special circumstances' condition in Article 6 is to ensure an equitable delimitation; and the combined 'equidistance-special circumstances rule', in effect, gives particular expression to a general norm that, failing agreement, the boundary between States abutting on the same continental shelf is to be determined on equitable principles⁴."

Thus the Court of Arbitration saw an identity of object in the "equidistance-special circumstances" rule and the rules of customary international law⁵. In the present case, it is this very identity of object, and the status of the rule as a particular expression of a general norm of equitable delimitation, that justifies the extension of the provisions embodied in Article 6 to the determination of a single maritime boundary.

283. Article 6 does not, of course, exhaust the applicable sources of law. Even if this case were concerned only with the continental shelf, and not with a single maritime boundary, it would still be necessary to consider customary law and recent developments in the law of the sea. For, as was said by the Court of Arbitration in the *Anglo-French Continental Shelf* award (as yet the only international adjudication that has provided the occasion to apply Article 6 to a delimitation case), "the rules of customary law are a relevant and even essential means both for interpreting and completing the provisions of Article 6"⁶. And although the

³ *Anglo-French Continental Shelf* award, pp. 48-49, paras. 68 and 70.

⁴ *Anglo-French Continental Shelf* award, p. 48, para. 70.

⁵ *Anglo-French Continental Shelf* award, p. 50, para. 75.

⁶ *Anglo-French Continental Shelf* award, p. 50, para. 75.

Court of Arbitration in 1977 did not adopt the contention that the emergence of the exclusive economic zone concept had overtaken the Continental Shelf Convention, it said that "the Court has no doubt that it should take due account of the evolution of the law of the sea in so far as this may be relevant in the context of the present case".⁷ So too did this Court, in the *Tunisia-Libya Continental Shelf* case, recognize the need to take account of developments at the United Nations Conference on the Law of the Sea, *proprio motu* if need be, to the extent that any of the provisions of what was then a draft convention on the law of the sea might reflect either a pre-existing or emergent rule of customary law⁸.

284. The need to consider the recent development of the law is all the more evident in the case of a single maritime boundary. The single maritime boundary to be determined in this case is one that already encompasses the most fundamental aspects of the exclusive economic zone — jurisdiction over the resources of both the water column and the shelf — and that will apply as well, by virtue of Article III of the Special Agreement, to those remaining forms of coastal State jurisdiction within the 200-mile zone that the contemporary law of the sea has brought into being. Taken together, the bundle of rights in issue here bears a close affinity to the concept of the exclusive economic zone. Moreover, the 200-mile fishing zones of the Parties are themselves very largely the reflection of a consensus reached during negotiations at the Third United Nations Conference on the Law of the Sea. And it is not only in the 200-mile distance factor that these zones reflect the new concept but in their specific legal content as well: the manner of their administration, with coastal State regulation of the fish stocks and the allocation of the "surplus" to foreign fleets, implements the provisions now found in the new convention in every fundamental respect.

285. It is clear, therefore, that the law applicable to the determination of the single maritime boundary at issue in this case must take account of the new principles that have recently emerged with respect to both the continental shelf itself and the exclusive economic zone. But the basic rule of law set out in paragraph 278 remains intact: as a fundamental norm, it is applicable to maritime boundaries in general, including those that delimit the newer forms of maritime jurisdiction. There is in this respect a continuum of law that links the shelf and the water column, the traditional law of the sea and its contemporary development, and the conventional and customary law of maritime delimitation. Where the integration of these various elements into a single delimitation will exert a decisive influence is not in the formulation of the basic rule of law itself but rather in its practical application, and above all in the identification and balancing of the circumstances and factors that are relevant to the case.

286. The application of these fundamental precepts to the fishery resources of the water column has in fact already received the express approval of the Court. In its Judgment in the *Fisheries Jurisdiction Case* of 1974, the Court held that the Parties were under an obligation to

⁷ *Anglo-French Continental Shelf* award, p. 40, para. 48.

⁸ *I.C.J. Reports* 1982, p. 38, para. 24.

negotiate an equitable solution, an equitable apportionment of the fishing resources. The Court saw a direct parallel with its approach to continental shelf delimitation and stated:

"It is not a matter of finding simply an equitable solution, but an equitable solution derived from the applicable law. As the Court stated in the *North Sea Continental Shelf* cases:

'... it is not a question of applying equity as a matter of abstract justice, but of applying a rule of law which itself requires the application of equitable principles' (*I.C.J. Reports 1969*, p. 47, para. 85)."

287. The evidence for this unity in the law of maritime delimitation may be found in the fundamentally similar character of the various forms of jurisdiction that are its object. The continental shelf, the exclusive economic zone, and the 200-mile fishing zones of the Parties (which themselves represent, in effect, a partial application of the exclusive economic zone concept) are all, in a sense, species of the same genus. They are offshore zones that are based on the principle of adjacency, that is, upon the legal relationship of the land territory to the sea and the fundamental principle that the land dominates the sea. These zones are analogous in their primarily economic character, as expressed by the concept of sovereign rights over natural resources. And they are alike in their legal character as well, for they fall short of full sovereignty and subsist side by side with many of the traditional freedoms of the high seas. The logic of the case, therefore, suggests the use of the same basic principles of delimitation, adapted in their application to reflect the specific factual and legal properties of each of these forms of maritime jurisdiction and their various combinations⁹.

288. This conclusion is confirmed by the provisions of the new Convention on the Law of the Sea. The unity of the law respecting the delimitation of the shelf and of the exclusive economic zone is reflected in the parallel wording of Articles 74 and 83 of the new Convention on the Law of the Sea¹¹. In their emphasis on achieving an equitable solution, these provisions are consistent with the finding of the Court in the

⁹ *Fisheries Jurisdiction (United Kingdom v. Iceland)*, *Merits, Judgment*, *I.C.J. Reports 1974*, p. 33, para. 78.

¹⁰ Further evidence of the unity of the law of maritime delimitation is offered by Article 7 of the Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas. Paragraph 1 of this Article provides that a coastal State may in certain circumstances adopt unilateral measures of conservation for fish stocks in any area of the high seas adjacent to its territorial sea. Paragraph 5 provides that "the principles of demarcation as defined in Article 12 of the Convention on the Territorial Sea and the Contiguous Zone shall be adopted when coasts of different States are involved".

¹¹ Article 74 as adopted by the Third Conference on the Law of the Sea on 30 April 1982 reads as follows:

"1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

Tunisia-Libya Continental Shelf case that it is the equitable character of the result which is predominant¹². Moreover, in this same emphasis upon an equitable solution, with no prescription of the specific principles and methods to be utilized toward this end, the new articles rule out any false dichotomy between equidistance on the one hand and equitable principles on the other. Finally, they affirm the continued relevance of Article 6 of the Convention on the Continental Shelf in their adoption of the sources of law set out in Article 38(1)(a) of the Statute of the Court: reasserting, by implication, the proposition that there is a single, combined rule of equidistance and special circumstances which is itself a particular expression of a general norm that delimitation must be effected in accordance with equitable principles, in order to achieve an equitable result.

B. THE LEGAL SOURCES OF TITLE: THEIR EVOLUTION AND THEIR RELEVANCE TO DELIMITATION

1. *Natural Prolongation*

289. To the extent that the continental shelf is included within and is a component of a single maritime boundary determination, as in the present case, the legal character of the continental shelf requires consideration. An important juridical principle, enunciated by the Court in the *North Sea Continental Shelf* cases, is that the shelf constitutes the natural prolongation of the land territory of a State¹³.

290. The Judgment in the *North Sea Continental Shelf* cases identified the concept of natural prolongation as one that may have a bearing on delimitation: for it held that delimitation ought to be effected "in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other"¹⁴. At the same time, the Court recognized the distinction between natural prolongation as a conceptual root of title and the issue of delimitation. As the Judgment in the *Tunisia-Libya Continental Shelf* case pointed out:

"The Court also clearly distinguished between a principle which affords the justification for the appurtenance of an area to a State and a rule for determining the extent and limits of such area: 'the appurtenance of a given area, considered as an entity, in no way

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement." (A/Conf.62/L.78, 28 August 1981.)

Article 83 contains identical provisions with respect to the delimitation of the continental shelf between States with adjacent or opposite coasts.

¹² *I.C.J. Reports* 1982, p. 59, para. 70.

¹³ *I.C.J. Reports* 1969, p. 31, para. 43.

¹⁴ *I.C.J. Reports* 1969, p. 53, para. 101(C)(1).

governs the precise delimitation of its boundaries' (*I.C.J. Reports 1969*, p. 32, para. 46)¹⁵."

291. In practice, the role of natural prolongation in the delimitation of shelf areas has proved to be of limited utility. In the *Tunisia-Libya Continental Shelf* case, the Court referred to its findings on the role of natural prolongation in the 1969 Judgment, and made the following observations:

"The Court also attributed to that concept a certain role in the delimitation of shelf areas, in cases in which the geographical situation made it appropriate to do so. But while the idea of the natural prolongation of the land territory defined, in general terms, the physical object or location of the rights of the coastal State, it would not necessarily be sufficient, or even appropriate, in itself to determine the precise extent of the rights of one State in relation to those of a neighbouring State¹⁶."

And in a subsequent passage, it added:

"It would be a mistake to suppose that it will in all cases, or even in the majority of them, be possible or appropriate to establish that the natural prolongation of one State extends, in relation to the natural prolongation of another State, just so far and no farther, so that the two prolongations meet along an easily defined line¹⁷."

Although the Court recognized that the physical factors constituting the natural prolongation might be taken into account as "one of several circumstances considered to be the elements of an equitable solution¹⁸", it emphasized that "the two considerations — the satisfying of equitable principles and the identification of the natural prolongation — are not to be placed on a plane of equality¹⁹".

292. In Canada's view, in spite of the physical underpinnings of the doctrine of the continental shelf, that doctrine is essentially a juridical concept designed to deal with a juridical question. The importance of viewing the continental shelf as a notion subject to legal rules, which take account of but are quite independent of physical facts, was recently reasserted in the strongest terms by the Court in its Judgment in the *Tunisia-Libya Continental Shelf* case²⁰. It follows, in Canada's submission, that natural prolongation is itself essentially a juridical concept, though one that is based on physical relationships; for as a legal concept it refers to the prolongation under the sea not of a continent or a geographical land-mass but of the land territory of a State²¹.

¹⁵ *I.C.J. Reports 1982*, pp. 46-47, para. 44.

¹⁶ *I.C.J. Reports 1982*, p. 46, para. 43.

¹⁷ *I.C.J. Reports 1982*, p. 47, para. 44.

¹⁸ *I.C.J. Reports 1982*, p. 58, para. 68.

¹⁹ *I.C.J. Reports 1982*, p. 47, para. 44.

²⁰ *I.C.J. Reports 1982*, pp. 45-46, paras. 41-42 and pp. 53-54, para. 61.

²¹ *Anglo-French Continental Shelf* award, p. 92, para. 191, and p. 93, para. 194, where the Court of Arbitration said:

"When the question is whether areas of continental shelf, which geologically may be considered a natural prolongation of the territories of two States, appertain to one

293. Natural prolongation, in its specifically legal sense, cannot simply be equated with geology and geomorphology. Indeed, as the separate opinion of Judge *ad hoc* Jiménez de Aréchaga in the *Tunisia-Libya Continental Shelf* case pointed out, the term as used in the 1969 Judgment should not be interpreted as reintroducing into the definition of the continental shelf the physical criteria that had been deliberately omitted in the development of the 1958 convention²². And if these factors are not essential to title, he suggests, they cannot be regarded as independent grounds of delimitation:

"Since geomorphology and geology were not admitted as the tests for the existence and recognition of the right to explore and exploit adjacent submarine areas, they cannot constitute by themselves valid grounds or applicable criteria for continental shelf delimitation. It would be contradictory to recognize that Chile, Peru or Norway possess continental shelf rights, as was done in 1958, despite the existence of deep depressions and regardless of the geological identity of the rock strata, and at the same time to deny these same rights to State A or to State B, setting a limit to their continental shelf rights, on the sole ground of the existence of a trough or depression, or by reason of the sea-bed contour, or of a certain change in the geological composition of the subsoil²³."

The United States itself, it must be noted, has exercised continental shelf rights off the coast of California that disregard trenches and canyons of very considerable depth in the extension of coastal State title²⁴.

294. The recent evolution of the law of the sea has further weakened the role of natural prolongation in its purely physical sense, at least in the area within the 200-mile limit, even where the continental shelf is considered in isolation from the water column; and accordingly the practical relevance of the concept is largely restricted to the area beyond 200 miles. Article 76, paragraph 1 of the new Convention on the Law of the Sea, by providing that proximity alone shall suffice as a source of title as far seaward as the 200-mile limit, has substituted distance for depth as the principal criterion of coastal State title to the continental shelf²⁵. In

State rather than to the other, the legal rules constituting the juridical concept of the continental shelf take over and determine the question. Consequently, in these cases the effect to be given to the principle of natural prolongation of the coastal State's land territory is always dependent not only on the particular geographical and other circumstances but also on any relevant considerations of law and equity."

²² *I.C.J. Reports 1982*, pp. 112-113, paras. 45-47.

²³ *I.C.J. Reports 1982*, p. 113, para. 49.

²⁴ The United States Department of the Interior has permitted leasing of phosphate deposits in the Forty-Mile Bank area of the ocean floor off the coast of California. It has also extended leases to the Cortez Bank, a rise in the same area. These features are separated from the coast by trenches some 1,200-1,500 metres deep. See Frank J. Barry: "The Administration of the Outer Continental Shelf Lands Act." (*Natural Resources Lawyer*, Vol. 1, 1968, p. 46.)

²⁵ Article 76, para. 1 as adopted by the Third Conference on the Law of the Sea on 30 April 1982 reads as follows:

"1. The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance." (A/Conf.62/L.78, 28 August 1981.)

this respect, as the Court noted in the *Tunisia-Libya Continental Shelf* case, the law modifies the legal concept of the continental shelf as a "species of platform" and departs from the principle that natural prolongation is the sole basis of title²⁶.

295. It is not only the introduction of the distance criterion that has diminished the role of geological and geomorphological features in relation to the continental shelf. It is equally the express recognition in Article 76 that coastal State rights extend, regardless of exploitability, beyond the 200-metre isobath — a depth that was adopted in the 1958 convention partly because it corresponded approximately to the point at which the shelf "break" at the top of the continental slope most frequently occurs. In contrast, the new convention now recognizes the *ipso facto* title of the coastal State at the much greater depths of the continental slope and rise as far as the outer limit of the margin as defined in Article 76. No longer is the spotlight aimed exclusively or primarily at the relatively shallow platform that constitutes the continental shelf proper, in its purely physical sense. On the greatly extended scale — both geomorphological and geographical, vertical and horizontal — that is reflected in the new definition, the superficial features of the shelf platform fade into insignificance. In the Gulf of Maine area, of course, these principles are given a very concrete expression, for the terminal points of the 200-mile claims of the Parties lie well beyond the shelf break at a water depth of about 3,000 metres.

296. In the present case there is a further, and quite conclusive, reason why it must be equity as a legal concept, and not the physical facts of geology or geomorphology, that governs. The Court is not concerned solely with a continental shelf boundary, but with a single maritime boundary that will divide the fishing zones of the Parties as well. If the physical structure of the seabed has become at best a secondary and exceptional factor in the delimitation of the continental shelf, it must inevitably be accorded far less weight — if any — in the case of a single maritime boundary. The rights in issue and the basis of jurisdiction respecting the resources of the water column are of an entirely different order, and unrelated in even a conceptual sense to the physical structure of the seabed. So too are the equities at stake.

2. Adjacency and Proximity

297. Adjacency is the common denominator that links the rights of the coastal State to the shelf, the 200-mile fishing zone, and the more comprehensive concept of the exclusive economic zone. The Court stressed the fundamental character of adjacency in relation to the shelf in the *Tunisia-Libya Continental Shelf* case, identifying it as the "paramount criterion for determining the legal status of the submerged areas" off the coast of a State²⁷. Although the Court made clear in this passage

²⁶ *I.C.J. Reports 1982*, p. 48, paras. 47 and 48.

²⁷ *I.C.J. Reports 1982*, p. 61, para. 73.

that it was discussing the basis of legal title rather than delimitation as such, there must necessarily be some correlation between the two, as the function of delimitation is precisely to determine the specific area within which such title exists. Adjacency is all the more fundamental as the legal foundation for a 200-mile zone: for here it is the spatial relationship between the land and the sea, expressed in terms of the 200-mile distance principle, that provides the sole and exclusive criterion of coastal State title.

298. Although the Court held in the *North Sea Continental Shelf* cases that there is "no necessary, and certainly no complete, identity between the notions of adjacency and proximity", it recognized that adjacency implies proximity "in a general sense²⁸". The role of proximity in this general sense has been greatly strengthened by the new emphasis on the criterion of distance from the coast as the legal basis of title to continental shelf rights as far seaward as the 200-mile limit, and as the sole basis of coastal State rights and jurisdiction within the exclusive economic zone. The importance given to the distance criterion, as an expression of the more fundamental concept of adjacency, cannot fail to exert an influence on the law of continental shelf delimitation. That influence must be all the more profound where the boundary of a 200-mile fishing zone or an exclusive economic zone, or a single maritime boundary delimiting both the water column and shelf, is in issue.

299. There are two closely related implications that flow from the concepts of adjacency and proximity as the basis of coastal State rights beyond the territorial sea. The first is that the coast and its relationship to the jurisdictional zones to be delimited must have a central role in the delimitation process. The second is that the proximity of these zones to the adjacent coasts is a factor of great importance in assessing the equities of delimitation; for where distance is a fundamental defining principle — the exclusive defining principle in relation to the water column and in relation to the shelf within 200 miles — proximity clearly takes on a special importance as the most concrete expression and measure of adjacency. And at the same time, the diminished role of natural prolongation in its physical sense, and its virtual irrelevance where the water column is concerned, reinforces the primacy that must be accorded to geography — "two-dimensional" geography — in the ranking of the purely physical factors that are relevant to delimitation.

Section II. The Relevant Circumstances in the Context of the Gulf of Maine Area

A. INTRODUCTION

300. Equitable principles cannot be identified or applied in the abstract. In the *Tunisia-Libya Continental Shelf* case the Court observed that it is "the result which is predominant; the principles are subordinate to the goal", and it went on to add:

²⁸ *I.C.J. Reports* 1969, p. 30, para. 42.

"The equitableness of a principle must be assessed in the light of its usefulness for the purpose of arriving at an equitable result. It is not every such principle which is in itself equitable; it may acquire this quality by reference to the equitableness of the solution. The principles to be indicated by the Court have to be selected according to their appropriateness for reaching an equitable result. From this consideration it follows that the term 'equitable principles' cannot be interpreted in the abstract; it refers back to the principles and rules which may be appropriate in order to achieve an equitable result²⁹."

The Court put the entire matter in a nutshell in the succeeding paragraph when it said that its task is "to apply equitable principles as part of international law, and to balance up the various considerations which it regards as relevant in order to produce an equitable result³⁰". The search, accordingly, is not for equitable principles *per se*, but for those factors that are legally relevant to the goal of an equitable solution in the case at hand.

301. Some of the factors that have received attention in the context of continental shelf delimitation are of general applicability and may easily be transposed to the determination of a single maritime boundary. Coastal geography and the conduct of the parties are within this category. Others — especially geology and geomorphology — are referable to the continental shelf alone; and while their consideration need not necessarily be ruled out entirely in the context of a single maritime boundary, their relative importance must obviously be much reduced. But where the present case introduces a new and special dimension is in its requirement that what may be termed the "water column equities" be taken into account: that these factors — in particular the respective interests of the two countries in the fisheries of the Gulf of Maine area — be weighed and integrated in a single balancing-up that will produce an equitable result overall. It is far more than a matter of simply listing all the relevant factors; for as the Court stated in the *North Sea Continental Shelf* cases —

"... more often than not it is the balancing-up of all such considerations that will produce this result rather than reliance on one to the exclusion of all others. The problem of the relative weight to be accorded to different considerations naturally varies with the circumstances of the case³¹."

302. If the identification of the relevant circumstances depends largely on the facts of each case, so too must the balancing-up. In the present matter, it is the Canadian submission that the fisheries equities must be given particular weight in the light of the exceptional value of the fishery resources of the Georges Bank area and their established economic importance. When, in the *dispositif* of the *North Sea Continental Shelf* cases, the Court emphasized the importance of the location of natu-

²⁹ *I.C.J. Reports* 1982, p. 59, para. 70.

³⁰ *I.C.J. Reports* 1982, p. 60, para. 71.

³¹ *I.C.J. Reports* 1969, p. 50, para. 93.

ral resources "so far as known or readily ascertainable"³², it was no doubt the importance of established patterns of use, and especially the dependence and vested economic interests that come to be associated with these patterns, that it had in mind. In the case of Georges Bank, it is the fishery resources that are known and certain in their extent, and that form the basis of the patterns of exploitation and dependence that give this dispute much of its real and immediate importance to Canada. Moreover, in contrast to the non-living resources of the shelf that could be exhausted in as little as a generation, the fisheries are renewable resources whose economic benefits can be indefinitely prolonged.

B. THE GENERAL CONFIGURATION OF THE COASTS

303. The Judgment given by the Court in the *Tunisia-Libya Continental Shelf* case shows that the coastal geography — the configuration of the coasts — is a leading factor in the law of maritime delimitation, since the coast is both the basis for title and the point of departure from which one must set out in any delimitation. This principle was summed up in the following passage from that Judgment:

"The geographic correlation between coast and submerged areas off the coast is the basis of the coastal State's legal title. As the Court explained in the *North Sea Continental Shelf* cases the continental shelf is a legal concept in which 'the principle is applied that the land dominates the sea' (*I.C.J. Reports 1969*, p. 51, para. 96)³³."

304. Other sources of law confirm the importance of coastal geography. The combined equidistance and special circumstances rule in Article 6 of the 1958 Convention on the Continental Shelf emphasizes geographical factors in the organization of its structure around the concepts of opposite and adjacent coasts. Similarly, the delimitation provisions of the new Convention on the Law of the Sea reflect the same preoccupation with coastal relationships in their reference to States with opposite or adjacent coasts, though the new formulation departs from the format of Article 6 by merging these two broad geographical categories into a single formulation. Coastal geography was also accorded a pivotal role in the reasoning of the Court in the *North Sea Continental Shelf* cases³⁴, despite the emphasis upon natural prolongation as the conceptual basis of the "inherent right" of coastal States to the continental shelf.

305. In dealing with the role of coastal geography in the delimitation of the continental shelf, the Court in the *North Sea Continental Shelf* cases distinguished between the *general* configuration of the coasts of the parties, and the presence of incidental, special or unusual features³⁵. In the Canadian submission the application of the maxim that "the land dominates the sea" requires that an equitable delimitation faithfully reflect the general configuration of the coasts of the Parties,

³² *I.C.J. Reports 1969*, pp. 53-54, para. 101(D)(2).

³³ *I.C.J. Reports 1982*, p. 61, para. 73.

³⁴ *I.C.J. Reports 1969*, p. 51, para. 96.

³⁵ *I.C.J. Reports 1969*, p. 50, para. 91 and pp. 53-54, para. 101(D)(1).

and that features of the kind mentioned by the Court have only an influence proportionate to their geographical importance and their real connection to the area to be delimited. As paragraphs 331 to 356 will show, the Canadian equidistance line has been constructed in a manner that fulfills these two requirements. It reflects the overall comparability of the Canadian and United States coasts in the Gulf of Maine area, while discounting the special or unusual features that would otherwise have a disproportionate and inequitable effect upon the location of an equidistance line.

C. THE CONTINUITY OF THE CONTINENTAL SHELF

306. Although the "physical and geological structure" of the continental shelf was identified in the *dispositif* of the *North Sea Continental Shelf* cases³⁶ as a factor of potential relevance to delimitation, the subsequent development of the law — as outlined in paragraphs 289 to 296 — demonstrates that natural prolongation rarely provides a defining principle that may be used in order to achieve an equitable delimitation. In the case of a single maritime boundary, it should again be noted, these factors are even less likely to be of genuine relevance.

307. Beyond these general considerations of law, the physical structure of the continental shelf in the present case is such that the delimitation must necessarily depend upon other factors. The Gulf of Maine area is characterized by a single, uniform and continuous continental margin common to both Parties, and whatever irregularities may exist in its seafloor topography are secondary features that in no manner change or interrupt this basic structural continuity. Though the whole area abounds in banks and depressions — it is a shelf whose surface has been scoured by glaciation — these are features whose very dispersion and superficiality rule out their relevance for delimitation.

308. In such a case, the physical evidence of natural prolongation would be of little assistance even if the delimitation were concerned with the continental shelf alone. The situation, in this regard, is analogous to that considered in the *Tunisia-Libya Continental Shelf* case:

"In the present case, in which Libya and Tunisia both derive continental shelf title from a natural prolongation common to both territories, the ascertainment of the extent of the areas of shelf appertaining to each State must be governed by criteria of international law other than those taken from physical features³⁷."

For geomorphological or geological features to be decisive in determining a continental shelf boundary, they would have to constitute "such a marked disruption or discontinuance of the sea-bed as to constitute an indisputable indication of the limits of two separate continental shelves, or two separate natural prolongations³⁸". This is a stringent test, which no physical feature in the Gulf of Maine area can begin to meet. There is

³⁶ *I.C.J. Reports* 1969, pp. 53-54, para. 101(D)(2).

³⁷ *I.C.J. Reports* 1982, p. 58, para. 67.

³⁸ *I.C.J. Reports* 1982, p. 57, para. 66.

here a single continental shelf that constitutes the natural prolongation of the land territory of both Parties, and accordingly, as in the circumstances of the *Tunisia-Libya Continental Shelf* case, "no criterion for delimitation of shelf areas can be derived from the principle of natural prolongation as such"³⁹.

309. The situation may also be compared to that considered in the *Anglo-French Continental Shelf* award, where the Court of Arbitration held that to attach critical significance to the Hurd Deep-Hurd Deep Fault Zone "would run counter to the whole tendency of State practice on the continental shelf in recent years"⁴⁰. It noted the placement of such a feature is simply "a fact of nature" that cannot be equated with special circumstances under Article 6 or with inequity under customary law⁴¹. *A fortiori*, physical features of this character are of even less assistance in the delimitation of a single maritime boundary for both the water column and the continental shelf.

310. It is true that there may be situations where geomorphological structures that do not amount to an interruption in the continuity of the continental shelf might properly be taken into account as relevant circumstances in determining the actual course of a boundary, at least where the continental shelf alone is being delimited. Yet, as the Court pointed out in *Tunisia-Libya Continental Shelf* case —

"In such a situation, however, the physical factor constituting the natural prolongation is not taken as a legal title, but as one of several circumstances considered to be the elements of an equitable solution"⁴².

Thus we are brought back to the essential aim of securing an equitable result (as the Court again implied in subparagraph A(3) of the *dispositif*⁴³), and no physical feature that might be proffered as a potential boundary between States adjoining the same shelf could be entertained as such if contrary to that aim.

D. NATURAL RESOURCES AND ECONOMIC FACTORS

311. The circumstances relevant to the determination of the single maritime boundary that will divide the 200-mile fishing zones of the Parties must obviously include their respective interests in the fishery resources of the boundary area. Indeed, in the Canadian submission, the economic dependence associated with established patterns of exploitation of the fisheries of the disputed area must be given a special weight in the balancing-up of all the relevant circumstances if a truly equitable result is to be achieved.

312. Though this is the first case in which the delimitation of 200-mile fishing zones or exclusive economic zones has been considered, the

³⁹ *I.C.J. Reports* 1982, p. 92, para. 133(A)(2).

⁴⁰ *Anglo-French Continental Shelf* award, p. 63, para. 107.

⁴¹ *Anglo-French Continental Shelf* award, p. 63, para. 108.

⁴² *I.C.J. Reports* 1982, p. 58, para. 68.

⁴³ *I.C.J. Reports* 1982, p. 92, para. 133.

established legal principles respecting other forms of maritime jurisdiction have a continuing relevance. The international jurisprudence on these matters has accorded to actual economic considerations, especially those arising out of fishing practices, an important and sometimes decisive role. This of course was a central theme in the *Fisheries* case⁴⁴; and it is one that emerged again in the very different circumstances of the *Fisheries Jurisdiction* case. Indeed, it has been said that established economic interests have traditionally outweighed all others in the general international law of maritime claims, and that "actual exploitation of the resources of the disputed area is probably the most decisive consideration⁴⁵".

313. Fishery resources differ from hydrocarbons in many important respects; but the most fundamental difference in the present case is that the fishery resources of the Gulf of Maine area are fully known and have become the basis of present livelihoods and economic dependence, and these resources are among the most important of the Atlantic seaboard. It is these facts more than anything else that distinguish the fishing interests in this case from the historic fishing rights and unpredictable economic variables that were discussed in the *Tunisia-Libya Continental Shelf* case⁴⁶. For here the economic interests in the fishery are directly in issue as the most crucial component of the case, and these interests cannot be compared with the prospective and hypothetical economic benefits that might result from a future discovery of as yet unknown resources. Here too — in further contrast with the circumstances of the *Tunisia-Libya Continental Shelf* case — the fishery resources concerned lie squarely in the area in dispute.

314. There is a further important difference. The continental shelf rights in dispute have always been exclusive as a matter of legal principle, since these are rights that have vested *ipso facto* and *ab initio* as an inherent attribute of coastal State status since the continental shelf régime was established. The fishery resources of the superjacent waters, on the other hand, formed part of the commons of the high seas until the Parties' introduction of 200-mile zones in 1977, pursuant to a fundamental innovation in the law of the sea that has only recently gained acceptance. The fact that each Party had an unquestioned legal right of access to the fisheries of the disputed area until very recently suggests, in Canada's submission, that added weight should be given to established coastal State patterns of exploitation and dependence as circumstances that are relevant to the equities of delimitation.

315. Even the law on continental shelf delimitation, in fact, strongly suggests that *established* resource interests in the disputed area are among the most important factors to be taken into account. In the *North Sea Continental Shelf* cases, the Court confirmed the relevance of the natural resources of the areas involved, "so far as known or readily ascertainable⁴⁷". And the potential relevance of actual exploitation of

⁴⁴ *Fisheries, Judgment, I.C.J. Reports 1951*, p. 116.

⁴⁵ A. L. W. Munkman: "Adjudication and Adjustment — International Judicial Decisions and the Settlement of Territorial and Boundary Disputes." (*British Yearbook of International Law*, Vol. 46, 1972-1973, p. 101.)

⁴⁶ *I.C.J. Reports 1982*, p. 77, para. 107.

⁴⁷ *I.C.J. Reports 1969*, pp. 53-54, para. 101(D)(2).

known resources was alluded to by the Court in the *Tunisia-Libya Continental Shelf* case as an element that might be taken into account "in the process of weighing all relevant factors to achieve an equitable result"⁴⁸. It is perhaps only now, in the context of a single maritime boundary that will govern both the fisheries and the shelf as a unified whole, that this principle can receive its full expression.

316. It is not economic interests in the abstract that call for consideration. The fisheries interests of the Parties operate not in isolation but in conjunction with the geographic circumstances by showing the close linkage and affinity between the relevant coasts and the disputed area. Moreover, the interests that have a legal relevance are those that have an established reality: interests that are actual not merely conjectural, though not necessarily of the very long duration that might be required in support of a claim of historic title. It is actual dependence and not indeterminate considerations of relative national wealth and poverty that are relevant and that are in issue here.

317. This analysis suggests that in the case of a single maritime boundary, where fisheries interests represent the dominant component of the interests at stake, a somewhat modified approach to the notion of the "relevant coasts" may be in order. It is true, of course, that these should exhibit an appropriate degree of adjacency and proximity to the disputed area. It is equally apparent that in a case of this nature it ceases to be appropriate to identify the relevant coasts and to assess their importance in a purely geometrical way, in terms of their abstract spatial characteristics, without regard to their actual reliance upon the resources of the area concerned. There must be, in other words, an interaction between the physical and the economic geography and the manner in which these are balanced in assessing the equities of delimitation.

318. Georges Bank is by far the most important part of the Gulf of Maine area in terms of economic value, and it is the focal point of the present dispute. The strength of the Canadian fishery on Georges Bank, and the great dependence of southwest Nova Scotia on that fishery for its well-being, give the area a special economic significance to Canada that is entirely without parallel in the United States. The fishing industry is the leading employer in Nova Scotia in the primary and secondary industrial sectors, and Georges Bank is the single most valuable fishing ground available to Nova Scotia fishermen. The heartland of this industry lies in southwest Nova Scotia, in close proximity to Georges Bank. In equity, these factors must surely be given great weight in the balancing-up of all the relevant circumstances; for it is the equitable character of the *result* that counts.

319. In the Canadian submission, the application of equitable principles demands that Georges Bank not be allotted in its entirety to one or other of the Parties, for it is an area that has always been freely open to and exploited by fishermen of both coastal States and whose present and prospective economic importance has been amply demonstrated. The boundary line claimed by Canada projects across the central portion of Georges Bank, and its effect is to leave over one-half of the Bank subject to the jurisdiction of the United States. It is a line that

⁴⁸ *I.C.J. Reports 1982*, p. 78, para. 107.

achieves an equitable result in its division of this area, and that respects the legitimate and vested economic interests of the two Parties. The United States claim, on the other hand, would appropriate the entirety of Georges Bank to exclusive United States jurisdiction, excluding Canada from an offshore area to which Canada has had access and over which Canada has exercised jurisdiction for many years. It is a claim that, for that very reason, fails to meet the most fundamental test of the law of maritime boundary delimitation.

E. THE CONDUCT OF THE PARTIES

320. The Court has recently held that the conduct of the Parties is a circumstance that may be "highly relevant" to the determination of the method of delimitation, quite apart from any considerations of estoppel or tacit agreement⁴⁹. For as the Court pointed out, the crux of the matter is the identification of a method of delimitation that will ensure an equitable result, and it follows that the search for this method should "take into account whatever indicia are available of the line or lines which the Parties themselves may have considered equitable or acted upon as such"⁵⁰.

321. The equidistance method used in the Canadian claim is one that meets this test. From 1965 onwards until the end of the decade, the clearly expressed position of the Government of Canada, to the effect that the equidistance method produced the correct boundary in law, was accepted by the United States Government. It was accepted not only in its legal premises, but in the equity of its application in the circumstances of the Gulf of Maine area. The implications of this pattern of conduct are discussed in Chapter II below as a ground of estoppel or acquiescence; but in the Canadian submission it is of at least equal importance as one of the indicia of the line which both Canada and the United States have considered equitable and have acted upon as such. Even in the wake of the recent United States leasing programs, the Canadian claim corresponds to the respective areas in which each Party has granted leases or permits for hydrocarbon operations.

322. It is important to stress a somewhat different but equally salient aspect of the conduct of both Parties. For many years, Canada and the United States have been coastal State partners in relation to the fisheries of Georges Bank, and have cooperated closely in this capacity. Canada's active role in the conduct of scientific research aimed at the management of these resources and the cooperation of government scientists of both countries in these endeavours have been outlined in paragraphs 195 to 199. So too has the Canadian record of activity — again, very often in cooperation with United States agencies — in the practical management programs carried out under the aegis of ICNAF's panel 5. ICNAF itself, to which both Canada and the United States were contracting parties from the outset until the 1977 extension of jurisdiction, recognized the special coastal State interests of both Canada and the United States in Georges Bank by naming these two countries — on the

⁴⁹ *I.C.J. Reports 1982*, p. 83, para. 117.

⁵⁰ *I.C.J. Reports 1982*, p. 84, para. 118.

initiative of the United States — as the sole charter members of the panel responsible for this portion of the convention area. The whole pattern of the relationship can only suggest that the Georges Bank fishery was deemed by the Parties to be a shared resource. There may well have been differences over the precise shares in that fishery to which the fishermen of Canada and the United States were entitled, but of the reality and legitimacy of the Canadian interest there was never any doubt.

323. The mutual acceptance of the equity and legitimacy of Canada's rights in respect of Georges Bank was confirmed again by the negotiation and signature of the 1979 East Coast Fishery Resources Agreement. The agreement was negotiated slowly, arduously, and with painstaking care by diplomatic representatives endowed with a special authority and mandate by their governments. It represents the concerted efforts of these special negotiators, working together in a setting that permitted an objective appraisal of the issues, yet acting at the same time in close consultation with the fishermen and other regional interests that would be affected. The executive branches of both countries, including the President of the United States and his Secretary of State, viewed the settlement as an appropriate and equitable one and gave it their unqualified support⁵¹; and both countries, of course, signed the agreement. Accordingly, though not a treaty in force, the agreement provides strong corroborative evidence of the concrete equities of the fisheries relationship; and it demonstrates, with a clarity and precision not to be found elsewhere in the record, the Parties' shared perception of the character of their respective interests in the fisheries of Georges Bank.

324. The terms of the agreement carry an unmistakable message. Its main emphasis was on the sharing of the fishery resources of Georges Bank, and on the cooperative management of its principal commercial species. The allocations set out in the agreement, it will be recalled, gave Canada a major portion of the fishery resources of Georges Bank as a whole, with permanent fishing rights throughout the Bank: close to three-quarters of the scallops found both on Georges Bank itself and on the more westerly grounds of the Great South Channel and Nantucket Shoals, together with a long list of allocations to a wide variety of other species. At the same time, it made Canada and the United States the joint managers of these resources, with Canada in the lead role for scallops — the key commercial stock of the area — throughout Georges Bank east of the Great South Channel area⁵². The clear implication is that, in the view of both governments, each of the two Parties has a legitimate claim to a substantial share of the fishery resources of the Bank — a share that is broadly commensurate with the Canadian claim — and to a major role in the conservation and management of these resources.

325. The signature of the agreement and the support given to it by the Government of the United States point to the inequitable — and

⁵¹ On 18 April 1979, President Carter transmitted the east coast fisheries agreement and the maritime boundary settlement treaty to the United States Senate for its advice and consent prior to ratification. In his letter of transmittal, the President described the agreements as being "fair to both Parties" and in the "best interests" of the United States. See *Message from the President of the United States*, 96th Congress, 1st Session (1978), reproduced in the Annexes, Vol. II, Annex 43.

⁵² See paras. 255-256 and the text of the 1979 agreement in the Annexes, Vol. I, Annex 20.

totally inconsistent — character of the assertion that Canada should be deprived of the fishing grounds of eastern Georges Bank that are so vital to its regional economy. It is no adequate response that the United States Senate failed in the end to give its consent to the agreement (though it might also be recalled that the agreement was not actually rejected by that body). The more important fact, for these present purposes, is that the agreement was approved and signed by each government, and that it was strongly endorsed by the President and Secretary of State of the United States: by the highest authorities, in other words, of the executive branch of the United States, charged with the conduct of the foreign relations of that nation. That endorsement was expressly made on the basis that the result embodied in the agreement was equitable — “fair to both Parties”, in the words of the President’s message to the Senate⁵³.

F. RECAPITULATION

326. In summary, it is submitted that the following relevant circumstances, when integrated and properly weighed in a single balancing-up, provide the basis of an equitable delimitation in the present case:

- (a) the general configuration of the coasts, the broad comparability of the relevant coasts of the two Parties, and the continuity of the single continental shelf;
- (b) the known resources of the boundary area, the established patterns of their utilization, and above all the relative degrees of economic dependence associated with these patterns;
- (c) the conduct of the Parties as a recognition, both tacit and express, of the fundamental equity of the equidistance method in the Gulf of Maine area with respect to both hydrocarbon resources and fisheries.

Section III. The Method or Methods Most Appropriate in Light of All the Relevant Circumstances

A. THE GENERAL FRAMEWORK

327. The Court confirmed in the *Tunisia-Libya Continental Shelf* case that the search for an appropriate method must begin with an analysis of the geographical situation:

“Any examination of methods, like the examination of applicable rules and principles, must take as starting-point the particular geographical situation, and especially the extent and features of the area found to be relevant to the delimitation⁵⁴.”

It is, accordingly, to the coastal geography of the Gulf of Maine area that this chapter will now turn.

⁵³ Annexes, Vol. II, Annex 43.

⁵⁴ *I.C.J. Reports* 1982, p. 82, para. 114.

328. The Gulf of Maine area is a geographical and physical continuum, and the method of delimitation should be consistent with this essential unity. When the focus is narrowed, however, it is possible to identify at least two principal components of this general area, not as discrete or self-contained features, but as elements of a larger whole.

329. The first of these is the Gulf of Maine itself, bordered by the coasts of the two Parties and thus, in a sense, "within" their respective territories⁵⁵. The second principal component, where Georges Bank is situated, lies seaward of the Gulf. In this outer part there is an unfolding in the geography, as the coasts open up to face the outer Atlantic, and the area to be delimited is more properly described as "off" than as "within" the territories of the Parties. There is an analogy, imperfect but instructive, with the situation considered in the *Anglo-French Continental Shelf* award, for there the English Channel lay between the coasts of the United Kingdom and France, while the Atlantic area or the southwestern approaches lay off the coasts of these two countries⁵⁶.

330. The method of delimitation utilized in the Canadian claim is one that respects both the continuity of the area as a whole and the differing characteristics of its inner and outer portions. A single basic method — the equidistance method — has been used throughout, but the manner of its application has been varied and adapted as appropriate in order to take account of particular geographic and other circumstances as the Canadian line proceeds on its course. The unity of the Gulf of Maine area thus finds expression in the selection of equidistance as the single basic method for the entire length of the boundary, while its local variations are reflected in the adaptation of this method to the distinguishing characteristics of each portion of the area.

B. THE INNER SEGMENTS OF THE LINE

331. In Canada's submission, the prevailing geographical relationship within the Gulf of Maine is largely one of opposite coasts, especially beyond the innermost part of the Gulf. In the vicinity of Point "A" an element of oppositeness characterizes the relationship as between Nova Scotia and Maine, becoming increasingly dominant further to seaward where the coasts of Nova Scotia and Massachusetts face each other across the Gulf. This opposite relationship is most pronounced in the area where the boundary passes between Cape Sable and Cape Cod.

332. In the case of opposite States, the equidistance method generally produces results that accord with equitable principles. Thus the Court in the *North Sea Continental Shelf* cases observed that —

"The continental shelf area off, and dividing, opposite States, can be claimed by each of them to be a natural prolongation of its territory. These prolongations meet and overlap, and can therefore only

⁵⁵ The Gulf of Maine itself may be viewed as comprising two sectors: those waters lying immediately off New Hampshire, Maine and the Fundy coasts of New Brunswick and Nova Scotia, and those waters between the facing coasts of Nova Scotia and Massachusetts.

⁵⁶ *Anglo-French Continental Shelf* award, p. 110, paras. 232-233.

be delimited by means of a median line; and, ignoring the presence of islets, rocks and minor coastal projections, the disproportionately distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved⁵⁷."

Equidistance was applied by the Court of Arbitration in the *Anglo-French Continental Shelf* award in order to produce an equitable result in a case involving the opposite coasts of the United Kingdom and France in the English Channel⁵⁸. Similarly, the Court in the *Tunisia-Libya Continental Shelf* case noted the weight to be given to the position of an equidistance line in a geographical situation involving a degree of oppositeness, and gave effect to this factor in its balancing of equitable considerations⁵⁹. The equidistance method, in consequence, can be said to occupy a leading position under both customary law and under the regime of Article 6 of the 1958 convention, as a means of achieving an equitable delimitation between opposite States.

333. The emphasis, of course, must always be on the actual relationship of the two coasts and not on any sharp distinction between opposite and adjacent States. There are many geographical situations that escape an easy assignment to either of these two conceptual categories. It is often a difference more of degree than of kind, and the appropriateness of equidistance as a method to effect an equitable delimitation is always a function of the geographical and other circumstances. But where the geographical relationship is reasonably clear, and where oppositeness is the dominant element, it is generally the median line that will best produce results in accordance with equitable principles. In the present case, the coasts of Nova Scotia and of Maine and Massachusetts face each other across the Gulf in a relationship whose dominant characteristic is oppositeness, and the use of equidistance as the basic method of delimitation is therefore in order.

334. It is important to assess the appropriateness of the Canadian line not only in terms of the broad geographical patterns of the Gulf, but in terms of the manner in which it reflects the local geography throughout its course. *Figure 32* depicts the Canadian claim, with construction lines joining the basepoints on both coasts to the relevant turning points on the Canadian equidistance line. Thus each segment of the line can easily be correlated with the appropriate pairs of controlling basepoints on the two coasts.

335. The basepoints on the United States side have been designated by letters from "a" to "f" inclusive, while those on the Canadian side have been given letters "s" to "y" inclusive. The turning points are indicated by the numbers assigned to them in the Canadian Order in Council promulgating the line⁶⁰. Turning points 1 to 40 inclusive are all landward of Point "A" where the adjudicated boundary is to begin and

⁵⁷ *I.C.J. Reports* 1969, p. 36, para. 57.

⁵⁸ *Anglo-French Continental Shelf* award, p. 95, para. 201.

⁵⁹ *I.C.J. Reports* 1982, p. 88, para. 126.

⁶⁰ *Fishing Zones of Canada (Zones 4 and 5) Order, amendment*. P.C. 1979-184, 25 January 1979, published in the *Canada Gazette*, Part II, Vol. 113, No. 3, 14 February 1979, and reproduced in the Annexes, Vol. II, Annex 42.

- (15) do not appear in *Figure 32*; the series as illustrated accordingly begins at turning point 41. Point "A" itself is situated between turning points 41 and 42 at 20.5 nautical miles from basepoint "b" on the United States coast and basepoint "s" on the Canadian coast, the basepoints that control the line between those two turning points. Point 52, where the Canadian claim intersects the 200-mile arc defining the Canadian fishing zone, is not a turning point as such but simply indicates the terminus of the Canadian line at the 200-mile limit.

336. In the first segments of the line beyond Point "A", the turning points are closely grouped. This is because of the nearness and irregular configuration of the adjacent coasts, causing new features to move into a position of closest proximity to the line at a fairly frequent rate as its course proceeds seaward. From Point "A" (between turning points 41 and 42) to turning point 45, the succeeding segments of the line are controlled on the United States side by a cluster of basepoints — "a", "b" and "c" — separated by very short distances and situated on rocks and islands a few miles off the mainland coast of the state of Maine. On the Canadian coast, most of this inner portion of the line is controlled by two closely situated points — "s" and "t" — on Machias Seal Island (south of New Brunswick's Grand Manan Island), until Trinity Ledge (basepoint "u" off the Digby county coast in Nova Scotia) takes over for the short segment of the line from turning points 44 to 46. Although the Canadian line in this inner portion allots less ocean space to Canada than would the United States claim (a factor that holds true throughout most of the Gulf of Maine itself), it is submitted that it bears a perfectly appropriate relationship to the coastal geography, dividing the space seaward of the controlling basepoints in a roughly equal fashion. (See the shaded area in *Figure 32*.)

(15) 337. A lengthy portion of the line, from turning point 45 to turning point 49, is controlled by Mount Desert Rock, designated as basepoint "d". This is a rock that lies 22 nautical miles off the mainland coast of Maine and about 17.5 nautical miles from Mount Desert Island. On the Canadian side, the same portion of the line is governed successively by four basepoints off the Nova Scotia coast. The first two — "u" and "v" — are situated 6 and 7.6 nautical miles respectively off the Canadian mainland and control about one-half of the boundary from turning points 45 to 49, while basepoints "w" and "x", close to Seal Island at 14.5 nautical miles off the mainland coast, are utilized for the remainder of this portion of the line. The point at which the two claimed lines intersect for a second time and then open out to create the disputed area occurs between turning points 47 and 48.

338. Basepoint "e" on the United States side is Matinicus Rock, a small islet 17.75 nautical miles off the mainland coast of the state of Maine. Along with basepoint "x" on the Canadian side, it controls the segment of the line from turning point 49 to turning point 50. The line reaches the 200-metre contour on the northern edge of Georges Bank just before turning point 50. (See *Figures 3 and 32*.)

(3) (15) 339. Clearly, then, the Canadian line within the Gulf of Maine has been constructed in a manner that is equitable to the United States. Were an equidistance line in this area to be constructed from basepoints on the United States mainland, the boundary would be shifted further

westward to the disadvantage of the United States; but at no point does the Canadian methodology use the actual coast of Maine or New Hampshire to determine the course of the line. Instead, through the use of Mount Desert Rock and Matinicus Rock, the Canadian line is constructed from basepoints on the United States side that lie much farther out to sea than the corresponding basepoints on the Canadian side. The effect is to avoid encroachment upon areas appertaining to the United States and to steer the line in a direction that keeps it considerably closer to the Canadian land mass — an effect especially notable in the long stretch of the line between turning points 45 and 49. In this way the greater part of the ocean space within the Gulf of Maine itself is allocated to the United States, in keeping with the geographic configuration of this inner area.

(15) 340. Thus the concavity of the coast of Maine and New Hampshire (for every bay or gulf implies some degree of concavity) produces no untoward effect. (See *Figure 32*.) For although there are circumstances where concavity may be productive of inequity, it largely depends upon whether the basepoints that control the course of the line are *within* or outside the concavity. In the present case, a glance at the chart shows that no point along the concavity of the United States coast between Matinicus Rock and Cape Cod Canal can have any effect in pulling the boundary towards the United States coast. To echo the words of the Court in the *North Sea Continental Shelf* cases, the Canadian line has been drawn in a manner that remedies or compensates for whatever effect this concavity in the United States coast might otherwise have produced⁶¹. And — as will be demonstrated in paragraphs 346 to 350 — when the outer area, including Georges Bank, is approached, the concave portion of the United States coast has long since ceased to exercise any influence on the course of the line; for by that point it is the *convexity* of the “bulge” in the Massachusetts coast southeast of Boston that is the determining feature.

341. The offlying basepoints used for the Canadian line in the Gulf of Maine thus have the effect of constructing a comparatively regular United States coastal front, leaving a large expanse of ocean space on the landward side of the United States basepoints. The overall effect, in the geographical circumstances of the Gulf of Maine itself, is to produce an equidistance line that gives a due and proper effect to the coasts of both Parties by attributing to them the ocean areas that lie directly in front of these coasts.

C. THE OUTER SEGMENTS OF THE LINE

342. Despite the continuity of the Gulf of Maine area as a whole, the outer area — including Georges Bank — exhibits some distinctive geographical characteristics. In particular:

- (a) it lies off rather than within the Canadian and United States coasts, in contrast to the Gulf of Maine itself;

⁶¹ *I.C.J. Reports 1969*, p. 52, para. 98. Canada has complied with the Court's injunction to eliminate the distortions resulting from “markedly concave ... coasts ...”.

- (b) the changing coastal configurations within the Gulf itself exercise no influence upon the equidistance line in the outer area, and in most of this area the Canadian claim is a line of almost constant bearing controlled throughout by a limited number of basepoints.

The decisive characteristic of this outer area, however, is the openness of the sea, so that the course of the boundary is no longer confined within an indentation or concavity of the continental landmass.

343. At the threshold of the outer area and just beyond, as the line passes between Cape Sable and Cape Cod, the coasts are truly opposite. Further seaward, however, the geography of the outer area lacks the clear-cut character of oppositeness that prevails within the Gulf of Maine itself. It is, like many others, a hybrid situation where elements of oppositeness and adjacency are both in play. In the *North Sea Continental Shelf* cases, the Court recognized that the distinction between opposite and adjacent coasts may not always be uniform and clear-cut along the whole length of the boundary and that —

“In certain geographical configurations of which the Parties furnished examples, a given equidistance line may partake in varying degree of the nature both of a median and of a lateral line⁶².”

The delimitation provisions of the new Law of the Sea Convention implicitly recognize the difficulty of organizing the infinite variability of physical geography into clearly defined legal categories by eliminating the separate treatment of opposite and adjacent coasts that appears in Article 6 of the Continental Shelf Convention. Indeed, this factor is vividly illustrated by the findings of the *Tunisia-Libya Continental Shelf* case, for there the Court noted that while the Parties were not in the position of “legally opposite States⁶³”, the change in direction of the Tunisian coast went “some way, though not the whole way”, toward producing an opposite relationship⁶⁴.

344. There is in this regard an analogy to the geographical character of the southwestern approaches or Atlantic area considered by the Court of Arbitration in the *Anglo-French Continental Shelf* award. There the Court of Arbitration noted that although in a legal sense the Atlantic region might have been one that falls within the terms of paragraph 1 rather than paragraph 2 of Article 6, the purely geographical situation was one of two laterally related coasts⁶⁵. But the precise legal classification of the region appeared to the Court of Arbitration to be of little importance, for it held that the rules of delimitation in both paragraphs of Article 6 are the same, and that it is the actual geographical relationship of the coasts of the two States that determines their application. The appropriateness of equidistance, the Court of Arbitration said, is not so much a matter of classification into the categories of opposite and adja-

⁶² *I.C.J. Reports* 1969, p. 17, para. 6.

⁶³ *I.C.J. Reports* 1982, p. 63, para. 78.

⁶⁴ *I.C.J. Reports* 1982, p. 88, para. 126.

⁶⁵ *Anglo-French Continental Shelf* award, p. 113, para. 241.

cent States, as "a function or reflection of the geographical and other relevant circumstances of the particular case⁶⁶"; and it concluded that —

"What is important is that, in appreciating the appropriateness of the equidistance method as a means of effecting a 'just' or 'equitable' delimitation in the Atlantic region, the Court must have regard both to the lateral relation of the two coasts as they abut upon the continental shelf of the region and to the great distance seawards that this shelf extends from those coasts⁶⁷."

345. In the present case the analogy is clear. Though the relationship of oppositeness as between the coasts that face each other across the Gulf is obviously maintained, and though the facing coasts of Massachusetts and of southwest Nova Scotia are relevant both to the Gulf itself and to the outer area, the disputed area of Georges Bank is not *within* these opposite coasts. Further, the abutting coasts that are relevant to the outer area must clearly include those that face the open sea on either side of the entrance points of the Gulf of Maine, and in particular the stretches of coastline from which the fishery of the disputed area is conducted. It is evident that these outer coasts are in an essentially lateral relationship to each other. Accordingly, the geographical situation in the more seaward portions of the outer area is a complex one that combines elements of both oppositeness and adjacency, in varying degree.

346. As the equidistance line proceeds seaward into the Atlantic Ocean, the projection of Cape Cod and the nearby island of Nantucket comes into play. Here the Massachusetts coast makes a sudden, isolated projection eastwards. The elongated protrusion of Cape Cod, separated from the Massachusetts mainland by the Cape Cod Canal, is indisputably an irregularity of the eastern North American coastline, and its eastward thrust is wholly out of alignment with the general direction of the Massachusetts coast within the Gulf of Maine. But because of its location at the southwestern entrance of the Gulf it occupies a pivotal position in the fixing of the maritime boundary; and, if basepoints on Cape Cod and its dependencies were to be utilized in the construction of an equidistance line, the boundary would swing markedly eastward toward the Nova Scotia coast. Cape Cod and Nantucket thus constitute special circumstances and are creative of inequity requiring an adjustment in the plotting of the equidistance line.

347. The inequity that could thus be worked by Cape Cod and its adjacent islands is not simply a matter of their sharp divergence from the general direction of the coast of the Gulf of Maine and the long and narrow configuration of the Cape. The real difficulty is that the strategic location of these features would make them the decisive points on the United States coast in the construction of an unadjusted equidistance boundary, despite their departure from the dominant trends of the geography. For Cape Cod and Nantucket *by themselves* would control the most important and extensive portions of the entire boundary, including most of the segments that lie within the disputed area and the whole of Georges Bank.

⁶⁶ *Anglo-French Continental Shelf award*, p. 112, para. 239.

⁶⁷ *Anglo-French Continental Shelf award*, p. 113, para. 242.

16 348. This rather extraordinary effect is illustrated in *Figure 33* showing the area that would be controlled by basepoints on Cape Cod and Nantucket. The Canadian line is illustrated on this chart as well for purposes of comparison; it can be seen that Cape Cod begins to exert an influence two nautical miles seaward of turning point 49, and it is accordingly at that point that the Canadian line begins to diverge from what might be called a "strict" equidistance line. The Canadian line changes direction quite markedly at turning point 50, reflecting the convexity of the "mainland" Massachusetts coast which shifts the course of the line back toward the east. When Cape Cod is utilized as a controlling coastline, it can be seen that this swing of the line is amplified; and because the shift occurs at a point significantly further to the north and east, it produces a far more dramatic and indeed disproportionate effect. The question is, then, to what *degree* can the boundary be allowed to veer toward the east and still produce an equitable delimitation? For the effect of Cape Cod is by no means simply a matter of abstract geometry, important though the purely spatial relationships may be. The real crux of the matter, in the Canadian submission, is that an exceptional geographic feature like Cape Cod — one whose economy is in no way significantly dependent on the disputed area — should not exert a disproportionate influence on the location of the boundary and thus on the disposition of the vitally important natural resources of Georges Bank.

349. The cure for such an inequity has been described in the 1977 *Anglo-French Continental Shelf* award in the following terms:

"The Court notes that in a large proportion of the delimitations known to it, where a particular geographical feature has influenced the course of a continental shelf boundary, the method of delimitation adopted has been some modification or variant of the equidistance principle rather than its total rejection⁶⁸."

In another passage which has application to the Gulf of Maine situation, the Court of Arbitration also affirmed:

"What equity calls for is an appropriate abatement of the disproportionate effects of a considerable projection on to the Atlantic continental shelf of a somewhat attenuated portion of the coast of the United Kingdom⁶⁹."

A somewhat analogous approach was adopted by this Court in its treatment of the Kerkennah Islands in the *Tunisia-Libya Continental Shelf* case⁷⁰. The abatement of disproportionate effects is an approach that equally commends itself here.

350. In the case of the coasts that abut upon the Gulf of Maine area, there is a marked protrusion of the United States coastline south-east of Boston, even before Cape Cod is reached, unmatched by any comparable feature on the Canadian coast. But for this change in the direction of the United States coast, an equidistance line would clearly allow

⁶⁸ *Anglo-French Continental Shelf* award, p. 116, para. 249.

⁶⁹ *Anglo-French Continental Shelf* award, pp. 116-117, para. 249.

⁷⁰ *I.C.J. Reports* 1982, p. 89, para. 129.

much more of Georges Bank to Canada. The protrusion of the Massachusetts coast, north of Cape Cod, in itself places the United States in an advantageous position with respect to the delimitation of the outer area by means of an equidistance line. It is, however, when Cape Cod and the islands of Nantucket and Martha's Vineyard are *added* to this convexity in the Massachusetts coast, that the effect upon a line constructed in accordance with equidistance becomes clearly disproportionate. In the Canadian view, the solution must properly lie in the construction of an equidistance line drawn without reference to the coastal projections of Cape Cod and its adjacent islands.

351. The basic principle requiring the abatement or elimination of disproportionate effects finds strong support in the law and practice of maritime delimitation. But the exact method to be used must be varied in response to the particular circumstances of each situation. In the circumstances of the *Tunisia-Libya Continental Shelf* case, for example, the Court disregarded the island of Jerba in assessing the direction of the coastline. In the present case, in order to offset the distorting effect of Cape Cod and its adjacent islands, the solution lies in the selection of basepoints that more accurately express the general direction of the coast and so produce an equitable result. It is the Canadian submission that a basepoint at the northeast entrance point to Cape Cod Canal achieves this goal. This basepoint, as already noted, gives the United States the benefit of the convexity of the Massachusetts "mainland", but eliminates the compounding of this effect that would result from the selection of basepoints placed further to the east. For Cape Cod and the adjacent islands are features that exhibit a marked divergence from the general direction of the coast, toward the coast of the other Party⁷¹. The effect, in other words, is not simply one of *projecting* the United States coast seaward, but also of *diverting* it out into the Gulf of Maine and directly toward the Canadian coast.

(15) 352. The detailed construction of the outer segments of the Canadian line can be seen in *Figure 32*. The basepoint at Cape Cod Canal controls the entire length of the line seaward of turning point 50, including the whole of Georges Bank. On the Canadian side two basepoints control the course of the line in this outer area: points "x" and "y", the first less than a mile from Seal Island and the second on Seal Island itself. These two points are so close to each other that the impact of the change at turning point 51 is negligible, and the entire course of the line from turning point 50 across Georges Bank to the 200-mile limit is virtually a line of constant bearing.

353. A number of factors lend additional support to the Canadian claim in the Georges Bank area. The relevant coasts are in a position of balance and symmetry in terms of the broad geographical features of the area, though their configuration is, of course, distinctive in each case. The coasts that may reasonably be said to be relevant in relation to Georges Bank include the coasts of Nova Scotia and Massachusetts that face each

⁷¹ The Scillies on the other hand lay roughly on the southwesterly course of the Cornish coast, and the Court of Arbitration was able to characterize their effect as projecting the coastline of the mainland of the United Kingdom westwards onto the Atlantic continental shelf. See *Anglo-French Continental Shelf* award, p. 117, para. 251.

other across the Gulf of Maine: two coasts that are roughly comparable in their general configuration and in their relation to the boundary area. As well, the relevant coasts must include those stretches of coastline that face the open sea outside the Gulf of Maine itself, extending along the Nova Scotia coast northeast of Cape Sable and along the Massachusetts coast southwest of Cape Cod, especially as these stretches of coastline exhibit a genuine link to Georges Bank through their established patterns of fishing. And again, the dominant characteristic of these outer coasts is their symmetry, for they both lie along a general northeast-to-southwest line of direction that is essentially the same for both the Canadian and United States coasts.

354. The general comparability of the coastal relationship is reinforced by the situation of the basepoints that control the course of the line on Georges Bank. Each of these basepoints is situated in the vicinity of what might be described as the hinge-point or fulcrum of the relevant coasts of Nova Scotia and Massachusetts — the points where the coasts that form the two sides of the Gulf of Maine abruptly change direction and turn the corner to extend indefinitely to the northeast and southwest respectively. (See *Figure 34*.) The effect is of two matching pairs of coastal fronts, the “wings” of southwest Nova Scotia and Massachusetts, resembling each other in the broad patterns of their configuration and in their geographical relationship to Georges Bank. These too are the coasts that exhibit, though to very different degrees, an established economic dependence on the Bank.

355. The overall balance and comparability in the coasts that are relevant to the outer area lends strength to the view that equidistance is apt to produce an equitable result in that area, provided the distorting effect of Cape Cod and Nantucket is eliminated. And in fact this view is confirmed by the result. The Canadian line is one that leaves to each Party a broad expanse of ocean space in front of its coast. As the line beyond its inner segments never comes closer than 94 nautical miles to the United States coast, there can be no question of any undue encroachment on the offshore areas adjacent to the United States. Finally, the line delimits Georges Bank in an equitable manner, giving an appropriate expression to the established economic interest and dependence of the Parties in this crucial area of the sea. In sum, the physical and the economic geography combine in their support of the appropriateness of the Canadian claim.

356. The Canadian line has been designed to achieve an equitable result throughout its course in both the inner and outer portions of the Gulf of Maine area, through a judicious selection of basepoints. The use of offlying islands to control the inner segments of the line within the Gulf of Maine itself, on the one hand, and of Cape Cod Canal to control the outer segments, on the other hand, are in a sense complementary; for in each case, the object has been to eliminate any distorting effect that coastal irregularities might otherwise have produced. In the first case, the main effect is to straighten out a concavity; in the second, to moderate the effect of a protruding coastal feature. The cumulative effect is to produce a general coastal configuration that aptly expresses the dominant trends of the coastal geography and that provides a setting in which the equidistance method can operate to translate these trends into an equitable boundary.

D. THE GENERAL ATTRIBUTES OF THE EQUIDISTANCE METHOD

357. The appropriateness of the equidistance method is always a function of the geographical and other relevant circumstances, and the foregoing analysis has therefore centred on the concrete application of this method in the Gulf of Maine area and the results it produces in that situation. There are, at the same time, a number of general attributes of the equidistance method that tend to reinforce the view that this method may be expected to produce a reasonable solution in the circumstances of this case.

358. In the *Tunisia-Libya Continental Shelf* case the Court stated:

"Treaty practice, as well as the history of Article 83 of the draft convention on the Law of the Sea, leads to the conclusion that equidistance may be applied if it leads to an equitable solution; if not, other methods should be employed⁷²."

The utility of equidistance lies precisely in its aptitude for achieving equitable solutions in a variety of geographical situations. As the Court stated in the *North Sea Continental Shelf* cases, "no other method of delimitation has the same combination of practical convenience and certainty of application⁷³". It is significant that a number of modern delimitation agreements, employing equidistance or a variation thereof, have recited in preambular language that the delimitation has been concluded with the objective of applying "equitable principles⁷⁴".

359. In the absence of special circumstances requiring the use of another method, equidistance has the obvious advantage that it allocates to each State the offshore areas that lie closest to its coast. Where the coasts are comparable, moreover, it tends to achieve at least a rough equality in the division of adjacent maritime areas between neighbouring States. In brief, where the circumstances are suitable for its application, equidistance is the method that most aptly fulfills the requirements of equity. It is, moreover, a method that can be applied with considerable flexibility and adapted to highly varied geographical situations — including situations that may constitute special circumstances — as shown in

⁷² *I.C.J. Reports* 1982, p. 79, para. 109.

⁷³ *I.C.J. Reports* 1969, p. 23, para. 23.

⁷⁴ See, for example, *The Convention on Delimitation, France and St. Lucia*, 4 March 1981. (*Revue générale de droit international public*, Tome 85, 1981, p. 654.) which contains the following recitals in the preamble:

"Conscients de la nécessité de délimiter de façon précise les espaces maritimes dans lesquels les deux États exercent respectivement des droits souverains;

Se fondant sur les règles et les principes du droit international applicables en la matière et prenant en considération les travaux de la Troisième Conférence des Nations Unies sur le droit de la mer;

Considérant que l'application de la méthode de l'équidistance constitue dans ce cas un mode équitable de délimitation."

In an unratified agreement to establish two maritime boundaries between Mexico and the United States (in the Pacific and in the Gulf of Mexico), the parties termed the equidistance line "practical and equitable". The United States and Venezuela similarly stated that the equidistance maritime boundary in effect between Puerto Rico and Venezuela was agreed to out of the need to establish a "precise and equitable maritime boundary". Copies of these agreements have been deposited with the Registrar.

its adaptation to the circumstances of the present case and in the statements of the Court of Arbitration in the *Anglo-French Continental Shelf* award that have been referred to in paragraph 349. This is not to say that equidistance has any *a priori* quality of necessity or even the status of a preferred method, but only to underline again its practical utility as a means of achieving an equitable result in particular circumstances.

360. As noted in paragraph 217, Canada and the United States are parties to the Geneva Convention on the Continental Shelf. Article 6 of the convention establishes a combined equidistance and special circumstances rule, whose object is to secure an equitable delimitation. It indicates that unless another boundary is justified by special circumstances, the median or equidistance line should be looked to as the appropriate method of achieving an equitable result, whether the abutting coasts are opposite or adjacent. It was no doubt in that sense (and certainly not in derogation of the fundamental norm of equitable principles) that the Court of Arbitration in the *Anglo-French Continental Shelf* award indicated that "under Article 6 the equidistance principle ultimately possesses an obligatory force which it does not have in the same measure under the rules of customary law⁷⁵".

361. The utility of the equidistance method as a means of achieving an equitable delimitation has been recognized by the United States itself, not only in relation to the Gulf of Maine area — until its reversal of position in 1969 — but also in relation to its delimitation practice generally⁷⁶. A series of maritime boundary agreements between the United States and Cuba, Mexico and Venezuela respectively, and between the United States and New Zealand in relation to the Cook Islands and Tokelau, all demonstrate a reliance on equidistance as the basic method of delimitation⁷⁷. A factor that lends a special weight to these precedents is that they are all single maritime boundary agreements applicable both to the continental shelf and to the water column.

⁷⁵ *Anglo-French Continental Shelf* award, p. 48, para. 70.

⁷⁶ See Mark Feldman and David Colson: "The Maritime Boundaries of the United States." (*American Journal of International Law*, Vol. 75, No. 4, 1981, p. 749.) The authors state:

"Although the U.S. maritime boundary position is based on the concept of 'equitable principles,' the boundaries that have been negotiated to date generally have been based on the equidistance method to one degree or another, giving full effect to islands."

At the 1958 United Nations Conference on the Law of the Sea, Miss Marjorie Whiteman, the United States delegate to the Fourth Committee, commenting on what was to become Article 6 of the 1958 Continental Shelf Convention, stated that —

"... article 72 contained as well a provision for delimiting the boundary by a median line, which would enable equitable apportionment to be made of the seabed area to each coastal State concerned. That was an objective standard of reference and might well provide guidance in arriving at agreement on a boundary line even in the presence of special circumstances." (A/Conf.13/42/p.95.)

⁷⁷ See Appendix to this Memorial. Also of interest are offshore boundary delimitations between individual states within the United States under the United States Coastal Energy Impact Program (CEIP), 16 United States Code, Section 1456(1)(a), which has been put into effect through a 1976 amendment to the *Coastal Zone Management Act* of 1972, 16 United States Code, Section 1451 *et seq.* Under the program, states are allocated federal funds by the United States Government according to the amount of continental shelf acreage adjacent to them and the amount of oil and gas produced therefrom. In order to determine the acreage, lateral seaward boundaries have to be estab-

362. That the equidistance method produces an equitable result in the majority of cases can be demonstrated by a careful analysis of general international practice in the conclusion of delimitation agreements beyond the territorial sea, involving both opposite and adjacent States. Out of 94 known maritime boundaries settled by agreement, 66 of them — almost 71 percent of the total — utilize the equidistance principle or a modification thereof for all or part of the boundary⁷⁸. Thus, in the *Anglo-French Continental Shelf* award, the Court of Arbitration recognized that in a large proportion of the known delimitations, where a particular geographical feature has influenced the course of a continental shelf boundary, the method of delimitation adopted has been some modification or variant of equidistance⁷⁹.

363. The practical utility of the equidistance method as a means of achieving an equitable result was also noted by this Court in the *Tunisia-Libya Continental Shelf* case. Thus, after holding the direction of an equidistance line in the northern sector of the delimitation area to be a factor of "material significance", the Court said that while —

"there is no mandatory rule of customary international law requiring delimitation to be on an equidistance basis, it should be recognized that it is the virtue — though it may also be the weakness — of the equidistance method to take full account of almost all variations in the relevant coastlines⁸⁰".

The Canadian claim has been designed with a view to taking advantage of this basic strength, while avoiding the weakness that could result from a too rigid application of the method where coastal variations would produce a disproportionate effect.

364. Wherever the application of the equidistance method is warranted by the relevant circumstances, such application is consonant with the doctrine of the *Tunisia-Libya Continental Shelf* case that the coast is both the decisive factor for title and the starting point for any delimitation: that "the land dominates the sea⁸¹". By the same token, the use of equidistance in this case is consonant with the general concepts of adjacency and proximity as the common sources of title to both the seabed and subsoil and to the superjacent waters, and with the ascendancy of these concepts in the contemporary law of the sea. In the Canadian view, there are no sharp discontinuities in the transition from the old to the new law of the sea in regard to delimitation, but the trend toward the criteria

lished. These boundaries are determined "according to the applicable principles of international law, including the principles of the Convention on the Territorial Sea and Contiguous Zone". In the five boundaries dealt with to date (New York/Rhode Island, New Jersey/New York, New Jersey/Delaware, Delaware/Maryland, and Mississippi/Louisiana), considerable prominence has been given to the method of equidistance either by means of a strict equidistance line or an equidistance line modified to take account of special circumstances. See J. I. Charney: "The Delimitation of Lateral Seaward Boundaries between States in a Domestic Context." (*American Journal of International Law*, Vol. 75, 1981, p. 28.)

⁷⁸ See Appendix.

⁷⁹ *Anglo-French Continental Shelf* award, p. 116, para. 249.

⁸⁰ *I.C.J. Reports* 1982, p. 88, para. 126.

⁸¹ *I.C.J. Reports* 1982, p. 61, paras. 73 and 74.

of adjacency and proximity cannot but give new strength to equidistance as a method of delimitation.

365. The Court has referred to this development, in the context of the continental shelf, as "the 'trend' towards the distance principle⁸²". Distance, of course, is an even more fundamental criterion for title to a 200-mile zone; and with it, in Canada's submission, comes the implication that proximity should have considerable weight in the delimitation of such zones. Not, to be sure, an absolute weight — for the validity of equidistance or of any other method ultimately depends upon the equity of the results it achieves — but undoubtedly a far greater weight than would have been appropriate in the context of a pure continental shelf delimitation at an earlier stage of the evolution of that juridical doctrine.

366. There is a passage in the *North Sea Continental Shelf* cases which suggests that where a single maritime boundary, applicable to both the seabed and the superjacent waters, is in issue, the factor of proximity may take on added weight. Thus, speaking of territorial waters, the Court said:

"There is also a direct correlation between the notion of closest proximity to the coast and the sovereign jurisdiction which the coastal State is entitled to exercise and must exercise, not only over the seabed underneath the territorial waters but over the waters themselves, which does not exist in respect of continental shelf areas where there is no jurisdiction over the superjacent waters, and over the seabed only for purposes of exploration and exploitation⁸³."

Much of the general thrust of this reasoning can readily be transposed to the new forms of jurisdiction now exercised in respect of waters beyond the territorial sea, in addition to the jurisdiction exercised over the seabed and subsoil beneath those waters. There is, of course, no question of sovereignty *per se*; but the greater comprehensiveness of the integrated water column and shelf jurisdiction to be delimited by a single maritime boundary suggests an analogy with the thought expressed by the Court in this passage. For as the range of interests in issue is broadened beyond the specialized, localized, and highly concentrated operations that are related to offshore oil and gas extraction, to encompass a more varied and "everyday" range of maritime activities, there is every reason why the waters closest to each State should normally be subject to the jurisdiction of that State.

Section IV. The Equitable Character of the Overall Result

A. PROPORTIONALITY AND DISPROPORTIONALITY

367. The element of a reasonable degree of proportionality between the coastlines of the parties and the submarine areas to be attributed to each of them has been identified in the jurisprudence on

⁸² *I.C.J. Reports* 1982, p. 49, para. 48.

⁸³ *I.C.J. Reports* 1969, p. 37, para. 59.

continental shelf delimitation as a test of the equity of a maritime boundary. In the recent *Tunisia-Libya Continental Shelf* case, this factor was characterized by the Court as "the test of proportionality as an aspect of equity⁸⁴". Its function is essentially to assess the equitable character of the method of delimitation used, in the light of the results to which it leads.

368. In Canada's view, this criterion may also have a useful role to play as a test of the equity of the result in the case of a single maritime boundary. The manner of its application, on the other hand, may have to be modified in certain respects. The relevant circumstances that govern the delimitation of a single maritime boundary are more extensive and complex than those applicable to the continental shelf alone, and the Court has recently emphasized in the *Tunisia-Libya Continental Shelf* case that proportionality must be applied "taking into account all the relevant circumstances⁸⁵".

369. In the case of a single maritime boundary delimitation, especially where the evolution of the dispute and the character of the interests at stake show the fisheries dimension to have a paramount importance, one highly relevant circumstance must surely be the actual connections that contemporary fishing patterns have established between certain portions of the adjacent coasts and the boundary area, including the existing economic dependence of the inhabitants of those coasts upon that area. There is, in other words, a very strong relationship between the economic and social connections that link the adjacent coastlines and the disputed area, as a circumstance that is relevant to the case as a whole, and the manner in which the criterion of proportionality should be considered in assessing the equity of the result. In Canada's submission, therefore, geography in its socio-economic as well as its physical aspects should properly have a bearing on the identification and treatment of the coastal areas that are relevant to Georges Bank, where the fisheries interests at stake in this matter are centred.

370. A conceptual distinction between the Gulf of Maine itself and the outer area is especially appropriate in approaching the test of proportionality in this case. Within the Gulf of Maine, the geography lends itself easily to the application of the test in a fairly straightforward, mathematical way. As pointed out in paragraph 28, there is here an approximate equivalence in the coastlines of the two Parties. The Canadian line, partly because of its use of offshore basepoints in the manner described in paragraphs 335 to 341, allocates to the United States approximately two-thirds of the total area within the Gulf⁸⁶. Accordingly,

⁸⁴ *I.C.J. Reports 1982*, p. 91, para. 131.

⁸⁵ *I.C.J. Reports 1982*, p. 91, para. 131.

⁸⁶ The approximate lengths of the Canadian and United States coastlines measured according to their general direction from the international boundary in Passamaquoddy Bay to Cape Sable and to the Cape Cod Canal respectively are 287 and 299 nautical miles; these coastal lengths thus stand in a proportion of 49:51 (Canada:United States). For the purpose of ascertaining sea-area ratios within the Gulf of Maine, a line may be drawn between Cape Sable and the southeastern extremity of Cape Cod. The sea-areas appertaining to Canada and the United States respectively inside that line but seaward of straight baselines and notional straight baselines drawn in the general direction of the coast and bay closing lines — excluding such indentations as Minas Basin, Chignecto Bay, Passamaquoddy Bay, Penobscot Bay, Massachusetts Bay and Cape Cod Bay — stand in a proportion of 32:68 (Canada:United States) on the basis of the Canadian claimed line.

the Canadian line in the Gulf of Maine clearly produces no inequity in its effect.

371. In the outer area that includes Georges Bank, a purely mathematical application of the proportionality criterion is far more difficult. Both the "area" itself and the extent of the environing coastlines are indeterminate, and there are no natural features (in contrast to the situation considered in the *Tunisia-Libya Continental Shelf* case) that provide clear indications of how the area might logically be bounded and enclosed. As noted above, the Atlantic seaboard coasts flanking the entrance points of the Gulf of Maine extend indefinitely to the northeast and southwest respectively, comprising potentially the entire Atlantic seaboard of North America. These seaboard coasts generate maritime zones in an essentially parallel relationship to each other, precluding the ready identification of a finite area to which a mathematical calculation could be meaningfully applied. The indeterminate character of the area is accentuated by the fact that the outer terminus of the line to be decided in this case represents only the first of two phases in the delimitation process, a process that could give rise to further proceedings under the Special Agreement.

372. Indeed, there is here again a certain analogy with the Atlantic region considered by the Court of Arbitration in the *Anglo-French Continental Shelf* award; for there, it will be recalled, the Court of Arbitration refrained from defining the abutting coasts of the two parties, noting only that while the United Kingdom coast was "more complex in form and less easy perhaps to define", it was "comparable broadly in its extent with that of the French Republic⁸⁷". Similarly, no attempt was made to define the appurtenant area of shelf, except to refer to the great distance seaward that the shelf extended from the coasts. It was, perhaps, this open-endedness that led the Court of Arbitration to remark that the criterion of a reasonable degree of proportionality is not one for application in all cases; that "it is disproportion rather than any general principle of proportionality which is the relevant criterion or factor⁸⁸"; and, at the end of that passage, that —

"Proportionality, therefore, is to be used as a criterion or factor relevant in evaluating the equities of certain geographical situations, not as a general principle providing an independent source of rights to areas of continental shelf⁸⁹."

It is, in short, an "aspect of equity", as the Court said in the *Tunisia-Libya Continental Shelf* case; and as such it can never be divorced from "all the relevant circumstances" of the particular case⁹⁰.

373. It would of course be possible to devise a variety of formulas for the ascertainment of ratios, though in the nature of the case none of them can be fully satisfactory or decisive. One approach, clearly suppor-

⁸⁷ *Anglo-French Continental Shelf* award, p. 110, para. 234.

⁸⁸ *Anglo-French Continental Shelf* award, p. 60, para. 101.

⁸⁹ *Anglo-French Continental Shelf* award, p. 61, para. 101.

⁹⁰ *I.C.J. Reports* 1982, p. 91, para. 131.

tive of the Canadian position whatever area of ocean were chosen for its application, would be to identify as relevant those stretches of adjacent coast that exhibit a genuine link in economic terms to the resources of the disputed area, as discussed in paragraphs 32, 316 to 318 and 369. But if a purely *geometrical* technique is utilized, whatever point is selected as the terminus of the relevant coast on the Atlantic seaboard of one country must suggest a coastline of similar extent on the other: for the Court has said that "one must compare like with like", and that the "same approach" should be "adopted to each of the two coasts"⁹¹. The net effect in the particular geographical circumstances of this case, discounting off-lying islands or coastal irregularities, is to produce a situation of rough equivalence where the selection of a given stretch of coast in one country points towards a similar treatment of the corresponding coast of the other country. Such a technique is clearly incapable of producing a decisive test in relation to the course of the boundary; though by the same token, this rough equivalence is itself a factor that tends to corroborate the equity of the Canadian claim.

374. More generally, the essential point is that the overall balance of the relevant Canadian and American coasts rules out any element of disproportion in the Canadian claim. The claim, in fact, is one that owes much of its strength to proportionality as a general concept of delimitation, for as the *Anglo-French Continental Shelf* award stated —

"The factor of proportionality may appear in the form of the ratio between the areas of continental shelf to the lengths of the respective coastlines, as in the *North Sea Continental Shelf* cases. But it may also appear, and more usually does, as a factor for determining the reasonable or unreasonable — the equitable or inequitable — effects of particular geographical features or configurations upon the course of an equidistance-line boundary⁹²."

It is precisely this formulation of the concept that has governed the Canadian selection of a basepoint at Cape Cod Canal to control the course of the line in the outer area. Further, it is Canada's submission that in practical terms the question of proportionality should be addressed not simply as a matter of geometrical measurement, but rather in terms of whether the area of Georges Bank that the boundary leaves to each Party is proportionate in the light of *all* the relevant circumstances of the case.

B. A SUMMING-UP

375. The appropriateness of a maritime boundary must be judged in light of the need to reach an equitable result and the dictum of the Court that "what is reasonable and equitable in any given case must depend on its particular circumstances"⁹³. The merit of the Canadian line, it is submitted, resides in the justice it does to both the purely spatial

⁹¹ *I.C.J. Reports 1982*, p. 91, para. 130.

⁹² *Anglo-French Continental Shelf* award, p. 60, para. 100.

⁹³ *I.C.J. Reports 1982*, p. 60, para. 72.

characteristics of the Gulf of Maine area and to the vital economic and other considerations at stake. It allocates to each Party a reasonable and equitable extent of ocean space in front of its coast; it is constructed in a manner that faithfully reflects the local geography; and it gives an appropriate geographical expression to the established economic interests and realities of the region, especially in relation to Georges Bank, the crucial resource-bearing portion of the outer boundary area. Finally, and not least important, it accords with the indicia of equity revealed by the conduct of the Parties in respect of both hydrocarbon and fishery resources.

376. A recapitulation of the geographical character of the Canadian claim will demonstrate the soundness of these general propositions. Within the Gulf of Maine, the Canadian line allocates the greater portion of the ocean space to the United States. Indeed, throughout the Gulf the line traces a course that often runs closer to the Canadian mainland than to that of the United States. The coasts here are largely opposite, especially in the zone of transition between the Gulf of Maine and the outer area; but the effect of the coast of Maine and the selection of basepoints well to seaward of the United States mainland coast pushes the line towards the Canadian side of the Gulf. Within the Gulf of Maine itself the net result is to leave to the United States an extensive — and equitable — expanse of ocean in front of its coast.

377. In the Georges Bank area, it is the southwestern coast of Nova Scotia and the protruding coastline of Massachusetts as it approaches Cape Cod that move into a controlling position. The importance accorded to these portions of the coast in determining the boundary in the outer area is justified by their proximity to the area to be delimited, reinforced by their pivotal situation on the coastline of each country that exhibits both geographical adjacency and a substantial economic connection to Georges Bank. It is the balance and symmetry of the coasts that are relevant to the outer area — relevant in both a geographic and an economic sense — that point toward the use of equidistance as a means of finding an equitable dividing line. For the facing coasts of Nova Scotia and Massachusetts that border the two sides of the Gulf of Maine are broadly comparable in their purely geographical character and extent; and symmetry, moreover, is an equally evident characteristic of the relationship between the Atlantic seaboard coasts that face the open sea both northeast and southwest of the entrance points to the Gulf, each extending in the general direction of the North American coastline.

⑧ 378. The general direction of the Atlantic coast of North America is northeast to southwest, and — as shown in *Figure 8* — the coastline exhibits a more easterly direction north of Long Island. Thus this portion of the continental landmass of North America faces in a generally south-southeastward direction onto the open sea. The direction of the continental coastline is reflected in the parallel trend of the Atlantic continental margin that fringes the entire coast from northeast to southwest. Thus it can be seen that the direction of the Canadian line in the outer area reflects not only the dominant characteristics of the geographically adjacent coasts, but equally the broader trends that are exhibited on a continental scale.

379. The effect — and the equitable character — of the Canadian claimed line in the outer area is again to bring about a reason-

able division of the adjacent fishing grounds and shelf between the two Parties. An equidistance line, proceeding on a course midway between points on the coasts of Massachusetts and Nova Scotia, is one that reflects the equal weight that should properly be attributed to these two coasts. And the appropriateness of the method is confirmed in the specific result that it achieves: Georges Bank — framed by the exclusively national fishing grounds of the Great South Channel and Nantucket Shoals on the United States side and of Browns Bank and the adjacent shoal areas on the Canadian side — is divided in a manifestly reasonable way, leaving over half of the Bank to the United States. Moreover, the adaptation of the equidistance method to the special circumstances of Cape Cod in the Georges Bank area is one that, as a matter of law, quite aptly expresses the unity of the combined rule of equidistance and special circumstances.

380. Though the Canadian method takes appropriate account of the physical geography, it would not meet the test of an equitable result if it failed to do justice to the economic interests at stake. For the real subject of this dispute is the natural resources of the sea and the economic benefits they provide. Among the most relevant circumstances of the area must surely be the reliance on Georges Bank of the fishing communities of the adjacent coasts, and their established dependence on the prolific waters of the offlying areas. And it is Canada's submission that its claimed line does substantial justice to these important considerations. It leaves to Canada the fishing grounds of eastern Georges Bank, where its fishery on the Bank has been so heavily concentrated and where its fleet has exhibited a strong and enduring presence. It leaves the United States with an ample resource base on the larger, undisputed portion of Georges Bank. And for the fishing industry of southwest Nova Scotia — an industry for which the disputed area is crucial, in contrast to the situation prevailing in New England — it secures continued access to its most important source of supply.

381. In short, the Canadian line is in harmony with the established economic equities of the Gulf of Maine area: for it is Canada that depends upon the fishery of the disputed area, far more than the United States. And it is to the fisheries, to the *known* resources of the disputed area — a factor emphasized in the *dispositif* of the *North Sea Continental Shelf* cases — that this established pattern of exploitation and dependence has been directed⁹⁴. Further, respect for the stability of these established patterns is an objective that the Canadian line achieves in far greater measure than does that of the United States. It does so both with respect to the fishery itself and with respect to the shelf, for it is Canada, and Canada alone, that has issued resource permits for the hydrocarbons of the continental shelf in the disputed area.

382. The Court held in the *North Sea Continental Shelf* cases that "proximity may afford one of the tests to be applied and an important one in the right conditions"⁹⁵. In the Canadian submission the circumstances of the present case demonstrate the relevance of this test as well as the practical advantages of proximity. The inherent logic of this

⁹⁴ *I.C.J. Reports 1969*, pp. 53-54, para. 101(D)(2).

⁹⁵ *I.C.J. Reports 1969*, p. 30, para. 42.

factor is borne out by the position that Canada has assumed in the fisheries of the disputed area, and particularly by the fishing patterns of the small-boat fishermen from the area of Nova Scotia that lies closest to the eastern portion of Georges Bank. (See paragraphs 143 to 148.) Furthermore, one effect of the boundary will be to allocate jurisdiction for purposes of pollution control, both with respect to continental shelf oil and gas operations and with respect to those other forms of environmental jurisdiction that are within the exclusive economic zone concept. As a general proposition, States have a legitimate interest in the exercise of this jurisdiction in areas that are nearer to their coasts than to the coasts of a neighbouring State. Large areas of Georges Bank are closer to Nova Scotia than to Massachusetts. In fact, apart from the protrusion of Cape Cod and its offlying islands, the whole of the disputed area lies closer to Canada than to the United States. Thus the Canadian line meets the test of proximity to a far greater degree than does the United States claim.

383. Finally, it is the Canadian submission that the conduct of the Parties is an important factor as one of the "indicia" that point to what the Parties themselves have considered as equitable. It is relevant not only in relation to the issuing and maintenance of permits and leases respecting the continental shelf, but equally with respect to the 1979 Agreement on East Coast Fisheries Resources and the fisheries relationship that led to its conclusion. For in each case, the facts speak for themselves; and the shared perception they disclose is the equity of a division of Georges Bank corresponding either in terms or in its practical effect to the fundamental approach underlying the Canadian claim.

384. In conclusion, the Canadian line is based upon the application of an accepted legal method and is consistent with the conduct of the Parties. It recognizes the equitable interests of both Parties in allowing each of them to enjoy continued access, in fair degree, to the resources of the Gulf of Maine area and in taking due account of existing patterns of usage and dependence. The Canadian line, moreover, achieves a delimitation in accordance with equitable principles by faithfully reflecting the general configuration of the coasts of the Parties, while at the same time ensuring that particular coastal configurations do not have a disproportionate effect on the course of the boundary. The resulting delimitation accords with equitable principles by taking account of all the relevant circumstances so as to produce an equitable result. It is, Canada submits, equitable and reasonable in fact and in law.

CHAPTER II. THE LAW OF ACQUIESCENCE, RECOGNITION AND ESTOPPEL IN RELATION TO THE GULF OF MAINE AREA BOUNDARY

Section I. Introduction

385. In 1965 the United States Government was informed in the clearest terms possible that the Government of Canada considered the western limit of Canadian rights in the continental shelf of the Gulf of Maine area to be the equidistance or median line and, further, that this demarcation was based upon the relevant principles of public international law. No protest or reservation of rights was made by the Government of the United States for nearly five years.

386. Equally significant is the fact that while the Canadian Government utilized the equidistance method in issuing offshore permits on Georges Bank in December 1964 and January 1965, it had already issued permits on Georges Bank, east of the equidistance line, as early as May 1964. These latter permits were issued in an area of the Bank to which the United States subsequently laid claim in a diplomatic note of 16 October 1974 referred to in paragraph 220¹. From May 1964 until its express reservation of rights in November 1969², however, the United States did nothing to challenge either the use of the equidistance or median line by Canada or Canada's exercise of sovereign rights over the hydrocarbon resources of eastern Georges Bank.

387. This official silence must be appreciated in the context of a situation involving notoriety and the exercise of jurisdiction, through the issuing of offshore oil and gas exploratory permits, with respect to an area not far removed from the coasts and administrative centres of the two States, against a background of world competition for oil and gas resources. In this context, and given the clear information provided to the United States Government by the Government of Canada, the period during which the United States refrained from challenging or protesting Canada's open, public acts was sufficient to be decisive. In all the circumstances this silence constitutes unequivocal evidence of the acquiescence, the tacit acceptance or recognition on the part of the United States Government of the principle of the equidistance or median line as utilized by the Government of Canada in the Gulf of Maine area on the basis of international law.

388. The diplomatic exchanges of the period 1965-1969 focused principally upon the resources of the continental shelf and the legal principles relevant to shelf delimitation. Consequently, the basis of those Canadian rights which vested by reason of the acquiescence of the United States must be the principles of international law obtaining in 1969. There can be no presumption that the pertinent principles have subse-

¹ See Annexes, Vol. III, Annex 21.

² United States aide-mémoire of 5 November 1969. See Annexes, Vol. III, Annex 13.

quently changed; at the same time, there can be no presumption that the equidistance principle as accepted for the continental shelf in the period 1965-1969 must be the basis for the drawing of a single maritime boundary in accordance with the Special Agreement. The correct position is that such a single maritime boundary should be *compatible with* the rights which had vested in Canada as a consequence of the acquiescence of the United States at the material time.

389. There is another facet of the situation in the years 1965 to 1969. There can be little doubt that the acquiescence of the United States Government, in face of a Canadian policy expressly based upon legal considerations, stemmed from an acceptance that the position of Canada was in accordance with international law. The absence of protest on the part of the United States in all the circumstances of the years 1965 to 1969 thus constitutes evidence of the legality of the position of Canada on a key question — the applicability of an equidistance or median line in the Gulf of Maine area. The toleration of other States evidences the conformity of the given delimitation system with international law, as was affirmed by the Court in the *Anglo-Norwegian Fisheries case*³. Such toleration is of greater weight when the State concerned is located close to the zone in issue and has "her own interest in the question".

390. It should be noted here that the position of the Canadian Government in relation to the principle of acquiescence or recognition is without prejudice to the role of the conduct of the Parties as one of the relevant circumstances for the purposes of establishing the single maritime boundary (discussed in paragraphs 320 to 325) or to the evaluation of the evidence in the context of estoppel (discussed in paragraphs 419 to 426).

Section II. The Relevant Diplomatic Correspondence

391. Canada was not a party to the Convention on the Continental Shelf when the Canadian authorities first began to issue oil and gas exploratory permits on Georges Bank in the Gulf of Maine area in 1964. The permits ultimately issued by Canada between 1964 and 1965 on Georges Bank are shown in *Figure 35*. The first such permits, 15 in all, were issued by Canada to Texaco Exploration Company, a United States corporation (now Texaco Canada Inc.), on 20 May 1964. These permits covered a substantial part of Georges Bank but did not extend up to the equidistance line. A further 11 exploratory permits were issued to the California Standard Company, also a United States corporation (now Chevron Canada Limited), on 30 December 1964, followed by an additional five permits to the same company on 13 and 14 January 1965. As *Figure 35* shows, seven of the permits issued to California Standard extended close to or abutted upon the equidistance line. On 15 January 1965, four permits were issued to Socony Mobil Oil of Canada (now Mobil Oil Canada Ltd.) on Georges Bank. These latter permits included areas that extended up to and, because of the grids employed, partially straddled the equidistance line.

³ *I.C.J. Reports 1951*, pp. 138-139.

⁴ *I.C.J. Reports 1951*, p. 139.

392. Even though Canada was not yet party to the 1958 convention, for purposes of delimiting those areas of the continental shelf where Canada exercised sovereign rights from those areas where the United States exercised such rights, the Canadian authorities were utilizing a line drawn in accordance with the method of equidistance under Article 6 of the convention, controlled throughout by the nearest point of land on each coast, when the above-noted permits were issued to California Standard and Socony Mobil⁵.

393. The first reaction of the Government of the United States to the granting of permits by the Canadian authorities was the letter of 1 April 1965 from the Bureau of Land Management of the United States Department of the Interior, requesting information on the location of Canadian oil and gas exploratory permits. This letter read as follows:

"This Bureau is charged with the responsibility for mineral leasing on the Outer Continental Shelf pertaining to the United States of America. In this connection, we have information that the Canadian Federal Government recently has issued offshore permits for mineral prospecting on the Outer Continental Shelf.

Some of the submerged lands we understand you have leased under offshore permits are approximately 125 nautical miles east of Cape Cod. We refer specifically to an offshore permit of some 190,657 acres to Secony [sic] Mobil Oil Company of Canada Ltd., and 1,332,753 acres leased to California Standard. *We would like to identify these two leases with reference to the median line as defined in Article 6 of the Convention on the Continental Shelf, agreed upon at the 1958 United Nations Conference on the Law of the Sea at Geneva. We understand that this convention came into full effect on June 10, 1964. Therefore, we would appreciate a description of the two leases mentioned above.*

We also would appreciate a set of your regulations and instructions pertaining to offshore permits and mineral leasing. For your information we have enclosed a copy of our regulations pertaining to *Mineral Leasing and Pipelines on the Outer Continental Shelf*. We also are enclosing a set of our Outer Continental Shelf leasing maps. These maps represent the Outer Continental Shelf off Washington to a depth of 500 fathoms. *You will note on the sheet showing the Cape Flattery Area that the leasing blocks do not cross the median line seaward from AP12⁶.*" (Italics added.)

394. The above-cited letter made a series of statements on matters of legal principle in the context of a generalized and continuing situation regarding the exercise of resource jurisdiction by Canada on the Atlantic coast and by the United States on the Pacific coast. The subject matter of the letter was the system of offshore permit-granting by Canada in the areas of seabed adjacent to the "median line". The use of

⁵ The circumstances and timing of Canada's ratification of the convention are explained in paras. 217-218.

⁶ See Annexes, Vol. III, Annex 1.

the median line by Canada was referred to in the context of Article 6 of the Convention on the Continental Shelf. The recognition of the median line as a legal method and as a general principle is evidenced further by the reference to its use by the United States in awarding offshore leases in the Cape Flattery area (off the Juan de Fuca Strait boundary region on the Pacific coast) and the enclosure of a set of United States "Outer Continental Shelf" leasing maps relating to this latter area.

395. The Government of Canada's reply to this request was prompt. The Department of Northern Affairs and National Resources responded in a letter dated 8 April 1965, as follows:

"Thank you for your letter of April 1, with which you enclosed a copy of your Regulations, Mineral Leasing and Pipelines on the Outer Continental Shelf, and a set of your leasing maps for the Cape Flattery and Copalis Beach Areas off the west coast.

The disposition of oil and gas rights for the submerged lands off Canada's sea-coast is administered by the Department of Northern Affairs and National Resources. Accordingly, the Department has issued Canada Oil and Gas Permits off Canada's Atlantic, Pacific and Arctic coasts and in Hudson Bay. The attached small-scale sketch map indicates the areas in which these off-shore Permits have been issued.

Enclosed is a copy of the Canada Oil and Gas Land Regulations, as amended. We are sending you, under separate cover, complimentary copies of our maps showing off-shore Canada Oil and Gas Permits issued off the east and west coasts. These materials are available to the public at the offices of the Resources Division. There is no charge for the Regulations, but there is a charge of \$3.00 per copy for the maps. Enclosed with the maps you will find an index listing the holders of off-shore Canada Oil and Gas Permits. Please note that each Permit is referred to in the index by the co-ordinates of its northeast corner.

I believe the above materials will meet the request for information in your letter. We will be pleased to be of further assistance as may be possible.

We notice that the maps accompanying your letter of April 1 outline your system of leasing blocks but do not show the leases that have been issued to petroleum companies, for example, those purchased at the Sale of October 1, 1964. We would appreciate receiving maps from you indicating the locations of such leases, as well as maps showing any leases you may have issued off the east coast⁷."

396. In a letter dated 14 May 1965, the Assistant Director of the Bureau of Land Management, United States Department of the Interior,

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⁷ Annexes, Vol. III, Annexes 2 and 3 (letter and Canadian maps referred to therein).

wrote to Canadian officials requesting further information on the method of delimitation used by Canada in issuing the aforementioned exploratory permits. That letter reads as follows:

"Thank you for the maps showing locations and holders of the off-shore oil and gas permits you have issued on the east and west coasts. We also appreciate the copy of your printed oil and gas land regulations.

As a matter of some concern to us, we believe that you have issued off-shore permits on the Outer Continental Shelf pertaining to the United States. We believe this is the case in the Gulf of Maine, off the Straits of Juan de Fuca, and Dixon Entrance. We are unable to comment on the permits you have issued in the Arctic Ocean as we do not have a map showing their locations.

Inasmuch as the location of a median line might be subject to different interpretations, we suggest that you check the locations of your permits which approach submerged lands under United States jurisdiction to see if they are within Canadian jurisdiction under an application of Article 6 of the Convention on the Continental Shelf of the 1958 Geneva Conference.

This communication is being written solely in the interest of seeing if there is a basis for disagreement as to the *location of a median line* separating our respective jurisdictions on the Outer Continental Shelf. As an operating Bureau, we, of course, have no authority to enter into any formal discussion of the *location of a median line in case of a dispute*. However, we are hopeful that there could be a simple misunderstanding on either our part or yours, of *the elements positioning a median line*. If this is the case, then the matter could be amicably determined without resort to higher authority.

In the last paragraph of your letter of April 8 you ask for the location of leases we might have issued off the east coast and the State of Washington. No Federal oil and gas leases on the Outer Continental Shelf off the east coast have been issued. However, certain seismic permits have been issued. These permits allow only geophysical activities and no deep drilling. Although a number of blocks off Washington were leased as a result of our October 1, 1964 sale, we believe you will be interested in only Blocks 21 N., and 61 and 62 W. that are nearest to the Canadian-United States boundary⁸. (*Italics added.*)

397. By letter dated 16 June 1965, the Chief of the Resource Management Division of the Canadian Department of Northern Affairs and National Resources replied:

"Thank you for your letter of May 14, concerning the matter of Canada Oil and Gas Permits and United States Leases in off-shore areas on the continental shelf.

⁸ Annexes, Vol. III, Annex 4.

We can appreciate your concern respecting the positions of the lines of demarcation of the resources of the seabed on the continental shelf off the east and west coasts. *We wish to assure you that we have utilized a median line as described in the third paragraph of your letter, constructed in accordance with the equidistance principle as defined in Article 6 of the Convention on the Continental Shelf, to determine the limits of the off-shore areas within which to issue Canada Oil and Gas Permits.* It may help clarify matters somewhat to explain that *since the exact position of such a median line may be open to some interpretation*, we issue permits covering grid areas up to and straddling these off-shore median lines. In the case of a permit straddling a median line, a cautionary statement is included in the permit to the effect that it is issued subject to the lands covered thereby being Canada Lands.

I believe the foregoing answers the various points raised in your letter⁹. (*Italics added.*)

398. By virtue of the foregoing exchange of correspondence, the United States Government, by no later than June 1965, had received from the Canadian Government two precise items of information:

- (a) clear affirmation that in determining the limits of the offshore areas wherein oil and gas exploratory permits were to be issued in the Gulf of Maine area, Canada used the legal principle of the equidistance or median line in accordance with Article 6 of the Convention on the Continental Shelf;
- (b) maps showing the exact location and the holders of the offshore oil and gas permits that Canada had issued up to that time in the Gulf of Maine area.

399. The United States did not respond in any way to the Canadian letter of 16 June 1965. Indeed, following the exchange of letters in May and June 1965, no further information on these matters was sought and no further communication was made by United States authorities until over a year later when, on 16 August 1966, the Second Secretary at the United States Embassy in Ottawa wrote to the Director, Resource Development Branch, Canadian Department of Mines and Technical Surveys, as follows:

"I refer to our telephone conversation of August 16 regarding oil exploration activities in Canadian continental shelf areas.

It would be appreciated if you could provide me with available information on permits issued for exploration in the Cape Flattery and Gulf of Maine areas, as well as information on operational plans and schedules of oil companies holding permits¹⁰."

400. In order to leave no possible doubt as to the formal, official position of the Government of Canada regarding the lateral limits of the

⁹ Annexes, Vol. III, Annex 6.

¹⁰ Annexes, Vol. III, Annex 7.

offshore areas in which it had issued exploratory permits, the Under-Secretary of State for External Affairs replied to the United States Embassy's enquiry by letter dated 30 August 1966, as follows:

"I wish to refer to your letter of August 16 which you addressed to Mr. J.W. McNeil, Director, Research Development Branch, Department of Mines and Technical Surveys, concerning Canadian exploratory permits in that part of the Continental Shelf which is situated off the Eastern Coast of Canada. In view of this Department's general interest in the exploration activities being carried out on the Canadian Continental Shelf in close proximity to areas under the jurisdiction of foreign countries, it was deemed preferable that this Department should answer your query. In order to avoid unnecessarily long delays, we would very much appreciate your directing any future enquiries of a similar nature to the Legal Division of this Department.

As we have commented previously in a letter to the United States Department of the Interior, the policy of the Canadian Government has been to issue permits covering grid areas up to and straddling the medium (sic) line which divides the areas of jurisdiction between Canada and the United States since the exact position of that line might be open to some interpretation. However, when such is the case a cautionary statement is included in the permit to the effect that it is issued subject to the lands covered thereby being Canada Lands. The attached map and index will provide you with all available information concerning permits which have been issued under the Oil and Gas Land Regulations off the Southeast Coast of Canada.

As to your request for information on operational plans and schedules of oil companies holding permits in the above mentioned areas, our policy has been to regard the question of the publicity to be given to such plans as the permit holders may have as the exclusive responsibility of the companies concerned. The competitive nature of their business is of such scope that only they can reasonably establish the criteria for their publicity requirements. The Canadian Government is, of course, made aware of these plans but only insofar as it is necessary to exercise proper jurisdictional control over such operations in accordance with existing legislation. While we cannot, therefore, make such information public, the fact is that a considerable amount of information has over the years been released through the press and we call your attention in particular to the trade magazine 'Oilweek'.

Please do not hesitate to call upon us if we can be of further assistance¹¹. (Italics added.)

401. This reply by the Under-Secretary on behalf of the Department of External Affairs constituted, of course, an official diplomatic communication. It confirmed and explicitly referred back to the position of the Government of Canada as set out in the first correspondence in the

¹¹ Annexes, Vol. III, Annex 8 (letter and attachments).

matter in April to June 1965. It reaffirmed in unambiguous terms Canada's use of the median line as a matter of law in the Gulf of Maine area in accordance with the Convention on the Continental Shelf. It emphasized the legal character of the subject by stating that "we would very much appreciate your directing your future enquiries of a similar nature to the Legal Division of this Department". And it also provided an additional map, further to those transmitted to the United States Government in April 1965, showing all the offshore permit areas and the individual permits issued off the southwest coast of Nova Scotia.

402. The letters of April 1965, June 1965 and August 1966 convey in the clearest possible fashion Canada's adherence to the use of the equidistance or median line for shelf delimitation in the Gulf of Maine area in accordance with international law. The letters follow a consistent line, refer to the legal implications in each case and reflect a coherent position of policy maintained by the Government of Canada. Both individually and cumulatively they could leave the United States in no possible doubt as to Canada's position in respect of the use of an equidistance or median line for purposes of continental shelf delimitation in the Gulf of Maine area.

403. In parallel to the diplomatic correspondence, the Canadian position was clearly apparent from a perusal of the exploratory permits issued by Canada in the Gulf of Maine area from May 1964. These public documents indicated, first, that Canada was exercising jurisdiction over the resources of the continental shelf adjacent to its coast on Georges Bank, and, secondly, as regards the permits issued in January 1965, that Canada had used a line constructed on the basis of the equidistance method to demarcate its jurisdiction in this area.

404. In the period between August 1966 and May 1968 the Canadian position remained unchanged and this position was, at intervals, confirmed in official correspondence and other public conduct. Thus on 22 November 1966, the Canadian Department of Energy, Mines and Resources wrote to an official at the United States Embassy in Ottawa as follows:

"In accordance with our recent telephone conversations, enclosed please find the following publications:

Canada Oil and Gas Permit Map No. 100 — West Coast
Canada Oil and Gas Permit Map No. 150 — East Coast
Index for Water Permits (Except Arctic)

I am sorry for the delay in supplying these materials. As explained over the telephone, we have just completed bringing the maps and indexes up-to-date. Additional copies of the maps may be obtained for \$3.00 each — the index is supplied free of charge¹²."

The Embassy acknowledged receipt of the permit maps on 28 November 1966¹³.

¹² Annexes, Vol. III, Annex 9 (letter and attachments).

¹³ Annexes, Vol. III, Annex 10.

405. During 1967 and 1968 the Canadian Government continued its public activity in the sphere of issuing permits for offshore oil and gas exploration activities in the Gulf of Maine area, and the United States was well aware of this state of affairs. Eventually, by an aide-mémoire dated 10 May 1968, the United States Government offered to enter into discussions with Canada relating to continental shelf areas in the Gulf of Maine area and in the area of the Strait of Juan de Fuca "with a view to reaching agreement on the location of these dividing lines". The full text of the Department of State's aide-mémoire is as follows:

"As the Government of Canada is aware, the United States Government has been considering the desirability of delineating the boundary between the United States and Canada on the continental shelf in the Gulf of Maine as well as in the area of the Straits of Juan de Fuca. Since the mineral interests in both countries are urgently seeking to begin exploration of the areas, it appears to the United States highly desirable that early discussions be undertaken between the two governments with a view to reaching agreement on the location of these dividing lines. At the same time, it would also seem opportune for the two governments to consult with regard to steps to be taken to protect the living resources of the sea against the pollution and disturbance which might result from mineral exploration and exploitation. In this connection, in order that some reassurance can be given to the fishing interests involved, it appears to the United States that particular urgency attaches to the question with regard to the fishing resources now being exploited by a number of nations in the area of the Georges Banks.

The United States, therefore, proposes that appropriate representatives of the two governments consult at an early date with regard to the nature and application of possible safeguard measures before the beginning of exploration for mineral resources or their exploitation. In licensing offshore activities in other areas, for example, the United States Government has applied the safeguards envisaged in Article V of the Convention on the Continental Shelf of April 29, 1958, to insure against any 'unjustifiable interference with . . . fishing or the conservation of the living resources of the sea'. The United States authorities, accordingly, would be pleased to share with their Canadian colleagues the benefit of their technical experience in the application of the safeguards.

The United States also suggests that in the meantime there be a temporary suspension of exploration and exploitation activities with regard to mineral resources in the area of the northern half of the Georges Banks to permit consultation to take place and to provide time to seek an agreement on the exact location of the boundary in this area¹⁴."

406. Nothing in the foregoing communication directly or indirectly indicates in any way that as of 10 May 1968 the United States did not accept and would not continue to accept the use of the median

¹⁴ Annexes, Vol. III, Annex 11.

line or the equidistance method in determining the continental shelf boundary with Canada in the Gulf of Maine area and on Georges Bank in particular. The aide-mémoire merely states that the United States considered it "highly desirable" that early discussion begin so as to reach agreement on the "location of these dividing lines". In combination with the letter from the United States Department of the Interior of 14 May 1965, and in light of the two formal communications from the Government of Canada clearly stating Canada's use of equidistance for delimitation purposes, the aide-mémoire seemed merely to ask for discussions to agree on the "exact location" of the median or equidistance line, rather than indicating any disavowal of its use. There is no attempt in the clear text of this document to challenge the application of the equidistance principle or method in drawing the boundary line in the Gulf of Maine area.

407. It was not for another year and a half, five-and-one-half years after the first Canadian offshore oil and gas exploratory permits were issued on Georges Bank, that the United States Government finally denied recognition of the Canadian-claimed line for delimitation purposes. Thus, by an aide-mémoire dated 5 November 1969, the United States Government stated:

"The Department of State refers to the aide-mémoire given to the Canadian Embassy on May 10, 1968, suggesting the suspension by Canada of exploration and exploitation activities on the Georges Bank until agreement could be reached on the exact location of the United States-Canada Atlantic continental shelf boundary and to permit consultation on measures to safeguard fisheries interests from possible oil pollution. The Government of Canada agreed to a moratorium on mineral exploitation on the Georges Bank, but declined to stop exploratory activities, claiming that Canadian exploration regulations adequately safeguarded fisheries resources.

Earlier this year considerable pollution of the seas occurred as a result of drilling operations off Santa Barbara, California. In the light of this incident, continued uncertainty regarding the United States-Canada continental shelf boundaries, and the importance of the fishery resources of the Georges Bank, the Government of the United States hopes that Canada will now agree to a complete moratorium on all mineral exploration and exploitation in the entire Gulf of Maine until agreement can be reached on the exact location of the United States-Canada continental shelf boundary in this area and mutually acceptable regulations safeguarding the fisheries of the area from pollution can be formulated. If Canada cannot agree to a complete suspension of mineral exploration and exploitation in the Gulf of Maine, the United States hopes that, at a minimum, Canada will agree to a moratorium on all drilling in the area. Until mineral exploration and exploitation are suspended in the Gulf of Maine and mutually acceptable regulations safeguarding the fisheries of the area are adopted, the United States will hold the Government of Canada completely liable for any and all damages for pollution of the Gulf and the Georges Bank resulting from such activities authorized by Canada.

The Government of Canada has already issued exploration permits for the northern portion of the Georges Bank continental shelf. The United States is concerned that, pending settlement of the boundary question, substantial investment in exploration and exploitation of the area could greatly increase the difficulty of negotiating a satisfactory boundary. For this reason, the United States has refrained from authorizing mineral exploration or exploitation in the area.

Until the exact location of the United States-Canada continental shelf boundary in the Gulf of Maine is agreed upon, the United States cannot acquiesce in any Canadian authorization of exploration or exploitation of the natural resources of the Georges Bank continental shelf. The United States Government, therefore, cannot recognize the validity of Canadian permits for any part of the Georges Bank, reserves its rights and the rights of its nationals to this continental shelf area, and intends to make its position a matter of public record in the Federal Register so that individuals and companies concerned with exploration and exploitation in the area may be aware of this position.

The United States Government further reserves its rights and those of its nationals in all continental shelf areas in the vicinity of the other boundaries between the United States and Canada pending agreement on continental shelf boundaries in these areas as well.

Regarding the suggestion made in its aide-mémoire of May 10 for consultation on measures to safeguard fisheries from possible oil pollution anywhere in the Gulf of Maine, the United States Government would welcome a Canadian Government response and a proposal for a convenient place and time of meeting.

In the near future, the United States Government will suggest to the Canadian Government dates for the initiation of formal negotiation of all of the United States-Canada continental shelf boundaries¹⁵.

408. In its response of 1 December 1969 to the above aide-mémoire the Government of Canada stated:

"The Canadian Embassy refers to the Note from the Department of State dated November 5, 1969, concerning activities on the continental shelf in the Gulf of Maine and the delimitation of Canada-United States continental shelf boundaries.

The Canadian Government has noted the views expressed by the United States Government with respect to the Gulf of Maine. The Government of Canada shares the concern of the Government of the United States with respect to pollution hazards arising from

¹⁵ Annexes, Vol. III, Annex 13.

offshore mineral exploration and exploitation. In response to the United States Aide-Mémoire of May 10, 1968, on this subject, the Canadian Embassy on September 23, 1968, transmitted to the State Department copies of the Canadian regulations concerning offshore exploration. No pollution damage has resulted from offshore operations under these regulations, and fish kills resulting from marine seismic surveys have been kept to an acceptable level.

The Canadian Government is unable to accept the suggestion of the United States Government for a temporary suspension of all mineral exploration and exploitation or drilling activities in the Gulf of Maine, pending agreement on the boundary line. The Canadian Government must also emphasize that it has not agreed at any time to a moratorium on mineral exploitation on Georges Bank.

With respect to exploration permits issued by the Government of Canada in the Gulf of Maine, the Canadian authorities on a number of occasions have pointed out that the procedure followed by Canada was in accordance with the principle of equidistance established by the Geneva Convention on the Continental Shelf. The United States authorities did not register any protest to this procedure.

The Canadian Government welcomes the proposal of the United States Government for consultations on measures to safeguard fisheries from possible oil pollution in the Gulf of Maine, and will propose a time and place of meeting for this purpose early in 1970.

The Canadian Government will also be pleased to receive the suggestions of the United States Government concerning possible dates for the initiation of formal negotiation of the Canada-United States continental shelf boundaries. The Canadian Government proposes, however, that the first phase of the negotiations should deal only with the offshore boundaries in the Gulf of Maine and the region of Juan de Fuca Strait¹⁶. (*Italics added.*)

The foregoing official communication once again reaffirmed Canada's use of equidistance in delimiting the areas of its continental shelf within which it issued oil and gas exploratory permits consistent with the Convention on the Continental Shelf.

409. The sequel to the Canadian diplomatic note of 1 December 1969 was a note from the United States Department of State, dated 19 February 1970, proposing that a first phase of negotiations of continental shelf boundaries should deal with the offshore boundaries in the Gulf of Maine area and in the region of the Juan de Fuca Strait. The outcome was the first round of talks held in Washington in 1970 concerning delimitation in the Gulf of Maine area, referred to in paragraph 246.

¹⁶ Annexes, Vol. III, Annex 14.

410. In the years following, the Canadian Government maintained its previous position on the question of legal principle, and made prompt protests in face of United States claims which appeared to be incompatible with the equidistance line in the Gulf of Maine area. The relevant Canadian protests include the following:

Canadian diplomatic note no. 1126, 19 September 1974;
Canadian diplomatic note no. 180, 3 June 1975;
Canadian aide-mémoire, 12 September 1975;
Canadian diplomatic note no. 52, 2 February 1976;
Canadian aide-mémoire, 28 April 1976;
Canadian diplomatic note no. 226, 28 May 1976¹⁷.

411. The penultimate Canadian protest in this series — the aide-mémoire of 28 April 1976 — was followed by the United States note of 20 May 1976, in which the Government of the United States recorded its own view that its first reservation of rights was expressed in the United States note of 5 November 1969.

Section III. The Principle of Acquiescence or Recognition in International Law

412. The role of acquiescence or recognition in general international law is widely acknowledged and, particularly, in the context of the problems of acquisition of title to territory and of maritime delimitation. Indeed, acceptance by conduct by a State of a certain legal position, as a consequence of an absence of protest in face of public activity affecting legal rights as between the parties, is very commonly stated to be an element in the acquisition and loss of rights in territory and in adjacent submarine areas.

413. This principle is aptly summarized in an article by Professor Hersch Lauterpacht that reads, in part, as follows:

"In the first instance, the absence of protest on the part of other states may be fairly interpreted as meaning that *they* 'accepted as law' — i.e. as being in conformity with the existing law — the practice of other states relating to submarine areas. While that practice may have justly created the appearance of novelty, it does not follow that the law on which it is based is new. To that extent the absence of protest, in face of an apparently new departure publicly proclaimed, provides evidence of the essential conformity of the new practice with the principles of international law.

However, in addition to providing evidence as to the views of governments on the existing legal position, the absence of protest on the part of interested states — for in the case of most proclamations and other instruments in the matter of submarine areas there must have been states actually or potentially directly affected — may in itself bring about legal effects. For the absence of protest in

¹⁷ Annexes, Vol. III, Annexes 20, 23, 24, 25, 31 and 32a.

the past can be adduced not only as showing that in the view of the complaining state itself the act which is now being made the subject of challenge was not inconsistent with international law. The absence of protest may, in addition, in itself become a source of legal right inasmuch as it is related to — or forms a constituent element of — estoppel or prescription. Like these two generally recognized legal principles, the far-reaching effect of the failure to protest is not a mere artificiality of the law. It is an essential requirement of stability — a requirement even more important in the international than in other spheres; it is a precept of fair dealing inasmuch as it prevents states from playing fast and loose with situations affecting others; and it is in accordance with equity inasmuch as it protects a state from the contingency of incurring responsibilities and expense, in reliance on the apparent acquiescence of others, and being subsequently confronted with a challenge on the part of those very states.

... any such duty to protest is especially incumbent upon states directly interested — in the case of the proclamations relating to submarine areas in particular upon neighbouring states — though there would be nothing improper, and might be prudent, for other states to assert their legitimate interest in upholding, through protest, a legal principle of general application. The international law of both peace and war provides numerous examples of such protests¹⁸.”

414. There is a considerable weight of judicial authority behind the principle that rights may be affected by acquiescence, that is, by tacit acceptance of a certain legal position as a result of a failure to make a reservation of rights at the appropriate juncture. Thus, the absence of protest on the part of the United Kingdom formed a significant element in the reasoning of the Court in the *Fisheries* case. Having observed that no formal British protest concerning the Norwegian baselines was made until 1933, well after promulgation of the relevant Norwegian decrees, the Court stated:

“The United Kingdom Government has argued that the Norwegian system of delimitation was not known to it and that the system therefore lacked the notoriety essential to provide the basis of an historic title enforceable against it. The Court is unable to accept this view. As a coastal State on the North Sea, greatly interested in the fisheries in this area, as a maritime Power traditionally concerned with the law of the sea and concerned particularly to defend the freedom of the seas, *the United Kingdom could not have*

¹⁸ H. Lauterpacht: “Sovereignty over Submarine Areas.” (*British Yearbook of International Law*, Vol. 27, 1950, pp. 395-398.) The foregoing passage by Lauterpacht has been incorporated by Marjorie Whiteman in M. Whiteman: *Digest of International Law*. United States Department of State, Publication 7553. Washington, U.S. Government Printing Office, 1963, Vol. 2, p. 1062. Miss Whiteman was Assistant Legal Adviser to the Department of State at the time of publication.

been ignorant of the Decree of 1869 which had at once provoked a request for explanations by the French Government. Nor, knowing of it, could it have been under any misapprehension as to the significance of its terms, which clearly described it as constituting the application of a system. The same observation applies *a fortiori* to the Decree of 1889 relating to the delimitation of Romsdal and Nordmøre which must have appeared to the United Kingdom as a reiterated manifestation of the Norwegian practice.

The Court notes that in respect of a situation which could only be strengthened with the passage of time, the United Kingdom Government refrained from formulating reservations.

The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom¹⁹. (*Italics added.*)

It is clear from these passages and from the relevant parts of the Judgment taken as a whole that the Court regarded a failure to protest as critical *even in the short run*, in face of a significant legislative act by a foreign state.

415. The principle of acceptance or recognition by conduct formed a major element in the decisions of the Court in the *Case concerning the Arbitral Award made by the King of Spain on 23 December 1906*²⁰ and in the *Temple of Preah Vihear* case. In the latter case, the Court decided that acknowledgement by conduct of a given state of affairs, and failure to object where circumstances demanded it, amounted to acquiescence on the part of Thailand respecting the true boundary in the Temple area as shown on certain maps conveyed to Thai authorities. Thus, the Court held that —

"... an acknowledgement by conduct was undoubtedly made in a very definite way; but even if it were otherwise, it is clear that the circumstances were such as called for some reaction, within a reasonable period, on the part of the Siamese authorities, if they wished to disagree with the map or had any serious question to raise in regard to it. They did not do so, either then or for many years, and thereby must be held to have acquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset*²¹."

416. In his separate opinion, Judge Alfaro explained the matter as follows:

¹⁹ *I.C.J. Reports 1951*, pp. 138-139.

²⁰ *Judgment of 18 November 1960, I.C.J. Reports 1960*, p. 192.

²¹ *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment of 15 June 1962: I.C.J. Reports 1962*, p. 23.

"A State may also be bound by a passive or negative attitude in respect of rights asserted by another State, which the former State later on claims to have. Passiveness in front of given facts is the most general form of acquiescence or tacit consent. Failure of a State to assert its right when that right is openly challenged by another State can only mean abandonment to that right. Silence by a State in the presence of facts contrary or prejudicial to rights later on claimed by it before an international tribunal can only be interpreted as tacit recognition given prior to the litigation. This interpretation obtains especially in the case of a contractual relationship directly and exclusively affecting two States. Failure to protest in circumstances when protest is necessary according to the general practice of States in order to assert, to preserve or to safeguard a right does likewise signify acquiescence or tacit recognition: the State concerned must be held barred from claiming before the international tribunal the rights it failed to assert or to preserve when they were openly challenged by word or deed²²."

417. The legal importance of abstention from protest and other forms of recognition has been signified in other but allied forms by international tribunals. In the *Tunisia-Libya Continental Shelf* case the Judgment of the Court carefully considered whether certain unilateral acts of the respective parties had, as a consequence of acquiescence, become "opposable" to the other State concerned. Interestingly, in that case, the Court found that the existence of the *modus vivendi* presented in argument by Libya —

"... resting only on the silence and lack of protest on the side of the French authorities responsible for the external relations of Tunisia, falls short of proving the existence of a recognized maritime boundary between the two Parties. Indeed, it appears that Libya is not in fact contending that it had that status, but rather that the evidence that such a line was employed or respected to a certain extent is such as to deprive the ZV 45° line of credibility. But in view of the absence of agreed and clearly specified maritime boundaries, the respect for the tacit *modus vivendi*, which was never formally contested by either side throughout a long period of time, could warrant its acceptance as a historical justification for the choice of the method for the delimitation of the continental shelf between the two States, to the extent that the historic rights claimed by Tunisia could not in any event be opposable to Libya east of the *modus vivendi* line²³." (*Italics added.*)

In the *Minquiers and Ecrehos* case, the Court recognized that a failure to express a reservation of rights in face of a statement of material facts by the other party should be given considerable probative value²⁴. On other occasions, reference has been made in the jurisprudence of international tribunals to the general principle of law that a State may not make claims inconsistent with its previous conduct. Witness the award of the Court of

²² *I.C.J. Reports* 1962, p. 40.

²³ *I.C.J. Reports* 1982, pp. 70-71, para. 95.

²⁴ *Judgment, I.C.J. Reports* 1953, p. 71.

Arbitration in the *Palena* case²⁵. And in the *Honduras Borders* arbitration, the arbitrators applied the principle to several aspects of the dispute, stating, *inter alia*:

"While no State can acquire jurisdiction over territory in another State by mere declarations on its own behalf, it is equally true that these assertions of authority by Guatemala . . . were public, formal acts and show clearly the understanding of Guatemala that this was her territory. These assertions invited opposition on the part of Honduras if they were believed to be unwarranted²⁶."

418. It is the common view of the Parties that the first reservation of legal rights by the Government of the United States took the form of the aide-mémoire of 5 November 1969²⁷. By that time the United States had been aware for nearly five years of the Canadian claim to an equidistance line in the Gulf of Maine area and of the issuance of Canadian permits on Georges Bank as early as May 1964. In particular, the official exchanges of communications in 1965 show in clear terms the extent to which the United States appreciated what was at stake. The letter from the United States Department of the Interior of 14 May 1965 is unequivocal in demonstrating the extent of knowledge of Canadian policies and practices and the legal principles on which they were based. These communications must be weighed in terms of the evidence they provide as to the *knowledge* of the United States Government of the position of the Government of Canada. In the context of official correspondence, the presumption is that each official has the appropriate authority and speaks for the government concerned (see, for instance, the *Russian Indemnity* case²⁸). The pertinent United States officials were well aware of the situation in the Gulf of Maine area, and this awareness is exemplified by the request by the United States Embassy in Ottawa, on 16 August 1966, for further information on Canadian exploratory permits in this area and on the operational plans of permit holders. On several occasions in the 1965-1966 period, the Canadian Government transmitted maps showing the location of the offshore oil and gas permits. Receipt of such maps was acknowledged in the letter of 14 May 1965, from the United States Department of the Interior. In sum, the correspondence as a whole involved — and demonstrates beyond all doubt — a patent

²⁵ *Argentine-Chile Frontier Case*. *International Law Reports*, Vol. 38, 1969, p. 10.

²⁶ *Honduras Borders (Guatemala-Honduras)*, Opinion and Award of the Special Boundary Tribunal, 23 January 1933. United Nations, *Reports of International Arbitral Awards*, Vol. II, p. 1327.

²⁷ The United States diplomatic note of 20 May 1976, Annexes, Vol. III, Annex 32, reads in part as follows:

"The Government of the United States recalls that in its Note of November 5, 1969, in which it reserved its rights and those of its nationals with respect to the Gulf of Maine continental shelf boundary, it also reserved its rights and those of its nationals with respect to areas in the vicinity of other continental shelf boundaries between the United States and Canada."

²⁸ *Award of the arbitral tribunal constituted by virtue of the arbitration agreement signed at Constantinople between Russia and Turkey, July 22/August 4, 1910*. *The Hague, November 11, 1912*. J. B. Scott, ed.: *The Hague Court Reports*. New York, Oxford University Press, 1916, pp. 322-323. Indeed, in some instances, States may be bound by actions of minor officials. In the *Yukon Lumber* case, for example, Great Britain was held by the British-American Claims Tribunal set up under the Convention of 1910 to have been bound as a result of the acts of the Canadian timber and land agent in the Yukon, H. Lauterpacht: *Private Law Sources and Analogies of International Law*. Archon Books, 1970, pp. 280-281.

appreciation by the United States of the legal significance of the matters on which information was being sought.

Section IV. The Principle of Estoppel in International Law

419. It is the further submission of the Government of Canada that the effective silence of the United States in face of Canadian insistence on the use of an equidistance line in the years 1965 to 1969 creates an estoppel in favour of Canada. The consequence of this estoppel is that the single maritime boundary which is to be established in accordance with the Special Agreement should be *compatible with* the rights which had vested in Canada by virtue of United States acceptance of the equidistance method in the period 1965 to 1969 in the context of continental shelf delimitation in the Gulf of Maine area.

420. In the circumstances of the present case the concept of estoppel is applicable in either of two forms. In the first and less rigorous form, the concept is an *alter ego* of acquiescence. In his separate opinion in the *Temple of Preah Vihear* case, Judge Alfaro, referring to the principle of law that constituted the essential basis for the Court's decision, states the matter thus:

"This principle, as I understand it, is that a State party to an international litigation is bound by its previous acts or attitude when they are in contradiction with its claims in the litigation²⁹."

421. This formulation of the principle is specifically endorsed in the report of the Court of Arbitration in the *Palena* case³⁰. In his separate opinion in the *Temple of Preah Vihear* case, Judge Fitzmaurice observed:

"The principle of preclusion is the nearest equivalent in the field of international law to the common-law rule of estoppel . . . It is quite distinct theoretically from the notion of acquiescence. But acquiescence can operate as a preclusion or estoppel in certain cases, for instance where silence, on an occasion where there was a duty or need to speak or act, implies agreement, or a waiver of rights, and can be regarded as a representation to that effect³¹ . . .".

422. In the passage quoted, Judge Fitzmaurice continues:

"On that basis, it must be held in the present case that Thailand's silence, in circumstances in which silence meant acquiescence, or acted as a representation of acceptance of the map line, operates to preclude or estop her from denying such acceptance³² . . .".

²⁹ *I.C.J. Reports* 1962, p. 39. On the same page, the learned Judge states:

"The principle, not infrequently called a doctrine, has been referred to by the terms of 'estoppel', 'preclusion', 'forclusion', 'acquiescence'. I abstain from adopting any of these particular designations, as I do not believe that any of them fits exactly to the principle or doctrine as applied in international cases."

³⁰ *Argentine-Chile Frontier Case, International Law Reports*, Vol. 38, 1969, p. 77.

³¹ *I.C.J. Reports* 1962, p. 62.

³² *I.C.J. Reports* 1962, pp. 62-63.

This same conclusion is applicable to the conduct of the Government of the United States in the years 1965 to 1969, when no reservation was made in the face of the clearest possible information on the Canadian position on delimitation of the continental shelf in the Gulf of Maine area. As the United States Government itself accepts in its note of 20 May 1976³³, the first reservation of its rights regarding Georges Bank took place in its aide-mémoire dated 5 November 1969³⁴.

423. Some authorities have asserted that the doctrine of estoppel in public international law takes a more rigorous form and, in this form, is not to be seen as a mere *alter ego* of the principle of acquiescence but rather as a separate rule of law with precise criteria. Thus Whiteman's *Digest of International Law*³⁵ incorporates passages from an earlier article by Dr. Bowett in the *British Yearbook of International Law*³⁶, in which the following conditions are said to be "essential" to the invocation of estoppel:

- "(i) The purported acquisition of some right or interest by State A in ignorance of State B's conflicting right or interest.
- (ii) Actual or constructive knowledge by State B that State A purports to be acquiring some right or interest in conflict with its own right or interest.
- (iii) Silence or inaction by State B such as to lead State A to suppose it possessed no conflicting right or interest.
- (iv) Some detriment to State A as a result of reliance upon the silence or inaction of State B, or some gain to State B as a result of State A's action."

With regard to the last requirement, in the *Temple of Preah Vihear* case, Judge Fitzmaurice in his separate opinion stated that —

"The essential condition of the operation of the rule of preclusion or estoppel, as strictly to be understood, is that the party invoking the rule must have 'relied upon' the statements or conduct of the other party, either to its own detriment or to the other's advantage³⁷."

424. While the doctrine of estoppel in international law is probably still developing, the facts of the present case certainly satisfy all the conditions cited in the preceding paragraph. In particular, the Canadian Government was placed in a situation of reliance by the United States' abstention from protest, in circumstances of close official and diplomatic contact involving the handing over of maps and other pertinent information, in which the attitude of the Government of Canada was clear, public and open. Thus the Canadian Government for a substantial period was placed in the position of assuming a rightful power to create legal relationships with Canadian and foreign persons and corporations by the grant of permits. While the official correspondence with the United

³³ Annexes, Vol. III, Annex 32.

³⁴ Annexes, Vol. III, Annex 13.

³⁵ M. Whiteman: *Digest of International Law*, Vol. 2, p. 1077.

³⁶ D. W. Bowett: "Estoppel before International Tribunals and its Relations to Acquiescence." (*British Yearbook of International Law*, Vol. 33, 1957, p. 200.)

³⁷ *I.C.J. Reports* 1962, p. 63.

States during this period might have indicated, at the very most, that the precise location of the equidistance line required refinement by means of negotiation and agreement — a point which the Canadian Government took into account in “caveating” those permits that straddled the then equidistance line — the fact remains that for a period of more than five years the United States gave Canada no reason to believe that the principle of the equidistance line was itself in question. The creation of legal relationships in these circumstances constituted a detriment to the Government of Canada as a result of its reasonable and necessary reliance upon the acceptance of its legal position by the United States. Thus again, all four of the conditions set forth in *Whiteman's Digest* (see paragraph 423) were amply fulfilled.

425. In the circumstances of the years 1965 to 1969 there was an additional element of reliance in the fact that, given the apparent acquiescence of the United States and the absence of any reservation (much less any indication of controversy), the diplomatic and legal stance of the Government of Canada was maintained *at the level appropriate to such acquiescence and the absence of controversy*. This involved a form of reliance, a change in the “relative positions” of the parties, which was given express recognition by Judge Fitzmaurice in the *Temple of Preah Vihear* case:

“... what [the term ‘change of position’] really means is that these statements, or this conduct, must have brought about a change in the *relative* positions of the parties, worsening that of the one, or improving that of the other, or both³⁸.”

426. Thus the element of “detriment” does not necessarily involve only potential material harm or physical loss but extends to forms of reliance which cause some relative “disarmament” in the *legal* posture of the two States. The nature of the detriment in this sense appears in the United States aide-mémoire of 5 November 1969, which refers to the significance of the issuing of exploratory permits in disputed areas. After a period of complete acquiescence in the light of full knowledge of Canadian policies and views on the delimitation in the Gulf of Maine area, the United States suddenly changed its stance and reserved its rights. Meanwhile the Government of Canada, for a period of more than five years, had been exercising its sovereign rights and conducting its legal affairs on the basis that there was no controversy on the general principle of delimitation in the Gulf of Maine area. This relative disarmament in the level of the maintenance of Canadian rights was a direct result of the evident acceptance of the equidistance or median line by the Government of the United States. As a consequence of this change in the relative position of the Parties, the United States now “cannot be heard to deny what it said or did³⁹”.

³⁸ *I.C.J. Reports* 1962, p. 63.

³⁹ To borrow the words of Judge Fitzmaurice, *I.C.J. Reports* 1962, p. 64.

Section V. Conclusion

427. The absence of protest on the part of the United States Government in the period 1964 to 1969 in face of unequivocal evidence of the views and actions of the Government of Canada constitutes in law an acquiescence in or recognition of the equidistance line claimed by Canada on the basis of international law at the material time. In addition, the conduct of the United States in the circumstances clearly created an estoppel in favour of Canada in respect of the line of equidistance in the Gulf of Maine area. The consequence of these conclusions of law is that the single maritime boundary to be established by the Court should be compatible with and not derogate from the rights which had vested in Canada in the period from 1964 to 1969.

PART III. SUMMARY OF PRINCIPAL CONCLUSIONS

428. The principal conclusions advanced in this Memorial may be summarized as follows:

- (a) The single maritime boundary in issue is to be determined in accordance with equitable principles, taking account of all relevant factors pertaining to both the water column and the continental shelf, appropriately weighed and balanced in order to achieve an equitable result.
- (b) The configuration of the coasts in the Gulf of Maine area represents the starting point for an equitable delimitation. The geographical relationship between the coasts of the Parties and between their coasts and the Gulf of Maine area in general and Georges Bank in particular is marked by an overall comparability, except as noted in sub-paragraph (f) below.
- (c) This geographical relationship is reflected in well-established patterns of exploitation of the fishery resources of the area. These patterns, and the dependence of Canadian coastal communities on the fishery of Georges Bank, constitute relevant factors of fundamental importance.
- (d) The continental shelf in the Gulf of Maine area is geologically uniform and continuous. There are no discontinuities or geomorphological features that are relevant to the determination of the single maritime boundary.
- (e) The application of the equidistance method is appropriate in light of all of these circumstances.
- (f) The geographical relationship between the Parties is distorted by the exceptional protrusion of Cape Cod and its offlying islands. When superadded to the general protrusion of the coast of Massachusetts, this feature exercises a disproportionate influence upon the course of the equidistance line and thus produces an inequitable effect upon the delimitation. The use of an appropriate basepoint on Cape Cod Canal corrects this distortion.
- (g) The application of the equidistance method in this case is consistent with the conduct of the Parties in terms of both fisheries and continental shelf resources, with the conventional law in force between them, and with Canada's long-recognized status as a coastal State in relation to Georges Bank.
- (h) The conduct of the United States, moreover, constitutes acquiescence in or recognition of the use of the equidistance method in the Gulf of Maine area and the exercise of Canadian jurisdiction on Georges Bank, and creates an estoppel in favour of Canada; and the single maritime boundary should be compatible with the rights which have vested in Canada.
- (i) The single maritime boundary line claimed by Canada represents an equitable solution that takes account of all relevant factors and meets the test of a reasonable degree of proportionality.

PART IV. SUBMISSION

In view of the facts and arguments set out in this Memorial, *may it please the Court to declare and adjudge that:*

The course of the single maritime boundary referred to in the Special Agreement concluded by Canada and the United States on 29 March 1979 is defined by geodetic lines connecting the following geographical coordinates of points:

44° 11' 12" N	67° 16' 46" W
44° 08' 51" N	67° 16' 20" W
43° 59' 12" N	67° 14' 34" W
43° 49' 49" N	67° 12' 30" W
43° 49' 29" N	67° 12' 43" W
43° 37' 33" N	67° 12' 24" W
43° 03' 58" N	67° 23' 55" W
42° 54' 44" N	67° 28' 35" W
42° 20' 37" N	67° 45' 36" W
41° 56' 42" N	67° 51' 29" W
41° 22' 07" N	67° 29' 09" W
40° 05' 36" N	66° 41' 59" W

27 September 1982

L. H. Legault, Q.C.
Agent for the Government
of Canada

APPENDIX

STATE PRACTICE IN MARITIME DELIMITATION

- I. The following continental shelf or maritime boundary agreements incorporate the equidistance method for all or part of the boundary.

<i>Parties</i>	<i>Date of signature</i>
1 Argentina/Uruguay	19/11/73
2 Australia/Indonesia (Arafura Sea and Pacific Ocean)	18/05/71
3 Australia/Indonesia (Arafura Sea)	12/02/73
4 Burma/Thailand	25/07/80
5 Colombia/Dominican Republic	13/01/78
6 Colombia/Haiti	17/02/78
7 Colombia/Panama (Caribbean Sea and Pacific Ocean)	20/11/76
8 Costa Rica/Panama (Caribbean Sea and Pacific Ocean)	02/02/80
9 Cuba/Mexico	26/07/76
10 Denmark/Canada	17/12/73
11 Denmark/Federal Republic of Germany (North Sea)	09/06/65
12 Denmark/Federal Republic of Germany (Baltic Sea)	09/06/65
13 Denmark/Norway (North Sea)	08/12/65
14 Denmark/Norway (Faeroes)	15/06/79
15 Finland/Union of Soviet Socialist Republics	20/05/65
16 Finland/Union of Soviet Socialist Republics, extension	05/05/67
17 Federal Republic of Germany/United Kingdom	25/11/71

	<i>Parties</i>	<i>Date of signature</i>
18	France/Australia (Coral Sea and Indian Ocean)	02/10/80
19	France/Tonga	11/01/80
20	Haiti/Cuba	27/10/77
21	India/Indonesia	08/08/74
22	India/Indonesia, extension	14/01/77
23	India/Maldives	28/12/76
24	India/Sri Lanka (Bay of Bengal and Indian Ocean)	23/03/76
25	India/Thailand	22/06/78
26	Indonesia/Papua New Guinea	17/12/79
27	Iran/Bahrain	17/06/71
28	Iran/Oman	25/07/74
29	Iran/Qatar*	20/09/69
30	Iran/United Arab Emirates*	13/08/74
31	Italy/Greece	24/05/77
32	Italy/Spain	19/02/74
33	Italy/Tunisia	20/08/71
34	Italy/Yugoslavia	08/01/68
35	Japan/Republic of Korea	30/01/74
36	Malaysia/Indonesia (Malacca Strait and South China Sea)	27/10/69
37	Malaysia/Thailand (Gulf of Thailand)	24/10/79
38	Mauritius/France	02/04/80
39	Netherlands/Federal Republic of Germany	01/12/64
40	Netherlands/United Kingdom	06/10/65

	<i>Parties</i>	<i>Date of signature</i>
41	Norway/United Kingdom	10/03/65
42	Norway/United Kingdom, protocol	22/12/78
43	Poland/German Democratic Republic	29/10/68
44	Poland/Union of Soviet Socialist Republics	29/08/69
45	St. Lucia/France	04/03/81
46	Saudi Arabia/Iran	24/10/68
47	Spain/France	29/01/74
48	Sweden/German Democratic Republic	22/06/78
49	Sweden/Norway**	24/07/68
50	Tokelau/United States of America	02/12/80
51	Trinidad and Tobago/Venezuela**	26/02/42
52	Turkey/Union of Soviet Socialist Republics	23/06/78
53	United Kingdom/Denmark	03/03/66
54	United States of America/Cook Islands	11/06/80
55	United States of America/Cuba**	16/12/77
56	United States of America/Mexico (Caribbean Sea and Pacific Ocean**)	04/05/78
57	Venezuela/Dominican Republic	03/03/79
58	Venezuela/Netherlands (Aves Island/Saba)	30/03/78
59	Venezuela/United States of America	28/03/78

* ignoring islands

** simplified equidistance

II. Continental shelf or maritime boundary agreements which do not incorporate the equidistance method.

<i>Parties</i>	<i>Date of signature</i>
1 Abu Dhabi/Dubai	18/02/68
2 Australia/Indonesia	09/10/72
3 Australia/Papua New Guinea	18/12/78
4 Chile/Peru	18/08/52
5 Colombia/Costa Rica	17/03/77
6 Colombia/Ecuador	23/08/75
7 Federal Republic of Germany/ Denmark	28/01/71
8 Finland/Sweden	29/09/72
9 France/Brazil	30/01/81
10 Malaysia/Indonesia (Malacca Strait, extension)	21/12/71
11 Malaysia/Indonesia (South China Sea, eastern part)	27/10/69
12 Malaysia/Thailand (Andaman Sea)	21/12/71
13 Mauritania/Morocco	14/04/76
14 Netherlands/Federal Republic of Germany	28/01/71
15 Norway/Iceland	22/10/81
16 Norway/Union of Soviet Socialist Republics	29/11/57
17 Peru/Ecuador	18/08/52
18 Portugal/Spain (north and south)	12/02/76
19 Qatar/Abu Dhabi	20/03/69
20 Saudi Arabia/Bahrain	22/02/58
21 Senegal/The Gambia (north and south)	04/06/75
22 Senegal/Guinea Bissau	26/04/60
23 Thailand/Indonesia	17/12/71

	<i>Parties</i>	<i>Date of signature</i>
24	Uruguay/Brazil	11/05/70
25	Venezuela/France	17/07/80
26	Venezuela/Netherlands (Aruba, Curacao, Bonaire)	30/03/78

Note: Copies of all agreements listed in this Appendix, together with illustrations prepared by the Canadian Hydrographic Service, have been deposited with the Registrar and supplied to the Agent for the United States.

ANNEXES TO THE MEMORIAL OF CANADA

Volume I

CONTEMPORARY TREATIES AFFECTING THE NORTHWEST ATLANTIC FISHERIES, WITH A HISTORICAL INTRODUCTION

HISTORICAL INTRODUCTION

A. FOREWORD

1. The fisheries and boundary relations of Canada's Maritime Provinces and New England have contributed much to international legal history. The uncertainties of the boundary dividing Maine from the Canadian provinces, as defined in the Treaty of Paris of 1783 that confirmed the independence of the United States, brought about a series of arbitral proceedings that became important precedents in the development of modern ideas of international dispute settlement. Chief among these were the commission set up under Jay's Treaty of 1794 to identify the St. Croix River boundary between Maine and New Brunswick, in the southern reaches of the boundary near the coast, and the 1814 Treaty of Ghent Commission to settle the sovereignty of certain islands in Passamaquoddy Bay and the Bay of Fundy. Efforts to ascertain the true boundary further inland were faced with greater difficulty and controversy. It was not until 1842, through the Webster-Ashburton Treaty, that the present boundary was finally accepted by the two countries.

2. The equally contentious struggles over fishing rights and jurisdiction have a much longer provenance in time. The early history of the fisheries relationship between the two countries, admittedly, did not concern itself with Georges Bank itself or with any of the other offshore fishing banks of the region; these were open seas that were free to all who chose to fish there. And yet, though the relevance may be indirect it is nonetheless real; for the course of the Northwest Atlantic fisheries dispute from the outset has shown patterns of continuity that shed light on some of the most recent events in its evolution.

3. There are perhaps two major themes, one adversarial and the other cooperative in nature, that emerge from this history and have continued to manifest themselves until recent times. The first of these is the strong northward pressure constantly exerted by New England fishermen and traders both in the French and British periods of Nova Scotia's colonial age¹. The second is that the two countries, at least when statesmanship has been the order of the day, have shown themselves capable of solid achievements in the cooperative management of shared fishery resources with a view to fostering the prosperity and stability of the industry on both sides of the border. The unratified 1979 Agreement on East Coast Fishery Resources was negotiated in the spirit of this cooperative tradition and is in a direct line of descent from a series of earlier agreements and arrangements on these matters.

¹ Harold Adams Innis: *The Cod Fisheries. The History of an International Economy*. New Haven, Yale University Press, 1940, pp. 95-143; Andrew Hill Clark: *Acadie. The Geography of Early Nova Scotia to 1760*. Madison, Wisconsin, University of Wisconsin Press, 1968, pp. 179-183, 227, 246; John Bartlett Brebner: *The Neutral Yankees of Nova Scotia. A Marginal Colony during the Revolutionary Years*. New York, Columbia University Press, 1937, pp. 5-49; John Bartlett Brebner: *New England's Outpost. Acadia Before the Conquest of Canada*. Hamden, Connecticut, Archon Books, 1965; John Bartlett Brebner: *North Atlantic Triangle. The Interplay of Canada, the United States and Great Britain*. New Haven, Yale University Press, 1945.

4. These major trends are complemented by three other persistent factors. First, in the face of the unrelenting northward pressure of New England vessels, Canada (and, of course, Great Britain in right of Canada in the colonial era) has repeatedly shown forbearance in the exercise of its jurisdictional claims against the American fishing fleet, especially where a confrontation might have endangered the prospects for an amicable negotiated settlement of the issues, or generally threatened relations or a clash of arms. Secondly, in the days when trade relations were conducted on a purely bilateral basis and without regard to the general rules of law and policy that now apply, Canadian (and Newfoundland) dependence on the United States export market for the sale of fish was a major factor in the acceptance of an American fishing presence off the coasts of the British Dominions. A third factor, closely allied to the second one, was American dependence on Canadian inshore waters and ports, first for drying facilities, shelter, bait and supplies, and afterwards, in the last quarter of the nineteenth century, for the trans-shipment of catches and the recruitment of skilled and experienced Nova Scotia schooner seamen — both fishermen and skippers — to operate New England vessels and dories.

B. THE AMERICAN REVOLUTION AND THE TREATY OF PARIS OF 1783

5. The fishery played a significant part in the events leading up to the American Revolution and the independence of the United States. In the rising tensions of 1775, Lord North, the British Prime Minister known for his harsh policies in regard to the American colonies, induced Parliament to pass the *Restraining Act* that curbed the trading activities of the rebellious provinces and colonies of New England. The Statute recited that —

“... during the Continuance of the Combinations and Disorders, which at this Time prevail within the Provinces of *Massachusetts Bay* and *New Hampshire*, and the Colonies of *Connecticut* and *Rhode Island*, to the Obstruction of the Commerce of these Kingdoms, and other [of] His Majesty's Dominions, and in Breach and Violation of the Laws of this Realm, it is highly unfit that the Inhabitants of the said Provinces and Colonies should enjoy the same Privileges of Trade, and the same Benefits and Advantages to which His Majesty's faithful and obedient Subjects are entitled”.

Article VII, in particular, provided that the fishermen of these colonies might not, on pain of forfeiture of the vessel and of all its cargo and equipment, carry on any fishery —

“... on the Banks of *Newfoundland*, the Coast of *Labrador*, or within the River or Gulph of *Saint Lawrence*, or upon the Coast of *Cape Breton*, or *Nova Scotia*, or any other Part of the Coast of *North America*. . . .”.

6. The American colonies retaliated by prohibiting their residents from supplying British fishing vessels with provisions. The next step in this escalation was a British *Prohibitory Act* of 1776², forbidding all nations to trade with the American colonies. Only one month later the hostilities of the Revolutionary War broke out. The American fishery and its profitable supply trade to Nova Scotia and other colonies and provinces of British North America were seriously hampered until several years after the peace.

7. The restoration of American fishing rights off Nova Scotia and the other British North American colonies figured prominently in the

² 15 Geo. III, chap. 10.

³ 15 Geo. III, chap. 10.

⁴ 16 Geo. III, chap. 5.

negotiations concerning American independence. The matter was of particular concern to John Adams, who was one of the American commissioners at the Paris negotiations, along with such other figures of the day as Benjamin Franklin and John Jay. Article III of the Treaty of Paris of 1783 reinstated the American fisheries off the British coasts of the Northwest Atlantic in terms that distinguished between the "right" to fish in the open sea and on the banks of Newfoundland — the bank fisheries, in other words, that were not within territorial waters — and the "liberty" to fish in coastal waters. The distinction would later acquire a fundamental significance.

8. The fisheries provisions of the Treaty of Paris were generous to the Americans. The "liberty" of fishing extended throughout the coastal waters of the British colonies on the Atlantic coast, and carried with it, in more limited areas, the important ancillary privilege to dry and cure fish on certain unsettled shores. When the Comte de Vergennes, the French Minister of Foreign Affairs, saw the provisional articles, he commented that the British had "bought a peace" rather than made one, and that their concessions exceeded anything he had thought possible⁵. Not surprisingly, the treaty was unpopular in Nova Scotia, with its large population of loyalist émigrés from the thirteen colonies.

⁵ "Treaties Affecting the Northeastern Fisheries." *United States Tariff Commission Report* No. 152, Second Series (1944) (hereinafter referred to as *The United States Tariff Commission Report*). Washington, U.S. Government Printing Office, 1944, p. 16, citing F. Wharton, ed.: *The Revolutionary Diplomatic Correspondence of the United States*. House Miscellaneous Document 603, 50th Congress, 1st session, 1889, Vol. 6, p. 107. Vergennes had earlier taken the view, in September of 1779, that the Americans had forfeited their share in the British fisheries by declaring their independence. See F. Wharton, p. 9.

C. THE WAR OF 1812 AND ITS DIPLOMATIC AFTERMATH

9. The fisheries dispute that would plague relations between British North America and the United States for a full century was originally sparked by the hostilities that broke out in 1812. Great Britain maintained that the War of 1812 had abrogated the fishing privileges granted under the Treaty of Paris. The question was a major topic in the negotiations leading to the 1814 Treaty of Ghent that ended the war, but it was caught up with a British demand for the free navigation of the Mississippi and with irreconcilable differences of legal principle respecting the effect of the war on the Treaty of Paris. The British recognized, seemingly as a right that existed independently of the treaty, that the United States was free to take fish on the banks of Newfoundland, and on other banks in areas of the open sea beyond territorial waters. But the importance of the distinction between this right, and the "liberty" granted by the original Treaty of Paris of 1783 to fish and exercise related privileges in the coastal waters and upon the shores of British North America, was strongly insisted upon; and it was that "liberty" that Great Britain held to have been irrevocably extinguished by the war. The net result was that the Treaty of Ghent made no mention of the fisheries, and there were seizures of American fishing vessels in British North American waters in the ensuing years.

10. In the course of the diplomatic correspondence that surrounded these events, Lord Bathurst, the British Secretary of State for Foreign Affairs, offered to enter into negotiations for a "modified renewal" of the American fishing liberties. A conference was called at London to negotiate a settlement upon these terms. The resulting convention, signed on 20 October 1818, played a prominent part in relations between Great Britain and the United States throughout the nineteenth century, and dominated the fisheries relationship in Atlantic North America. In brief, the first article of this convention limited the American fisheries to certain stretches of the coast of Newfoundland, to the Magdalen Islands, to the north coast of the Gulf of St. Lawrence, and to the Labrador coast. In all other areas — including, of course, the entire coast of Nova Scotia — the United States "renounced forever" the liberty to fish within three marine miles of the "Coasts, Bays, Creeks or Harbours" of British North America⁶.

11. Apart from its substantive importance, one historically significant feature of the Convention of 1818 is that it was perhaps the earliest instrument that crystallized the rule of the 3-mile territorial sea⁷. But it was not this aspect of the convention that created difficulties in later years. Rather, there were two fundamental ambiguities that became the

⁶ *British and Foreign State Papers*, Vol. 6, 1818-19. London, James Ridgway, 1835, pp. 3-5. An accurate account is to be found in A. L. Burt: *The United States, Great Britain and British North America*. New York, Russell and Russell, 1961, pp. 416-426.

⁷ See D. M. Johnston: *The International Law of Fisheries*. New Haven, Yale University Press, 1965, p. 198; n. 14. According to at least one source, the stipulation that the "renunciation" extended only to the 3-mile limit was important to the American negotiators because the fishery on the coast of Nova Scotia was conducted at a greater distance from shore than was that of the Labrador coast. Access to the inshore fisheries of Nova Scotia, in other words, was perceived as less than essential provided that the limit was not placed too far out to sea. See *The United States Tariff Commission Report*, p. 32.

focal point of most of the disputes between the two powers respecting the coastal fisheries of British North America in the remainder of the nineteenth century and in the early part of the present century. The first of these difficulties was the meaning that should be given to the word "bays": did the expression mean, as the British contended, that the Americans were to be excluded from bays of whatever size or configuration, and from the 3-mile belt seaward of a line drawn from headland to headland across their entrances? Or did the treaty support the opposing view, advocated by the United States, that the 3-mile belt meant 3 miles from the low-water mark, following the sinuosities of coast, so that all bays more than 6 miles broad would be open to the American fisheries? The other persistent source of conflict in the administration of the agreement was the question whether the "liberty" of engaging in the coastal fisheries of British North America was one to be exercised in accordance with the legislation and regulations laid down by the territorial authorities. Or was it intended instead to be subject only to such controls as the United States itself might choose to impose?

12. Although the rights and privileges extended by the 1818 convention were very extensive indeed, they were less generous than those set forth in the original Treaty of Paris of 1783. Perhaps the greatest single difference was the restriction of American fishing vessels to areas outside the 3-mile limit along the coasts of the Maritime Provinces. The most assertive of the British colonial authorities in this regard, it seems, was the legislature of Nova Scotia, which in 1836 passed a law commonly referred to as the *Hovering Act*, imposing stringent penalties upon unauthorized fishermen within the 3-mile limit laid down by the 1818 convention — including, of course, the waters within the headland to headland closing lines asserted by the British to be required by a proper interpretation of the convention.

13. One rather threatening incident precipitated by the difference of views between the two powers with respect to the question of jurisdiction over bays was the seizure of the American schooner *Washington* in the Bay of Fundy in 1843. This incident, along with another seizure further north in the area of Cape Breton Island, again within a headland to headland closing line, took on dimensions that threatened peaceful relations in the area and engaged the attention of the high authorities of both Britain and the United States. The immediate issue was settled, without any sacrifice of principle, by an undertaking on behalf of Great Britain that United States fishermen would again be allowed into the Bay of Fundy. Later, however, in 1853, the matter was referred to an umpire appointed under a claims convention of 8 February 1853⁸, and his decision was adverse to the British case.

⁸ One of a number of conciliatory measures taken by Great Britain and the United States to dampen the atmosphere of hostility and promote relations to the point where negotiations for reciprocity of Canadian-United States trade and navigation could be fruitful. See *British Foreign and State Papers*, Vol. 42, 1852-1853. London, William Ridgway, 1865, p. 34.

D. THE RECIPROCITY TREATY OF 1854

14. The interests of the inland communities of Canada became entangled with the fisheries dispute when it became apparent during the 1840s that Canadian economic interests of a general character favoured reciprocal trade with the United States. American fisheries privileges began to be seen as part of the *quid pro quo* for favourable terms of trade, and the two issues became linked in the diplomacy of the day and remained a persistent theme of both Liberal and Conservative administrations in Canada until 1899⁹. During the same period, tensions over the enforcement of the British interpretation of the Convention of 1818 were increasing dramatically; and an accord between the British North American colonies was concluded at Toronto in 1851 for the specific purpose of building up an enforcement fleet for the protection of the Atlantic fisheries. In 1852, the Imperial Government itself announced its intention to despatch a small naval force of vessels to enforce the 1818 convention. A similar force was built up by the United States at Portsmouth, New Hampshire. Much of this activity, undoubtedly, was in the nature of "sabre rattling". The British naval forces had orders to continue the earlier policy of restraint in the Bay of Fundy, and to exercise their powers with leniency elsewhere; and Commodore Shubrick of the United States had equally conciliatory instructions. But the dangers were nonetheless real; and Lord Elgin, the Governor General of Canada, said in a speech given at about this time that "a single indiscretion on the part of one or the other of those naval officers would have brought on a conflict involving all the horrors of war"¹⁰.

15. Formal negotiations were undertaken in 1853, and in 1854 Lord Elgin himself took charge of the matter in Washington for the British Government. What emerged was the famous Reciprocity Treaty of 1854, said to have been "floated through on champagne" by Lord Elgin¹¹. It dealt in a comprehensive manner with both the general trade and the fisheries questions. American fishing rights along virtually the whole coast of British North America were reinstated on essentially the same basis as had obtained in the Treaty of Paris of 1783. More specifically, the Reciprocity Treaty granted to the United States fishermen the right to take fish of every kind, except shellfish, throughout the waters of the Maritime Provinces of Canada, without being restricted to any particular distance from shore. In return, fish and fish oil were included in the list of

⁹ Goldwin Smith: *The Treaty of Washington, 1871*. Ithaca, New York, Cornell University Press, 1941, pp. 3-5; Robert Craig Brown: *Canada's National Policy, 1883-1900*. Princeton, New Jersey, Princeton University Press, 1964, pp. 8-9.

¹⁰ House Document 1350, 61st Congress, 3rd. Session, p. 42, cited in the *United States Tariff Commission Report*, p. 56.

¹¹ Lester Burrell Shippee: *Canadian-American Relations, 1849-1874*. New Haven, Yale University Press, 1939, pp. 82-83. See the still authoritative book by D. C. Masters: *The Reciprocity Treaty of 1854*. Toronto, McClelland and Stewart, 1963, pp. 29-61.

commodities subject to free trade between the United States and the British North American colonies. As well, British subjects were to be free to take fish along the coast of the United States north of 36° north latitude.

16. While the Reciprocity Treaty brought a halt to the dispute between the two powers on the proper interpretation of American fishing rights under the 1818 convention, the respite was only temporary. A number of factors contributed to the eventual abrogation of the treaty only a decade or so after its adoption. There was no great dissatisfaction with the fisheries provisions of the treaty. It was rather the general deterioration of relations between Great Britain and the United States in the context of the events surrounding the American Civil War, and a growing climate of protectionism in the United States, that led to its eventual demise. Canada strongly favoured maintenance of the treaty¹². It was the United States that took the initiative in abrogating it, effective 17 March 1866. Once again, therefore, the parties reverted to the original position under the profoundly ambiguous Convention of 1818.

17. The abrogation of the Reciprocity Treaty, however, did not precipitate the immediate confrontation that might have been feared. The British and colonial authorities opted instead for a policy of moderation. Shortly after abrogation, the British Secretary of State for the Colonies stated that, notwithstanding the "strict right" of the British Government to exclude American fishermen from the Bay of Fundy, that right would not be exercised for the coming fishing season; and further, that American fishermen should not be interfered with in any way unless they were found within 3 miles of the shore or within 3 miles of a line drawn across the mouth of any bay or indentation of less than 10 miles in width. A more enduring policy of restraint was instituted by the British government shortly thereafter: instead of simply excluding American fishermen from Canadian waters, a system of licences was instituted that allowed these fishermen to enjoy full fishing privileges on payment of a fee.

18. In 1867, the hand of the colonial authorities was strengthened by the creation of the Dominion of Canada through the federation of the four original provinces — Nova Scotia, New Brunswick, Ontario and Québec. The "Sea Coast and Inland Fisheries" were among the categories of exclusive legislative authority given to the central government of Canada by the *British North America Act* of 1867, and in 1868 an Act for the regulation of foreign fishing vessels was passed by the Parliament of Canada. It was modelled in some respects after the Nova Scotia *Hovering Act* of 1836, and applied stringent penalties to foreign fishing vessels unlawfully found within waters claimed to be under Canadian jurisdiction¹³.

¹² Of Canada's attempts to negotiate reciprocity with the United States, a leading authority on the subject has written: "The dreary tale of fruitless pilgrimages to Washington did not end until the turn of the century. The memory of these humiliating experiences exerted a considerable influence in the repudiation by the Canadian people of the Laurier-Taft Agreement in 1911." [The American-Canadian Reciprocity Agreement] D. C. Masters, *The Reciprocity Treaty of 1854*, p. 183, n. 28.

¹³ *Fishing by Foreign Vessels Act*, Statutes of Canada 1868, chap. 61.

E. THE 1871 TREATY OF WASHINGTON

19. In the wake of the American Civil War a wide variety of controversies endangered peaceful relations between Great Britain and the United States. The fishery itself was not one of the most pressing matters at this time, but it had sufficient importance that it was included on the list of negotiating topics given in instructions to both the British and the American members of a joint High Commission appointed in 1871 to treat on all questions affecting the relations between the United States and British North America.

20. During the negotiations of the Joint High Commission in 1871, the American negotiators offered to purchase in perpetuity the enjoyment of the British North American inshore fisheries, in common with British fishermen, for one million dollars. But the final settlement, even though it was restricted to the fisheries and fish products, was more favourable to the Canadian cause, largely because of the efforts of Sir John A. Macdonald, Canada's first prime minister, who was the colonial member of the British commission. Instead of a perpetual right, the Treaty of Washington gave the Americans a right to conduct fisheries in the inshore waters of British North America for a term of ten years, with a provision for termination on two years' notice. The free entry of fish and fish oil was conceded as a *quid pro quo*; and, as well, British subjects were to have the right to fish in American territorial waters north of the 39° north latitude. But the essential concession that led to a settlement of this issue was that, although the United States commissioners thought that the removal of duties on fish and fish oil would be worth more than the use of the British North American inshore fisheries, they agreed that the United States would submit the determination of the relative value of the fisheries provisions of the agreement to arbitration and would pay whatever amount of money might be found necessary to complete an equivalent¹⁴.

21. That settled the immediate issue of reciprocal fishing rights, although certainly not to the full satisfaction of Canadian opinion, which had long perceived the fisheries to be an integral part of the larger question of reciprocal trade measures not addressed by the treaty. Prime Minister Macdonald, who was attacked for having sacrificed Canadian interests to his own ambition, clearly held deep misgivings about the limited outcome of the treaty negotiations¹⁵. Nevertheless, he defended the settlement in Parliament in the interests of Imperial unity, and the necessary Canadian legislation to give effect to the fishery articles was passed.

¹⁴ John Bassett Moore: *History and Digest of the International Arbitrations to which the United States has been a Party*. Washington, U.S. Government Printing Office, Vol. 1, p. 741.

¹⁵ Donald Creighton: *John A. Macdonald. The Old Chieftain*. Toronto, The Macmillan Company of Canada, 1955, pp. 84-105.

F. THE FAILURE OF THE BROWN-THORNTON DRAFT TREATY AND THE HALIFAX COMMISSION AWARD

22. It was some time, however, before agreement could be obtained on the establishment of the arbitration commission for the valuation of the Canadian fisheries and the selection of the neutral member, as required by the Treaty of Washington. One factor that may have delayed the institution of the arbitral proceedings was the accession to power of a new Liberal government in Canada which, under Prime Minister Alexander Mackenzie, felt itself mandated by an angry electorate to effect changes in the treaty. The Liberals, like Macdonald's Conservatives before them, were committed to a broader reciprocity modelled on the agreement of 1854. Encouraged by the initial reactions of the American administration, they commenced negotiations in 1874 with the objective of waiving the right of compensation for the inshore fisheries in exchange for a wide range of reciprocal trade measures. The so-called Brown-Thornton draft treaty failed, however, to receive the support of the United States Senate¹⁶. Negotiations resumed once again over the vexing question of the appointment of a neutral member to the commission of arbitration provided for by the 1871 Treaty of Washington. The issue was settled and the proceedings of what ultimately became known as the Halifax Commission commenced in 1877.

23. One of the issues put before the tribunal was the extent of American rights in bays along the coast of British North America. On the value of the inshore fisheries on each side of the border as such, it was contended by the United States that most of its fisheries off British North America were conducted on the outer banks, beyond territorial waters. Indeed, the United States argued that the only fishery operated by American fishermen within Canadian territorial waters was for mackerel, and that only a small fraction of this catch had ever been taken within these waters¹⁷. The United States also argued that the value of its inshore fishery that had been made available to Canadian fishermen was not inconsiderable. But the British contended that this reciprocal concession was valueless and that American fishing in Canadian waters was both extensive and critical to the success of their industry. Indeed, the issue at stake made it incumbent on both parties to minimize the value of the other's inshore waters to their fisheries¹⁸.

24. The Halifax Commission gave a decision, without written reasons and not concurred in by the American commissioner, setting the value of access to the Canadian inshore fisheries to American fishermen at \$5,500,000. In the end, on 21 November 1878, the United States paid the required amount to the British authorities, but maintained, nonethe-

¹⁶ L. B. Shippee, *Canadian-American Relations, 1849-1874*, pp. 460-470.

¹⁷ J. B. Moore, *History and Digest of the International Arbitrations to which the United States has been a Party*, Vol. 1, p. 741.

¹⁸ "Correspondence Respecting the Halifax Fisheries Commission", *British Parliamentary Papers, Colonies, Canada*, reprinted in Irish University Series. Shannon, Ireland, Irish University Press, 1970, Vol. 29, pp. 1-97, I.U.P. page numbers 15-111.

less, that it could not accept the decision of the Halifax Commission as a just evaluation of the advantages of United States access to the inshore fisheries of Canada and that it did not acquiesce in that evaluation¹⁹.

25. It was no doubt partly a reaction to the Halifax Commission award, in combination with a bitter dispute between the inhabitants of Fortune Bay in Newfoundland and American fishermen exercising their treaty privileges in that area, that led Congress in 1883 to recommend the termination of the fishery articles of the Treaty of Washington. Notice was accordingly given, and the reciprocal fishing privileges under this agreement were terminated at the end of 1885.

¹⁹ *United States Tariff Commission Report*, p. 85; J. B. Moore, *History and Digest of the International Arbitrations to which the United States has been a Party*, p. 753.

G. THE ABORTIVE TREATY OF 1888 AND THE MODUS VIVENDI

26. Once again the position reverted to the Convention of 1818, and once again the old wounds were re-opened. There was extensive enforcement action against American vessels within the 3-mile limit by the Canadian authorities; and in 1887 the *Retaliatory Act* was passed by the United States Congress authorizing the President — under an authority he never exercised — to deny the entry of British North American vessels into United States ports or waters and to impose related trade sanctions.

27. The promise of solving the fishing question in the broad context of "the entire commercial relations of the two countries" held out by the American Secretary of State Bayard, set in motion yet another joint commission which met in Washington during 1887 and 1888. But the Cleveland administration, bent on tariff reform, had not fully reckoned with the extent of protectionist sentiment in the United States Senate. Upon meeting with their British and Canadian counterparts, the American commissioners hastily retreated from Bayard's position by insisting that discussions be confined to the fisheries²⁰. Despite this major difficulty, a treaty was signed in February 1888, dealing only with the fisheries question. Although Great Britain, Canada and Newfoundland ratified the treaty, the United States did not. In contrast to the Reciprocity Treaty of 1854 and the Treaty of Washington, the rights granted to American fishermen along the coast of British North America (and reciprocally to Canadian and Newfoundland fishermen along the coast of the United States) did not extend to waters within the 3-mile limit. Nonetheless, at least some of the old disputes under the Convention of 1818 were to have been avoided by a provision delimiting "territorial" waters for the limited purposes of that treaty. The 3-mile limit specified in the 1818 convention would have been measured from the low-water mark, and in the case of bays and similar indentations, this distance would have been measured from a straight line from the point at which the width of the indentation ceased to exceed 10 nautical miles²¹.

28. Despite the non-ratification of the treaty of 1888 by the United States the efforts of the negotiators were not entirely in vain. At the time the treaty was signed, the British delegation proposed and the

²⁰ Charles Callan Tansill: *Canadian-American Relations, 1875-1911*. New Haven, Yale University Press, 1943, p. 21; D. Creighton, *John A. Macdonald. The Old Chieftain*, p. 490; R. C. Brown, *Canada's National Policy*, pp. 58-59. Bayard had written Sir Charles Tupper, the Canadian plenipotentiary to the Washington talks, to propose that "... the only way of solving the *questio vexata* of the fisheries was to treat it in a straight-forward ... and liberal statesmanlike plan of the entire commercial relations of the two countries". R. C. Brown, *Canada's National Policy*, pp. 58-59, 63-72; and Charles Callan Tansill: *The Foreign Policy of Thomas F. Bayard*. New York, Fordham University Press, 1940, pp. 526-529.

²¹ "Act of the Government of Canada, assenting to the Treaty between Great Britain and the United States of February 15, 1888", *British and Foreign State Papers*, Vol. 79, 1887-1888. London, Her Majesty's Stationery Office, pp. 550-554.

American representatives accepted a *modus vivendi* to remove the old sources of "friction and irritation" for an interim period not exceeding two years. The *modus vivendi* did not deal with fishing rights as such, but with the vitally important ancillary rights to enter ports and harbours to purchase bait and other equipment and to trans-ship catches and take on crews. These rights were granted to United States vessels along the coasts of Canada and Newfoundland on condition of obtaining an annual licence at a fee of \$1.50 per ton, which licences were to have been issued free of charge if duties on Canadian fish and related products were removed by the United States. Although the *modus vivendi* was originally intended for a period of only two years, it actually remained in effect until 1924 and undoubtedly helped to alleviate many of the concerns that had disturbed the fisheries relations of the two countries in earlier times²².

²² "Treaty of Washington and two Protocols establishing a *modus vivendi*", *British and Foreign State Papers*, Vol. 79, pp. 264-276; Sir L. S. Sackville West to Mr. Bayard, May 30, 1888, and enclosure, "Licence to United States Fishing Vessels", *Papers Relating to the Foreign Relations of the United States*, Part I. Washington, U.S. Government Printing Office, 1889, p. 808.

H. THE NORTH ATLANTIC FISHERIES ARBITRATION OF 1910

29. In the ensuing years, the focal point of North American fisheries diplomacy shifted to the waters off Newfoundland. It was primarily a number of difficulties concerning United States fisheries in those waters, in combination with the still unresolved dispute under the Convention of 1818, that induced the parties to submit a comprehensive list of questions concerning their rights and obligations in this matter to the recently established Permanent Court of Arbitration at The Hague. Among the more important questions submitted were the matters of the proper definition to be given to bays and similar indentations under the 1818 convention, and the extent to which American fishermen exercising their rights under that treaty would be subject to British, Canadian or Newfoundland fisheries legislation.

30. The decision of The Hague Tribunal²³ on the matter of bays and historic waters is well known in the annals of international jurisprudence and has undoubtedly made a major contribution to the modern law of the sea. Less well known, perhaps, but equally important at the time was the award of the Tribunal on the question of the extent to which the British, Canadian and Newfoundland authorities had the right to regulate American fishermen in the exercise of their treaty rights. In essence, the decision on this point was that the right of regulation was inherent in the sovereignty of Great Britain, and was not restricted by any purported international servitude created by the treaty. But such measures might not lawfully violate the treaty "liberties", and the Tribunal laid down criteria and recommendations with respect to the proper limits of legislation or regulations affecting this matter.

31. The parties had reserved to themselves the right to vary the award in certain respects, and in pursuance of that understanding they entered into an agreement in 1912 on the detailed implementation of certain aspects of the award. The recommendations of The Hague Tribunal on the limits of bays were adopted so far as they related to Canadian bays. With respect to the regulatory powers of Great Britain and the colonial authorities, a Permanent Mixed Fishery Commission was established in conformity with the Tribunal's recommendation that an impartial authority should be established to resolve disputes. It would appear, however, that with The Hague decision of 1910 the old controversies had been very largely laid to rest, and recourse to the Permanent Mixed Fishery Commission was seldom if ever required.

32. The decision of The Hague Tribunal and the implementing agreement of 1912 largely disposed of the legal aspects of the fisheries problem. In subsequent years, it was mainly bilateral trade and tariff matters affecting the trade in fish that captured the attention of the two governments.

²³ "Award of the Permanent Court of International Arbitration at The Hague in the North Atlantic Fisheries", *British and Foreign State Papers*, Vol. 103, 1909-1910. London, His Majesty's Stationery Office, 1914, pp. 86-132; J. B. Scott: *The Hague Court Reports*. New York, Oxford University Press, 1916, p. 141.

33. Toward the end of the First World War, a Canadian-American Fisheries Conference was held to negotiate current issues²⁴. No formal treaty actually emerged from these talks, but they did produce a positive result: it was agreed that the fishermen of both countries would be given reciprocal privileges to go into the ports of the other country to sell their catch and to take on provisions. By this time, advancing technology in the industry, particularly in the use of powered trawlers with greater range and self-sufficiency, was creating new patterns and requirements that largely eclipsed the inshore fisheries as a matter of major bilateral concern. Direct access to the fresh fish markets of the United States, on the other hand, was obviously an advantage of undiminished economic value. In its final report, the Canadian-American Fisheries Conference recommended "that the markets of both countries be made available to the fishermen of both on the same terms²⁵". But the port privileges granted under this informal arrangement (commonly referred to as the Hazen-Redfield Pact) had originally been implemented in the United States only as a war measure, and were terminated by the United States in 1921. A second blow to the Canadian fishing industry followed in 1922, when the Fordney-McCumber Tariff, which has been described as an "almost prohibitive wall against the importation of Canadian fish", was imposed by the United States²⁶.

34. In the immediate wake of the cancellation of the Hazen-Redfield Pact, tensions began to rise and there were a number of seizures of United States vessels in Canadian waters. Canada attempted once again to negotiate a new treaty based, *inter alia*, on free trade in the fishery and reciprocal port privileges, but these efforts were in vain²⁷. Meanwhile, in the hope that a policy of moderation would be reciprocated, the old *modus vivendi* privileges, granting United States fishermen the use of Canadian ports, were maintained by Canada despite the political and economic pressures created by the combined impact of the abandonment of the Hazen-Redfield Pact and the imposition of the Fordney Tariff. Eventually, however, the *modus vivendi* privileges were cancelled, in 1924. The Government of Canada issued a statement explaining its action in this regard, stating that "from the action of the United States authorities the obvious conclusion was reached that little or no value was attached by the people of the United States to the privileges that Canada had been voluntarily extending for so long a period²⁸".

²⁴ *American-Canadian Fisheries Conference Hearings*. Washington: U.S. Government Printing Office, 1918.

²⁵ *Canadian Annual Review of Public Affairs, 1921*. Toronto, The Canadian Review Company, 1922, p. 135.

²⁶ R. Grant: *The Canadian Atlantic Fishery*. Toronto, The Ryerson Press, 1934, pp. 119, 136; H. L. Keenleyside and G. S. Brown: *Canada and the United States*. New York, Alfred A. Knopf, 1952, p. 244; *Canadian Annual Review of Public Affairs, 1922*. Toronto, The Canadian Review Company, 1923, p. 14.

²⁷ *Canadian Annual Review of Public Affairs, 1922*, p. 80; *Canadian Annual Review of Public Affairs, 1921*, p. 137.

²⁸ *Canadian Annual Review of Public Affairs, 1923*. Toronto, The Canadian Review Company, 1924, pp. 54-55.

35. It was undoubtedly true that the value of the *modus vivendi* privileges to American fishermen had declined. Their abrogation did not, therefore, have a serious impact on the United States fisheries off Canada's coasts²⁹. With the election of the Roosevelt administration in 1933, some of these privileges were restored, as were lower American tariffs with the passage of the United States-Canada Trade Agreement in 1936. These privileges were maintained in effect until fairly recent times.

²⁹ H. L. Keenleyside and G. S. Brown, *Canada and the United States*, p. 246, as well as R. Grant, *The Canadian Atlantic Fishery*, p. 120, and the authors of the *United States Tariff Commission Report*, p. 151, support the conclusion that the new trawler technology diminished the real value of the *modus vivendi*.

I. INSTITUTIONAL COOPERATION

36. Perhaps the most significant development in the early part of this century was the emergence of international institutional arrangements for the conservation and management of the fisheries of the Northwest Atlantic, inspired no doubt in part by the formation in 1902 of the International Council for the Exploration of the Sea. In 1921, Canada and the United States, along with Newfoundland and France, formed the North American Council on Fisheries Investigations³⁰. This council had no independent powers but it did serve as a useful forum for the exchange of information and views on the conservation of the fisheries of this region, and it brought into existence an exceptional Canadian-American scientific cooperation that flourished in later years. This body was a precursor of the more elaborate international fishery commissions of the years after the Second World War.

37. Early in 1949, a diplomatic conference at Washington adopted a text for an "International Convention for the Northwest Atlantic Fisheries", the main function of which was to establish the International Commission for the Northwest Atlantic Fisheries (ICNAF). The convention came into force on 3 July 1950 with both Canada and the United States, along with a number of European countries, as charter members.

38. The regulatory and scientific history of ICNAF is long and complex, but a very positive aspect of its operations was the cooperative relationship that was established between the United States and Canada as the coastal States for that part of the convention area that included Georges Bank. By the mid-1970s, however, Canadian and United States fishermen were pressing for the adoption of the 200-mile limit. The United States Government was authorized to abrogate its existing fisheries treaties by the *Fisheries Conservation and Management Act* of 1976, and it accordingly withdrew the United States from ICNAF on 31 December 1976. At Canada's urging, negotiations leading to the establishment of a successor organization to be known as the Northwest Atlantic Fisheries Organization (NAFO) were conducted in a series of meetings at Ottawa in 1977 and 1978, and the NAFO Convention came into force on 1 January 1979. Canada remained a member of ICNAF until it became defunct at the end of 1979, and is now a member of NAFO. The United States, however, is not³¹. The new organization — whose geographical area of concern is identical to the former ICNAF area — has

³⁰ *Canadian Annual Review of Public Affairs, 1921*, p. 133; North American Council on Fisheries Investigations, *Proceedings of the Council*, No. 1, 1921-1930. Ottawa, King's Printer, 1932.

³¹ Northwest Atlantic Fisheries Organization, *Annual Report*, Vol. 1, 1979. Dartmouth, Nova Scotia, 1980, pp. 57, 76, 77; Northwest Atlantic Fisheries Organization, *Scientific Council Reports*, 1981, Dartmouth, Nova Scotia, 1981, p. 7; *Yearbook of International Organizations*, 19th edition, item C1537g. Brussels, Union of International Associations, October 1981.

essentially two functions. First, it regulates the fisheries beyond the 200-mile limit in much the same manner as did ICNAF before the general extension of fisheries jurisdiction; and secondly, it serves as a vehicle for international scientific cooperation within the 200-mile limit.

J. THE BEGINNINGS OF JURISDICTIONAL CHANGE: 1960-1977

39. The Canadian Atlantic fishery has never been a distant-water operation. The fleet, by and large, has confined its range to adjacent waters and offshore banks. The capital-intensive technologies of the post-war era — giant trawlers with their long-range capability and enormously increased catching capacity, floating canneries and freezer plants, mother ships and support vessels — were never a feature of the Canadian industry. The coastal communities of Atlantic Canada therefore felt the impact of the distant-water fisheries explosion of the 1950s and 1960s with particular intensity; and this put Canada in the forefront of those nations that sought to bring the rights of coastal and distant-water States into a more equitable balance that would reflect the fundamental changes that had taken place.

40. This was the context in which a number of jurisdictional changes took place in the fifteen years preceding the creation of the 200-mile zones. In 1964, Canada established a 9-mile fishing zone adjacent to her existing 3-mile territorial sea³². But the policy of the Government of Canada was to phase in this extension of jurisdiction with a minimum of friction and disruption. Therefore, United States fishing vessels, along with those of France and a number of distant-water fishing countries, were authorized by a regulation passed immediately before the extension of jurisdiction, to continue to fish in the newly created fishing zones pending the outcome of negotiations³³. This unilateral exemption for United States vessels was continued in effect by Canada throughout the decade, even though no agreement on the subject was concluded until 1970.

41. There were further developments in the ensuing years. The United States created its own 9-mile fishing zone in 1966, while Canada promulgated a number of straight baselines in 1967 off Newfoundland, and in 1969 off Nova Scotia and British Columbia³⁴. Subsequently, in

³² *Territorial Sea and Fishing Zone Act*. Statutes of Canada 1964-1965, chap. 22, and consolidated as amended in Revised Statutes of Canada 1970, chap. T-7.

³³ Unlicensed foreign fishing vessels were prohibited from entering Canadian fisheries waters by the *Coastal Fisheries Protection Act*. Statutes of Canada 1952-1953, chap. 15, consolidated as amended in Revised Statutes of Canada 1970, chap. C-21. Licences were issued under the authority of regulations made pursuant to the Act: see the *Coastal Fisheries Protection Regulations*, amended, P.C. 1964-1112 of 17 July 1964, published in the *Canada Gazette*, Part II, Vol. 98, No. 15, 12 August 1964.

³⁴ Straight baselines were established pursuant to regulations made under the authority of the *Territorial Sea and Fishing Zones Act*, Statutes of Canada 1964-1965, chap. 22. For Newfoundland see the *Territorial Sea and Fishing Zones Geographic Co-ordinates (Areas 1, 2 and 3) Order*, P.C. 1967-2025, 26 October 1967, published in the *Canada Gazette*, Part II, Vol. 101, No. 21, 8 November 1967. For Nova Scotia and British Columbia, see the *Territorial Sea and Fishing Zones Geographical Co-ordinates (Zones 4, 5 and 6) Order*, P.C. 1969-1109, 29 May 1969, published in the *Canada Gazette*, Part II, Vol. 103, No. 11, 11 June 1969.

1970, Canada enacted legislation extending the breadth of its territorial sea to 12 nautical miles, and authorizing the creation of additional fishing zones adjacent to the coasts of Canada³⁵. In 1971, Canada exercised these new statutory powers to create expanded fishing zones by establishing fishery "closing lines" across the Bay of Fundy, the Gulf of St. Lawrence, and the waters of the Inside Passage off British Columbia.

42. In the wake of these developments, the first of the recent reciprocal fishing agreements with the United States was concluded on 24 April 1970. It was essentially an agreement to allow traditional coast-wide fishing operations to continue despite the various extensions of jurisdiction that had occurred in the 1960s and early 1970s (unaccompanied by new agreements on maritime boundaries), and thus to avert both jurisdictional conflict between the two countries and hardship for the fishermen. In effect, the agreement placed on a treaty basis the informal arrangement that had existed between the two countries since the creation of their 9-mile exclusive fishing zones.

43. The wording of the 1970 agreement was intricately framed with respect to the geographical scope of the reciprocal fishing privileges it conferred so as to allow traditional patterns of fishing to continue in the newly claimed areas of the sea, while meticulously avoiding expressions that might prejudice the legal position of either party on any of these matters. In practical effect, fishing was allowed to continue in the areas from 3 to 12 miles from the coast, but only outside Canadian bays less than 24 miles in breadth. The agreement set forth, in addition to its more detailed provisions, an undertaking to cooperate in the management of fishery resources of common concern. It was originally for a term of two years, but it was renewed successively (with technical changes in 1973) until April 1977. At that time it was replaced with an interim agreement adopted upon the creation of the 200-mile zones of the parties.

44. The interim agreement was renewed in 1978 but this renewed agreement never came into force owing to disputes over its interpretation and application. Transboundary fishing by Canadian and United States vessels was thereupon terminated, in the expectation that it would resume upon the entry into force of the 1979 Agreement on East Coast Fishery Resources, to which Canada and the United States now turned their attention. That agreement, however, was not ratified by the United States. Its provisions and its significance are discussed in the main body of the Canadian Memorial. It represented perhaps the most ambitious joint undertaking in the alternating pattern of conflict and cooperation that marks the history of the Northwest Atlantic fisheries dispute, which is now before the Court in its maritime boundary aspects.

³⁵ *Territorial Sea and Fishing Zones Act*, Revised Statutes of Canada 1970, chap. T-7 was amended by the *Territorial Sea and Fishing Zones Act*, Revised Statutes of Canada 1970 (1st Supp.), chap. 45, which entered into force 26 June 1970. It was under the authority of this amended Act that 200-mile fishing zones were created by the *Fishing Zones of Canada (Zones 4 and 5) Order*, P.C. 1977-1, 1 January 1977, published in the *Canada Gazette*, Part II, Vol. 111, extra edition, 1 January 1977.

Annex 1**INTERNATIONAL CONVENTION FOR THE
NORTHWEST ATLANTIC FISHERIES***

OPENED FOR SIGNATURE AT WASHINGTON, D.C., ON 8 FEBRUARY 1949

CANADIAN RATIFICATION DEPOSITED ON 3 JULY 1950

CAME INTO FORCE ON 3 JULY 1950

[Not reproduced]

Annex 2**PROTOCOL TO THE INTERNATIONAL CONVENTION FOR THE NORTHWEST ATLANTIC
FISHERIES SIGNED AT WASHINGTON UNDER DATE OF 8 FEBRUARY 1949****

DONE AT WASHINGTON 25 JUNE 1956

SIGNED BY CANADA 26 JUNE 1956

INSTRUMENT OF RATIFICATION OF CANADA DEPOSITED 27 MARCH 1957

IN FORCE 10 JANUARY 1959

[Not reproduced]

Annex 3**PROTOCOL TO THE INTERNATIONAL CONVENTION FOR THE
NORTHWEST ATLANTIC FISHERIES*****

DONE AT WASHINGTON 15 JULY 1963

SIGNED BY CANADA 15 JULY 1963

CANADA'S INSTRUMENT OF RATIFICATION DEPOSITED 23 JANUARY 1964

ENTERED INTO FORCE 29 APRIL 1966

[Not reproduced]

* *Canada Treaty Series*, 1950, No. 10.

** *Canada Treaty Series*, 1959, No. 4.

*** *Canada Treaty Series*, 1966, No. 17.

Annex 4

PROTOCOLS TO THE INTERNATIONAL CONVENTION FOR THE NORTHWEST ATLANTIC FISHERIES (1) RELATING TO MEASURES OF CONTROL (2) RELATING TO ENTRY INTO FORCE OF PROPOSALS ADOPTED BY THE COMMISSION*

DONE AT WASHINGTON, 29 NOVEMBER 1965

SIGNED BY CANADA 13 DECEMBER 1965

CANADA'S INSTRUMENTS OF RATIFICATION DEPOSITED 1 APRIL 1966

ENTERED INTO FORCE 19 DECEMBER 1969

[Not reproduced]

Annex 5

PROTOCOL TO THE INTERNATIONAL CONVENTION FOR THE NORTHWEST ATLANTIC FISHERIES RELATING TO PANEL MEMBERSHIP AND TO REGULATORY MEASURES**

DONE AT WASHINGTON, 1 OCTOBER 1969

SIGNED BY CANADA 10 OCTOBER 1969

CANADA'S INSTRUMENT OF RATIFICATION DEPOSITED 29 OCTOBER 1970

ENTERED INTO FORCE 15 DECEMBER 1971

[Not reproduced]

Annex 6

PROTOCOL TO THE INTERNATIONAL CONVENTION FOR THE NORTHWEST ATLANTIC FISHERIES RELATING TO AMENDMENTS TO THE CONVENTION***

WASHINGTON, 6 OCTOBER 1970

CANADA'S INSTRUMENT OF ADHERENCE DEPOSITED 27 JULY 1972

IN FORCE 4 SEPTEMBER 1974

[Not reproduced]

* *Canada Treaty Series*, 1969, No. 34.

** *Canada Treaty Series*, 1971, No. 16.

*** *Canada Treaty Series*, 1974, No. 32.

Annex 7

PROTOCOL TO THE INTERNATIONAL CONVENTION FOR THE
NORTHWEST ATLANTIC FISHERIES

DONE AT WASHINGTON, 8 APRIL 1975

CANADA'S INSTRUMENT OF APPROVAL DEPOSITED 18 SEPTEMBER 1975

IN FORCE 18 SEPTEMBER 1975

[Not reproduced]

Annex 8

PROTOCOL TO THE INTERNATIONAL CONVENTION FOR THE
NORTHWEST ATLANTIC FISHERIES RELATING TO
CONTINUED FUNCTIONING OF THE COMMISSION

DONE AT WASHINGTON, 20 DECEMBER 1976

CANADA'S INSTRUMENT OF APPROVAL DEPOSITED 9 MARCH 1977

IN FORCE 9 MARCH 1977

[Not reproduced]

Annex 9**CONVENTION ON FUTURE MULTILATERAL COOPERATION IN THE
NORTHWEST ATLANTIC FISHERIES***

DONE AT OTTAWA, 24 OCTOBER 1978

CANADA'S INSTRUMENT OF RATIFICATION DEPOSITED 30 NOVEMBER 1978
IN FORCE 1 JANUARY 1979

[Pages 1-27 not reproduced]

ANNEX III TO THE CONVENTION**Scientific and Statistical Sub-areas, Divisions and Subdivisions**

The scientific and statistical sub-areas, divisions and subdivisions provided for by Article XX of this Convention shall be as follows:

1 (a) Sub-area 0

That portion of the Convention Area lying to the north of the parallel of $61^{\circ} 00'$ north latitude; bounded on the east by a line extending due north from a point at $61^{\circ} 00'$ north latitude and $59^{\circ} 00'$ west longitude to the parallel of $69^{\circ} 00'$ north latitude, thence in a northwesterly direction along a rhumb line to a point at $75^{\circ} 00'$ north latitude and $73^{\circ} 30'$ west longitude and thence due north to the parallel of $78^{\circ} 10'$ north latitude; and bounded on the west by a line beginning at $61^{\circ} 00'$ north latitude and $65^{\circ} 00'$ west longitude and extending in a northwesterly direction along a rhumb line to the coast of Baffin Island at East Bluff ($61^{\circ} 55'$ north latitude and $66^{\circ} 20'$ west longitude), and thence in a northerly direction along the coast of Baffin Island, Bylot Island, Devon Island and Ellesmere Island and following the eightieth meridian of west longitude in the waters between those islands to the parallel of $78^{\circ} 10'$ north latitude.

1 (b) Sub-area 0 is composed of two Divisions:

Division 0-A

That portion of the Sub-area lying to the north of the parallel of $66^{\circ} 15'$ north latitude;

Division 0-B

That portion of the Sub-area lying to the south of the parallel of $66^{\circ} 15'$ north latitude.

2 (a) Sub-area 1

That portion of the Convention Area lying to the east of Sub-area 0 and to the north and east of a rhumb line joining a point at $61^{\circ} 00'$ north latitude and $59^{\circ} 00'$ west longitude with a point at $52^{\circ} 15'$ north latitude and $42^{\circ} 00'$ west longitude.

* *Canada Treaty Series*, 1979, No. 11.

2 (b) Sub-area 1 is composed of six Divisions:

Division 1A

That portion of the Sub-area lying north of the parallel of $68^{\circ} 50'$ north latitude (Christianshaab);

Division 1B

That portion of the Sub-area lying between the parallel of $66^{\circ} 15'$ north latitude (5 nautical miles north of Umanarsugssuak) and the parallel of $68^{\circ} 50'$ north latitude (Christianshaab);

Division 1C

That portion of the Sub-area lying between the parallel of $64^{\circ} 15'$ north latitude (4 nautical miles north of Godthaab) and the parallel of $66^{\circ} 15'$ north latitude (5 nautical miles north of Umanarsugssuak);

Division 1D

That portion of the Sub-area lying between the parallel of $62^{\circ} 30'$ north latitude (Frederikshaab Glacier) and the parallel of $64^{\circ} 15'$ north latitude (4 nautical miles north of Godthaab);

Division 1E

That portion of the Sub-area lying between the parallel of $60^{\circ} 45'$ north latitude (Cape Desolation) and the parallel of $62^{\circ} 30'$ north latitude (Frederikshaab Glacier);

Division 1F

That portion of the Sub-area lying south of the parallel of $60^{\circ} 45'$ north latitude (Cape Desolation).

3 (a) Sub-area 2

That portion of the Convention Area lying to the east of the meridian of $64^{\circ} 30'$ west longitude in the area of Hudson Strait, to the south of Sub-area 0, to the south and west of Sub-area 1 and to the north of the parallel of $52^{\circ} 15'$ north latitude.

3 (b) Sub-area 2 is composed of three Divisions:

Division 2G

That portion of the Sub-area lying north of the parallel of $57^{\circ} 40'$ north latitude (Cape Mugford);

Division 2H

That portion of the Sub-area lying between the parallel of $55^{\circ} 20'$ north latitude (Hopedale) and the parallel of $57^{\circ} 40'$ north latitude (Cape Mugford);

Division 2J

That portion of the Sub-area lying south of the parallel of $55^{\circ} 20'$ north latitude (Hopedale).

4 (a) Sub-area 3

That portion of the Convention Area lying south of the parallel of $52^{\circ} 15'$ north latitude; and to the east of a line extending due north from Cape Bauld on the north coast of Newfoundland to $52^{\circ} 15'$ north latitude; to the north of the parallel of $39^{\circ} 00'$ north latitude; and to the east and north of a rhumb line commencing at $39^{\circ} 00'$ north latitude, $50^{\circ} 00'$ west longitude and extending in a northwesterly direction to pass through a point at $43^{\circ} 30'$ north latitude, $55^{\circ} 00'$

west longitude in the direction of a point at $47^{\circ} 50'$ north latitude, $60^{\circ} 00'$ west longitude until it intersects a straight line connecting Cape Ray, on the coast of Newfoundland, with Cape North on Cape Breton Island; thence in a northeasterly direction along said line to Cape Ray.

4 (b) Sub-area 3 is composed of six Divisions:

Division 3K

That portion of the Sub-area lying north of the parallel of $49^{\circ} 15'$ north latitude (Cape Freels, Newfoundland);

Division 3L

That portion of the Sub-area lying between the Newfoundland coast from Cape Freels to Cape St. Mary and a line described as follows: beginning at Cape Freels, thence due east to the meridian of $46^{\circ} 30'$ west longitude, thence due south to the parallel of $46^{\circ} 00'$ north latitude, thence due west to the meridian of $54^{\circ} 30'$ west longitude, thence along a rhumb line to Cape St. Mary, Newfoundland;

Division 3M

That portion of the Sub-area lying south of the parallel of $49^{\circ} 15'$ north latitude and east of the meridian of $46^{\circ} 30'$ west longitude;

Division 3N

That portion of the Sub-area lying south of the parallel of $46^{\circ} 00'$ north latitude and between the meridian of $46^{\circ} 30'$ west longitude and the meridian of $51^{\circ} 00'$ west longitude;

Division 3-O

That portion of the Sub-area lying south of the parallel of $46^{\circ} 00'$ north latitude and between the meridian of $51^{\circ} 00'$ west longitude and the meridian of $54^{\circ} 30'$ west longitude;

Division 3P

That portion of the Sub-area lying south of the Newfoundland coast and west of a line from Cape St. Mary, Newfoundland to a point at $46^{\circ} 00'$ north latitude, $54^{\circ} 30'$ west longitude, thence due south to the limit of the Sub-area;

Division 3P is divided into two Subdivisions:

3Pn — Northwestern Subdivision — That portion of Division 3P lying northwest of a line extending from Burgeo Island, Newfoundland, approximately southwest to a point at $46^{\circ} 50'$ north latitude and $58^{\circ} 50'$ west longitude;

3Ps — Southeastern Subdivision — That portion of Division 3P lying southeast of the line defined for Subdivision 3Pn.

5 (a) Sub-area 4

That portion of the Convention Area lying north of the parallel of $39^{\circ} 00'$ north latitude, to the west of Sub-area 3, and to the east of a line described as follows: beginning at the terminus of the international boundary between the United States of America and Canada in Grand Manan Channel, at a point at $44^{\circ} 46' 35.346''$ north latitude; $66^{\circ} 54' 11.253''$ west longitude; thence due south to the parallel of $43^{\circ} 50'$ north latitude; thence due west to the meridian of $67^{\circ} 40'$ west longitude; thence due south to the parallel of $42^{\circ} 20'$ north latitude; thence due east to a point in $66^{\circ} 00'$ west longitude; thence along a rhumb line in a southeasterly direction to a point at $42^{\circ} 00'$ north latitude and $65^{\circ} 40'$ west longitude; and thence due south to the parallel of $39^{\circ} 00'$ north latitude.

5 (b) Sub-area 4 is divided into six Divisions:

Division 4R

That portion of the Sub-area lying between the coast of Newfoundland from Cape Bauld to Cape Ray and a line described as follows: beginning at Cape Bauld, thence due north to the parallel of $52^{\circ} 15'$ north latitude, thence due west to the Labrador coast, thence along the Labrador coast to the terminus of the Labrador-Quebec boundary, thence along a rhumb line in a southwesterly direction to a point at $49^{\circ} 25'$ north latitude, $60^{\circ} 00'$ west longitude, thence due south to a point at $47^{\circ} 50'$ north latitude, $60^{\circ} 00'$ west longitude, thence along a rhumb line in a southeasterly direction to the point at which the boundary of Sub-area 3 intersects the straight line joining Cape North, Nova Scotia with Cape Ray, Newfoundland, thence to Cape Ray, Newfoundland;

Division 4S

That portion of the Sub-area lying between the south coast of Quebec from the terminus of the Labrador-Quebec boundary to Pte. des Monts and a line described as follows: beginning at Pte. des Monts, thence due east to a point at $49^{\circ} 25'$ north latitude, $64^{\circ} 40'$ west longitude, thence along a rhumb line in an east-southeasterly direction to a point at $47^{\circ} 50'$ north latitude, $60^{\circ} 00'$ west longitude, thence due north to a point at $49^{\circ} 25'$ north latitude, $60^{\circ} 00'$ west longitude, thence along a rhumb line in a northeasterly direction to the terminus of the Labrador-Quebec boundary;

Division 4T

That portion of the Sub-area lying between the coasts of Nova Scotia, New Brunswick and Quebec from Cape North to Pte. des Monts and a line described as follows: beginning at Pte. des Monts, thence due east to a point at $59^{\circ} 25'$ north latitude, $64^{\circ} 40'$ west longitude, thence along a rhumb line in a southeasterly direction to a point at $47^{\circ} 50'$ north latitude, $60^{\circ} 00'$ west longitude, thence along a rhumb line in a southerly direction to Cape North, Nova Scotia;

Division 4V

That portion of the Sub-area lying between the coast of Nova Scotia between Cape North and Fourchu and a line described as follows: beginning at Fourchu, thence along a rhumb line in an easterly direction to a point at $45^{\circ} 40'$ north latitude, $60^{\circ} 00'$ west longitude, thence due south along the meridian of $60^{\circ} 00'$ west longitude to the parallel of $44^{\circ} 10'$ north latitude, thence due east to the meridian of $59^{\circ} 00'$ west longitude, thence due south to the parallel of $39^{\circ} 00'$ north latitude, thence due east to a point where the boundary between Sub-areas 3 and 4 meets the parallel of $39^{\circ} 00'$ north latitude, thence along the boundary between Sub-areas 3 and 4 and a line continuing in a northwesterly direction to a point at $47^{\circ} 50'$ north latitude, $60^{\circ} 00'$ west longitude, and thence along a rhumb line in a southerly direction to Cape North, Nova Scotia;

Division 4V is divided into two Subdivisions:

4Vn — Northern Subdivision — That portion of Division 4V lying north of the parallel of $45^{\circ} 40'$ north latitude;

4Vs — Southern Subdivision — That portion of Division 4V lying south of the parallel of $45^{\circ} 40'$ north latitude;

Division 4W

That portion of the Sub-area lying between the coast of Nova Scotia from Halifax to Fourchu and a line described as follows: beginning at Fourchu, thence along a rhumb line in an easterly direction to a point at $45^{\circ} 40'$ north

latitude, $60^{\circ} 00'$ west longitude, thence due south along the meridian of $60^{\circ} 00'$ west longitude to the parallel of $44^{\circ} 10'$ north latitude, thence due east to the meridian of $59^{\circ} 00'$ west longitude, thence due south to the parallel of $39^{\circ} 00'$ north latitude, thence due west to the meridian of $63^{\circ} 20'$ west longitude, thence due north to a point on that meridian at $44^{\circ} 20'$ north latitude, thence along a rhumb line in a northwesterly direction to Halifax, Nova Scotia;

Division 4X

That portion of the Sub-area lying between the western boundary of Sub-area 4 and the coasts of New Brunswick and Nova Scotia from the terminus of the boundary between New Brunswick and Maine to Halifax, and a line described as follows: beginning at Halifax, thence along a rhumb line in a southeasterly direction to a point at $44^{\circ} 20'$ north latitude, $63^{\circ} 20'$ west longitude, thence due south to the parallel of $39^{\circ} 00'$ north latitude, and thence due west to the meridian of $65^{\circ} 40'$ west longitude.

6 (a) Sub-area 5

That portion of the Convention Area lying to the west of the western boundary of Sub-area 4, to the north of the parallel of $39^{\circ} 00'$ north latitude, and to the east of the meridian of $71^{\circ} 40'$ west longitude.

6 (b) Sub-area 5 is composed of two Divisions:

Division 5Y

That portion of the Sub-area lying between the coasts of Maine, New Hampshire and Massachusetts from the border between Maine and New Brunswick to $70^{\circ} 00'$ west longitude on Cape Cod (at approximately 42° north latitude) and a line described as follows: beginning at a point on Cape Cod at 70° west longitude (at approximately 42° north latitude), thence due north to $42^{\circ} 20'$ north latitude, thence due east to $67^{\circ} 40'$ west longitude at the boundary of Sub-areas 4 and 5, and thence along that boundary to the boundary of Canada and the United States;

Division 5Z

That portion of the Sub-area lying to the south and east of Division 5Y.

Division 5Z is divided into two Sub-divisions: an eastern Subdivision and a western Subdivision defined as follows:

5Ze — Eastern Subdivision — That portion of Division 5Z lying east of the meridian of $70^{\circ} 00'$ west longitude;

5Zw — Western Subdivision — That portion of Division 5Z lying west of the meridian of $70^{\circ} 00'$ west longitude.

7 (a) Sub-area 6

That part of the Convention Area bounded by a line beginning at a point on the coast of Rhode Island at $71^{\circ} 40'$ west longitude, thence due south to $39^{\circ} 00'$ north latitude, thence due east to $42^{\circ} 00'$ west longitude, thence due south to $35^{\circ} 00'$ north latitude, thence due west to the coast of North America, thence northwards along the coast of North America to the point on Rhode Island at $71^{\circ} 40'$ west longitude.

7 (b) Sub-area 6 is composed of eight Divisions:

Division 6A

That portion of the Sub-area lying to the north of the parallel of $39^{\circ} 00'$ north latitude and to the west of Sub-area 5;

Division 6B

That portion of the Sub-area lying to the west of $70^{\circ} 00'$ west longitude, to the south of the parallel of $39^{\circ} 00'$ north latitude, and to the north and west of a line running westward along the parallel of $37^{\circ} 00'$ north latitude to $76^{\circ} 00'$ west longitude and thence due south to Cape Henry, Virginia;

Division 6C

That portion of the Sub-area lying to the west of $70^{\circ} 00'$ west longitude and to the south of Subdivision 6B;

Division 6D

That portion of the Sub-area lying to the east of Divisions 6B and 6C and to the west of $65^{\circ} 00'$ west longitude;

Division 6E

That portion of the Sub-area lying to the east of Division 6D and to the west of $60^{\circ} 00'$ west longitude;

Division 6F

That portion of the Sub-area lying to the east of Division 6E and to the west of $55^{\circ} 00'$ west longitude;

Division 6G

That portion of the Sub-area lying to the east of Division 6F and to the west of $50^{\circ} 00'$ west longitude;

Division 6H

That portion of the Sub-area lying to the east of Division 6G and to the west of $42^{\circ} 00'$ west longitude.

Annex 10

**AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF
THE UNITED STATES OF AMERICA ON RECIPROCAL FISHING PRIVILEGES IN CERTAIN
AREAS OFF THEIR COASTS***

SIGNED AT OTTAWA, 24 APRIL 1970

ENTERED INTO FORCE 24 APRIL 1970

* *Canada Treaty Series*, 1970, No. 11.

AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA ON RECIPROCAL FISHING PRIVILEGES IN CERTAIN AREAS OFF THEIR COASTS

The Government of Canada and the Government of the United States of America,

CONSIDERING that both Governments have established exclusive fishery zones,

RECOGNIZING that fishermen of the two countries have traditionally fished for the same species in certain areas now encompassed within the exclusive fishery zones,

DEEMING it desirable to establish the terms and conditions under which nationals and vessels of each of the two countries may conduct, on a reciprocal basis, commercial fishing operations within certain areas off their coasts, and

HAVING in mind the mutuality of interest on the part of the two countries in the conservation and rational exploitation of certain living marine resources off their coasts,

Have agreed as follows:

1. For the purposes of this agreement,

- (a) the reciprocal fishing area of the United States of America shall be the fishing zone established in 1966 south of 63° north latitude;
- (b) the reciprocal fishing area of Canada shall be as follows:
 - (i) in those "Areas" listed in Order-in-Council P.C. 1967-2025 and Order-in-Council P.C. 1969-1109, issued by the Government of Canada on November 8, 1967, and June 11, 1969, respectively, those waters extending 9 miles seaward of the territorial sea of Canada as it existed in 1966;
 - (ii) in those areas not listed in the Orders-in-Council cited above, those waters south of 63° north latitude which are contiguous to and extend from three to twelve miles from the coast of Canada, with the exception of bays where they cease to exceed 24 miles in breadth.

Nothing in this agreement shall affect waters other than those referred to in this paragraph.

2. Nationals and vessels of each country may continue to fish within the reciprocal fishing area of the other country, except that there shall be no such fishing for the following:

- (a) any species of clam, scallop, crab, shrimp, lobster or herring;

- (b) any salmon other than salmon taken by trolling off the Pacific coast northward from a line projected due west from the Cape Disappointment Light ($46^{\circ} 18' N$) and southward from a line projected due west from the Cape Scott Light ($50^{\circ} 46.9' N$).

Subject to its domestic legislation, each Government will continue to permit transfers of herring between nationals and vessels of the two countries within the reciprocal fishing areas west and north of a line drawn between Cape Sable, Nova Scotia, and Race Point, Massachusetts. The Governments agree that the principal purpose of this provision is to enable the continuation of transfers of herring intended for purposes other than reduction and, further, that they will meet within one year to assess the status of the herring stocks of the Bay of Fundy and the Gulf of Maine to determine whether restrictions on fishing or fish use are necessary.

3. Nationals and vessels of either country will not initiate fisheries within the reciprocal fishing area of the other country for species which are fully utilized by fishermen of the latter country. If fishermen of either country wish to initiate a fishery within any part of the reciprocal fishing area of the other country for species not fully utilized, their Government will first consult with the other Government and reach an understanding concerning conditions for such a fishery.

4. Regulations established by one country pertaining to the taking or possession of fish within its reciprocal fishing area shall apply equally to the nationals and vessels of both countries operating within such area. Such regulations shall be enforced by the Government which issued them. Should either Government consider it necessary to alter such fishery regulations, that Government shall notify the other Government of such proposed changes 60 days in advance of their application. Should such changes in fishery regulations require major changes in fishing gear an adequate period of time, up to one year, will be afforded the nationals and vessels of the other country to adapt to such changes prior to their application.

5. The two Governments recognize the importance of maintaining the fishery resources in their reciprocal fishing areas at appropriate levels. Both Governments agree to continue and expand cooperation in both national and joint research programs on species of common interest off their coasts. The appropriate agencies of the two Governments will arrange for exchanges and periodic joint reviews of scientific information.

6. Nothing in this agreement shall prejudice the claims or views of either of the parties concerning internal waters, territorial waters, or jurisdic-

tion over fisheries or the resources of the continental shelf; further, nothing in this agreement shall affect either bilateral or multilateral agreements to which either Government is a party.

7. This agreement shall remain in force for a period of two years. Representatives of the two Governments will meet annually or as mutually deemed necessary, but in any event prior to the expiration of the period of validity of this agreement, to review its operation and decide on future arrangements.

The two Governments further agree, in connection with the provisions of paragraph 2(b) of this agreement, to consult within one year regarding all matters of mutual concern related to the fisheries for Pacific salmon.

IN WITNESS WHEREOF the respective representatives have signed this Agreement.

DONE in two copies, in the English and French languages, each language version being equally authentic, at Ottawa this twenty-fourth day of April, 1970.

EN FOI de quoi les fondés de pouvoir respectifs ont signé le présent Accord.

FAIT en double exemplaire, en français et en anglais, chacune des deux versions faisant également foi, à Ottawa, ce 24^e jour d'avril 1970.

A. W. H. NEEDLER

For the Government of Canada
Pour le Gouvernement du Canada

DONALD L. McKERNAN

For the Government of the United States of America
Pour le Gouvernement des États-Unis d'Amérique

Annex 11

EXCHANGE OF NOTES BETWEEN THE GOVERNMENTS OF CANADA AND THE UNITED STATES OF AMERICA EXTENDING FOR ONE YEAR FROM 24 APRIL 1972 THE AGREEMENT SIGNED AT OTTAWA 24 APRIL 1970 CONCERNING RECIPROCAL FISHING PRIVILEGES IN CERTAIN AREAS OFF THEIR COASTS*

OTTAWA, 7 AND 21 APRIL 1972
ENTERED INTO FORCE 21 APRIL 1972

[Not reproduced]

* *Canada Treaty Series*, 1972, No. 13.

Annex 12

EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF CANADA AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE EXTENSION OF
THE AGREEMENT BETWEEN THE TWO COUNTRIES ON RECIPROCAL FISHING
PRIVILEGES IN CERTAIN AREAS OFF THEIR COASTS SIGNED AT OTTAWA
24 APRIL 1970*

WASHINGTON, 19 APRIL 1973
IN FORCE 19 APRIL 1973

* *Canada Treaty Series*, 1973, No. 16.

**EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF CANADA AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE
EXTENSION OF THE AGREEMENT BETWEEN THE TWO COUNTRIES ON
RECIPROCAL FISHING PRIVILEGES IN CERTAIN AREAS OFF THEIR
COASTS SIGNED AT OTTAWA APRIL 24, 1970⁽¹⁾**

I

**THE SECRETARY OF STATE OF THE UNITED STATES OF AMERICA
TO THE AMBASSADOR OF CANADA**

WASHINGTON, April 19, 1973

EXCELLENCY:

I have the honor to refer to the Agreement between the Government of the United States of America and the Government of Canada on reciprocal fishing privileges in certain areas off their coasts signed at Ottawa April 24, 1970. Representatives of the two Governments having met in Washington from April 10-14, 1973 to discuss amendment and extension of the Agreement, I have the honor to propose that, having in mind certain continuing discussions which are pertinent to the provisions of paragraph 2(b), this agreement shall be extended until April 24, 1974, subject to the following provision: after May 15, 1973, provided that both Governments agree that sufficient progress toward a final solution of the total west coast salmon problem has been made during the discussions in early May 1973, fishing for salmon under the terms of paragraph 2(b) shall be reduced to the following areas:

off the Pacific coast of the United States, seaward of a line joining Bonilla Point and Tatoosh Island and bounded on the south by a line projected due west from Cake Rock, (latitude 47 degrees 56 minutes 00 seconds north);

off the Pacific coast of Canada, between a line extending seaward from Cape Beale perpendicular to a line joining Cape Beale and Pachena Point and westward of a line joining Bonilla Point and Tatoosh Island;

or to any other areas which may be agreed to by both Governments; or it shall be reduced in any other manner agreed to by both Governments.

If both Governments do not so agree, this Agreement shall expire on June 15, 1973. However, representatives of the two Governments shall meet prior to any expiry date to decide on arrangements for possible amendment and/or extension of this agreement.

I have further the honor to propose that, if acceptable, this note and your reply accepting this proposal, in both the English and French languages, be regarded as constituting an agreement between the two Governments, which Agreement shall enter into force on the date of your reply note.

⁽¹⁾ Treaty Series 1970 No. 11

Accept, Excellency, the renewed assurances of my highest consideration.

DONALD L. McKERNAN
For the Secretary of State

His Excellency
Marcel Cadieux,
Ambassador of Canada.

II

THE AMBASSADOR OF CANADA TO THE SECRETARY OF STATE OF
THE UNITED STATES OF AMERICA

Washington, April 19, 1973

Note No. 144

EXCELLENCY:

I have the honour to refer to your Note of April 19, 1973 concerning the Agreement between the Government of Canada and the Government of the United States of America on reciprocal fishing privileges in certain areas off their coasts signed at Ottawa on April 24, 1970⁽¹⁾; and proposing that, having in mind certain continuing discussions which are pertinent to the provisions of paragraph 2(b), this Agreement shall be extended until April 24, 1974, subject to the following provision: after May 15, 1973 provided that both Governments agree that sufficient progress toward a final solution of the total west coast salmon problem has been made during the discussions in early May 1973, fishing for salmon under the terms of paragraph 2(b) shall be reduced to the following areas:

off the Pacific coast of the United States, seaward of a line joining Bonilla Point and Tatoosh Island and bounded on the south by a line projected due west from Cake Rock, (latitude 47 degrees 56 minutes 00 seconds north);

off the Pacific coast of Canada, between a line extending seaward from Cape Beale perpendicular to a line joining Cape Beale and Pachena Point and westward of a line joining Bonilla Point and Tatoosh Island;

or to any other areas which may be agreed to by both Governments; or it shall be reduced in any other manner agreed to by both Governments.

If both Governments do not so agree, this Agreement shall expire on June 15, 1973. However, representatives of the two Governments shall meet prior to any expiry date to decide on arrangements for possible amendment and/or extension of this Agreement.

In reply I have the honour to inform you that the proposal set forth in your Note is acceptable to the Government of Canada, who agree that your Note and this reply in both the English and French languages shall constitute an Agreement between our two Governments, which Agreement shall enter into force on the date of this reply.

Accept, Excellency, the assurances of my highest consideration.

M. CADIEUX
Ambassador

The Hon. William P. Rogers,
Secretary of State,
Washington, D.C.

⁽¹⁾ Treaty Series 1970 No. 11

Annex 13

AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF
THE UNITED STATES OF AMERICA ON RECIPROCAL FISHING PRIVILEGES IN CERTAIN
AREAS OFF THEIR COASTS*

SIGNED AT OTTAWA, 15 JUNE 1973

IN FORCE 16 JUNE 1973

[Not reproduced]

Annex 14

EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF CANADA AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA EXTENDING FOR A PERIOD OF
FOURTEEN (14) DAYS THE AGREEMENT ON RECIPROCAL FISHERIES,
DATED 15 JUNE 1973**

OTTAWA, 24 APRIL 1974

IN FORCE 24 APRIL 1974

[Not reproduced]

Annex 15

EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF CANADA AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA EXTENDING UNTIL 24 APRIL
1975 THE AGREEMENT ON RECIPROCAL FISHING PRIVILEGES IN CERTAIN AREAS OFF
THEIR COASTS SIGNED 15 JUNE 1973, AS EXTENDED

8 MAY 1974

[Not reproduced]

* *Canada Treaty Series*, 1973, No. 23.

** *Canada Treaty Series*, 1974, No. 14.

Annex 16

EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF CANADA AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA EXTENDING TO 24 APRIL 1976
THE AGREEMENT ON RECIPROCAL FISHING PRIVILEGES IN CERTAIN AREAS OFF
THEIR COASTS SIGNED 15 JUNE 1973, AS EXTENDED

24 APRIL 1975

[Not reproduced]

Annex 17

EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF CANADA AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA EXTENDING UNTIL 24 APRIL
1977 THE AGREEMENT ON RECIPROCAL FISHING PRIVILEGES IN CERTAIN AREAS OFF
THEIR COASTS SIGNED 15 JUNE 1973, AS EXTENDED*

OTTAWA, 14 AND 22 APRIL 1976

IN FORCE 22 APRIL 1976

[Not reproduced]

Annex 18

RECIPROCAL FISHERIES AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA**

WASHINGTON, 24 FEBRUARY 1977

IN FORCE 26 JULY 1977

[See II, Annex 7]

* *Canada Treaty Series*, 1976, No. 32.

** *Canada Treaty Series*, 1977, No. 23.

Annex 19**EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF CANADA AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA CONSTITUTING AN INTERIM
AGREEMENT AMENDING AND EXTENDING THE RECIPROCAL FISHERIES AGREEMENT
OF 1977****BRUSSELS AND WASHINGTON, 10 AND 11 APRIL 1978***[Not reproduced]*

This agreement did not enter into force but was implemented provisionally by the two Governments from 11 April 1978 to 2 June 1978. See Canadian diplomatic note No. FLM-0092 of 2 June 1978, reproduced in the Annexes to the Memorial submitted by Canada, Volume III, Annex 65 [*infra*, p. 463].

Annex 20

**AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF
THE UNITED STATES OF AMERICA ON EAST COAST FISHERY RESOURCES**

WASHINGTON; 29 MARCH 1979

This agreement did not enter into force.

**AGREEMENT BETWEEN THE GOVERNMENT OF CANADA
AND THE GOVERNMENT OF THE UNITED STATES OF
AMERICA ON EAST COAST FISHERY RESOURCES**

ARTICLE I

The purposes of this Agreement are:

- (a) to provide for the conservation and management of east coast fishery resources which are of mutual concern to the Parties and are specified in Annexes A, B and C in terms of the areas described in Annex D; and
- (b) to provide for the terms and conditions under which all fishing by nationals and vessels of either Party off the east coast of the other Party shall be conducted.

**CHAPTER I
FISHERY MANAGEMENT**

ARTICLE II

1. The Parties hereby establish and agree to maintain the East Coast Fisheries Commission (hereinafter the Commission).

2. Each Party shall appoint seven Commission members when the instruments of ratification of this Agreement are exchanged, to serve as the national section of that Party. Each Party shall thereafter fill vacancies in its national section when they occur or within a reasonable period thereafter. Commission members shall serve at the pleasure of the appointing Party.

3. In addition to the Commission members referred to in paragraph 2, the Commission shall have two Co-Chairmen who shall be appointed as follows:

- (a) The Parties shall jointly appoint the first two Co-Chairmen when the instruments of ratification are exchanged.
- (b) In order to ensure continuity of service, the Parties shall jointly appoint a successor prior to the expiration of the term of office of any Co-Chairman.
- (c) If a vacancy occurs before the expiration of the term of office of a Co-Chairman, the Parties shall jointly appoint a successor prior to the expiration of the term of office or within ninety days after the date on which the vacancy occurred, whichever is the earlier.

The Co-Chairmen of the Commission shall not be nationals of the same Party, and shall not form part of the national section of either Party.

4. If a Co-Chairman has not been appointed in the manner prescribed in paragraph 3 after the office has been vacant at any time for a period of ninety days, the appointment shall be made by the Arbitrator appointed in accordance with Chapter II not later than sixty days after the expiration of that period.

5. The Co-Chairmen shall preside over Commission meetings and shall carry out the duties and responsibilities set forth in this Agreement in an impartial manner.

6. Subject to paragraphs 7 and 8, the term of appointment of each Co-Chairman shall be five years. A Co-Chairman may serve more than one term.

7. Either Party may at any time transmit to the other Party and to the Commission a written notice stating that it withdraws its consent to the service of a Co-Chairman, in which event the Parties shall appoint a successor as provided for in paragraph 3(c). The incumbent Co-Chairman shall continue in office in the circumstances described in this paragraph until a successor has been appointed and no longer; but for the purposes of paragraphs 3(c), 4 and 8, a vacancy shall be deemed to have occurred on the date that the notice is transmitted pursuant to this paragraph.

8. The appointment of a Co-Chairman to fill a vacancy may be for either a full term of five years or for the remainder of the term for which his predecessor was appointed.

ARTICLE III

1. Each national section of the Commission shall have one vote, which shall be cast by the member of that national section designated for the purpose of voting by the appointing Party. A decision of the Commission shall require an affirmative vote by each national section.

2. The Commission may decide upon and amend, as occasion may require, by-laws or rules for the conduct of its meetings and the exercise of its functions.

ARTICLE IV

1. The headquarters of the Commission shall be at a place to be determined by the Parties.

2. The meetings of the Commission shall be held at its headquarters or at such other places as the Commission may decide.

3. The Arbitrator shall be entitled to attend all meetings of the Commission and shall be provided with copies of all Commission minutes and documents when they are issued.

4. Each Party shall pay the expenses of its own national section. All other expenses of the Commission shall be borne in equal shares by the Parties, unless otherwise agreed between them. An annual budget of joint expenses shall be prepared by the Commission in accordance with the by-laws and submitted to the Parties for approval. After the budget for the Commission has been approved, each Party shall pay its contributions when they are due. Subject to the by-laws, the Commission may authorize the disbursement of funds for expenses incurred in accordance with the budget.

5. The Commission shall appoint an Executive Secretary and may appoint a staff not to exceed a number agreed by the Parties.

6. The Commission may, with the approval of the Parties, establish a Scientific Committee and such other Committees as are necessary to enable it to carry out its functions under this Agreement.

ARTICLE V

1. The fishing year for each stock listed in Annex A shall initially be brought into force in accordance with the following procedure:

- (a) The Commission shall endeavor to reach agreement on the fishing year for the stock within forty-five days after entry into force of this Agreement. If it reaches agreement within that period, its decision shall be transmitted to the Parties for review. If neither Party objects to the decision within thirty days after its transmittal, it shall become final and binding on both Parties and shall remain in force until replaced. If either Party objects to the decision within thirty days after its transmittal, the Arbitrator shall decide the matter in accordance with Chapter II within thirty days after the objection is made. In reaching his decision, the Arbitrator shall take into account existing regulations and fishing patterns, the governing principles set out in Article X insofar as they are applicable, and any other factors he may consider relevant.
- (b) If the Commission does not reach agreement on the fishing year for the stock within forty-five days after entry into force of this Agreement, the Parties shall have a further period of thirty days in which to consult in an effort to reach agreement on the question. If agreement is reached within that period, the agreed fishing year shall become final and binding on both Parties and shall remain in force until replaced. If agreement is not reached within that period, the Arbitrator shall decide the matter as provided for in subparagraph (a) within thirty days after the expiration of that period.

2. The fishing year for each stock listed in Annex B shall initially be brought into force in accordance with the following procedure:

- (a) The Party having primary management responsibility as designated in Annex B (hereinafter the designated Party) shall, within forty-five days after entry into force of this Agreement, propose a fishing year to the Commission.
- (b) If, within seventy-five days after entry into force of this Agreement, the Commission reaches agreement on the proposed fishing year or on any modification thereof, that determination shall become final and binding on both Parties and shall remain in force until replaced.
- (c) If, after seventy-five days following entry into force of this Agreement, the Commission has not agreed on the fishing year proposed by the designated Party or on any modification thereof, the other Party may, within a further period of fifteen days, refer the matter to the Arbitrator for decision in accordance with Chapter II. The

Arbitrator shall render this decision within thirty days after the referral. The fishing year proposed by the designated Party shall be binding on the Parties pending the Arbitrator's decision. If the Arbitrator determines that the proposed fishing year is clearly inconsistent with the governing principles set forth in Article X insofar as they are applicable, taking into account existing regulations and fishing patterns and any other factors he may consider relevant, he shall determine the fishing year for that stock; otherwise the fishing year proposed by the designated Party shall become final and binding on the Parties and shall remain in force until replaced.

3. The fishing year initially established for a stock pursuant to this Article may subsequently be replaced pursuant to the procedures set out in this Agreement for the adoption of management measures.

4. (a) Within six months following entry into force of this Agreement, the Commission shall endeavor to reach agreement on the historical ratio of the annual recreational catch of each Party to the annual total of all recreational and commercial catches from each stock listed in the Annexes, adjusted to eliminate distortions resulting from under-exploitation or over-exploitation of the stock.

(b) In each case where the Commission reaches agreement within that period, its decision shall be transmitted to the Parties for review. If neither Party objects to the decision within thirty days after its transmittal, it shall become final and binding on both Parties until altered by agreement of the Parties. If either Party objects to the decision within thirty days after its transmittal, the Arbitrator shall decide the matter in accordance with Chapter II within forty-five days after the objection is made.

(c) In each case where the Commission does not reach agreement within the six month period referred to in subparagraph (a), the Parties shall have a further period of thirty days in which to consult and reach agreement on the question. If agreement is reached within that further period, it shall become final and binding on both Parties until altered by agreement of the Parties. If agreement is not reached within that further period, the Arbitrator shall decide the matter in accordance with Chapter II within forty-five days after the expiration of that thirty day period.

(d) If in any fishing year the ratio of the recreational catch of a Party from a stock to the total recreational and commercial catch exceeds the historical ratio determined in accordance with this paragraph, the excess shall be counted as part of the commercial catch of that Party. If, however, the fishing year for a stock has begun before the historical ratio has been determined, no part of the recreational catch shall be counted as part of the commercial catch for that fishing year.

(e) For the purposes of this paragraph, the Commission, the Parties, or the Arbitrator, as the case may be, shall have the authority to determine both the basis or criteria on which recreational catches shall be

attributed to one Party or the other and the factual basis on which the level of recreational catch shall be established.

5. Until management measures for a stock listed in Annex A, B or C are brought into force in accordance with this Agreement, each Party may manage that stock in accordance with its domestic law. The Parties shall consult with a view to providing for reciprocal fishing during this transitional period in a manner consistent, insofar as possible, with the provisions of the Annexes to this Agreement respecting entitlements and fishing access.

ARTICLE VI

1. The Commission shall meet at least once each calendar year in order to consider matters relating to the management of each of the fisheries covered by this Agreement. The Commission shall also meet at such other times as it or the Parties may agree.

2. Each year the Commission shall consider and seek to reach agreement on the management measures to be applied to each stock listed in Annex A or B during the subsequent fishing year, taking into account the governing principles set forth in Article X.

3. The management measures for each stock listed in Annex A shall be brought into force each year in the following manner:

- (a) If the Commission reaches agreement on the management measures to be adopted for a stock not later than one hundred twenty days before the beginning of the fishing year, these management measures shall be transmitted to the Parties for review. If neither Party objects to these management measures within thirty days after their transmittal, they shall become final and binding on both Parties for the fishing year to which they apply. If either Party objects to these management measures within thirty days after their transmittal, the Co-Chairmen shall attempt to resolve the questions in dispute as provided for in paragraph 1 of Article XII.
- (b) If the Commission does not reach agreement on the management measures to be adopted for a stock, it shall, no later than one hundred twenty days before the beginning of the fishing year, submit a report to the Parties on the areas and degree of agreement and disagreement. The Parties shall then consider the matter in consultation with each other and with their respective national sections. The Commission shall reconvene approximately thirty days after making its report unless the Parties have first reached agreement on the management measures to be adopted, in which case those measures shall become final and binding on both Parties for the fishing year to which they apply. If the Commission is reconvened and reaches agreement not later than forty-five days after making its report, the procedure set out in subparagraph (a) of this paragraph shall be followed. If the Commission is reconvened but does not reach agreement within forty-five days after making its report, the Co-Chair-

men shall attempt to resolve the questions in dispute as provided for in paragraph 1 of Article XII.

4. The management measures for each stock listed in Annex B shall be brought into force each year in the following manner:

- (a) The designated Party shall present proposed management measures to the Commission and to the other Party not later than one hundred twenty days prior to the beginning of the fishing year for the stock.
- (b) The Commission shall consider the proposed management measures in light of the governing principles set forth in Article X, and shall endeavor in good faith to reach agreement on the matter.
- (c) If the Commission reaches agreement on the management measures proposed by the designated Party, or on any modification thereof, not later than ninety days before the beginning of the fishing year, these measures shall be transmitted to the Parties for review. If within fifteen days after the transmittal the designated Party objects to any modification agreed upon by the Commission, that modification shall not enter into force pursuant to this Article. If, after that first fifteen day period but within thirty days after the transmittal, the other Party contends that the management measures proposed by the designated Party, or any modification thereof agreed upon by the Commission that has not been objected to by the designated Party, are clearly inconsistent with the governing principles set forth in Article X, it may refer the matter to the Co-Chairmen for decision pursuant to paragraph 2 of Article XII. The measures proposed by the designated Party, or any modification thereof agreed upon by the Commission that has not been objected to by the designated Party, shall in the event of such referral be binding on the Parties and remain in force pending the outcome of the dispute settlement process provided for in this Agreement.
- (d) If the Commission does not reach agreement on the measures proposed by the designated Party or on any modification thereof at least ninety days before the beginning of the fishing year, and the other Party contends that the proposed measures are clearly inconsistent with the governing principles set forth in Article X, that Party may refer the matter, not later than sixty days before the beginning of the fishing year, to the Co-Chairmen for decision pursuant to paragraph 2 of Article XII. The measures proposed by the designated Party shall in the event of such referral, be binding on the Parties and remain in force pending the outcome of the dispute settlement process provided for in this Agreement.
- (e) The management measures proposed by the designated Party, or any modification thereof agreed upon by the Commission that has not been objected to by the designated Party shall, in the absence of a referral to the Co-Chairmen pursuant to subparagraph (c) or (d), become final and binding on both Parties for the fishing year to which they apply.

5. With respect to each stock listed in Annex C, the Commission shall serve as a forum for consultation on annual management measures,

or amendments thereto, proposed by the Party having management responsibility. These consultations shall be held prior to the implementation of such measures by the Party having management responsibility, unless conservation considerations require their immediate implementation on a provisional basis pending the outcome of consultations. Management measures for these stocks must comply with governing principle 5, governing principle 6, and except as otherwise provided in this Agreement, governing principle 7 of Article X.

6. Proposals to be made by either Party pursuant to this Article shall be transmitted to the Commission and to the other Party as far in advance as possible of the meeting at which they are to be considered, and in any event not less than fifteen days in advance of that meeting.

7. Management measures adopted with respect to any stock listed in Annex A or B shall be for a term not exceeding one fishing year; but if for any reason annual management measures have not been adopted for that stock by the beginning of a fishing year, and no interim decision by the Arbitrator pursuant to Article XIX, paragraph 7(a) is in effect, the management measures applicable during the preceding fishing year shall remain in force pending the adoption of new management measures.

ARTICLE VII

1. Notwithstanding their final and binding character, the annual management measures for stocks listed in Annex A or B adopted under this Agreement may be amended in accordance with this Article.

2. Any management measure applicable to a stock listed in Annex A or B may be amended at any time by agreement of the Parties.

3. If in light of unforeseen circumstances a stock listed in Annex A or B is threatened with serious and immediate harm, or if there is an economic emergency in the fishery for the stock that can be alleviated without significant adverse effect upon the conservation of the stock, management measures for that stock may be amended during the fishing year in accordance with the following procedures:

- (a) In the case of a stock listed in Annex A, such management measures may be amended by a joint decision of the Co-Chairmen for a period not exceeding thirty days. The Commission shall be convened immediately if the Co-Chairmen propose that the amendment should remain in force for a period exceeding thirty days. If the Commission has not reached agreement on the matter within fifteen days after the amendment enters into force, the Arbitrator shall decide the matter within a subsequent fifteen day period. The decision of the Commission or the Arbitrator, as the case may be, shall be final and binding and shall remain in force for the remainder of the fishing year or for such lesser period as may be specified in the decision. The Arbitrator shall take into account:

- (i) the circumstances giving rise to the amendment;
 - (ii) the governing principles set forth in Article X; and
 - (iii) the need to ensure that the catches of the Parties are in proportion to their respective entitlements.
- (b) In the case of a stock listed in Annex B, such management measures may be amended by the designated Party upon at least seven days' advance notice to the other Party. If the other Party so requests, the Commission shall be convened immediately. If the Commission reaches agreement on the matter within fifteen days after it is convened, the decision of the Commission shall be final and binding. If the Commission does not reach agreement within that period, the other Party may refer the matter to the Arbitrator not later than twenty-one days after the amendment enters into force if it contends that:
- (i) the amendment is not justified by the circumstances;
 - (ii) it is clearly inconsistent with the governing principles set forth in Article X; or
 - (iii) it would result in catches which are not in proportion to the respective entitlements of the Parties for the fishing year.

The Arbitrator's decision shall be final and binding and shall remain in force for the remainder of the fishing year or for such lesser period as may be specified in the decision.

- (c) If the Arbitrator decides that the application of an amended management measure adopted in accordance with this paragraph will have the effect of depriving a Party of a share of the catch in proportion to its entitlement for the fishing year, and that the matter cannot conveniently be rectified by means of an adjustment during the current fishing year, he may adjust the entitlements of the Parties for the subsequent fishing year in order to restore the balance of fishing opportunities reflected in this Agreement.

ARTICLE VIII

1. The Parties may, at any time, amend any provision of the Annexes by agreement.

2. The Commission may recommend to the Parties the amendment of any provision of an Annex including without limitation the addition or deletion of stocks, the transfer of stocks from one Annex to another, and changes in fishing entitlements and access areas. If neither Party objects to the recommendation within ninety days of its transmittal by the Commission, the recommendation shall become binding at the end of that ninety day period or at such later time as may be agreed by the Parties, and the Annex or Annexes concerned shall be amended accordingly. If either Party objects to the recommendation within that period, the Parties shall consult with a view to reaching agreement, but in the absence of agreement the recommended amendment shall not enter into

force. If an objection is withdrawn by the Party which made that objection within ninety days after the expiration of the initial ninety day period for making objections, and no timely objection has been made and maintained by the other Party, the amendment shall enter into force immediately upon the withdrawal of the objection; but after that further ninety day period the amendment shall not enter into force unless a new recommendation is made by the Commission and accepted by the Parties in accordance with the procedure set out in this Article.

ARTICLE IX

1. During the ninth year of each successive ten year period following entry into force of this Agreement, either Party may request a review of the entitlements of the Parties to any stock listed in the Annexes (other than the stocks of loligo squid, redfish in Subareas 3 and 4 and lobster), in accordance with the procedures and on the basis of the principles set forth in paragraph 2 of this Article.

2. (a) During the first nine months of the ninth year of the first ten year period following entry into force of this Agreement, and of the ninth year of each successive ten year period, the Parties shall, if either Party so requests, review their respective entitlements to any or all of the stocks listed in the Annexes. If, following this review, the Parties agree upon an increase or decrease in entitlements for a particular stock, such redetermined entitlements shall take effect at the beginning of the next fishing year for that stock and shall remain in effect until a subsequent redetermination, if any, of the entitlements to that particular stock enters into force pursuant to this Article.

(b) If the Parties do not reach agreement with respect to a stock during the first nine months of the ninth year of any ten year period, the Arbitrator shall decide the issue before the end of that ten year period in accordance with Chapter II. The redetermination by the Arbitrator of the entitlements of each Party for any stock shall reflect the average annual proportion of the stock in question which occurs in the maritime area in which each Party exercises exclusive fisheries jurisdiction as determined on the basis of the best information available concerning stock distribution and migratory patterns, abundance and availability and other relevant factors; provided that where appropriate the Arbitrator shall moderate any change which may be indicated by the foregoing criterion by taking into account the social and economic impact of any proposed changes on coastal communities and significant changes in the market value, abundance and availability of the stock in question as compared to the situation prevailing at the outset of the ten year period.

(c) Notwithstanding the foregoing, if the issue is referred to the Arbitrator for decision:

- (i) the decrease in the entitlement of a Party to a particular stock shall not exceed ten percent of the annual permissible commercial catch for any stock for which that Party's entitlement upon entry into force of this Agreement was fifty percent or

more of the annual permissible commercial catch, or five percent of the annual permissible commercial catch if that Party's entitlement upon entry into force of this Agreement was less than fifty percent of the annual permissible commercial catch, and

- (ii) the overall reduction in any Party's entitlement to a particular stock as a result of successive redeterminations shall not exceed one-third of a Party's entitlement upon entry into force of this Agreement.

(d) Any entitlements redetermined by the Arbitrator for any stock shall enter into force at the beginning of the next fishing year for that stock. Any entitlement redetermined by the Arbitrator in accordance with this paragraph shall be binding on the Parties and remain in force until a subsequent redetermination, if any, of the entitlements to that particular stock enters into force pursuant to this Article.

3. If either Party is of the view that any time limit or other administrative procedure set forth in this Agreement is unsatisfactory, that Party may, at any time after five years following entry into force of this Agreement, request a review and renegotiation of the provision governing the procedure in question. If the Parties are unable to reach agreement within six months after any such request, the issue shall be decided by the Arbitrator in accordance with Chapter II.

4. This Agreement shall be amended as necessary to reflect any changes in entitlements or in procedures agreed by the Parties or determined by the Arbitrator in accordance with this Article.

ARTICLE X

The following governing principles shall apply to the stocks listed in Annexes A and B:

1. Management measures shall be designed to achieve the optimum yield from each stock subject to these principles, taking into account stock interrelationships and all other relevant ecological factors, and the nature and extent of the economic and social interests of each Party in the stock. Except as otherwise agreed by the Parties, they shall be designed to bring about an exploitation rate that will maintain the productivity of fishery resources over the long term. In particular, they shall be designed to prevent overfishing of fishery resources, to allow rebuilding of depleted stocks, and to avoid irreversible or long term adverse effects on fishery resources and the marine environment.

2. Management measures shall be based upon the best scientific information available.

3. Management measures shall take into account demonstrated degrees of stock and species interrelationships so that the productive potential of related stocks or species is not seriously threatened.

4. Management measures shall take into account the need for efficiency in administration and enforcement, including the minimization

of costs; the avoidance of unnecessary duplication; the need for maintaining the confidence of each Party in the administration and enforcement actions of the other Party; and, to the extent consistent with the other principles set out in this Article, the need to avoid disruptive changes in patterns of exploitation.

5. Management measures shall provide to the nationals and vessels of each Party the opportunity to harvest its entitlement to the stock in question, and to this end shall take into account any differences in fishing methods, patterns and procedures.

6. Management measures shall ensure access by the nationals and vessels of each Party to the maritime area in which the other Party exercises exclusive fisheries jurisdiction for the purpose of harvesting entitlements under this Agreement where such access is provided for in the Annexes.

7. Management measures shall not discriminate in form or in effect between the nationals and vessels of the Parties.

ARTICLE XI

1. Management measures for stocks listed in the Annexes shall include the annual total allowable catch and the permissible commercial catch in each case where entitlements are based on the annual permissible commercial catch.

2. Management measures for a stock listed in Annex A or B may include:

- (a) the designation of zones and periods in which fishing shall be limited or prohibited, or shall be permitted only by specified types of fishing vessels, or with specified types or quantities of gear;
- (b) limitations on the catch of fish (based on area, size, number, weight, sex, incidental catch, total biomass, or other factors) which are appropriate for the conservation and management of the fishery;
- (c) prohibitions, limitations, conditions, or requirements respecting the use of specified types or quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of applicable management measures; and
- (d) such other measures as are necessary and appropriate for the conservation and management of the fishery.

3. Management measures for a stock listed in Annex A, B or C may include a system for limiting access to a fishery, or restricting fishing to certain vessels or fishermen, but such a system may be established under this Agreement only where directly related to conservation of the stock and not for the purpose of economic allocation. Furthermore, such a limited access system may not become a binding management measure with respect to a stock listed in Annex A, B or C without the express approval of both Parties, notwithstanding the dispute settlement provisions of this Agreement.

4. Nothing in this Agreement shall affect the right of each Party to make allocations among its own nationals and vessels in any manner consistent with its own domestic law, or to adopt supplementary regulations, applicable to its own nationals and vessels, which are not inconsistent with this Agreement and the management measures adopted pursuant thereto.

ARTICLE XII

1. If, with respect to a stock listed in Annex A, one of the Parties objects in accordance with Article VI, paragraph 3(a), to the management measures recommended by the Commission or the Commission fails to reach agreement on such measures in the circumstances described in Article VI, paragraph 3(b), the Co-Chairmen shall attempt to resolve the dispute. If the Co-Chairmen reach agreement within fifteen days after the dispute comes before them, their decision shall be final and binding on both Parties. The decision shall state the management measures to be applied during the fishing year in question. Within thirty days after their decision the Co-Chairmen shall submit a reasoned opinion setting forth the basis for their decision. If the Co-Chairmen are unable to reach agreement within fifteen days after the dispute comes before them, the Arbitrator shall decide the matter in accordance with Chapter II.

2. If, with respect to a stock listed in Annex B, a matter is referred to the Co-Chairmen in the circumstances described in Article VI, paragraph 4(c) or (d), the Co-Chairmen shall attempt to determine jointly whether the management measures in dispute are clearly inconsistent with the governing principles set forth in Article X. If the Co-Chairmen reach agreement within fifteen days after the dispute is referred to them, their decision shall become final and binding on both Parties. Within thirty days after their decision the Co-Chairmen shall submit a reasoned opinion setting forth the basis for their decision. If the Co-Chairmen are unable to reach agreement within fifteen days after the dispute is referred to them, the Arbitrator shall decide the matter in accordance with Chapter II.

3. Subject to any other provisions for dispute settlement set forth in this Agreement, any other dispute involving the application or interpretation of this Agreement may be referred by either Party or by the Parties jointly to the Co-Chairmen, who shall attempt to resolve the dispute. If the Co-Chairmen reach agreement within thirty days after the dispute is referred to them, their decision shall become final and binding on both Parties. Within thirty days after their decision the Co-Chairmen shall submit a reasoned opinion setting forth the basis for their decision. If the Co-Chairmen are unable to reach agreement within thirty days after the dispute is referred to them, the Arbitrator shall decide the matter in accordance with Chapter II. If either Party contends that a decision by the Co-Chairmen pursuant to this paragraph is in conflict with a prior decision of the Arbitrator, that Party may refer the matter to the Arbitrator for a definitive interpretation.

4. If the Co-Chairmen decide:

- (a) in the case of a dispute referred to in paragraph 2, that the management measures in dispute are clearly inconsistent with the governing principles set forth in Article X, or
- (b) in the case of a dispute referred to in paragraph 3, that a provision of this Agreement has been or is being contravened,

they shall award appropriate relief which shall be final and binding unless the Parties agree to implement other relief. In the case of a dispute referred to in paragraph 2, relief shall be in the form of a direction as to the management measures to be implemented by the Parties.

ARTICLE XIII

1. When any document is transmitted by the Commission to the Parties, the Executive Secretary of the Commission shall record the date of transmittal of the document, and that date shall be considered to be the date of transmittal for all purposes of this Agreement.

2. Any document transmitted by a Party pursuant to this Agreement, including any referral to the Co-Chairmen or the Arbitrator, shall be transmitted both to the other Party and to the Commission. The Executive Secretary of the Commission shall record the date on which any such document is received at the headquarters of the Commission, and that date shall be considered to be the effective date of the document for all purposes of this Agreement.

3. Any period of time stated in this Agreement in terms of a specified number of days refers to calendar days.

4. Any time limit set out in this Agreement may be extended by agreement of the Parties.

ARTICLE XIV

1. The Parties shall exchange and make available to the Commission scientific data in their possession which is relevant to the work of the Commission.

2. The Commission may coordinate the collection of statistics and make recommendations to the Parties for cooperative research programs.

3. The Parties agree that cooperative fishery research and the exchange of biological data and statistical information respecting fisheries should continue and, where appropriate, be expanded.

ARTICLE XV

1. Each Party shall, with respect to the maritime area in which it exercises exclusive fisheries jurisdiction and with respect to vessels subject to its jurisdiction, take all necessary measures to make effective the provisions of this Agreement and in particular, to ensure that the entitlements set out in the Annexes are not exceeded and that the management measures adopted pursuant to this Agreement are complied with. The Parties undertake to consult and cooperate in order to ensure effective enforcement of this Agreement.

2. Each Party shall require of its nationals and vessels reports of catch and related data for stocks listed in the Annexes in a manner determined by the Commission. Each Party may also require nationals and vessels of the other Party to make reports of catch and location data at reasonable intervals while fishing within the maritime area in which the former Party exercises exclusive fisheries jurisdiction.

3. Each Party shall make available to the Commission the data obtained pursuant to paragraph 2. The Commission and the Parties shall preserve the confidential nature of the records or statistics of individual catches and individual company operations.

4. The Parties agree to exchange fisheries statistics on a timely and regular basis where necessary to permit an accurate determination to be made of the time at which an entitlement referred to in an Annex is reached during any given fishing year, and otherwise to ensure the effective implementation of this Agreement.

ARTICLE XVI

1. The Parties agree that if a portion of an entitlement of one Party to a stock listed in an Annex, or a portion of a stock not listed in an Annex which occurs in the maritime area in which that Party exercises exclusive fisheries jurisdiction, is surplus to the requirements of that Party, consideration will be given to any request by the other Party for an allocation from that surplus. Any such allocation may be subject to such terms and conditions as may be agreed upon by the Parties.

2. If an allocation referred to in paragraph 1 is to be harvested in whole or in part within the maritime area in which the Party granting the allocation exercises exclusive fisheries jurisdiction, that Party may require the vessels fishing for the allocation within that area to obtain licenses or permits upon the payment of reasonable fees and to abide by any other requirements applicable to vessels of third parties.

ARTICLE XVII

1. All fishing pursuant to the Annexes by nationals and vessels of either Party within the maritime area in which the other Party exercises exclusive fisheries jurisdiction shall be conducted seaward of twelve nautical miles from the coast and of the point at which any bay ceases to exceed twenty-four nautical miles in breadth, except where a provision of an Annex specifically provides for access landward of those limits.

2. Each Party may authorize vessels of third parties to harvest a portion of its entitlements if:

- (a) such authorization is given only for one fishing year at a time;
- (b) such vessels are permitted to fish only within the maritime area in which the authorizing Party exercises exclusive fisheries jurisdiction; and
- (c) such vessels are subject to management measures at least as restrictive as those in force under this Agreement.

3. Subject to and in accordance with applicable regulations and permit and licensing requirements, including the payment of fees, recreational fishing by nationals and vessels of each Party may be conducted in areas off the east coast of the United States and Canada, including areas landward of the area referred to in paragraph 1; except that licensing or permit requirements directed specifically at foreign fishing vessels pursuant to the Coastal Fisheries Protection Act of Canada and the Fishery Conservation and Management Act of 1976 of the United States of America, as they may be amended from time to time, or pursuant to any statute replacing such Acts, shall not apply.

4. Either Party may, with respect to the maritime area in which it exercises exclusive fisheries jurisdiction, require that commercial fishermen and vessels of the other Party obtain a permit or license for the purpose of fishing for entitlements set out in the Annexes. Except as otherwise agreed between the Parties, no fees shall be required for such licenses or permits.

5. Either Party may require that agents are appointed and maintained within its territory who possess the authority to receive and respond to any legal process with respect to a vessel owner or operator for any cause arising out of the conduct of fishing activities under this Agreement.

6. If during any fishing year the nationals and vessels of either Party exceed an entitlement established by this Agreement, the Commission shall determine an amount to be deducted from the entitlement of that Party to the stock concerned, and may determine an amount to be added to the entitlement of the other Party, for the following fishing year or years. If the Commission is unable to agree on the matter, the matter shall be referred to dispute settlement in accordance with paragraph 3 of Article XII.

7. Each Party shall permit transfers of herring between the nationals and vessels of the Parties in the maritime area in which it exercises exclusive fisheries jurisdiction within Division 5Y, within the Bay of Fundy, and elsewhere within Division 4X west of 65 degrees west longitude. The Parties agree that the principal purpose of this provision is to permit the continuation of transfers of herring intended for purposes other than reduction.

8. Each Party shall have the right to place observers on the vessels of the other Party fishing within the maritime area in which the former Party exercises exclusive fisheries jurisdiction.

CHAPTER II ARBITRATION

ARTICLE XVIII

1. An impartial arbitrator (herein the Arbitrator) shall be appointed jointly by the Parties when instruments of ratification of this Agreement are exchanged, and thereafter from time to time as set forth in this Article.

2. The Arbitrator shall decide issues submitted to arbitration in accordance with this Agreement. When a dispute has been considered but not resolved by the Co-Chairmen, the Co-Chairmen shall submit a statement of the issues to the Arbitrator.

3. The Arbitrator's decision on matters referred to arbitration shall be final and binding upon the Parties except that either Party may request a review of a decision if it discovers the existence of a new factor of decisive importance which was unknown to that Party when the decision was rendered, provided that such lack of knowledge was not due to negligence.

4. Every decision by the Arbitrator shall be supported by a reasoned opinion setting forth the basis on which the decision was reached. This reasoned opinion shall be issued not later than thirty days after the decision is reached.

5. The Arbitrator may award appropriate relief in his decision, which shall be final and binding unless the Parties agree to implement other relief. In the case of a dispute respecting management measures, such relief shall be in the form of a direction as to the measures to be implemented by the Parties for the stock in question. In cases where time permits, the Arbitrator may make a preliminary recommendation with respect to the relief to be awarded and allow the Parties a period of time in which to consult before relief is awarded in a final and binding fashion.

6. Subject to paragraph 7, the Arbitrator shall be appointed for a term of five years, unless a shorter term is agreed upon by the Parties and the Arbitrator. An Arbitrator may be appointed to more than one term.

7. Either Party may at any time transmit to the other Party a written notice stating that it withdraws its consent to the service of the Arbitrator, in which case the Parties shall jointly appoint a successor within a period of ninety days after the transmittal of the written notice. If a successor is not appointed by the Parties by the end of that period, the Parties shall immediately request the President of the International Court of Justice to appoint an Arbitrator within a period of ninety days after the expiration of the initial ninety day period. In the circumstances described in this paragraph, the incumbent Arbitrator shall retain competence to hear and decide any matter referred to him before the appointment of his successor.

8. The Parties shall jointly appoint a new Arbitrator:

(a) prior to the expiration of the term of office of the incumbent, or

- (b) when the office becomes vacant more than ninety days before the expiration of a term of office, not later than ninety days after the vacancy first occurs.

If the Parties have not appointed a new Arbitrator by the time referred to in subparagraph (a) or (b), as the case may be, they shall immediately request the President of the International Court of Justice to appoint an Arbitrator within a period of ninety days after that time.

9. In each case where the President of the International Court of Justice appoints an Arbitrator, he shall select, following consultations with the Parties, a person who is not a national or permanent resident of Canada or the United States of America.

10. The remuneration of the Arbitrator and his expense allowances shall be determined by the Parties at the time of his appointment, and may be modified from time to time with the agreement of the Parties and the Arbitrator. These costs shall be included in the budget of the Commission as joint expenses of the Commission. The Arbitrator shall be provided with office facilities and services at the headquarters of the Commission.

ARTICLE XIX

1. Except as may otherwise be specified in this Agreement or agreed between the Parties, when a matter is referred to arbitration, the Arbitrator shall render a decision:

- (a) in the case of a dispute respecting management measures, within thirty days after the date on which he is seized of the matter, or
(b) in the case of any other dispute, within ninety days after the date on which he is seized of the matter.

2. In the case of a dispute which has been considered but not resolved by the Co-Chairmen, the Arbitrator shall take into account the opinions of the Co-Chairmen and the reasons for their inability to resolve the dispute.

3. The Arbitrator shall provide an opportunity for each Party to present evidence and arguments both in writing and, if requested by either of the Parties, in oral hearing.

4. The Arbitrator may seek, with the agreement of both Parties, the advice of experts. The advice given the Arbitrator by any such experts shall be made part of the record of the proceedings and shall be made available to the Parties, who shall be afforded an opportunity to comment on any such advice.

5. In any arbitration, each Party shall have the right to call its own witnesses, to present documentary evidence, and to cross-examine the witnesses of the other Party. The Arbitrator shall not be bound by any technical rules respecting the admissibility of evidence, but may take such rules into account in considering the relevance or probative value of any evidence presented.

6. Each Party shall bear its own expenses associated with an arbitration. All other expenses of the arbitration not included in the budget of the Commission as provided in paragraph 10 of Article XVIII shall be shared equally by the Parties. The Parties shall provide facilities for the arbitration of any matter in such manner as may be agreed between them or as may be required by the Arbitrator.

7. When a dispute respecting management measures comes before the Arbitrator less than thirty days before the beginning of the fishing year for that stock, or in any other case where a decision is required as a matter of urgency, the Arbitrator may either:

- (a) render an interim decision to safeguard the interests of the Parties pending the final decision, or
- (b) establish procedures for an expedited hearing of the case subject only to the right of both Parties to have a full opportunity to be heard.

8. Decisions of the Arbitrator shall be made public.

9. After a decision is rendered, the Arbitrator shall retain competence to clarify the meaning or scope of the decision at the request of either Party, or, where relief has been granted, of determining any question of compliance submitted by the Party in whose favor the relief was granted.

10. Subject to this Agreement, the Arbitrator shall determine all questions of procedure, including time limits for submitting written material and the time and place of any hearing, provided that each Party is given a full opportunity to present its evidence and arguments.

CHAPTER III MISCELLANEOUS

ARTICLE XX

The Annexes attached hereto form an integral part of this Agreement. All references to this Agreement shall be understood as including the Annexes in force.

ARTICLE XXI

Pending delimitation of the maritime boundary in the Gulf of Maine area, the following principles shall be applied as interim measures in the boundary region:

- (a) as between the Parties, enforcement shall be carried out by the flag state;
- (b) neither Party shall authorize fishing by vessels of third parties; and
- (c) either Party may enforce with respect to fishing or related activities by vessels of third parties.

ARTICLE XXII

Each Party shall allow access to its customs ports on the east coast for nationals and vessels of the other Party fishing pursuant to this Agreement, for the purposes of purchasing bait, supplies, outfits, fuel, and effecting repairs. Access under this provision is subject to general requirements regarding advance notice of port entry, availability of facilities and the needs of domestic fishermen and flag vessels.

ARTICLE XXIII

A reference in this Agreement to the maritime area in which a Party exercises exclusive fisheries jurisdiction includes without distinction areas within and seaward of the internal waters and territorial sea of that Party.

ARTICLE XXIV

Nothing in this Agreement shall affect the position of either Party with respect to the legal nature and seaward extent of internal waters, of the territorial sea, of the continental shelf, of fisheries jurisdiction, or of sovereign rights or jurisdiction for any other purpose under international law.

ARTICLE XXV

1. This Agreement shall be subject to ratification in accordance with the domestic requirements of the Parties and shall enter into force on the date instruments of ratification of this Agreement and the Treaty Between the Government of Canada and the Government of the United States of America To Submit to Binding Dispute Settlement the Delimi-

tation of the Maritime Boundary in the Gulf of Maine Area signed at Washington on March 29, 1979 are exchanged. The instruments of ratification shall be exchanged at Ottawa as soon as possible.

2. Subject to paragraph 3, this Agreement shall remain in force until terminated by agreement of the Parties.

3. If the Agreement Between the Government of Canada and the Government of the United States of America to Submit to a Court of Arbitration the Delimitation of the Maritime Boundary in the Gulf of Maine Area (the Arbitration Agreement), annexed to the Treaty referred to in paragraph 1, enters into force, and

- (a) the Court of Arbitration provided for in the Arbitration Agreement is not constituted within one year following entry into force of the Arbitration Agreement, or
- (b) following the constitution of the Court of Arbitration, a vacancy on the Court of Arbitration is not filled in accordance with Article XI of the Arbitration Agreement within six months from the date on which the vacancy occurred,

either Party may, prior to the decision of the Court of Arbitration on the question posed in Article I of the Arbitration Agreement, terminate this Agreement upon six months' written notice to the other Party; provided that if within such six months notice period the Court of Arbitration is constituted and any vacancy or vacancies which may have occurred are filled, the notice of termination shall be without effect and shall be withdrawn.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE in two copies at Washington, D.C. this twenty-ninth day of March 1979, in the English and French languages, each text being equally authentic.

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet par leurs Gouvernements respectifs, ont signé le présent Traité.

FAIT en deux exemplaires à Washington ce vingt-neuvième jour de mars 1979, en français et en anglais, chaque texte faisant également foi.

For the Government of Canada
Pour le Gouvernement du Canada

For the Government of the
United States of America
Pour le Gouvernement des
États-Unis d'Amérique

(Signed) P. TOWE
(Signed) M. CADIEUX

(Signed) CYRUS R. VANCE
(Signed) LLOYD N. CUTLER

ANNEX A

This Annex establishes the terms of fishing access and entitlements with respect to each of the fish stocks listed below, and deals with other related matters. Each stock is defined by species and geographical location within the subareas, divisions or subdivisions described in Annex D, or, in the case of northern lobster, within the boundary region of the Gulf of Maine pending delimitation of the maritime boundary in that area.

Atlantic Mackerel

1. For the stock of Atlantic mackerel (*Scomber scombrus*) located in Subareas 3, 4, 5 and 6, the following terms shall apply:

- (a) Each fishing year vessels of the United States may catch 60 percent of the annual permissible commercial catch set for this stock under this Agreement, and vessels of Canada 40 percent of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, vessels of each Party may fish for this stock throughout the portion of Subareas 3, 4, 5 and 6 in which that Party exercises exclusive fisheries jurisdiction. Pending delimitation of the maritime boundary in the Gulf of Maine area, vessels of either Party may fish for this stock within the boundary region.
- (c) The annual total allowable catch and permissible commercial catch for this stock shall be determined in accordance with the procedures applicable to stocks listed in this Annex.
- (d) Notwithstanding the inclusion of this stock in Annex A, management measures for this stock, other than the annual total allowable catch and permissible commercial catch, shall be determined in accordance with the procedures applicable to stocks listed in Annex B. For this purpose each Party is the Party of primary interest in the maritime area in which it exercises exclusive fisheries jurisdiction and, with respect to its own nationals and vessels, in the boundary region pending delimitation of the maritime boundary in the Gulf of Marine area.
- (e) Allocations of surplus and requirements established by either Party regarding fishing for this stock by vessels of third parties in the maritime area in which that Party exercises exclusive fisheries jurisdiction shall be the subject of prior consultations between the Parties.
- (f) At the beginning of the fourth fishing year following the entry into force of this Agreement, the Parties shall consider whether scientific evidence warrants the setting of the annual total allowable catch for the northern or southern components of this stock in accordance with procedures applicable to stocks listed in Annex B. If after the ninth month of the fourth fishing year following entry into force of this Agreement the Parties disagree whether such a change is appropriate for either or both components, either Party may refer the issue to the Arbitrator for decision in accordance with Chapter II of this

Agreement. The Annex or Annexes concerned shall be amended as necessary to reflect changes agreed upon by the Parties or determined by the Arbitrator.

Pollock

2. For the stock of pollock (*Pollachius virens*) located in Divisions 4V, 4W and 4X and in Subarea 5, the following terms shall apply:

- (a) Each fishing year vessels of Canada may catch 74.4 percent of the annual permissible commercial catch set for this stock under this Agreement, and vessels of the United States 25.6 percent of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, vessels of Canada may fish for this stock only throughout Divisions 4V, 4W, 4X, Subdivision 5Ze and that portion of Division 5Y which is in the maritime area in which Canada exercises exclusive fisheries jurisdiction; and vessels of the United States may fish for this stock throughout Subarea 5 and Division 4X only.

Cusk

3. For the stock of cusk (*Brosme brosme*) located in Subdivision 5Ze, the following terms shall apply:

- (a) Each fishing year vessels of Canada may catch 66 percent of the annual permissible commercial catch set for this stock under this Agreement, and vessels of the United States 34 percent of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, vessels of both Parties may fish for this stock throughout Subdivision 5Ze.

Northern Lobster

4. For the stock of northern lobster (*Homarus americanus*) located in the boundary region of the Gulf of Maine area, the following terms shall apply:

- (a) Until the end of the fishing year in which the maritime boundary in the Gulf of Maine area has been determined, vessels of both Parties may fish for this stock within the boundary region in a manner consistent with applicable management measures, but vessels of neither Party shall expand their directed fisheries for this stock, except as authorized by the Commission.
- (b) Management of this stock shall be in accordance with procedures applicable to stocks listed in this Annex, until the end of the fishing year in which the maritime boundary in the Gulf of Maine area has been determined, at which time this paragraph shall no longer apply.

ANNEX B

This Annex establishes the terms of fishing access and entitlements with respect to each of the fish stocks listed below, designates the Party of primary interest with respect to the management of each stock, and deals with other related matters. Each stock is defined by species and geographical location within the subareas, divisions or subdivisions described in Annex D.

Atlantic Herring

1. For the stock of Atlantic herring (*Clupea harengus*) located in Divisions 4W and 4X and in the portion of Division 5Y which encompasses the Grand Manan Banks, and not including the juvenile herring located within three nautical miles of the coast of Canada, the following terms shall apply:

- (a) Each fishing year vessels of Canada may catch 100 percent of the annual permissible commercial catch set for this stock under this Agreement.
- (b) In a manner consistent with applicable management measures, vessels of Canada may fish for this stock throughout Divisions 4W and 4X and in the portion of Division 5Y which encompasses the Grand Manan Banks. Vessels of the United States may not fish for this stock.
- (c) Canada is the Party of primary interest with respect to the management of this stock.

2. For the stock of Atlantic herring (*Clupea harengus*) located in Division 5Y, excluding the portion of Division 5Y which encompasses the Grand Manan Banks, and not including the juvenile herring located within three nautical miles of the coast of the United States, the following terms shall apply:

- (a) Each fishing year vessels of the United States may catch 100 percent of the annual permissible commercial catch set for this stock under this Agreement.
- (b) In a manner consistent with applicable management measures, vessels of the United States may fish for this stock throughout Division 5Y, excluding the portion of Division 5Y which encompasses the Grand Manan Banks. Vessels of Canada may not fish for this stock.
- (c) The United States is the Party of primary interest with respect to the management of this stock.

3. For the stock of Atlantic herring (*Clupea harengus*) located in Division 5Z and Subarea 6, the following terms shall apply:

- (a) During each of the first three fishing years following entry into force of this Agreement, vessels of Canada may catch 2,000 metric tons of this stock, regardless of the annual permissible commercial catch set for this stock under this Agreement. During the same period, each fishing year vessels of the United States may catch 100 percent of

the annual permissible commercial catch set for this stock, less 2,000 metric tons.

- (b) During the fourth, fifth and sixth fishing years following entry into force of this Agreement, each fishing year vessels of Canada may catch 2,000 metric tons of this stock plus 50 percent of any portion of the annual permissible commercial catch for this stock which exceeds 21,000 metric tons; except where the permissible commercial catch has been set at a level above 45,000 metric tons, in which case they may catch one-third of the annual permissible commercial catch for this stock. During the same period, each fishing year vessels of the United States may catch 100 percent of the first 21,000 metric tons of the annual permissible commercial catch for this stock, less 2,000 metric tons, plus 50 percent of any portion of the annual permissible commercial catch which exceeds 21,000 metric tons; except where the annual permissible commercial catch for this stock has been set above 45,000 metric tons, in which case they may catch two-thirds of the annual permissible commercial catch.
- (c) After the sixth fishing year following entry into force of this Agreement, each fishing year vessels of Canada may catch one-third of the annual permissible commercial catch set for this stock under this Agreement. During the same period, each fishing year vessels of the United States may catch two-thirds of the annual permissible commercial catch for this stock.
- (d) In a manner consistent with applicable management measures, vessels of both Parties may fish for this stock in Division 5Z and Subarea 6, but vessels of the United States may not fish for this stock east of 66° west longitude and vessels of Canada may not fish for this stock west of 68°30' west longitude.
- (e) The United States is the Party of primary interest with respect to the management of this stock.

4. After the third fishing year following entry into force of this Agreement, the Parties shall review the management categorization of each of the three stocks of herring listed in paragraphs 1 through 3 of this Annex. If either Party believes data on any of these stocks is inadequate, no change shall be made to the management categorization applicable to any of the three stocks. After the sixth fishing year following entry into force of this Agreement, the management categorization of each of the stocks in question shall again be reviewed by the Parties, and if the Parties cannot agree on the action to be taken, either Party may refer the matter to the Arbitrator for decision in accordance with Chapter II. The Annexes shall be amended as necessary to reflect changes agreed upon by the Parties or determined by the Arbitrator pursuant to this paragraph.

5. The Parties shall undertake joint research into herring stock structure, in order to improve the scientific basis for the review provided for in paragraph 4.

6. In this Annex "juvenile herring" means herring which are less than three years of age. This definition shall be reviewed periodically by the Commission with a view to any change in this definition, if necessary.

Sea Scallops

7. For the stock of sea scallops (*Placopecten magellanicus*) located in Subdivision 5Ze, the following terms shall apply:

- (a) Each fishing year vessels of Canada may catch 73.35 percent of the annual permissible commercial catch set for this stock under this Agreement and in accordance with this Annex, and vessels of the United States 26.65 percent of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, vessels of both Parties may fish for this stock throughout Subdivision 5Ze.
- (c) Subject to subparagraph (d), Canada shall be the Party of primary interest with respect to that portion of this stock located east of 68°30' west longitude and the United States shall be the Party of primary interest with respect to that portion of this stock located west of 68°30' west longitude. The annual permissible commercial catch for this stock shall be the sum of the annual harvest limit for the portion of this stock for which Canada is the Party of primary interest and the annual harvest limit for the portion of this stock for which the United States is the Party of primary interest.
- (d) Notwithstanding the inclusion of this stock in Annex B, management measures respecting size limits (e.g., shell sizes and meat counts) shall be determined for this entire stock in accordance with the procedures applicable to stocks listed in Annex A.

Atlantic Cod

8. For the stock of Atlantic cod (*Gadus morhua*) located in Division 5Z, the following terms shall apply:

- (a) Each fishing year vessels of the United States may catch 83 percent of the annual permissible commercial catch set for this stock under this Agreement, and vessels of Canada 17 percent of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, vessels of both Parties may fish for this stock throughout Division 5Z.
- (c) The United States is the Party of primary interest with respect to the management of this stock.

Haddock

9. For the stock of haddock (*Melanogrammus aeglefinus*) located in Subarea 5, the following terms shall apply:

- (a) Each fishing year vessels of the United States may catch 79 percent of the annual permissible commercial catch set for this stock under this Agreement, and vessels of Canada 21 percent of the annual permissible commercial catch.

- (b) In a manner consistent with applicable management measures, vessels of both Parties may fish for this stock throughout Subarea 5.
- (c) The United States is the Party of primary interest with respect to the management of this stock.

Silver Hake

10. For the stock of silver hake (*Merluccius bilinearis*) located in Subdivision 5Ze, the following terms shall apply:

- (a) Each fishing year vessels of the United States may catch 90 percent of the annual permissible commercial catch set for this stock under this Agreement, and vessels of Canada 10 percent of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, vessels of both Parties may fish for this stock throughout Subdivision 5Ze.
- (c) The United States is the Party of primary interest with respect to management of this stock.

Red Hake

11. For the stock of red hake (*Urophycis chuss*) located in Subdivision 5Ze, the following terms shall apply:

- (a) Each fishing year vessels of the United States may catch 90 percent of the annual permissible commercial catch set for this stock under this Agreement, and commercial vessels of Canada 10 percent of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, vessels of both Parties may fish for this stock throughout Subdivision 5Ze.
- (c) The United States is the Party of primary interest with respect to the management of this stock.

Atlantic Argentine

12. For the stock of Atlantic argentine (*Argentina silus*) located in Divisions 4V, 4W and 4X, and in Subarea 5, the following terms shall apply:

- (a) Each fishing year vessels of Canada may catch 75 percent of the annual permissible commercial catch set for this stock under this Agreement, and vessels of the United States 25 percent of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, vessels of both Parties may fish for this stock throughout Divisions 4V, 4W and 4X and Subarea 5.
- (c) Canada is the Party of primary interest with respect to the management of this stock.

White Hake

13. For the stock of white hake (*Urophycis tenuis*) in Divisions 4V, 4W and 4X, the following terms shall apply:

- (a) Each fishing year vessels of Canada may catch 94 percent of the annual permissible commercial catch set for this stock under this Agreement, and vessels of the United States 6 percent of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, vessels of Canada may fish for this stock throughout Divisions 4V, 4W and 4X and vessels of the United States may fish for this stock throughout Division 4X only.
- (c) Canada is the Party of primary interest with respect to the management of this stock.

14. For the stock of white hake (*Urophycis tenuis*) in Subarea 5, the following terms shall apply:

- (a) Each fishing year vessels of the United States may catch 94 percent of the annual permissible commercial catch set for this stock under this Agreement, and vessels of Canada 6 percent of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, vessels of the United States may fish for this stock throughout Subarea 5 and vessels of Canada may fish for this stock only in Subdivision 5Ze and in that portion of Division 5Y which is in the maritime area in which Canada exercises exclusive fisheries jurisdiction.
- (c) The United States is the Party of primary interest with respect to the management of this stock.

15. If new information concerning the stocks of white hake listed in paragraphs 13 and 14, respectively, indicates that alternative arrangements would be mutually advantageous, the terms applicable to fishing access and entitlements and management of these stocks may be changed by agreement of the Parties.

Illex Squid

16. For the stock of illex squid (*Illex illecebrosus*) located in Subareas 3, 4, 5 and 6, the following terms shall apply:

- (a) The vessels of each Party may fish for this stock only in the area in which it exercises exclusive fisheries jurisdiction. Pending delimitation of the maritime boundary in the Gulf of Maine area, vessels of the Parties shall not fish for this stock in the boundary region, except by agreement of the Parties.
- (b) Canada is the Party of primary interest with respect to the management of that portion of this stock located in Subareas 3 and 4. The United States is the Party of primary interest with respect to the management of that portion of this stock located in Subareas 5 and 6.

ANNEX C

This Annex establishes the terms of fishing access and entitlements with respect to each of the fish stocks listed below, designates the Party which will manage that stock, and deals with other related matters. Each stock is defined by species and geographical location within the subareas, divisions or subdivisions described in Annex D.

Atlantic Cod

1. For the stock of Atlantic cod (*Gadus morhua*) located in Division 4W and Subdivision 4Vs, the following terms shall apply:

- (a) Each fishing year vessels of Canada may catch 98.6 percent of the annual permissible commercial catch set for this stock under this Agreement, and vessels of the United States 1.4 percent of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, vessels of both Parties may fish for this stock throughout Division 4W and Subdivision 4Vs.
- (c) Canada shall determine the management measures for this stock.

2. For the stock of Atlantic cod (*Gadus morhua*) located in the portion of Division 4X south and east of straight lines connecting coordinates 44°20' north latitude, 63°20' west longitude; then 43°00' north latitude, 65°40' west longitude; then 43°00' north latitude, 67°40' west longitude, the following terms shall apply:

- (a) Each fishing year vessels of Canada may catch 92.5 percent of the annual permissible commercial catch set for this stock under this Agreement, and vessels of the United States 7.5 percent of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, vessels of both Parties may fish for this stock throughout the portion of Division 4X specified in this paragraph.
- (c) Canada shall determine the management measures for this stock.

3. For the stock of Atlantic cod (*Gadus morhua*) located in Subarea 5Y, the following terms shall apply:

- (a) Each fishing year vessels of the United States may catch 98.4 percent of the annual permissible commercial catch set for this stock under this Agreement, and vessels of Canada 1.6 percent of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, vessels of both Parties may fish for this stock throughout Subarea 5Y.
- (c) The United States shall determine the management measures for this stock.

Haddock

4. For the stock of haddock (*Melanogrammus aeglefinus*) located in Divisions 4V and 4W, the following terms shall apply:

- (a) Each fishing year vessels of Canada may catch 90 percent of the annual permissible commercial catch set for this stock under this Agreement, and vessels of the United States 10 percent of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, vessels of both Parties may fish for this stock throughout Divisions 4V and 4W.
- (c) Canada shall determine the management measures for this stock.

5. For the stock of haddock (*Melanogrammus aeglefinus*) located in Division 4X, the following terms shall apply:

- (a) Each fishing year vessels of Canada may catch 90 percent of the annual permissible commercial catch set for this stock under this Agreement, and vessels of the United States 10 percent of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, vessels of both Parties may fish for this stock throughout Division 4X.
- (c) Canada shall determine the management measures for this stock.

Atlantic Redfish

6. For the stock of Atlantic redfish (*Sebastes marinus*) located in Divisions 4V, 4W and 4X, the following terms shall apply:

- (a) Each fishing year vessels of Canada may catch 65 percent of the annual permissible commercial catch set for this stock under this Agreement, and vessels of the United States 35 percent of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, vessels of both Parties may fish for this stock throughout Divisions 4V, 4W and 4X.
- (c) Canada shall determine the management measures for this stock.

7. For the stock of Atlantic redfish (*Sebastes marinus*) located in Divisions 4R, 4S and 4T, the following terms shall apply:

- (a) Each fishing year vessels of Canada based outside the Gulf of St. Lawrence may catch 90 percent of any portion of the annual permissible commercial catch for this stock set under this Agreement for vessels based outside the Gulf of St. Lawrence, and vessels of the United States 10 percent of that portion of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, ves-

sels of both Parties may fish for this stock throughout Divisions 4R, 4S and 4T where subparagraph (a) is applicable.

(c) Canada shall determine the management measures for this stock.

8. For the stock of Atlantic redfish (*Sebastes marinus*) located in Division 3-O, the following terms shall apply:

- (a) Subject to paragraph 9 of this Annex, each fishing year vessels of the United States may catch 600 metric tons of the annual permissible commercial catch set for this stock under this Agreement, and vessels of Canada 100 percent of the annual permissible commercial catch, less 600 metric tons.
- (b) In a manner consistent with applicable management measures, vessels of both Parties may fish for this stock throughout Division 3-O.
- (c) Canada shall determine the management measures for this stock.

9. For the stock of Atlantic redfish (*Sebastes marinus*) located in Division 3P, the following terms shall apply:

- (a) Upon the delimitation of the maritime boundary between Canada and France, the United States may request that its entitlement to 600 metric tons of the Division 3-O redfish stock be exchanged for an equivalent entitlement to this stock. If Canada agrees to such an entitlement for vessels of the United States, each fishing year thereafter vessels of the United States may catch 600 metric tons of the annual permissible commercial catch set for this stock under this Agreement, and vessels of Canada 100 percent of the annual permissible commercial catch, less 600 metric tons; and paragraph 8 of this Annex shall cease to apply.
- (b) In a manner consistent with applicable management measures, vessels of both Parties may fish for this stock throughout Division 3P where subparagraph (a) is applicable.
- (c) Canada shall determine the management measures for this stock.

10. For the stock of Atlantic redfish (*Sebastes marinus*) located in Subarea 5, the following terms shall apply:

- (a) Each fishing year vessels of the United States may catch 99 percent of the annual permissible commercial catch set for this stock under this Agreement, and vessels of Canada 1 percent of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, vessels of both Parties may fish for this stock throughout Subarea 5.
- (c) The United States shall determine the management measures for this stock.

11. Upon expiration of the tenth year following entry into force of this Agreement, paragraphs 6 through 9 of this Annex, which pertain to four redfish stocks, shall no longer apply, after which time fishing for such stocks in the maritime area in which each Party exercises exclusive fisheries jurisdiction shall be governed by the domestic law of that Party.

Other Atlantic Groundfish

12. For the stocks of other Atlantic groundfish located in Subareas 3 and 4, including all Atlantic groundfish species but excluding those stocks listed elsewhere in this Annex or in Annex A or B, the following terms shall apply:

- (a) Each fishing year vessels of Canada may catch 99 percent of the annual permissible commercial catch set for any one or more of these stocks under this Agreement, and vessels of the United States 1 percent of the annual permissible commercial catch. Depending on management preferences, an annual permissible commercial catch may be set individually for any of these stocks, in the aggregate for a grouping of two or more such stocks, or in both ways.
- (b) In a manner consistent with applicable management measures, vessels of Canada may fish for these stocks throughout Subareas 3 and 4. Vessels of the United States may catch these stocks only incidentally in fishing for other stocks listed in this Annex or in Annex A or B, and may catch these stocks in Subareas 3 and 4, to the extent authorized to fish for such other stocks and in a manner consistent with applicable management measures.
- (c) Canada shall determine the management measures for these stocks.

13. For the stocks of other Atlantic groundfish located in Subarea 5, including all Atlantic groundfish species but excluding those stocks listed elsewhere in this Annex or in Annex A or B, the following terms shall apply:

- (a) Each fishing year vessels of the United States may catch 99 percent of the annual permissible commercial catch set for any one or more of these stocks under this Agreement, and vessels of Canada 1 percent of the annual permissible commercial catch. Depending on management preferences, an annual permissible commercial catch may be set individually for any of these stocks, in the aggregate for a grouping of two or more such stocks, or in both ways.
- (b) In a manner consistent with applicable management measures, vessels of the United States may fish for these stocks throughout Subarea 5. Vessels of Canada may catch these stocks only incidentally in fishing for other stocks listed in this Annex or in Annex A or B, and may catch these stocks in Subarea 5 to the extent authorized to fish for such other stocks and in a manner consistent with applicable management measures.
- (c) The United States shall determine the management measures for these stocks.

Northern Lobster

14. For the stock of northern lobster (*Homarus americanus*) located in Subareas 4 and 5, upon the delimitation of the maritime boundary in the Gulf of Maine area, the following terms shall apply:

- (a) Vessels of each Party, in a manner consistent with applicable man-

agement measures, may fish for this stock only in the portion of Subareas 4 and 5 which is within its exclusive fisheries jurisdiction, subject to subparagraph (c).

- (b) Each Party shall determine the management measures for this stock in the portion of Subareas 4 and 5 which is within its exclusive fisheries jurisdiction, subject to subparagraph (c).
- (c) The Parties agree to review the possibility of fishing for this stock by vessels of one Party in the area under the exclusive fisheries jurisdiction of the other Party, on a basis of reciprocity. Any arrangements that may be agreed for such reciprocal fishing access to this stock shall include provisions for the minimization of conflicts between lobster fishing vessels and gear and other types of fishing vessels and gear. If the Parties agree on arrangements for such reciprocal access, but cannot agree on the nature of gear conflict provisions, the question of gear conflict provisions may be referred by either Party to the Arbitrator for decision in accordance with Chapter II. This Annex shall be amended as necessary to reflect changes agreed by the Parties or determined by the Arbitrator.

Loligo Squid

15. For the stock of loligo squid (*Loligo pealei*) located in Division 5Z and Subarea 6, the following terms shall apply:

- (a) Each fishing year vessels of the United States may catch 91 percent of the annual permissible commercial catch set for this stock under this Agreement, and vessels of Canada 9 per cent of the annual permissible commercial catch.
- (b) In a manner consistent with applicable management measures, vessels of both Parties may fish for this stock throughout Division 5Z and Subarea 6.
- (c) The United States shall determine the management measures for this stock. To the extent reasonably necessary to assure levels of incidental catch of other species which are consistent with United States management goals and to avoid conflicts between different types of fishing vessels and gear, the management measures applicable to the vessels of Canada may be more restrictive than measures applicable to vessels of the United States; provided, however, that the management measures applicable to vessels of Canada shall be designed to assure them the opportunity to catch the full Canadian entitlement without undue fishing hardship.
- (d) Upon expiration of the tenth year following entry into force of this Agreement, this paragraph shall no longer apply.

Incidental Catch

16. Regarding the incidental catch of stocks not included in paragraph 12 or 13 of this Annex, the Parties shall consult periodically in an effort to develop suitable arrangements consistent with the objectives of this Agreement. At the request of either Party the incidental catch provi-

sions of paragraph 12 or 13 applicable to other Atlantic groundfish stocks, including entitlements, shall be reviewed by the Commission to determine whether such provisions are resulting in undue restriction on the ability of vessels of that Party to harvest its other entitlements under this Agreement. Changes in any incidental catch provision may be agreed upon by the Parties and this Annex shall be amended accordingly. Temporary relaxations of such a provision may be implemented immediately if so agreed by both Parties.

Access to Grand Manan Island Area

17. (a) Subject to this paragraph, where vessels of the United States are authorized by this Annex or by Annex A or B to fish for a groundfish stock throughout Division 4X, such vessels may have access to the area from three to twelve nautical miles from the coast of Grand Manan Island, but seaward of twelve nautical miles from the mainland coast of Canada.

(b) Fishing access pursuant to subparagraph (a) shall be on an equal footing with vessels of Canada and in particular shall be subject to nondiscriminatory Canadian regulations respecting the dimensions of vessels which may fish in this area.

(c) Fishing access pursuant to subparagraph (a) shall be restricted to traditional patterns of fishing and levels of effort by vessels of the classes which may fish in the area.

(d) The Parties agree that best efforts shall be exerted to prevent gear conflicts from arising out of the fishing access provided for in subparagraph (a); and without restricting the generality of subparagraph (b), they further agree that vessels exercising such rights of access shall observe nondiscriminatory Canadian regulations regarding gear conflicts.

ANNEX D

The subareas, divisions and subdivisions used to describe the fishery stocks listed in Annexes A, B and C shall be as follows:

1. *Subarea 3* is that portion of the maritime area lying south of the parallel of 52° 15' north latitude, and to the east of a line extending due north from Cape Bauld on the north coast of Newfoundland to 52° 15' north latitude; to the north of the parallel of 39°00' north latitude; and to the east and north of a rhumb line commencing at 39°00' north latitude, 50°00' west longitude and extending in a northwesterly direction to pass through a point at 43°30' north latitude, 55°00' west longitude in the direction of a point at 47°50' north latitude, 60°00' west longitude until it intersects a straight line connecting Cape Ray, on the coast of Newfoundland, with Cape North on Cape Breton Island; thence in a northeasterly direction along said line to Cape Ray. Subarea 3 includes the following Divisions:

(a) *Division 3-O*, which is that portion of the Subarea lying south of the parallel of 46°00' north latitude and between the meridian of 51°00' west longitude and the meridian of 54°30' west longitude;

- (b) *Division 3P*, which is that portion of the Subarea lying south of the Newfoundland coast and west of a line from Cape St. Mary, Newfoundland to a point at 46°00' north latitude, 54°30' west longitude, thence due south to the limit of the Subarea.

2. *Subarea 4* is that portion of the maritime area lying north of the parallel of 39°00' north latitude, to the west of Subarea 3, and to the east of a line described as follows: Beginning at the terminus of the international boundary between the United States of America and Canada in Grand Manan Channel, at a point at 44°46' 35.346" north latitude; 66°54' 11.253" west longitude; thence due south to the parallel of 43°50' north latitude; thence due west to the meridian of 67°40' west longitude; thence due south to the parallel of 42°20' north latitude; thence due east to a point in 66°00' west longitude; thence along a rhumb line in a southeasterly direction to a point at 42°00' north latitude and 65°40' west longitude; and thence due south to the parallel of 39°00' north latitude. Subarea 4 is divided into six Divisions:

- (a) *Division 4R*, which is that portion of the Subarea lying between the coast of Newfoundland from Cape Bauld to Cape Ray and a line described as follows: Beginning at Cape Bauld, thence due north to the parallel of 52°15' north latitude, thence due west to the Labrador coast, thence along the Labrador coast to the terminus of the Labrador-Quebec boundary, thence along a rhumb line in a southwesterly direction to a point at 49°25' north latitude, 60°00' west longitude, thence due south to a point at 47°50' north latitude, 60°00' west longitude, thence along a rhumb line in a southeasterly direction to the point at which the boundary of Subarea 3 intersects the straight line joining Cape North, Nova Scotia with Cape Ray, Newfoundland, thence to Cape Ray, Newfoundland;
- (b) *Division 4S*, which is that portion of the Subarea lying between the south coast of Quebec from the terminus of the Labrador-Quebec boundary to Pte. des Monts and a line described as follows: Beginning at Pte. des Monts, thence due east to a point at 49°25' north latitude, 64°40' west longitude, thence along a rhumb line in an east-southeasterly direction to a point at 47°50' north latitude, 60°00' west longitude, thence due north to a point at 49°25' north latitude, 60°00' west longitude, thence along a rhumb line in a northeasterly direction to the terminus of the Labrador-Quebec boundary;
- (c) *Division 4T*, which is that portion of the Subarea lying between the coasts of Nova Scotia, New Brunswick, and Quebec from Cape North to Pte. des Monts and a line described as follows: Beginning at Pte. des Monts, thence due east to a point at 49°25' north latitude, 64°40' west longitude, thence along a rhumb line in a southeasterly direction to a point at 47°50' north latitude, 60°00' west longitude, thence along a rhumb line in a southerly direction to Cape North, Nova Scotia;
- (d) *Division 4V*, which is that portion of the Subarea lying between the coast of Nova Scotia between Cape North and Fourchu and a line described as follows: Beginning at Fourchu, thence along a rhumb line in an easterly direction to a point at 45°40' north latitude,

60°00' west longitude, thence due south along the meridian of 60°00' west longitude to the parallel of 44°10' north latitude, thence due east to the meridian of 59°00' west longitude, thence due south to the parallel of 39°00' north latitude, thence due east to a point where the boundary between Subareas 3 and 4 meets the parallel of 39°00' north latitude, thence along the boundary between Subareas 3 and 4 and a line continuing in a northwesterly direction to a point at 47°50' north latitude, 60°00' west longitude, and thence along a rhumb line in a southerly direction to Cape North, Nova Scotia. Division 4V is divided into two Subdivisions:

- (i) Subdivision 4Vn, which is that portion of Division 4V lying north of the parallel of 45°40' north latitude;
- (ii) Subdivision 4Vs, which is that portion of Division 4V lying south of the parallel of 45°40' north latitude;
- (e) *Division 4W*, which is that portion of the Subarea lying between the coast of Nova Scotia from Halifax to Fourchu and a line described as follows: Beginning at Fourchu, thence along a rhumb line in an easterly direction to a point at 45°40' north latitude, 60°00' west longitude, thence due south along the meridian of 60°00' west longitude to a parallel of 44°10' north latitude, thence due east to the meridian of 59°00' west longitude, thence due south to the parallel of 39°00' north latitude, thence due west to the meridian of 63°20' west longitude, thence due north to a point on that meridian in 44°20' north latitude, thence along a rhumb line in a northwesterly direction to Halifax, Nova Scotia;
- (f) *Division 4X*, which is that portion of the Subarea lying between the western boundary of Subarea 4 and the coasts of New Brunswick and Nova Scotia from the terminus of the boundary between New Brunswick and Maine to Halifax, and a line described as follows: Beginning at Halifax, thence along a rhumb line in a southeasterly direction to a point at 44°20' north latitude, 63°20' west longitude, thence due south to the parallel of 39°00' north latitude, and thence due west to the meridian of 65°40' west longitude.

3. *Subarea 5* is that portion of the maritime area lying to the west of the western boundary of Subarea 4, to the north of the parallel of 39°00' north latitude, and to the east of the meridian of 71°40' west longitude. Subarea 5 is composed of two Divisions:

- (a) *Division 5Y*, which is that portion of the Subarea lying between the coasts of Maine, New Hampshire and Massachusetts from the border between Maine and New Brunswick to 70°00' west longitude on Cape Cod (at approximately 42° north latitude) and a line described as follows: Beginning at a point on Cape Cod at 70°00' west longitude (at approximately 42° north latitude), thence due north to 42°20' north latitude, thence due east to 67°40' west longitude at the boundary of Subareas 4 and 5, and thence along that boundary to the boundary of Canada and the United States;
- (b) *Division 5Z*, which is that portion of the Subarea lying to the south and east of Division 5Y. Division 5Z is divided into Subdivisions:

- (i) Subdivision 5Ze, which is that portion of Division 5Z lying east of the meridian of $70^{\circ}00'$ west longitude;
- (ii) Subdivision 5Zw, which is that portion of Division 5Z lying west of the meridian of $70^{\circ}00'$ west longitude.

4. *Subarea 6* is that portion of the maritime area bounded by a line beginning at a point on the coast of Rhode Island at $71^{\circ}40'$ west longitude; thence due south to $39^{\circ}00'$ north latitude; thence due east to $42^{\circ}00'$ west longitude; thence due south to $35^{\circ}00'$ north latitude; thence due west to the coast of North America; thence northwards along the coast of North America to the point on Rhode Island at $71^{\circ}40'$ west longitude.

5. The foregoing subareas, divisions and subdivisions are depicted graphically on the attached map, for illustrative purposes. [*Attachment omitted.*]

CERTIFICATION

I, the undersigned L.H. Legault, Q.C., Agent for Canada, hereby certify that the copy of each document attached as a Documentary Annex in Volume I of the Annexes to the Memorial submitted by Canada is an accurate copy, whether prepared by photographic means or by transcription.

(Signed) L.H. LEGAULT, Q.C.

Volume II
PUBLIC AND OFFICIAL DOCUMENTS

Annex 1

EXTRACTS FROM THE *REPORT ON THE FISHERIES OF NOVA SCOTIA, 1867*,
BY THOMAS F. KNIGHT (TITLE PAGE AND PAGES 1, 2 AND 3)

[Not reproduced]

Annex 2

EXTRACTS FROM THE LETTER OF 19 FEBRUARY 1868 FROM THE NOVA SCOTIA
DEPARTMENT OF MARINE AND FISHERIES OFFICE TO THE MINISTER OF THE
CANADIAN DEPARTMENT OF MARINE AND FISHERIES (PAGES 1-11)

[Not reproduced]

Annex 3

"HADDOCKING ON BROWN'S BANK", BY F. WILLIAM WALLACE (*CANADIAN
FISHERMAN*, VOLUME I, NUMBER 5, MAY 1914, PAGES 141-145)

[Not reproduced]

Annex 4

"SHIPPING AND FISHING", QUOTING THE *YARMOUTH TIMES*
(*THE DIGBY WEEKLY COURIER*, 25 JUNE 1915)

[Not reproduced]

Annex 5

"THE ATLANTIC FISHERIES, THE TWELVE MONTHS' TALLY: DIGBY, N.S.",
SPECIAL CORRESPONDENCE (*CANADIAN FISHERMAN*, VOLUME III, NUMBER 2,
FEBRUARY 1916, PAGES 52-54)

[Not reproduced]

Annex 6

"MARITIME FISH CORPORATION", BY ROY M. WHYNACHT (*CANADIAN FISHERMAN*,
VOLUME IX, NUMBER 7, JULY 1922, PAGES 141-144)

[Not reproduced]

Annex 7

EXTRACTS FROM *PROCEEDINGS OF THE ROYAL COMMISSION INVESTIGATING THE
FISHERIES OF THE MARITIME PROVINCES, 1927-1928* (VOLUME 9, PAGE 3432 AND
VOLUME 10, PAGE 3476)

[Note: on page 3432 the speaker is J. D'Entremonet, an Overseer from
Yarmouth District, and on page 3476 the speaker is George E. Earle, a dealer
from Yarmouth.]

[Not reproduced]

Annex 8

EXTRACTS FROM THE *REPORT OF THE ROYAL COMMISSION INVESTIGATING THE FISHERIES OF THE MARITIME PROVINCES AND THE MAGDALENE ISLANDS, 1928*
(COVER AND PAGE 7)

[Not reproduced]

Annex 9

STEAM TRAWLER ORDER, ORDER IN COUNCIL P.C. 2196, 30 OCTOBER 1929

[Not reproduced]

Annex 10

CANADIAN DEPARTMENT OF TRANSPORT WRECK REPORT, FILE: EAST COAST
LUCILLE M (26 JULY 1942)

[Not reproduced]

Annex 11

EXTRACTS FROM THE UNITED STATES DRAFT INTERNATIONAL CONVENTION FOR THE
NORTHWEST ATLANTIC FISHERIES, INTERNATIONAL NORTHWEST ATLANTIC
FISHERIES CONFERENCE, 26 JANUARY 1949 TO 5 FEBRUARY 1949
(DOCUMENT 1, 1 OCTOBER 1948, PAGES 6, 7, 23 AND 24)

[Note: in the final text of the Convention, sub-area 4 became sub-area 5 owing
to the division into two of sub-area 1.]

Article IV

1. For the purpose of regulation within the sub-areas, the High Contracting Parties agree to establish and maintain Panels for each of the sub-areas provided for by Article I. High Contracting Parties participating on any Panel shall be represented on such Panel by their three Commissioners. Each Panel shall elect its chairman who shall serve for a period of one year and shall be eligible for re-election. It is authorized to adopt and to amend subsequently, as occasion may require, suitable by-laws or rules for the conduct of its meetings and for the exercise of its functions and duties. The secretariat of the Commission shall act as the secretariat for the Panels.

2. A two-thirds majority of the Commissioners of a Panel shall constitute a quorum.

3. Each panel Commissioner shall have one vote. Any Panel Commissioner of any High Contracting Party shall have the right to cast the ballot of the other Panel Commissioner or Commissioners representing that High Contracting Party who may be absent from a Panel meeting. Decisions of the Panel shall be taken by a simple majority of the votes cast, except that the adoption of regulations pursuant to Article IX, paragraph 2, shall require a two-thirds majority of the votes cast, which majority shall include the votes of the Panel Commissioners representing High Contracting Parties with coastlines contiguous to the sub-area.

4. The Commissioners of any non-participating High Contracting Party shall have the right to attend the meetings of any Panel as observers.

5. As soon as possible after the entry into force of this Convention, each Panel shall be established by those High Contracting Parties entitled to representation thereon, as specified in the Annex, which have ratified or adhered to the Convention.

6. For a period of three years from the date of entry into force of this Convention, Panel representation shall be as specified in the Annex. Panel representation shall be reviewed annually thereafter by the Commission, which shall have the power to determine the representation, on the basis of current substantial exploitation in such sub-area of the species of fish listed in the Annex, except that each High Contracting Party with coastline contiguous to a sub-area shall have the right of representation on the Panel for the sub-area.

.....

ANNEX

1. The sub-areas provided for by Article I of this Convention shall be as follows:

Sub-area 1 — That portion of the area defined in Article I which lies north of the parallel of 52° 15' north latitude.

Sub-area 2 — That portion of the area defined in Article I lying south of the parallel of 52° 15' north latitude; to the north of the parallel of 39° 00' north latitude; and to the east and north of a rhumb line extending in a northwesterly direction which passes through a point in 43° 30' north latitude, 55° 00' west longitude, in the direction of a point in 47° 50' north latitude, 60° 00' west longitude, until it intersects a straight line connecting Cape Ray, on the coast of Newfoundland, with Cape North on Cape Breton Island; thence in a northeasterly direction along said line to Cape Ray.

Sub-area 3 — That portion of the area defined in Article I, lying to the west of sub-area 2 defined above, and to the east of a line described as follows: Beginning at the terminus of the international boundary between the United States of America and Canada in Grand Manan Channel, at a point in 44° 46' 35.34" north latitude, 66° 54' 11.23" west longitude; thence due south to the parallel of 43° 50' north latitude; thence due west to the meridian of 67° 40' west longitude; thence due south to the parallel of 42° 20' north latitude; thence due east to a point in 66° 00' west longitude; thence along a rhumb line in a southeasterly direction to a point in 42° 00' north latitude, 65° 40' west longitude; thence due south to the parallel of 39° 00' north latitude.

Sub-area 4 — That portion of the area defined in Article I lying west of the western boundary of sub-area 3 defined above.

2. For a period of three years from the date of entry into force of this Convention, Panel representation for each sub-area shall be as follows:

- (a) Sub-area 1 — Canada, Denmark, France, Newfoundland, Portugal, Spain, United States.
- (b) Sub-area 2 — Canada, Denmark, France, Newfoundland, Portugal, Spain, United States.
- (c) Sub-area 3 — Canada, France, Newfoundland, United States.
- (d) Sub-area 4 — Canada, United States.

3. Pursuant to the provisions of Article X of this Convention, the following species of fish are subject to regulation:

<i>Scientific Name</i>	<i>Common Name</i>
<i>Gadus morrhua</i>	
(synonym: <i>Gadus callarius</i>)	cod, codfish
<i>Hippoglossus hippoglossus</i>	halibut
<i>Melanogrammus aeglefinus</i>	haddock
<i>Sebastes marinus</i>	rosefish, redfish
<i>Urophycis tenuis</i>	white hake
<i>Urophycis chuss</i>	red hake
<i>Pollachius virens</i>	pollock
<i>Brosme brosme</i>	cusk

— END —

Annex 12

MINUTES OF THE SECOND SESSION OF THE INTERNATIONAL NORTHWEST ATLANTIC FISHERIES CONFERENCE, 26 JANUARY 1949 TO 5 FEBRUARY 1949 (DOCUMENT 15, 27 JANUARY 1949, PAGES 1-13, AND CORRIGENDUM A, 28 JANUARY 1949)

Jan. 27, 1949

Minutes of the Second Session

TIME: Thursday, January 27, 1949, 10:35 a.m.
PLACE: West Ballroom, Shoreham Hotel
CHAIRMAN: Mr. Chapman (U.S.A.)

1. MR. CHAPMAN (CHAIRMAN): The first working session of the Committee as a whole is called to order.

2. I wish to say that it is pleasing to see all hands present this morning. Apparently the evening's festivities did not lay anyone low.

3. Before we begin the discussion of the draft convention, I wish to point out in some detail the reasons behind the action of the United States in convening this International Northwest Atlantic Fisheries Conference.

4. The sole purpose that we had in mind was this: To provide an international mechanism for (1) investigating the factors influencing the yield of the high seas fisheries in these areas, and (2) the control of fishing effort in the areas, if that should be found to be a factor that is influencing the yield of the fisheries in a deleterious way.

5. By control of fishing effort we mean precisely that and nothing more. Fishing effort should be regulated, when it is found necessary and desirable to do so, in such a manner as to keep the fish stocks, upon which the fisheries operate, at those levels which will make possible maximum sustained yields year after year.

6. Our ideas would be:

- (1) That the regulations would be applied uniformly to all vessels of the nations signatory to this pact.
- (2) That the regulations would be promulgated by a joint commission composed of representatives of all the nations which maintain a substantial fishery in the area.
- (3) That the commission would base its regulations upon its scientific findings.

7. What gave rise to the United States' interest in this matter was the fact that we have information, satisfactory to us, that certain fish stocks on the Georgia's banks and in their vicinity are being over-fished, and that if they were not fished so hard, they actually would yield a greater catch of fish.

8. The fishery in this area is almost entirely a United States fishery at the present time. To the best of my knowledge, Canadian vessels have seldom fished in the area in recent years, and the vessels of other nations have seldom, if ever, worked in the area. I refer to Area 4 of the chart before you.

9. Since this is an almost exclusively United States fishery at the present time, there is no reason why we could not regulate it in any manner that we thought best by control over our own citizens. This has been, and still is, being given consideration. There are, however, two reasons why such a scheme is not necessarily the best one for handling the problem.

10. The first reason is this: If, by regulating the fishing efforts of our own citizens in this particular area, we build up the fish stocks to a high level and at the same time the fish stocks in an adjacent area are being over-fished and are going downhill, then other fishermen will be drawn to the enriched banks. Now, there is no practical sense in putting money in a savings account from which everybody else in the world can draw freely, while, at the same time, you regulate closely your own withdrawals.

11. The second reason is: The imposition of regulations on United States fishermen in Area 4 would not result in the United States fishermen tying their vessels to the dock. It would simply mean that their surplus fishing efforts will be diverted elsewhere, and we know from experience that it will be diverted to Area 3.

12. Thus, the same picture of overfishing and depletion would very likely follow. This latter situation, of course, would be quite beyond our control, for the fishermen of many nations operate in a major way in Area 3.

13. Again, regulation of the fishing effort of the United States citizens alone would not be effective from a conservation viewpoint. There is always the blunt fact that regulation of one group of fishermen without similar regulation of a second group, both of which are working the same grounds, would give a commercial advantage to the second group. No group of fishermen of any nation will willingly permit the fishermen of another nation to have such a commercial advantage.

14. We furthermore quite well realize that regulation of fishing in Areas 4 and 3 would mean an eventual shifting of fishing effort to Area 2 and, if that Area also were brought under conservation regulation, an eventual shifting of fishing effort to Area 1.

15. This is not all theory. The process is going on at this moment. While United States fishermen in the past have fished extensively in all four of the specified areas, it is also true that for a good many years our trawlers restricted their effort almost entirely to Area 4. No fisherman ever goes farther from his home port to get fish than is necessary.

16. More recently the decline in the yield of the Area 4 fisheries has forced our fishermen to go to the banks of Area 3. If I am correctly informed, the United States fishermen now land more fish from Area 3 than they do from Area 4. Furthermore, there already is a renewal of fishing by the United States in Area 2. It is expected, by the trade, that this will continue to grow, and very rapidly.

17. I wish to emphasize that our actions have originated because of two factual situations:

- (1) Overfishing in Area 4, and
- (2) A transfer of fishing efforts to adjacent areas with a likelihood that over-fishing will occur there also.

18. Except perhaps for the stocks of halibut, we have no conclusive evidence that there is overfishing in Areas 3, 2 or 1 at the present time. On the contrary, there is a belief, in the absence of factual information, that the stocks of fish in these areas are capable of producing substantially larger quantities of fish without damage to the stocks.

19. It is a part of our thinking regarding fishery conservation that a curtailment of fishing effort is not desirable until there is rather conclusive evidence that the point of maximum production from the fish stocks under consideration has been reached or exceeded. The other side of this thinking is equally strong. When there is proof that the point of maximum production has been reached or

exceeded, curtailment of fishing effort should be quickly applied in order to prevent the waste brought about by overfishing.

20. The authorities who will make up the regulations to curtail fishing effort must have a wide degree of flexibility in their scope of action. The relationship between the fishery and the fish stocks is a dynamic one, capable of quick shifts and turns. The relationship between many fishstocks and their natural environment is equally dynamic and also capable of quick and substantial changes. The regulatory code must therefore also be dynamic if it is to fulfill its objective of maintaining the possibility of a maximum production of fish.

21. In these days of a rapidly increasing potential fishing effort in the North Atlantic area, and the increasing ability of this fishing effort to be applied in widely separate areas in the North Atlantic, overfishing can arise with an ease and swiftness that could not have occurred previously.

22. As I have said, we have no reason for wishing regulation of fishing effort in the three areas until such regulation becomes necessary and desirable. Nevertheless, it is our firm belief that in view of the highly flexible nature of the fishing effort in the North Atlantic, it would be only prudent to begin large scale investigations in those areas where it would be necessary to provide the scientific bases that are required to determine when regulation will be profitable.

23. We believe with equal firmness that it would be equally prudent to maintain sufficient foresight to provide at this time the legal machinery for the application of such regulations as may be found desirable, even though they might not be necessary for some years to come.

24. In this country we have had a good deal of bitter experience in over-exploiting irreplaceable resources. The general pattern has been to jump in with scientific research to find out the obvious. Years pass by while the scientists prove to everyone concerned that there has been over-exploitation. During these years, the resource produces little or nothing. As a result, the rate of exploitation is relaxed, the resource rebuilds itself, and if we are lucky, we eventually get it into shape where it can produce in quantity again.

25. This is not a sensible way to do business. Some day we will have to accept the knowledge gained from these many lessons, and be prepared, when over-exploitation rears its head, to take quick measures for its control without the intervention of these years of waste.

26. There may have been a suspicion on the part of some of the nations at this Conference that the real reason for calling the Conference is somewhat different. They may have feared that the United States, or the United States and Canada together, may be conspiring, in some way that is not quite clear, to exclude their fishermen from this area, or to limit the effort of their fishermen in such a way that the fishermen of the United States or Canada would have an advantage over them.

27. I wish to state categorically that the United States has no such objective in mind. Our objective is plainly and simply the desire to provide machinery which will permit the fish stocks of the Northwest Atlantic to continue to produce the maximum quantity of fish possible to feed the people of the world.

28. We have no intention of bringing up at this Conference anything concerning a diversion of the yield of these fisheries, and we hope no one else will, for I think it is quite certain we could not reach any agreement as to how the yield of these fisheries should be divided between the nations. On the other hand, we do not see how anyone fishing in the area could logically oppose the conservation of the fisheries to the profit of everyone.

29. Since the fishermen of many nations fish in many places in the four

areas, it is necessary that there be cooperation among the nations if the main objective is to be carried forward. Our purpose in convening this convention was to lay plans for such cooperation among the interested nations. To expedite the work of this convention there has been prepared and forwarded to you a draft for an international convention under which such cooperative effort would be possible. I wish to comment briefly on a few of the articles of that draft, to the end that you will know what we were thinking of in its preparation.

30. Detailed discussion of the draft will be left to a later time. However, it may be well to mention a few of the provisions at this time.

31. The draft provides that regulation or other action will initiate from panels set up for each of the separate areas. In developing this proposal two things were kept in mind. Canada and the United States have had a good deal of experience in managing high seas fisheries on the west coast through the medium of two International Commissions, each of which works with but one species of fish. The efforts of both of the Commissions have been quite satisfactory, and we now are rather thoroughly acquainted with the system. Each of the fisheries involved is fished solely by the two countries.

32. In the present instance, however, we hope to jump from that rather simple situation, which incidentally has been worked out over a period of some years, to an extremely complex situation, where there are many species of fish involved, and where many nations are involved. Thus we have sought to provide for as much simplification of the biological and the political problems as is possible. We have thought that this would be achieved best by splitting the overall area into smaller areas, which smaller areas have a degree of homogeneity from a biological standpoint and also from a political standpoint. To the best of our knowledge, the stocks of fish in which we are particularly interested do not move in any large way from one area to another. If that assumption proves to be correct, then regulations in one area simply would have little or no effect on the fish stocks in one of the other areas, and the problems can be taken up one by one.

33. Similarly with the fishing effort. Many nations fish in one or another of the four areas, but there is none of the four areas in which there is fishing by all of our nations. We know and recognize the difficulties involved in reconciling numerous viewpoints. The fewer viewpoints there are to reconcile, the more chance there is of reconciliation. If the primary responsibilities in each of the areas are placed in the hands of those nations who have the primary responsibilities and interests in the areas, we anticipate and hope that the process of learning how to work together on these very complex matters will go ahead with greater ease.

34. That is the primary purpose in providing for the proposed panel organization. From the biological standpoint it is realized that the presently proposed areas may not be the proper ones. It might be quite necessary, as more evidence comes in, to change the boundaries of the areas. It might even be necessary to split the areas, and provision has been made in the draft for flexibility in changing the boundaries of the areas.

35. Similarly, it is realized that the national composition of these fisheries will change from time to time as market conditions in the various countries provide their fishermen with different patterns of profitable work. We know that in the past there has been a very considerable shifting, upon the part of the individual nations, of interest in the four areas. As explained before, we ourselves have gone through that change. We have fished in all of the areas, then in one of the areas, and then in one or two. We realize that this is a dynamic situation, and we have provided in the draft a means to meet it.

36. We have proposed in the draft convention the use of Panel Committees. This has been based on our idea of the present situation. We think that it would be advisable to maintain any such Panel system that may be drawn up at this time for a period of at least three years, in order to give us that amount of time to learn how to work together. After that time, and it has been so provided in the draft, changes in the Panels should be possible each year, to compensate for the shifting of national interest on the part of individual nations.

37. Now, while we feel that the idea of Panels has some merit, we are quite aware of the fact that it would not be desirable for one Panel to take action that would defeat the purposes that another Panel is trying to achieve. That, we concede, is one of the principal objectives of the Commission as a whole, i.e., to act as a correlating factor.

38. In Article V we have provided that "each High Contracting Party shall be entitled to set up an Advisory Committee."

39. It is, of course, quite within the prerogative of any High Contracting Party to set up any kind of a committee it might desire to help it in its deliberations. The reason we have made this provision in the draft convention is to draw attention to the fact that in our other two International Commissions, which have been in operation for a number of years, we have found one of the most valuable factors of the organization to be the close liaison and relationship between the work of the Commission, the work of the scientists on the staff of the Commission, and the work of the fishermen in the industry. The Advisory Committees which have been provided for in those Commissions contributed in very large measure to their success. The trade knows at once through them what the program of the Commission is, both its research program, and its regulatory program. The trade actually participates in the formation of both investigatory programs and regulatory programs. As a consequence, the trade has come to assume a rather proprietary interest in the Commissions. Their views have been taken into full consideration at all stages, and the Commission very frequently accepts these views. One of the main advantages, however, is that the fishermen are educated at the same time the Commission and its staff are educated. Actions of the Commission are familiar to them because of their continuing acquaintance with Commission discussions and decisions. We feel, from our standpoint, that an Advisory Committee is quite necessary. We would, therefore, provide for one.

40. Article VI of our draft convention provides for the widest latitude for investigation on the part of the Commission. We do not think that we, or even this Conference, are capable of saying at this time what should be investigated. We know the complexities of the scene and the various populations of animals in the sea. We know the complexities of their relationships, we know that when we plan out a very careful campaign of research, that it has to be modified constantly as we go ahead with that research, because we have not known all the factors that need to be taken into consideration at the start. Very frequently, the avenue of research hoped to be the most promising became the least promising, and the least promising turned out to be the most promising, at the instigation of the program. Therefore, we have sought to have the Commission granted powers to investigate on the widest possible basis.

41. Considering that this type of organization is an experiment in itself and a very complex experiment, we have not wished to limit in any way the manner in which the Commission could undertake these investigations. We would like to leave them the utmost flexibility to use such means as they can to obtain the facts and information that will be required. We have stated in the first part of the article that the Commission may, "either in collaboration with agencies of

the High Contracting Parties or other public or private agencies and organizations or independently," make these investigations. In our other two Commissions, the Commissions themselves have scientific staffs to make their investigations. This Commission may well wish to make some use of that procedure. On the other hand, Canada, Denmark, others, and ourselves have in the past conducted a considerable amount of research in this area and will continue to do so. It is quite probable that the primary method of attack the Commission will use is to correlate those activities to bring them to full fruition. What we wish to do is to allow the Commission the maximum flexibility to set up its investigatory mechanism. There is a further point of flexibility that we would like very much to provide for the Commission, and it is taken care of in paragraph 2 of Article VI, which I will read:

"In order to provide for cooperation between the Commission and other public international organizations with related interests, the Commission shall enter into arrangements with the competent authorities of such organizations concerning the methods of cooperation."

42. There are two things, in particular, that we have in mind there. One is the International Council for the Exploration of the Sea. We would anticipate that the Commission would make full use of any cooperative scheme possible between their work and that of the International Council.

43. There is in this paragraph a further degree of flexibility that we would like to keep available for the Commission. The Food and Agriculture Organization of the United Nations has a Fisheries Division, which is capable of setting up a secretariat for, and of providing a great deal of assistance to, the Commission. The Commission might very well find great benefit in using that organization in many ways. We quite realize that FAO, as constituted, has no authority whatever when it comes to regulations. We realize further that not all of the nations attending this Conference are members of FAO. Nevertheless, we think that the Commission may very well find it quite profitable to utilize FAO in many ways and we would like to leave that degree of flexibility open to the Commission. The Commission is going to have a difficult task, and the more flexibility we can leave for it, the more likely it is to have success in its operations.

44. Now, if we could pass momentarily to Article IX, it is the article which provides for the regulatory powers of the Commission. We have divided this into two categories, the first in paragraph 1, which deals with the gathering of statistics. We feel that it is desirable for the Commission to have powers to obtain statistics. We feel it is desirable for the nations that are involved to commit themselves to providing the statistics that the Commission will find necessary. Biological statistics is one of the considerable lacunae in our knowledge of the area. Now, we simply cannot go forward in understanding the dynamics of the fish population and the fisheries without a much more intimate knowledge of the statistics of the catch. This we would consider to be no restriction upon the fisheries. It would be simply a requirement to provide the statistics that covered their effort. We also are quite well aware that no fisherman provides accurate statistics under compulsion, no matter what the regulatory authorities may say. The fisherman may or may not give you the accurate location of his catch and its accurate composition. However, we have found in our other Commissions that in the early stages the Commission gathered statistics from everyone, together with information as to which were reliable. It was fairly obvious that not more than twenty per cent of the statistics that were received from the fishermen were reliable. Therefore, the Commission worked on the basis of that percen-

tage of statistics known to be reliable, and while the collection of other statistics was continued, they were not used for research purposes. As time went on, the fishermen became less suspicious, realizing that such information might even bring them more and more profits. The fishermen began to give accurate statistics. Today, the accuracy of the Halibut Commission may run as high as ninety per cent.

45. The second paragraph provides the Commission with very wide powers of regulation. I might read what we have listed:

- “(a) to establish open and closed seasons;
- (b) to close to fishing such portions of the sub-area as the Panel finds to be a spawning area or to be populated by small immature fish;
- (c) establish size limits for any species;
- (d) fix the kind, size and specifications of fishing gear and other fishing appliances;
- (e) establish an over-all conservation catch limit for any species;
- (f) make such other regulations as may be necessary.”

46. This is a very broad granting of power and we do so without any foreknowledge of what the Commission may want to do. We cannot tell that until the information is in, and we have desired to specifically provide the Commission with a number of types of regulations that could be used where those regulations would best fit the particular cases under consideration.

47. I believe that I will terminate this preliminary statement at this point. The specific points in the draft will be brought up one by one; I had sought here only to provide you with our general background of thinking. We would now appreciate other nations presenting their points of view on this matter.

48. Mr. Dobson, United Kingdom.

49. MR. DOBSON (UNITED KINGDOM): Mr. Chairman, I hope I am not acting broadly in asking you that I might open the general discussion by reading two points which the British Delegation wish to raise for you. I think perhaps it may be of help to the other delegations if the British Delegation could put their points first.

50. Mr. Chairman, I feel that we should all express our appreciation to you of the very clear exposition which you have given, not only of the grounds and reasons on which the United States has put forward these proposals, but also for the very clear resumé which you have given of the actual document which we shall shortly come to consider.

51. Mr. Chairman, you have, with an uncanny second sight, anticipated a great many, if not all, of the points which the British Delegation wishes to bring forward. Therefore, if I may be allowed to make the statement to you as I originally prepared it, you will not think that I have either not heard what you have said or have not appreciated that you have, in large measure, anticipated the difficulties which we had in mind. I think, in fact, that most of the points I want to bring before your notice have, in fact, been covered in your opening remarks. But, nevertheless, I propose to proceed in my remarks as I originally drafted them.

52. Now, the British Delegation knows only too well the extent of the tragedy of the North Sea, having taken such initiative in endeavoring, with the help of the other nations fishing in that area, to arrest the evil, we can appreciate to the full the initiative now taken by the U.S.A. in another part of the world in an attempt to create an effective machinery to guard against a repetition of the North Sea in the Northwest Atlantic area which, in our view, must be regarded

as containing some of the most important and valuable fishing resources of the world.

53. The British Delegation has no doubt whatever that the United States decision to convene this Conference is an act of statesmanship. As I said yesterday, the British Delegation wishes to play its part in the common effort and in these days of particular difficulty, too much importance cannot be attached to attempts at international cooperation by which a solution of these problems alone can be achieved.

54. In approaching a problem of this kind on its broadest basis, there are, however, certain points of principle which, in the British view, should be given prominence. In the first place, the British Delegation considers it vital that the high seas outside territorial waters should be equally available to all nations who desire to take advantage of its resources. It may well be that this is the United States' intention in the convention as drafted — quite clearly, from your remarks, sir, that is the case. But if not, the point I raise could quite easily be secured by some further suitable amendment.

55. Secondly, we think that whoever signs a convention of this kind, or subsequently decides to accede to it, is entitled to have full rights of representation, and so forth, without differentiation. Here, again, the point is clearly covered, Mr. Chairman, by your opening remarks or, if not adequately covered, could be dealt with by another suitable amendment.

56. But these are two cardinal points of principle to which the British Delegation attaches the highest importance. Having studied the draft convention, there are a number of further amendments which can, no doubt, be suitably dealt with when the convention comes to be considered, article by article. Some of these are, in our view, important. Many of them are merely drafted amendments.

57. There is, however, one further point which I am instructed to raise, and this is a point, again, Mr. Chairman, where you have dealt with it very fully. The United States has seen fit to approach the problems in this area by means of an *ad hoc* convention for signature by the countries here present, and in doing so they have seemingly by-passed the procedure contemplated by the United Nations organization in connection with FAO. I am well aware of the volume of work facing the Fisheries Division of FAO in all parts of the world, and of the other difficulties which you touched upon confronting what I may call the FAO procedure for the constitution of regional councils. Moreover, the British Delegation to FAO, two months ago, subscribed to the report of FAO in which the United States method of approach as regards the Northwest Atlantic Area was noted and no objection raised to it.

58. At the same time, it would be hardly proper that FAO, which is, incidentally, represented by observers at this Conference, should be set on one side; and in the British view it is therefore important that any Commission which emerges from the present discussion should have the closest possible relation with FAO, and if necessary, ITO, and that in due course, consideration should be given to the possibility of bringing the Commission within the framework of FAO.

59. The United States will, of course, be familiar, and other delegations here will be familiar, with the provisions of Article 3 (5) of the 1946 Whaling Convention. I need not belabor this point further, especially in view, Mr. Chairman, of what you have said, that as an observer from ICES, I would recall that ICES works in close accord with FAO, from whom they have lately had valuable advice, and this working harmony has been to the benefit of both organizations.

60. In conclusion, it may be helpful to the United States delegation, and in-

deed to all the other delegations here present, if I say, generally speaking, subject to a satisfactory consideration of the points which I have put forward, the British Delegation would be ready to append its signature to a convention of this kind. But it realizes that many other delegations may have considerable reservations to put forward; and for the time being, the British Delegation is prepared to reserve its judgment in the light of the pleas which will no doubt be put forward by other delegations concerned.

61. In any case, there is, as in other cases of this kind, considerable scope for compromise; and the British Delegation wishes to approach the matter as far as possible with an open mind.

62. Thank you, Mr. Chairman.

63. MR. CHAPMAN (CHAIRMAN): Thank you, Mr. Dobson, for your very fine elucidation of the matter before us.

64. Unless other nations wish to make a statement at this time, we will continue our discussions at the afternoon session. Is that agreeable?

65. (General agreement)

66. MR. CHAPMAN (CHAIRMAN): The Chair will entertain a motion for adjournment at this time.

67. Mr. Flory?

68. MR. FLORY (UNITED STATES): I so move.

69. MR. CHAPMAN (CHAIRMAN): Is there a second?

70. MR. SUNNANAA (NORWAY): I second the motion.

71. MR. CHAPMAN (CHAIRMAN): Mr. Sunnanaa, Norway, has seconded. All those in favor, please say "aye"; contrary, "no."

72. (The motion was carried.)

73. MR. CHAPMAN (CHAIRMAN): Then we shall adjourn until two-thirty this afternoon.

74. (The Conference was adjourned at 11:30 a.m., to reconvene at 2:30 p.m. the same day.)

DONALD J. CHANEY
TECHNICAL SECRETARY

— END —

Jan. 28, 1949

CORRIGENDUM A
Minutes of the Second Session
January 27, 1949

The following paragraph should read as shown below (changes in text indicated by underscoring).

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49. MR. DOBSON (UNITED KINGDOM): Mr. Chairman, I hope I am not acting wrongly in asking you that I might open the general discussion by reading the points which the British Delegation wish to raise. ~~for you.~~ I think perhaps it may be of help to the other delegations if the British Delegation could put their points first.

— END —

Annex 13

MINUTES OF THE THIRD SESSION OF THE INTERNATIONAL NORTHWEST ATLANTIC FISHERIES CONFERENCE, 26 JANUARY 1949 TO 5 FEBRUARY 1945 (DOCUMENT 16, 27 JANUARY 1949, PAGES 1-14, CORRIGENDUM A, 28 JANUARY 1949, AND CORRIGENDUM B, 29 JANUARY 1949)

Jan. 27, 1949

Minutes of the Third Session

TIME: Thursday, January 27, 1949, 2:35 p.m.
PLACE: West Ballroom, Shoreham Hotel
CHAIRMAN: Mr. Chapman (U.S.A.)

1. MR. CHAPMAN (CHAIRMAN): The meeting will come to order.
2. This morning we heard general discussion and views on the draft convention before us from the viewpoint of the United States and the United Kingdom. It will be useful, I believe, to have some similar general statements from each of the other countries present before we settle down to a discussion of the particular provisions of the draft convention.
3. I know some countries here are prepared to make such statements immediately, and others have informed me that they would appreciate a little more time for preparation.
4. I am not going to follow any alphabetical system of calling upon the nations, but will recognize from the floor the Chairmen of the Delegations in the order in which they ask for the floor.
5. If there are no individual requests from the floor, I will ask for statements in the order in which I have information leading me to believe that statements are available.
6. Mr. Sunnanaa, Chairman of the Delegation from Norway, has informed me he is prepared to make such a general statement on behalf of his Delegation.
7. The Chair now recognizes Mr. Sunnanaa.
8. MR. SUNNANAA (NORWAY): Thank you, Mr. Chairman.
9. On behalf of the Norwegian Government, I want to express our gratitude to the Government of the United States of America for having invited Norway to this Conference to discuss a subject of the greatest interest to my country.
10. I would also like to thank the Chairman of the United States Delegation, Mr. Chapman, for the statement he made this morning, and the Chairman of the Delegation of the United Kingdom, Mr. Dobson, for the comments he made. After these two statements, I think we have come closer to the main problems of this Conference. Likewise, I take the opportunity on my own behalf to thank the Conference for having elected me as the Vice Chairman.
11. As Chairman of the Norwegian Delegation, it is my privilege to express the broad principles of the Norwegian view with regard to the problems before us. First, I have to give some information regarding the Norwegian fisheries as a background for the views of my Government.
12. The resources of the sea are of utmost importance to the people of Norway. Our country is located at the northeast shores of the Atlantic Ocean and some of the adjacent waters to the Norwegian coast, such as Barents Sea, the Norwegian Sea, and the North Sea, are very productive areas of these waters as regards the fisheries. Also, whaling and sealing play an important part in the

economy of Norway. The conservation of the resources of the sea is, therefore, of great concern to our people, and we are anxious to participate in all efforts which can serve that purpose.

13. A great part of the Norwegian fisheries can be characterized as inshore fisheries. These fisheries are either close to the coast or on fishing grounds 20 or 30 nautical miles from the coast line. The deep sea fisheries in the northern and Arctic waters, Bear Island, Spitzbergen, the coast of Iceland and West Greenland also play an important part.

14. Owing to the seasonal character of the coastal fisheries, it is necessary for a substantial number of Norwegian fishing vessels and fishermen to participate in the different deep sea fisheries between the main fishing seasons. The deep sea fisheries — fisheries in distant waters — have always been of substantial importance to the fishing industry of Norway. This is especially the case now, when greater and more expensive vessels and fishing equipment have to be kept engaged as far as possible during the whole year, in order to bring the best economic results of the capital invested and the manpower engaged.

15. Norway began early to study and initiate scientific investigations with regard to fish, whales, seals, and the whole flora and the fauna of the seas. About a hundred years ago Norwegian scientists, such as Michael Sars and Jorg Osian Sars and, later, Johan Hjorth, founded what we call the Norwegian Fisheries Investigations.

16. The Norwegian Government and especially the Fisheries Administration attach great importance to scientific investigations of the sea, regarding such knowledge as necessary in order to conduct a proper and wise fishery policy. In order to utilize the resources of the sea in the best possible way, Norway has introduced a great number of regulations with regard to the fisheries. We have introduced measures aiming at regulating and making more effective different methods of fishing operations. But we have also, based upon scientific investigations, enforced regulations to protect the stock of fish. For many years we have had closed seasons for the catch of lobster, and during the spawning seasons, the catch, for instance, of plaice, halibut and salmon is limited or even prohibited, and we have done the same thing with regard to the Norwegian herring and brisling, which is the raw material for the Norwegian sardines.

17. In many cases regulations introduced by the Norwegian Government, and applying only to the Norwegian fishermen, may be sufficient to protect some species of fish. As regards other migrating species, regulations on a national basis are not sufficient. In such cases agreements between the interested countries is necessary, and Norway is always ready to participate on an international basis to protect the resources of the sea.

18. In accordance with agreements made between Denmark, Sweden and Norway before the war, we had in all three countries the same regulations for protection of cod and plaice in the area of Skagarak. After the Conference in London in 1937, where several countries completed a convention on mesh sizes and size limits of fish, Norway adopted in 1938 a law for preservation of the stocks of fish. This law includes the regulations of the said convention and authorizes the Administration to issue other regulations as may be deemed desirable. According to this law, the size limits of fish agreed upon in the London convention of 1937, and later altered in accordance with the convention of 1946, apply to all Norwegian fishing vessels where they may be fishing — also in the Northwest Atlantic — the area which is the subject of this Conference.

19. The Norwegian authorities are of the opinion that it is extremely necessary to continue and extend international collaboration in order to conserve the resources of the sea as a basis for economic fishing operations. We therefore

welcome the step taken by the Government of the United States of America to convene this Conference.

20. Although the major part of the Norwegian fisheries take place in the northern and eastern Atlantic, we realize that it will be necessary to find a basis for international cooperation regarding the fisheries in the Northwest Atlantic, which would be of benefit to all nations engaged in fisheries in this area.

21. It has been our experience in Norway that comprehensive and profound knowledge with regard to the stock of fish and the different factors influencing life conditions of the fisheries is necessary if one aims at providing for effective and working regulations in order to maintain the stock of fish as a basis for economic fisheries.

22. In our opinion, the convention tabled here by the Government of the United States provides a basis and a frame for effective regulations in this area. On the other hand, I wish to emphasize that the draft convention represents a great and expensive machinery, and implies the possibility of far-reaching implications which may have serious consequences. It may, therefore, be difficult for Norway to recommend that the American proposal adopted, unless we have the data placed before us, which will prove that this machinery is necessary at the present time for the protection and conservation of the resources of the sea in this area.

23. It is the Norwegian view that this Conference should consider the possibility of regarding as sufficient a limitation of the scope of the proposed commission to scientific investigation in the area in question. The investigations should also include the collection of more accurate commercial statistics for the area. As Norway participates in the cod fisheries on the west coast of Greenland and probably will expand the cod fisheries there, we are highly interested in participating in such scientific exploration.

24. I wish to emphasize that the investigations in question should be conducted, as far as possible, on an international basis, and I will support the view expressed by the representative of the United Kingdom, Mr. Dobson, that a close cooperation with ICES and FAO ought to be established.

25. In conclusion I wish to say: We should not introduce regulations with regard to commercial fisheries before we have collected, on an international basis, all relevant scientific information which proves the desirability of such regulations. However, if the Norwegian Delegation is convinced by the information and data which will be placed before us at this Conference that it is desirable at the present time to do something to protect some species of fish in some parts of the area in question, we will discuss and participate in the accomplishment of doing this in the most suitable manner and by the most effective methods.

26. MR. CHAPMAN (CHAIRMAN): Thank you, Mr. Sunnanaa, for a very clear dissertation. Is any other country prepared to make such a general statement? Mr. Meireles from Portugal.

27. MR. MEIRELES (PORTUGAL): First of all, I want to thank the United States Government for the invitation to come to this Conference that has a great interest for my country. I want to emphasize the great importance of fishing to Portugal, not only have we always been a country of fishermen but we fished in the seas of Newfoundland perhaps before the Island of Newfoundland was settled.

28. But fishing has, to my country, a special economic importance. Its sardine catch is principally to be exported, although our population is also a great consumer of the sardine. Codfish is one of the staple diets of my country. The poorer people and the rich people all like codfish — they make it one of the principal diets — and so Portugal has always been forced to fish for or buy the

codfish in its markets. Unhappily, in the last years, and principally after this war, one of our biggest export products, our port wine, has no market as it is a luxurious product. So we are forced to fish more in order to reduce our needs for importing. Our aim is not to fish everything we need, but we need to fish more. In recent years, our whole fishing fleet has been motorized and it has been replenished; we have a large number of modern trawlers and other ships, and our fishermen are men who are one of the most important classes in the country.

29. I want also to point to the social importance of fishing to Portugal. A great number of our people live from the fishing business and from our fishermen, themselves, and all their families are dependent on these. So, after these words, I believe it is clear that Portugal is always in favor of any kind of regulation that will guarantee the maximum sustained yield from fishing and, as the high seas are recognized as a common thing, we believe that international cooperation is the only way to regulate fishing. The principle is settled in our constitution, that international cooperation is the advisable thing to do, so it was with great happiness that we came here and I can say that, in principle, the draft convention is acceptable, though there are some points that will be raised in detail. The principal points of principle have been raised already by the Chairman of the British Delegation, so I have no need to raise them again. I only wanted to point out to this Conference, really, the great importance of it for Portugal. Thank you.

30. MR. CHAPMAN (CHAIRMAN): Thank you. Is there another country prepared to make a statement at this time? Is France available at this time? Mr. Terrin.

31. MR. TERRIN (FRANCE): (Translated) I thank you for the statement which you made this morning and I thank the Chairman of the other Delegations who have already presented their points of view. Regarding France, we shall certainly have some observations to present but, as a whole, they are similar in their lines to what has been presented this morning. When we take up this matter, article by article, we shall be more precise about instructions I have received from my Government. Thank you, Mr. Chairman.

32. MR. CHAPMAN (CHAIRMAN): Thank you, Mr. Terrin. The Delegate from Spain.

33. MR. BARAIBAR (SPAIN): On behalf of the Spanish Delegation, I wish to submit to the full meeting of the Conference the following statement:

34. First, we fully agree with the British Delegation on the views so brilliantly expounded by Mr. Dobson about the freedom of the seas and full rights of representation for each nation concerned.

35. Spain, through the authorized voice of the old masters of the University of Salamanca, was the first nation in world history to proclaim the freedom of the seas and justice has been done to our country on this matter by a great American jurist, Professor Brown-Scott of the Carnegie Endowment. It should be pointed out that that basic principle was laid down and proclaimed in the 16th century when Spanish power attained full swing.

36. The Spanish Delegation would then like to have an explicit declaration included at the Preamble of the Convention to be signed, setting forth the basic principle of the freedom of the high seas, outside territorial waters, which waters — on the other side — ought to be clearly defined. Spain is, nevertheless, very willing to cooperate earnestly in any international effort to provide a better means of feeding the people of the world and is, therefore, disposed to accept an exception to that basic principle by way of a regulation, provided there exists a scientific reason for it, the measures are adopted by international agreement

freely agreed upon, and they are intended to reach a maximum constant catch in the fishing grounds concerned.

37. The same Preamble should also incorporate a categorical expression of the rights of representation of each signatory country.

38. Second, the Spanish Delegation has taken note of Mr. Chapman's interesting words, according to which the United States Delegation is disposed to submit to the full meeting the scientific reasons — statistics and so on — which have moved the United States Government to invite other nations to establish a common way of preventing overfishing in the general area concerned. The Spanish Delegation would like to know those investigations and statistics with as much detail as possible. As to our fishing activities in the convention area, the Spanish Delegation possesses full statistics which we believe pretty reliable and is quite ready to submit them for consideration of the Conference, giving also full access in Spain to check all the information here given.

39. Third, the Spanish Delegation wants to stress its utmost interest in the conservation of fishing resources in the convention area. With a population of 28 million people, food problems in Spain have become a fundamental problem, and Spain has had to face those problems with its own effort.

40. The Chairman of the Conference has expressed his belief that some nations invited to this Conference feel certain fears as to the intention on the part of the host country to beneficate of exclusive or semi-exclusive rights to a property which, up to now, is common to all the peoples of the international community.

41. We would like to make it clear that Spain cannot really feel that fear. The United States is the most resourceful power of all the countries here represented, and are helping almost all of them. It would be utterly illogical and unjust, if consideration is given to that foreign aid policy, to bargain now to the other nations for free access to that common riches.

42. I thank you, sir.

43. MR. CHAPMAN (CHAIRMAN): Does any other country have a statement to make at this time? Italy?

44. MR. SORO (ITALY): I wish to reserve my remarks until later, Mr. Chairman.

45. MR. CHAPMAN (CHAIRMAN): Thank you, I have already been informed by the Danish Delegate that they would like to wait until tomorrow to make a similar statement. I see that the Iceland Delegate is not here this afternoon. Mr. Gushue, do you have a statement to make from Newfoundland?

46. MR. GUSHUE (NEWFOUNDLAND): Mr. Chairman, we have no prepared statement on behalf of Newfoundland to make at the moment. I would like to say, however, that I join most heartily in the expressions of thanks and appreciation which have been made to the United States and to yourself, on behalf of other Delegations, and also to say that I was very profoundly impressed by the statement made this morning by yourself and followed by that of Mr. Dobson.

47. It seems to me that we are discussing a matter here, conservation of Northwest Atlantic, which is a matter of common interest to all the countries who fish in these waters, particularly in the case of the waters adjacent to the coast of Newfoundland, the Great Banks and other banks. The nationals of many countries have fished there for many years and, as has been said by the Delegate from Portugal, they might even claim that they were fishing there before the formal, recognized, discovery of the island. The Great Banks of Newfoundland are recognized as one of the great, if not one of the greatest fishing grounds of the world; and, as I have said, it is a matter of common interest to all countries who prosecute the fishery in these waters to consider together the

problems and effects which may lead up to the discovery of problems. Naturally, Newfoundland is more interested, more directly interested, perhaps more closely interested, because of its geographical position, than the countries who send their vessels from great distances, but it is still a common interest. In Newfoundland, we recognize most fully, and I think this was also exemplified by your remarks this morning, that this is an international problem. We are discussing fisheries in international waters. No one country, even a contiguous country, is in a position to claim special rights of fishing or property rights in the fish in these areas. Even Newfoundland, which is a little country in the midst of great fishing grounds, realizes that that cannot be done. We could not put forward a claim to any exclusive rights, although, as I have said, we are more immediately affected, perhaps, than some of the other countries. We would naturally be very happy if this Conference gave us exclusive rights, but I assure you that we don't intend to put forward any such claims.

48. I think the emphasis, Mr. Chairman, ought to be put on, first, the collection of statistics which is sadly lacking today, that is both on the commercial side and on the biological side, and that these statistics ought to be collected. I hope they will be collected as a result of this Conference, in a uniform manner and collated for the benefit of all the countries. I don't believe that any other approach to this problem is feasible or could be regarded as scientific. I think that the Conference is divisible into two clear compartments, one as to the collection, on an agreed international basis, of information, and I think that it will probably take a period of years, certainly, in most of the areas and in our own area before we can determine what the value of that collection of information is, and what problems it unfolds or reveals. I think we ought to keep very clearly in mind that that is the first stage in this proposed international collaboration. We in Newfoundland, as a possible reservation on that generous statement, are somewhat concerned as to the useless destruction of fish of certain types which is taking place on our banks today, that is, the catching and throwing away of large quantities of fish, small fish and fish of types which a particular fishery or a particular vessel is not interested in at the moment. We look upon that as one of the first problems of this Conference. It applies particularly to haddock, and we think merits the fullest possible investigation, contributing, as it does, to the lessening of the bodies of fish — as, of course, any fishing does — but different in that it can be characterized as a useless destruction.

49. With respect to the second aspect of the problem, I think if we keep before us the fact that it is the second aspect, and that any regulatory body, whether it be as proposed or otherwise, will act only upon the fullest possible collection of information, the fullest possible discussion of the value and implications of such information, and the fullest possible discussion of remedies, and that in this, too, as in the case of the collection of statistics, there must be full international accord, and in this no one country can claim an interest or a right paramount to that of others.

50. That, generally, Mr. Chairman, expresses, I think, the view of the Newfoundland Delegation at the moment. I would like to add just one word with respect to collaboration with existing international organizations, such as ICES and FAO, and it subscribes also warmly to the remarks which both you and the Chairman of the United Kingdom Delegation made in your remarks today.

51. MR. CHAPMAN (CHAIRMAN): Thank you, Mr. Gushue.

52. MR. CHAPMAN (CHAIRMAN): Mr. Thors, this afternoon we have been exchanging general statements in regard to the matter before us. I wonder if you have such a statement to present at this time?

53. MR. THORS (ICELAND): Mr. Chairman, the other two Delegates from Ice-

land have just arrived, and I would like to have the opportunity to consult them before we make any statement before this Conference.

54. MR. CHAPMAN (CHAIRMAN): Perhaps we will call on you tomorrow. Thank you.

55. Mr. Bates, do you have a statement that you care to make?

56. MR. BATES (CANADA): Mr. Chairman, on behalf of the Government of Canada, this Delegation is grateful to the Government of the United States for providing this opportunity of meeting and discussing an international matter of great significance in the world's fisheries.

57. The Chairman, in his opening remarks this morning, referred to the presently existing arrangement for fishery conservation made jointly by the United States and Canada. Our membership, as a country, on the specific halibut and salmon commission, is evidence of our willingness to enter international agreements in fisheries.

58. Our country has, moreover, in matters other than fisheries, revealed extreme readiness to consider and to implement international agreements aiming at the welfare of the peoples of the world.

59. It is clear, therefore, that Canada is ready to discuss an international convention for the fisheries of the Northwest Atlantic. Canada's concern with the whole area in question is vital. From the earliest colonization of our country the fisheries of the area have been basic to our eastern provinces. We have a historic interest in the whole area. Our interest today is not merely projected; it is real, it is vital to our eastern seaboard, to our inshore fishermen with their scattered communities, as well as to the offshore, or deep sea fishermen.

60. We are prepared, therefore, to consider a conservation program for the area in question. On our side, however, we would emphasize that this resource is a very extensive one, and that for most of the area and the species therein, there is presently little evidence of overfishing.

61. We wish, however, to improve our knowledge to extend the exploration and investigation in the area as a whole. Canada is today making such investigations and is prepared to consider increasing the scientific work, in cooperation with all or any other countries, or with interested international bodies.

62. We are prepared, therefore, to join an international commission aiming at the coordination of scientific investigation, and aiming at the extension of such investigation in the Northwest Atlantic.

63. Knowledge of the state of the fisheries is basic to any type of regulation. In the case of the halibut commission, it was first established as a scientific instrument, and only after scientific inquiries and recommendations was it possible to consider the type of regulatory body most suited to handle the problem in question.

64. We believe that is the sound principle of approach in this instance also. In short, we are prepared to consider the establishment of an international body designed to coordinate and extend scientific work. We believe, however, that it may be premature now to try to discuss a regulatory commission for the area in question. It may be premature, because there is insufficient knowledge of the state of the fisheries, and because the kind of regulatory body that may be necessary at some time in the future cannot be foreseen until we know the nature of the problem.

65. It is not merely that we don't yet know the kind of problem or the type of regulatory body that might prove necessary; also, we don't know the kind of powers that such a body might require.

66. As we see it, the proposed draft raises two separate questions: One, the question of the fisheries inquiry and scientific investigation; and second, the administration of regulations necessary for conservation.

67. On the former, we are anxious to proceed and to work with others immediately. On the latter, however, it is our view that the Conference should give this the most careful discussion and consideration, consideration to the end that if the scientific inquiry proves the need for regulation it then will indicate the type of regulation and the kind of power that such a regulatory body would require. We would suggest that we consider that now but retain for a future meeting of this kind the consideration of the type of regulation and type of body.

68. MR. CHAPMAN (CHAIRMAN): Thank you, Mr. Bates.

69. Is there any other country that would like to be heard from at this time?

70. Mr. Flory.

71. MR. FLORY (UNITED STATES): I want to express the appreciation of the American Delegation for the very frank, excellent and forthright views set forth by the various Delegations on the United States draft. I would like to comment briefly on some of these observations, but at this time I do not want to anticipate our later discussions and get into any great detail on any of the points raised, particularly since we will have an adequate opportunity to discuss the issues thoroughly as we examine the United States draft, article by article and paragraph by paragraph.

72. At the outset, I would like to point out that the United States draft was developed carefully over a period of more than three years, in consultation with literally hundreds of interested persons both within and outside United States Government. The United States draft has gone through revision after revision, perhaps as many as 25 different editions, and the final draft bears virtually no resemblance to the original draft.

73. I believe all this effort went into the draft with a view to setting forth a document as a basis for discussion at this Conference which, in the opinion of the experts, would provide a realistic view and realistic machinery for the conservation of the fisheries that are of concern to all of us.

74. However, we realized at the outset that any agreement for the conservation of the Northwest Atlantic fishery resources is a bold undertaking which, in order to succeed, must have the full support of the governments and of the people who have a direct interest in the resource. It is recognized that, regardless of how appropriate may be the concept embodied in a treaty, how excellent may be the provision for its implementation, and how concisely clear may be the drafting, if the nations and their peoples do not have faith in it and the will to make it work, such a treaty is largely an empty gesture.

75. The United States Delegation considers that it is dedicated at this Conference to assisting in developing a treaty to which we can all give our unqualified and wholehearted faith, and in which we will have full confidence in the ultimate success of our undertaking.

76. Now, despite the care with which the United States draft was prepared, we have no pride of authorship, nor do we consider that the United States marked the only way in which we can achieve our objective.

77. You will further recall that, in the invitation extended by the United States, it was pointed out that the United States draft does not necessarily represent the position of the United States on this question. In other words, the draft is set before you as a convenience, as a basis for discussion.

78. The Chairman has suggested some of the thinking which lay behind the preparation of the United States draft. The United States Delegation believes that many of the provisions contained in the United States draft are desirable. Nevertheless, we present the draft as a basis for discussion, and we are entering into these discussions with the intention of being as objective about the draft as

are the other Delegations present. We, in turn, have no hesitation in tearing the draft apart if, as the discussions go along, we find provisions inappropriate.

79. In response, however, to some of the comments, I would like to elaborate and explain very briefly concerning certain of the issues raised, so that you, again, will have no misunderstandings as to what was intended originally in presenting the draft.

80. Mr. Dobson, with his uncanny faculty for putting his finger on issues which need clarification, has mentioned the problem of maintaining the high seas free and open to all nations. The United States Government is quite conscious of the fact that there is a considerable misunderstanding, apparently, of the position of this Government on the question of the high seas.

81. I believe, as Mr. Chapman pointed out this morning, that the freedom of the seas is delineated quite clearly in the United States draft, and there was no other intention behind the United States draft. There was no intention of employing the United States draft as a means for exclusion of the vessels of any nation. I am delighted that Mr. Dobson brought that point out quite clearly and suggested the insertion of some kind of statement for the purpose of assuring that there will be no misunderstanding as to what this Conference may produce on this particular point.

82. On this second point which Mr. Dobson raised, namely, full rights of representation, I hope it is understood by the Conference that the United States Delegation does not consider that the machinery embodied in the United States draft is anything but a suggestion, one of many ways of handling the problem of representation; and I am confident that as the Conference progresses, it will be possible to work out a method of representation which is acceptable to all of the representatives here.

83. On many of the other points, I believe that we can have a detailed discussion at a later date. I believe there is relatively little quarrel with the approach made in the draft, and I believe we find ourselves, all of us, as I hear the comments, in complete agreement as to purpose and objective.

84. With respect to the comments by certain of the Delegations concerning the imposition of regulations, we find ourselves, in principle, in complete agreement that there should be no attempt to regulate fishing activities without full and adequate scientific data showing the need for such regulation.

85. In preparing the United States draft, it was recognized that it would be impossible, under the principles laid down in the draft, to have any regulation in Areas 1, 2, and 3, in the immediate future and possibly for a long time, simply because there are inadequate data at the present time on which to base any regulation.

86. With respect to Area 4, the accumulated data are greater in volume, and are much more compelling, and it is believed by the United States Delegation that we are, or will be very shortly, in possession of sufficient scientific data to warrant the imposition of regulation on fishing activity within Area 4.

87. I should like to comment on the observations of the Spanish Delegation. With respect to scientific data, the Secretariat of the Conference is in possession and is holding a considerable quantity of scientific material, particularly with respect to Area 4. If the Spanish Delegation should care to examine any of the material, as a Delegation or individually, the files of the Secretariat are available to them.

88. However, we will prepare at the earliest possible moment, within the next day or so, a summary of the essential data for distribution to the Conference here. That will only be in summary form. More complete data, of course, will be available from the Conference Secretariat.

89. Again I wish to express our gratitude to the Delegations for their comments, and I feel quite confident that we are now well on the way towards an examination of appropriate machinery for reaching our common objective.

90. MR. CHAPMAN (CHAIRMAN): Thank you, Mr. Flory.

91. The Danish Delegation has reported that the scientists who are with it have a considerable amount of information regarding the fisheries of Greenland, and also have some color films and photochromes from the area. I understand the information could be presented before the Conference tomorrow morning, if that suits the convenience of the Danish Delegation. That would give us all a little more time to prepare our thoughts at this stage of the discussions, and at the same time would contribute very much to the basic information necessary to our work.

92. Will that be satisfactory to the Danish Delegation?

93. MR. DINESEN (DENMARK): Yes.

94. MR. CHAPMAN (CHAIRMAN): Thank you. That then will be the first order of business in the morning at ten-thirty.

95. I believe we have had an expression of general views from all the countries that presently are prepared to give such general views. We hope that we will have further views from Iceland, Denmark, and Italy during tomorrow's session.

96. After that I would suggest that the proper way to continue would be to ask the United States spokesman to give a review article by article, of the draft convention, and then perhaps we can have the comments of other Delegations as we go along.

97. Is that a satisfactory method of procedure?

98. Mr. Flory has suggested that in going over the draft, article by article, we might have a general discussion of each article as it is brought up to see if there is a basis for agreement in any article or in any paragraph of any article.

99. Does this appear to be a satisfactory way to attack our problem?

100. MR. DOBSON (UNITED KINGDOM): Gentlemen, that seems an admirable method of procedure. As we go through the convention article by article on the general grounds, I presume it will be referred to the Drafting Committee.

101. MR. CHAPMAN (CHAIRMAN): Yes.

102. MR. DOBSON (UNITED KINGDOM): That is your intention?

103. MR. CHAPMAN (CHAIRMAN): Yes. We would like to get a good deal of clarification before we do submit it to a Drafting Committee. I think that would be useful to the Drafting Committee.

104. Are there any other comments on such procedure?

105. I believe we have gone about as far as we can this afternoon, and the Chair now will entertain a motion for adjournment.

106. MR. FLORY (UNITED STATES): I move we adjourn.

107. MR. DOBSON (UNITED KINGDOM): I second the motion.

108. MR. CHAPMAN (CHAIRMAN): It is moved by Mr. Flory and seconded by Mr. Dobson, that we adjourn until 10:30 a.m. tomorrow. All in favor say "aye"; contrary "no."

109. The meeting is adjourned until ten-thirty in the morning. Thank you, gentlemen.

110. (The meeting was adjourned at 3:35 p.m.)

DONALD J. CHANEY
TECHNICAL SECRETARY

— END —

Jan. 28, 1949

CORRIGENDUM A

Minutes of the Third Session

January 27, 1949

The sentences of the following paragraphs should read as shown below (changes in text indicated by underscoring):

Page 3

(Paragraph 22, third sentence)

It may, therefore, be difficult for Norway to recommend that the American proposal be adopted, unless we have the data placed before us, which will prove that this machinery is necessary at the present time for the protection and conservation of the resources of the sea in this area.

Page 4

27. MR. BARROS (PORTUGAL): First of all, I want to thank the United States Government for the invitation to come to this Conference that has a great interest for my country.

Page 5

(Paragraph 35, first sentence)

"Professor Brown-Scott" should appear "Professor Brown Scott".

Page 8

(Paragraph 48, sixth sentence)

We in Newfoundland, as a possible reservation on that general statement, are somewhat concerned as to the useless destruction of fish of certain types which is taking place on our banks today, that is, the catching and throwing away of large quantities of fish, small fish and fish of types which a particular fishery or a particular vessel is not interested in at the moment.

— END —

Jan. 29, 1949

CORRIGENDUM B

Minutes of the Third Session

January 27, 1949

The sentences of the following paragraphs should read as shown below (changes in text indicated by underscoring):

Page 9

57. The Chairman, in his opening remarks this morning, referred to the presently existing arrangement for fishery conservation made jointly by the United States and Canada. Our membership, as a country, on the Pacific halibut and salmon commissions is evidence of our willingness to enter international agreements in fisheries.

58. Our country has, moreover, in matters other than fisheries, revealed the same readiness to consider and to implement international agreements aiming at the welfare of the peoples of the world. It is clear, therefore, that Canada is ready to discuss an international convention for the fisheries of the Northwest Atlantic.

Paragraph 59 should begin with the sentence shown below :

59. Canada's concern with the whole area in question is vital.

— END —

Annex 14

EXTRACTS FROM THE MINUTES OF THE FIFTH SESSION OF THE INTERNATIONAL
NORTHWEST ATLANTIC FISHERIES CONFERENCE, 26 JANUARY 1949 TO 5 FEBRUARY
1949 (DOCUMENT 20, 28 JANUARY 1949, PAGES 1-6)

[Not reproduced]

Annex 15

EXTRACTS FROM THE MINUTES OF THE TWELFTH SESSION OF THE INTERNATIONAL NORTHWEST ATLANTIC FISHERIES CONFERENCE, 26 JANUARY 1949 TO 5 FEBRUARY 1949 (DOCUMENT 40, 4 FEBRUARY 1949, PAGES 1-5, AND CORRIGENDUM A, 28 FEBRUARY 1949)

Feb. 4, 1949

Minutes of the Twelfth Session

TIME: Friday, February 4, 1949, 10:40 a.m.
PLACE: West Ballroom, Shoreham Hotel
CHAIRMAN: Mr. Chapman (U.S.A.)

1. MR. CHAPMAN (CHAIRMAN): The meeting will come to order.
2. We have a matter of substance to be decided this morning that we have postponed from time to time. I think we may very well get to it the first thing this morning. That is the national composition of the Panels.
3. If you will turn to the original Draft that the United States proposed, you will see in the Annex on Page 24 a list of the nations that would be represented in the different areas. I think in view of what has happened during the course of this Conference we can just completely ignore this list and feel that it has not existed. We have brought a new area into it. By splitting Area 1 into two areas we now have five areas. That brings quite a new aspect to the matter.
4. Also, the organization of the work of the Commission has turned out quite differently so that the Commission itself has no regulatory power at all. This is transferred to the Contracting Governments.
5. So, in view of the rather considerable changes that have taken place in the whole Draft since we have begun our meeting, I think we will need to review this matter completely, and with that in mind, I am going to go around the table this morning and ask each of the Delegations which of these different areas they wish to be represented in. I am going to start out, contrary to our usual practice, with the United States, and then continue around the table, I will ask Mr. Flory to speak.
6. MR. FLORY (UNITED STATES): Mr. Chairman, the United States Delegation would propose that the United States be listed for membership on the Panels for Areas 4 and 5.
7. Consideration has been given to possible requests for participation in Area 3. We have fished Area 3 heavily in the past and are conducting fishing there now to some extent. We anticipate in the immediate future an increase in the amount of our fishing in Area 3.
8. However, we do not consider that at the moment we are engaged in current substantial exploitation within the meaning of Article IV, paragraph 6. Therefore, the United States would request representation only on Panels 4 and 5.
9. MR. CHAPMAN (CHAIRMAN): Dr. Bates?
10. MR. BATES (CANADA): Mr. Chairman, our views on this matter must necessarily be related to the views of Newfoundland, which may enter the Canadian Federation shortly. If we refer only to the areas now fished by Canada proper, we would assume that Newfoundland, in outlining the areas in which it wishes to fish, we would assume that these areas would pass to Can-

ada with Newfoundland as a Confederation. If that is so, the areas in which we fish intensively now are Areas 3, 4, and 5, and we would claim representation on these because of contiguity, subject to the matter I have already referred to on Newfoundland.

11. MR. CHAPMAN (CHAIRMAN): That is 3, 4, and 5? Doesn't that apply also to 2? 2 is the Labrador area.

12. MR. BATES (CANADA): Yes. Our Canadian fishing in Labrador is minor, and I am assuming that will be covered by the Newfoundland claim.

13. MR. CHAPMAN (CHAIRMAN): Oh, yes; thank you.

14. Denmark?

15. MR. DISEN (DENMARK): Mr. Chairman, Denmark should like to have representation in Areas 1, 2, and 3.

16. Thank you.

17. MR. CHAPMAN (CHAIRMAN): Thank you.

18. France?

19. MR. TERRIN (FRANCE): France would like to be represented on sub-Areas 1, 2, 3, and 4, where she has always fished. No doubt, she will fish in Area 5, but we do not insist at all in being represented in that Panel.

20. Thank you, Mr. Chairman.

21. MR. CHAPMAN (CHAIRMAN): Thank you.

22. Iceland?

23. MR. THORS (ICELAND): Mr. Chairman, according to the new Article IV, paragraph 6, it is a condition for being represented on a Panel that the nation has substantial exploitation in such sub-area concerned. As Iceland has not done any substantial fishing in any of the areas, we do not make any claim of being represented on any of the Panels.

24. MR. CHAPMAN (CHAIRMAN): Thank you, sir.

25. I believe — and I am just throwing this forth as an idea — that we have been shown by the scientists of the Danish Delegation that a good many Iceland cod do come into the area. I don't think there would be any objection raised to that being a special condition.

26. However, we can return to that point.

27. MR. THORS (ICELAND): Mr. Chairman, it is, of course known to us, and we have an Icelandic scientist here with us, that cod around the West Coast of Greenland come from Iceland. We do not make any special claim to that cod for the time being, since we are not fishing there. But according to your suggestion we would like to have the question open, if we later should decide to be represented on Panel No. 1.

28. MR. CHAPMAN (CHAIRMAN): That is thoroughly provided for in the mechanism of the Treaty for later consideration.

29. Italy?

30. MR. IPPIA (ITALY): Mr. Chairman, I think that Italy would like to be represented in Panel 1, 2, 3, and 4; this in view of the fact that the Mediterranean Sea is giving less and less possibility of fisheries and in view of the fact that the situation of the Italian people requires in the future more exploitation, more than in the past, of the Atlantic areas considered in the map attached to the Convention.

31. At this moment, I have no special instructions as to which of these four areas Italy would be more interested in in the future, but I may state generally that in the past the Atlantic fisheries of Italy have been a small activity, but I believe that in the future Italy is prepared to extend its activity in this economic field also, and more in the Atlantic Ocean than in the past due to the lesser possibility that the Mediterranean Sea shows for better exploitation and assuring

better conditions for the Italian people. This is generally the opinion of the Italian Delegation.

32. MR. CHAPMAN (CHAIRMAN): Thank you. I wonder if there hasn't been a little misunderstanding here. Representation on the Panel has no connection at all with rights of fishing in the area now or in the future. I think that has been abundantly made clear by us. In fact, my English colleague very succinctly summed it up by saying that the countries which can fish in any Panel area are those who are contiguous to that Panel area, and anybody else that wants to. So the matter of representation on the Panel has nothing whatever to do with what rights anyone may have to come and fish in that area, and it is provided in the Convention that when any country does establish a current substantial fishery in an area, they will be eligible to membership in the Panel.

33. Our effort has been now to reduce as much as we can the numbers of countries who are represented in a particular Panel at the start, simply because it is easier for a few countries to work together in a Conference than it is for many countries to work together closely. We have thought that the Panels should be composed of those countries that have a very real interest in it, either through the fact that their coastline is adjacent to the area or that they have a fishery in the area.

34. I quite realize that Italy is under very special circumstances in this matter, and I think actually you don't have any major fishery in any of the areas, but I think you had a vessel or two last year in the Newfoundland Area, the present Area 3.

35. I would like to have you think it over with these things in mind, and we will return to you later, if that is proper.

36. MR. IPPIA (ITALY): Thank you, Mr. Chairman; and I will be very glad to comment later on on this question.

37. MR. CHAPMAN (CHAIRMAN): Thank you.

38. Newfoundland?

39. MR. GUSHUE (NEWFOUNDLAND): Mr Chairman, I am very much in accord with the remarks which you have just made, and which have been previously made, and I think that membership in the Panels ought to be on the basis of current substantial exploitation, bearing in mind that there is a period for observers also to have the right to take part in the deliberation of any Panel, but not to vote.

40. On that basis, with respect to Panel 1, although Newfoundland has fished substantially there, it has not done so since the beginning of World War II and we would not therefore lay claim to membership in Panel 1. We would lay claim to membership in Panels 2 and 3 only.

41. MR. CHAPMAN (CHAIRMAN): Thank you, Mr. Gushue. Everyone will keep in mind the remarks of the Canadian Delegation — that these claims will be joint, actually, in a few months.

42. MR. GUSHUE (NEWFOUNDLAND): That has not yet been settled permanently, Mr. Chairman.

43. MR. CHAPMAN (CHAIRMAN): The Chair was out of order.

44. Norway?

45. MR. SUNNANAA (NORWAY): Area 1 only.

46. MR. CHAPMAN (CHAIRMAN): Thank you, sir.

47. Portugal?

48. MR. RAMALHO (PORTUGAL): On behalf of the Portuguese Delegation, I should like to express the opinion that Portugal should like to be represented on Sub-areas 1, 3 and 4.

49. MR. CHAPMAN (CHAIRMAN): Thank you, sir.

50. Spain?

51. MR. BARAIBAR (SPAIN): The Spanish Delegation wishes to be represented in Areas 1, 3 and 4.

52. MR. CHAPMAN (CHAIRMAN): Thank you.

53. United Kingdom?

54. MR. AGLEN (UNITED KINGDOM): Mr. Chairman, the United Kingdom would like to be represented on Areas 1 and 3. In putting forward this claim, I think I can say that we do fish substantially in Area 1, and that while our current fishing effort in Area 3 is very much less, it nevertheless is definite, and I think we must bear in mind that what we are doing now is not just fixing the Panel membership for a period of one year, but fixing it for a period of three years, and the beginning of that period is at some date in the future, of which we are not yet quite sure.

55. We expect our effort in Area 3 will be much greater. That is why we should like to be represented on that Panel.

56. Perhaps I might add that our instructions were to be represented on the old Areas 1, 2 and 3. I do not think we need press for representation on the new Sub-area 2, and having regard to the views expressed at this and other sessions of this Conference, we should be quite willing to forego the claim for Area 4.

57. MR. CHAPMAN (CHAIRMAN): Thank you, Mr. Aglen.

58. I think we have come out with a list of countries' desires in the matter. I think now we will just table it and bring it up for discussion again this afternoon.

59. At the last of our last meeting of the Committee of the Whole, we had a second report from the Biological Sub-committee. We have all had time to look at that now, and I think it is open for adoption or non-adoption by the Conference.

Feb. 27, 1949

CORRIGENDUM A

Minutes of the Twelfth Session

February 4, 1949

The following paragraph should read as shown below (changes in text indicated by underscoring):

Page 2

19. MR. TERRIN (FRANCE): France would like to be represented on sub-Areas 1, 2, 3, and 4, where she has always fished. No doubt we have fished in Area 5, but we do not insist at all in being represented in that Panel.

— END —

Annex 16

**COASTAL FISHERIES PROTECTION ACT (*STATUTES OF CANADA 1952-1953*,
CHAPTER 15, PAGES 51-56)**

[Not reproduced]

Annex 17

**TERRITORIAL SEA AND FISHING ZONES ACT (*STATUTES OF CANADA 1964-1965*,
CHAPTER 22, PAGES 153-155)**

13 ELIZABETH II.

CHAP. 22

An Act respecting the Territorial Sea and Fishing Zones of Canada.

[Assented to 16th July, 1964.]

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

SHORT TITLE.

1. This Act may be cited as the *Territorial Sea and Fishing Zones Act*. Short title.

PART I.

GENERAL.

2. Every provision of this Act extends and applies to every Act of the Parliament of Canada, now or hereafter passed, and to every order, rule or regulation thereunder, except in so far as any such provision is inconsistent with the intent or object of such Act, order, rule or regulation, or would give to any word, expression or clause thereof an interpretation repugnant to the subject matter or the context, or is, in any such Act, order, rule or regulation, declared not applicable thereto. Applies to Acts of Parliament, regulations, etc.

3. (1) Subject to any exceptions under section 5, the territorial sea of Canada comprises those areas of the sea having, as their inner limits, the baselines described in section 5 and, as their outer limits, lines measured seaward and equidistant from such baselines so that each point of the outer limit line of the territorial sea is distant three nautical miles from the nearest point of the baseline. Territorial sea.

Internal
waters
include
certain
sea areas.
Fishing
zones.

(2) The internal waters of Canada include any areas of the sea that are on the landward side of the baselines of the territorial sea of Canada.

4. (1) Subject to any exceptions under section 5, the fishing zones of Canada comprise those areas of the sea contiguous to the territorial sea of Canada and having, as their inner limits, the outer limits of the territorial sea and, as their outer limits, lines measured seaward and equidistant from such inner limits so that each point of the outer limit line of a fishing zone is distant nine nautical miles from the nearest point of the inner limit line.

Fisheries
laws of
Canada
apply to
fishing zones.

(2) Unless otherwise specified therein, the laws of Canada respecting fishing and the exploitation of the living resources of the sea apply to the fishing zones of Canada in the same way and to the same extent as they apply to the territorial sea of Canada.

Lists of
geographical
co-ordinates.

5. (1) The Governor in Council may, by order in council, issue one or more lists of geographical co-ordinates of points from which baselines may be determined and may, as he deems necessary, amend such lists.

Baselines
where
co-ordinates
listed.

(2) In respect of any area for which geographical co-ordinates of points have been listed, in a list issued pursuant to subsection (1) and subject to any exceptions in the list for the use of the low water line along the coast as the baseline between given points, baselines are straight lines joining the consecutive geographical co-ordinates of points so listed.

Baselines
in other
area.

(3) In respect of any other area and until such time as geographical co-ordinates of points have, for such other area, been listed in a list issued pursuant to subsection (1), baselines remain those applicable immediately before the coming into force of this section.

Substitution
of outer limit
lines in
certain
cases.

(4) Where, in his opinion, a portion of the territorial sea of Canada or a portion of the fishing zones of Canada, determined, respectively, in accordance with subsection (1) of section 3 or subsection (1) of section 4, would conflict with the territorial sea of a country other than Canada or would be unreasonably close to the coast of a country other than Canada, the Governor in Council may, by order in council, issue a list of geographical co-ordinates of points from which,

(a) in respect of the portion of the territorial sea of Canada designated in the list, an outer limit line may be determined in substitution for the territorial sea outer limit line described in subsection (1) of section 3, and

- (b) in respect of the portion of the fishing zones of Canada designated in the list, an outer limit line may be determined in substitution for the fishing zone outer limit line described in subsection (1) of section 4,

and the outer limit lines referred to in paragraphs (a) and (b) shall, thereupon, be substituted.

(5) Where an outer limit line of a portion of the territorial sea of Canada has been substituted pursuant to subsection (4) of this section, section 4 shall not apply to create a contiguous fishing zone in respect of such portion.

No fishing zone in certain cases.

6. The Minister of Mines and Technical Surveys may cause charts to be issued delineating the territorial sea of Canada and the fishing zones of Canada or of any portions thereof as may be delineated consistent with the nature and scale of the chart.

Issue of charts.

PART II.

CONSEQUENTIAL AMENDMENTS.

Aeronautics Act.

7. (1) Paragraphs (k) and (l) of section 3 of the *Aeronautics Act* are repealed and the following substituted therefor:

R.S., cc. 2, 302.

- “(k) to investigate, examine and report on the operation and development of commercial air services within or partly within Canada, including the territorial sea of Canada and all waters on the landward side thereof;
- (l) to consider, draft and prepare for approval by the Governor in Council such regulations as may be considered necessary for the control or operation of aeronautics in Canada, including the territorial sea of Canada and all waters on the landward side thereof, and for the control or operation of aircraft registered in Canada wherever such aircraft may be; and”

(2) All that portion of subsection (1) of section 4 of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:

“**4.** (1) Subject to the approval of the Governor in Council, the Minister may make regulations to control and regulate air navigation over Canada,

Powers of Minister to make regulations with approval of Governor in Council.

Annex 18

COASTAL FISHERIES PROTECTION REGULATIONS, AMENDED, ORDER IN COUNCIL
P.C. 1964-1112, 17 JULY 1964 (*CANADA GAZETTE*, PART II, VOLUME 98,
NUMBER 15, 12 AUGUST 1964, PAGE 723)

[Not reproduced]

Annex 19

PROCLAMATION INTO FORCE OF THE TERRITORIAL SEA AND FISHING ZONES ACT OF
1964, PROCLAMATION, 23 JULY 1964 (*CANADA GAZETTE*, PART II, VOLUME 98,
NUMBER 15, 12 AUGUST 1964, PAGE 771)

[Not reproduced]

Annex 20

TERRITORIAL SEA AND FISHING ZONES GEOGRAPHICAL CO-ORDINATES (AREAS 1, 2
AND 3) ORDER, ORDER IN COUNCIL P.C. 1967-2025, 26 OCTOBER 1967 (*CANADA
GAZETTE*, PART II, VOLUME 101, NUMBER 21, 8 NOVEMBER 1967,
PAGES 1700-1704)

[Not reproduced]

Annex 21

TERRITORIAL SEA AND FISHING ZONES GEOGRAPHICAL CO-ORDINATES (AREAS 4, 5
AND 6) ORDER, ORDER IN COUNCIL P.C. 1969-1109, 29 MAY 1969 (*CANADA
GAZETTE*, PART II, VOLUME 103, NUMBER 11, 11 JUNE 1969, PAGES 792-795)

[Not reproduced]

Annex 22

COASTAL FISHERIES PROTECTION ACT (*REVISED STATUTES OF CANADA 1970*,
CHAPTER C-21, PAGES 1135-1141)

[Not reproduced]

Annex 23

AN ACT TO AMEND THE TERRITORIAL SEA AND FISHING ZONES ACT (*REVISED
STATUTES OF CANADA 1970*, 1ST SUPPLEMENT, CHAPTER 45, PAGES 1031-1033)

[Not reproduced]

Annex 24

FISHING ZONES OF CANADA (ZONES 1, 2 AND 3) ORDER, ORDER IN COUNCIL
P.C. 1971-366, 25 FEBRUARY 1971 (*CANADA GAZETTE*, PART II, VOLUME 105,
NUMBER 5, 10 MARCH 1971, PAGES 363-364)

[Not reproduced]

Annex 25

TERRITORIAL SEA GEOGRAPHICAL CO-ORDINATES ORDER, ORDER IN COUNCIL
P.C. 1972-966, 9 MAY 1972 (*CANADA GAZETTE*, PART II, VOLUME 106,
NUMBER 10, 24 MAY 1972, PAGES 780-787)

[Not reproduced]

Annex 26

INTERNATIONAL COMMISSION FOR THE NORTHWEST ATLANTIC FISHERIES, SPECIAL
COMMISSION MEETING, JANUARY 1973, PROCEEDINGS NO. 4, APPENDIX I:
COMMENTS BY THE UNITED STATES ON THE PROPOSAL TO REGULATE FISHING
EFFORT IN SUBAREA 5 AND STATISTICAL AREA 6 — SUMMARY

Serial No. 2936
(A.a.4)

Summary

In summary, the specifics of the US proposal are:

1. That the reduction of fishing intensity required to obtain the maximum sustainable yield (MSY) is 25% below 1971.
2. USA proposes that the total allowable effort be expressed in terms of days on ground.
3. Taking into account the different principles of allocation discussed in this paper, the allowable fishing effort by countries for calendar year 1974 in terms of standardized US small otter trawler days on ground or its equivalent (see Table 2) is as follows:

Federal Republic of Germany (FRG)	10,160
Japan	7,716
Poland	45,829
Romania	2,750
Spain	3,250
USSR	80,868
Bulgaria	9,386
German Democratic Republic (GDR)	20,122

4. Furthermore, given the urgency of this situation, USA proposes that the total effort expended by each country listed in paragraph 3 in the period 1 September to 31 December 1973 be one third of the figures listed in paragraph 3 above.
5. USA proposes that the existing regime of ICNAF conservation measures be maintained (individual species quotas, minimum mesh size regulation, closed areas, minimum fish sizes).
6. USA proposes that, should new entrants or non-members not mentioned in paragraph 3 above become a significant factor in the fishery, then adjustments should be made in the allocated effort similar to that which has been done with the catch quotas.
7. Fisheries developed specifically for invertebrates with gear not capable of capturing finfish are to be excluded from the total effort regulations proposed herein.

USA conducts extensive research into the status of fisheries and works closely with STACRES to provide advice to ICNAF on the state of the fisheries. USA has a vital interest in the stocks of fish off its coast specifically, but also is concerned with developments elsewhere. US scientists and the ICNAF Assessments Subcommittee have advised over the last few years that the magnitude of fishing intensity in general in the ICNAF Area has been rapidly approaching the point where further increases will not provide significant in-

creases in catch in the long run; indeed, they have pointed out that some stocks have been rather severely overfished. The studies have shown that the situation in Subarea 5 and Statistical Area 6 is particularly serious. The variety of species makes assessment difficult and, in the past, the corrective actions have come too late, i.e., a severe reduction in catch is involved, with the possible exception of cod. All of the major finfish resources were heavily exploited by the beginning of 1971. The coastal fisheries have suffered a significant drop in catch of 46% over the last 10 years. Most of the resources of direct interest to coastal fishermen have suffered rather severe declines as indicated in the Assessments Subcommittee Report.

Because of these serious and alarming trends, USA believes that the overall fishing intensity needs to be regulated to maintain good yields, particularly in Subarea 5 and Statistical Area 6. USA proposes that the total fishing effort be regulated to achieve this. US reasons for choosing this means of regulation have been outlined and a reasonably specific method for framing the regulations has been proposed (Comm. Doc. 73/3).

The Assessments Subcommittee of STACRES has now studied the problem and evaluated most of the items relating to the US proposal (1973 Sp. Comm. Mtg. Proc. 1, App. 1). USA would like now to review a more detailed proposal which has been prepared along the lines of its original proposal (Comm. Doc. 73/3) taking into account the Assessments Subcommittee's advice.

1. *The US memorandum states that fishing effort be reduced to the level which corresponds to that required to provide the total maximum sustainable yield of finfish (Comm. Doc. 73/3, Section 1, Paragraph I)*

The objective of the Commission has long been to regulate fisheries in order to maximize the long-term yield. The Assessments Subcommittee of STACRES has concluded that the 1971 catch was at or beyond the MSY and the 1971 effort was significantly beyond the MSY level. It has also concluded that there are no large finfish resources now under exploitation. Therefore, there would be no missed opportunities for expansion with some overall effort limit. USA fully agrees with the merit of the individual species quotas which the Commission has set in the past. However, the Assessments Subcommittee has concluded that, because of the by-catch problem, this approach would tend to generate over-exploitation, and this can only be prevented by total catch or effort regulation.

In choosing the type of regulation, both biological and practical matters must be considered. A total catch quota is set to regulate the effective fishing intensity. Therefore, to achieve the correct level of fishing intensity, the quotas must be adjusted for changes in recruitment and growth which lead to changes in the stock abundance. The annual adjustments to quotas needed to maintain fishing intensity at the right level would require a very large amount of assessment work; much greater than we now put forward in ICNAF. This would mean not only many more manhours of assessment work but also much additional statistical and biological data. On the other hand, fixing the fishing intensity directly means that catches can be allowed to vary according to changes in abundance. While vessel controls will not eliminate entirely the need for quotas, and we are not suggesting that the effort regulation USA has proposed be substituted for the existing quotas, the regulation of effort will decrease the need for frequent adjustment in quotas. In either case, later adjustments may have to be made because of changing objectives, or because the initial status was not correctly assessed.

Another factor to be taken into account is the relative status of fisheries. The Assessments Subcommittee concluded that most of the finfish stocks are now overfished, i.e., the 1971 point of catch and effort is above and to the right of the MSY point on the total yield curve. The 1972 effort is even greater. If the effort were left at this level, the catch per unit of effort (CPE) and, hence, total catch would drop until stabilized at a new level, lower than MSY. Although this is a long-term phenomenon, in the interim, as now when we are considering regulation, the CPE will fall.

The quota must be set at the point on the yield curve corresponding to that catch of the current year's yield-effort curve. Yet we do not know the 1972 status nor can we predict the effect of fishing in the time period before the total quota comes into effect. The events in the interim period make no difference to the correctness of the effort level judged as of 1971, but could have a significant effect on the correctness of the quota set as of 1971.

The Assessments Subcommittee concluded that the mixed fisheries problem can only be dealt with by some overall limitation of fishing intensity. It also indicated that the by-catch problem itself was not solved by using a total catch or total effort regulation. Although we cannot eliminate the problem, we could alleviate it by preventing further increases in effort. Total effort limitation seems to take care of the situation best, in that it does prevent increases in effort. Quota regulations, even a total quota, do not accomplish this in a predictable way. As mentioned above, variations in stock abundance will cause changes in fishing intensity, unless they are adequately measured and the quota adjusted. Thus, the opportunity exists for increased effort, particularly when stocks decrease in abundance. The Commission can probably not observe, assess and take action quickly enough to prevent such increased effort.

The economic advantages of controlling effort that have been made obvious by earlier studies in ICNAF should be emphasized. The importance of effective enforcement to an effective management scheme should also be emphasized. A management program which includes many quotas and many changes will be very difficult to enforce.

Not only must a management program be administratively feasible in order to regulate effectively, but adherence must be self-evident to the participating fishermen. Because they are mixed fisheries, one cannot infer what species are caught from observations of vessel occurrence.

However, observations on the occurrence and time in the area of vessels would provide the opportunity for fishermen to see for themselves the effects of effort regulation. Also, Governments can mount observation programs to monitor adequately the number, type and activity of the fleet components. This would also, in addition, provide for much improved fishery statistics.

II. *The US memorandum states that the allowable amount of effort as recommended by STACRES should be expressed as a percentage reduction of 1971 effort because that is the last year for which complete statistics are available (Comm. Doc. 73/3, Section 1, Paragraph II)*

STACRES has accepted the Assessments Subcommittee's advice of a 20-30% cutback to achieve MSY. USA proposes that a value of 25% be used. The STACRES Report also stated that effective effort in 1972 had increased in excess of 10% from that in 1971. The US estimate of increase was 25%, based on US vessel overflight observations and calculations. Although this increase accentuates the problem by increasing the extent to which the stocks are being overfished, it does not have to be considered as the effort reduction can be calculated from 1971 reported effort levels.

III. *Problems of standardizing effort* (Comm. Doc. 73/3, Section 1, Paragraph III)

The Assessments Subcommittee has reported that, of the units of effort most regularly reported, "days fished" adequately relates effort to fishing intensity for management purposes and that "days on ground" is a feasible unit to use to regulate fishing effort. USA proposes, therefore, that the actual regulation of fishing effort be accomplished on the basis of "days on ground".

There are many problems involved in standardizing effort; USA welcomes further research and refinement of the measures of relative catchability. However desirable this is, the time for action is now. The Assessments Subcommittee has stated that a reduction in effort in the neighbourhood of 30% is required for proper management of the stocks. Therefore, the question is whether standardization is adequate for assuring a reduction in fishing mortality in 1973. The ratios between catch rates of various vessel classes within each country, based on 1971 reported statistics, are pertinent to this question. As computed from the 1971 ICNAF *Statistical Bulletin* tables, these ratios reflect differences in fishing patterns among such vessels, as well as different fishing power. The Federal Republic of Germany and Japan apparently fished with the same pattern for all their vessel classes. Polish side trawlers concentrated on herring to a greater extent than on mackerel, while the reverse was true for the stern trawlers. There was less indication of this tendency for the USSR vessels. In addition, the larger USSR vessels concentrated to a greater extent on hake. Changes in these patterns would affect the relative catchabilities to some degree, depending on relative availabilities of the different species. Changes in patterns would not appear, however, to be of major significance in the effectiveness of effort reduction. Of greater concern is possible future improvement in efficiency, particularly in the way a country deploys effort, relative to the "days fished" and "days on ground" as reported to ICNAF. It is unlikely that efficiency will decrease. Thus, using present values errs, if anything, in the direction of not achieving the desired effort reduction and, accordingly, effort should probably be reduced more than that recommended by the Assessments Subcommittee.

The only place in the computations where between-country coefficients are used is in the determination of the percentage reductions which will be applied to individual countries to achieve a 25% overall reduction. This depends, of course, on the proportion of effort eliminated relative to that being reduced. The greater the amount eliminated, the greater will be the percentage reduction on the remaining countries. Since most of the effort eliminated was US effort, it is appropriate to discuss these consequences. The Assessments Subcommittee discussions pointed out that the relative abundance of groundfish and pelagic stocks would influence their relative catchabilities based on standard US gear. If the pelagic stocks were in greater abundance than the groundfish stocks, the proportion of US effort would be underestimated relative to the distant-water fleets and thus, the percent reduction of the countries affected would be less, and might be too low to achieve a 25% overall reduction of effort.

A significant fishery for invertebrates exists at the present time and may develop further in the future. The US proposal is not intended to limit effort on such species so long as the gear used does not catch significant quantities of finfish as a by-catch. Thus, the US proposal excludes specific fisheries now in existence for lobster, shrimp, scallops, and other shellfish, except squid.

The current small fishery for squid takes significant quantities of finfish as a by-catch. The effort directed to squid has been included in the allocations. Should future development of this fishery include gear that does not take a by-

catch of finfish, the USA would expect the Commission to exempt the fishery from the total effort regulation. Separate quotas and effort regulation would have to be developed for these various independent fisheries depending on needs.

IV & V. Factors in allocation of effort among nations (Comm. Doc. 73/3, Section 1, Paragraphs IV and V)

In determining the allocation of total effort among participants, some of the same factors considered in applying quota management programs should be taken into account. Traditional fishing patterns, as reflected by average effort levels over a period of selected years and expressed in terms of standard fishing units, should provide a partial and useful basis for the allocation of effort levels. However, other factors, such as recent increases in effort, coastal state interests, developing fisheries, immobile vessels, and recent entrants, must be considered. Under the present circumstances of fully utilized fisheries, new entrants would not be given significant consideration.

Coastal fishing interests should be given high priority. Many coastal fisheries are relatively immobile and cannot be shifted to other areas. Similarly, coastal states are often concerned with developing new potentials; effort control must recognize this need and must be flexibly applied to permit such expansion.

Even a quick look at the data shows clearly that the coastal states have not increased their catch and effort since 1961. In fact, they have decreased it, and thus have already made a contribution to effort control. They should not be expected to make a further contribution now, since they have not created the problem.

Moreover, it must be recognized that the relatively immobile fleets of small coastal vessels are unique in contrast with the remaining vessels in the area, that is, the distant-water vessels. These coastal vessels have been designed almost exclusively to supply specialized markets with a continuous year-round supply of fresh fish. This they cannot do if they are shifted to other areas. Nor can they make longer trips to other fishing grounds: even when they are physically capable of venturing further offshore, they cannot operate effectively amidst the fleets of large vessels found there.

As in catch quota allocation, it appears appropriate to divide part of the effort quota among participating countries in proportion to their average level of participation over an agreed period of time. However, it seems only equitable to relate the amount of effort an individual participating country is asked to reduce, in part, to the extent by which that country has increased its level of effort over the years when the total effort was excessive. On the other hand, the allocation scheme must recognize that countries, which have not increased their fishing effort or which may have reduced their effort in response to changes in fish stocks or biomass, have already made a contribution toward effort control and should not be expected to accept further reductions.

Certain other special factors need consideration similar to that given to the allocation of catch quotas. USA recognizes that these might include provision for the special needs of recent entrants with relatively small fleets to the fishery.

Basing such an allocation on historical fishing, as was done with the catch quotas, is, as the Assessments Subcommittee has stated, difficult because of changes in relative catch rates within time periods. This was tried in several different ways and although the trends remain the same, the actual country values fluctuated depending on the time periods for which relative catchabilities were calculated. Nevertheless, in all trials, Japan, Poland, USSR, Bulgaria and the

German Democratic Republic showed increases since 1968 when effort was at about the right level. Because Canada and USA are coastal fishing nations, their effort was not reduced.

In order to avoid very small reductions, and the impairment of very small fisheries, countries with less than 2,500 days, or about 1% of the total, were not given reductions in effort. This rule applied to Romania and Spain.

Because of these difficulties, the procedure recommended by the Assessments Subcommittee to use 1971 relative catchabilities as determined from statistics reported to ICNAF to determine 1971 standard effort, was adopted. The number of standard days to be reduced was 25% of this total. This reduction was apportioned to those countries not exempted by the criteria given above on the basis of the standardized effort applied by each country in 1971. This resulted in a 30.7% reduction for each of the countries in the allocation to achieve the overall 25% reduction (Table 1).

A procedure for each country to use in allocating its total allowable effort among various vessel categories was presented by the Assessments Subcommittee. Tables have been prepared for each country. The conversion coefficients for "days on ground" to "days fished" are also listed.

Standardized "days fished" were computed using the relative catchabilities given in Table 7 of the Assessments Subcommittee Report. These were obtained by making monthly comparisons of catch rates of all vessel types with the US OTSI 0-50-ton class. These relative catch rates were then averaged over months to obtain an annual average.

The raw annual "days fished" for each gear type for each country were then multiplied by the annual average coefficients and added to obtain the total annual standardized "days fished" (Table 2). Serious problems arise in using the country-vessel type conversions for "days fished" to "days on ground". The first is that the last year for which such ratios were submitted to ICNAF was 1969 and changes may have occurred since then for some countries. The second is that such data are only available for Romania, Spain, Poland and USSR. The third is that there are differences among vessel classes in the "days fished" "days on ground" conversion coefficients for Poland. The latter fact leaves unresolved the precise determination of allowable "days on ground" to achieve the desired reduction in "days fished".

The Commission is faced with three possible solutions to this problem:

- (1) The Commission can decide at this meeting the best single coefficient for each country for conversion of "days fished" to "days on ground". It is assumed that further studies will be undertaken to improve the accuracy of this coefficient.
- (2) The Commission can set up a Working Party to study the matter further and to derive new country coefficients and to report to the 1973 Annual Meeting of the Commission. These new coefficients could then be applied to the regulations effective 1 September 1973.
- (3) The Commission can derive a scheme which would allow each country to utilize different "days on ground" to "days fished" conversion coefficients. This would require that the actual "days on ground" in column 15 of Table 13 of the Assessments Subcommittee Report would be reconverted to standard "days fished". The total of these reconverted "days fished" must not exceed the total given at the bottom of columns 6 or 7. If they do, a reapportion of days among different vessel categories must be done such that the reconverted "days fished" are less than, or equal to, the original allocated "days fished".

VI. *Present regulatory measures* (Comm. Doc. 73/3, Section 1, Paragraph VI)
(See Paragraph 5 of the Summary)

VII. *That the reduced level of fishing effort is to be implemented on an urgent basis*
(Comm. Doc. 73/3, Section 1, Paragraph VII)

The Assessments Subcommittee Report estimated that the level of fishing intensity associated with the MSY of finfish in Subarea 5 and Statistical Area 6 is 70-80% of the 1971 level. The Subcommittee also concluded that, on the basis of US overflight data, the increase in fishing effort from 1971 to 1972 was considerably in excess of 10%. The compositions of distant-water fleets have changed in recent years, with the ratio of large stern trawlers to medium side trawlers increasing from 0.7 in 1971 to 1.02 in 1972 (the former estimated to be 3.5 times as effective as the latter). Improved technology in addition to larger boats also tends to multiply the fishing intensity. This indicates that more fishing effort existed in 1972 than was necessary to harvest the available surplus resource.

In view of the existence of one major unregulated species (mackerel) and of other less substantial, unregulated stocks (including squid), one can only assume that all available effort will be directed by the distant-water fleets towards these resources. The by-catch of regulated species taken by effort specifically directed towards mackerel has been shown by the Assessments Subcommittee to be substantial.

Therefore, any delay in administering a reduction in fishing intensity will only serve to reduce stock levels further, and to increase the period of recovery of stocks to levels supporting the maximum sustainable yields. While the proposal sets out the annual allowable standard effort beginning 1 January 1974, the urgency of the current situation requires that effort reductions begin as soon as possible.

USA proposes that the standard "days fished" (expressed in terms of "days on ground") expended by each country from 1 September 1973 to 31 December 1973 not exceed one-third of the annual allowable effort as given in Table 2.

VIII. *Annual review* (Comm. Doc. 73/3, Section 1, Paragraph VIII)

The initial effort regulation should not only provide for the level at which effort should be set, but also for review and adjustments as necessary at each Annual Meeting.

As experience with the effort control system is gained, there will be a need to have the Assessments Subcommittee and STACRES review and adjust such critical factors in the equation as fishing power coefficients for various classes of vessels and for the different countries, as well as the relationship between "days on ground" and "days fished". In short, the effort regulation system must be considered to be a dynamic one over the years and adapt to changes in circumstances and experience.

IX. *Administration of effort regulations* (Comm. Doc. 73/3, Section 1, Paragraph IX)

Administration of effort regulations will be relatively simple. If a vessel is observed in Subarea 5 and Statistical Area 6, and if it is not listed as one to which vessel days which were allotted by its government from its allocation remain to be utilized, it is in violation. If it is listed, it is O.K. No boardings. No questions. No worrying about what it is doing.

Under an optimum system of enforcement of effort regulations, each country

will plan well ahead of time for the optimum utilization of the "days on ground" allocated to it. It will determine how many such days will be apportioned to each vessel class and, to ensure utilization of its full share, it will allocate these shares to individual vessels. Allocating lists can then be provided to the ICNAF Secretariat, which in turn can provide collected lists to enforcement officers. A listed vessel would then report by radio when it enters and leaves Subarea 5 and Statistical Area 6, and utilization of the days allocated to that vessel can be quickly verified. An enforcement officer can quickly check on the status of a vessel. If it is observed in the area, and it has not checked in, or is not listed, or has already checked out, it is in violation. If it is listed, and has checked in, everything is fine. However, it is envisaged that a simplified method of enforcement can be utilized under which a vessel will simply report its entry into and exit from the area. Of course, plans will change during the course of the year, and countries will have the possibility of modifying their lists, as situations change.

It has been stated that vessels will use up some of their allocated time in non-productive activities, such as not being able to fish because of weather, of breakdown, or of the need to transit from one ground to another, and so on. This is true, but these non-fishing periods have been taken into account, on the average, in formulating $X \text{ "days on ground"} = Y \text{ "days fished"}$. Thus, what the vessel is doing is immaterial in terms of enforcement. The only question is whether it should be in the area when observed there. The inspector would only have to record the names of the vessels he sees in the area. Later, in his office, he can check his observations against the listing, or whether the vessel had reported itself in the area.

Such a system, it has been said, would not improve the acceptance by fishermen that other nations were actually enforcing the rules. Credibility is a problem, because there is virtually no fisherman anywhere in the world who does not believe that he is subject to more rigorous enforcement than the other fishermen who are fishing alongside him. Fishermen of country A assume this to be true of countries B and C, while fishermen of country C assume this of countries A and B. It is universal. The system USA has proposed overcomes this through the ease with which checks can be made. True, an individual fisherman sees only a small part of what is going on, but fishermen have a very good communications system amongst themselves. More importantly, however, the fishermen will know how easy it will be for their own officials to verify compliance by others.

Moreover, fishermen can get the picture from what they observe even if they do not have all the details. Fishermen first saw in 1972 the increase in effort which was discussed in the two US memoranda. And fishermen will certainly be able to observe a decrease in effort of the order STACRES is referring to, and when they do, maybe they will say that ICNAF is useful instead of a failure.

Table 1. Calculation for reduction in fishing effort in US OTSI 2 standardized days fished

	Column 1	Column 2	Column 3 ¹
<i>Country</i>	<i>Days fished 1971</i>	<i>Percent distribution of effort based on total (Can, USA, Rom, Sp)</i>	<i>1973 decrease</i>
Canada	7 414	—	—
Germany, Fed. Rep.	11 285	6.09	3 470
Japan	8 567	4.62	2 632
Poland	45 974	24.81	14 135
Romania	1 980	—	—
Spain	2 375	—	—
USSR	89 003	48.04	27 370
USA	30 860	—	—
Bulgaria	9 684	5.23	2 980
Germany, Dem. Rep.	20 754	11.20	6 381
Total	227 896	99.99	56 968
	× 0.25		
Reduction	56 974		
Total (less Can, Rom, Sp, and USA)	185 267		

¹ Reduction × Column 2.

Table 2. Calculations for 1973 allowable effort by country

Column numbers	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Relative performance ratio		Actual 1971 days fished	Standardized days fished		Ratio: days on ground to days fished	Raw days on ground	Standardized days on ground		Reduction in standardized days fished		1973 Standardized days fished		1973 Standardized days on ground	
Vessel category	to US OTSI 2	to USSR OTSI 4		to US OTSI 2	to USSR OTSI 4			to US OTSI 2	to USSR OTSI 4	to US OTSI 2	to USSR OTSI 4	to US OTSI 2	to USSR OTSI 4	to US OTSI 2	to USSR OTSI 4
USSR															
OTSI 4	1.32	1.00	11 489	15 165	11 489	1.3	14 936	19 714	14 936						
OTSI 5	1.91	1.45	6 590	12 587	9 556	1.3	8 567	16 363	12 423						
OTST 5	1.91 ²	1.45	360	688	522	1.3 ¹	468	894	679						
OTST 7	7.26	5.50	7 767	56 388	42 718	1.3	10 097	73 304	55 533						
PS 4	3.93	2.98	197	744	587	1.7	335	1 316	998						
PS 5	6.63	5.02	513	3 401	2 575	1.5	770	5 102	3 862						
Total			26 916	89 003	67 447		35 173	116 693	88 431	27 370	20 706	61 633	46 741		
POLAND															
	to POL OTSI 5			to POL OTSI 5				to POL OTSI 5			to POL OTSI 5			to POL OTSI 5	
OTSI 5	1.57	1.00	5 852	9 188	5 852	1.6	9 363	14 700	9 363						
OTST 6	6.92	4.41	1 873	12 961	8 260	1.4 ³	2 622	18 144	11 563						
OTST 7	8.29	5.28	2 874	23 825	15 175	1.4	4 024	33 359	21 247						
Total			10 599	45 974	29 287		16 009	66 203	42 173	14 135	8 991	31 839	20 296		
GERMANY (DR)															
	to GDR OTSI 5			to GDR OTSI 5				to GDR OTSI 5			to GDR OTSI 5			to GDR OTSI 5	
OTSI 5	1.72 ⁴	1.00	Not known	Not known	Not known	1.4 ⁴	Not known	Not known	Not known						
OTST 6	7.82 ⁴	4.55 ⁴				1.3 ⁴									
OTST 7	7.31 ⁴	4.25 ⁴				1.4 ⁴									
Total				20 754 ⁵	12 066					6 381	3 704	14 373	8 362		

BULGARIA													
	<i>to BUL OTST 7</i>			<i>to BUL OTST 7</i>			<i>to BUL OTST 7</i>			<i>to BUL OTST 7</i>		<i>to BUL OTST 7</i>	
OTST 7	7.68	1.00	1 261	9 684	1 261	1.4	1 765	13 555	1 765	2 980	387	6 704	874
GERMANY (FR)													
	<i>to FRG OTST 6</i>			<i>to FRG OTST 6</i>			<i>to FRG OTST 6</i>			<i>to FRG OTST 6</i>		<i>to FRG OTST 6</i>	
OTST 6	8.72	1.00	490	4 273	490	1.3 ⁶	637	5 555	637				
OTST 7	8.82	1.01	795	7 012	803	1.3 ⁶	1 034	9 116	1 044				
Total			1 285	11 285	1 293		1 671	14 671	1 681	3 470	397	7 815	896
JAPAN (Cols 3, 5, 7, 11, 13 expressed in hours fished)													
	<i>to JAP OTST 6</i>			<i>to JAP OTST 6</i>			<i>to JAP OTST 6</i>			<i>to JAP OTST 6</i>		<i>to JAP OTST 6</i>	
OTST 6	0.13	0.50	2 520	328	1 260	1.3 ⁶	3 276	426	1 638				
OTST 7	0.42	1.00	19 617	8 239	19 617	1.3 ⁶	25 502	10 711	25 502				
Total			22 137	8 567	20 877		28 778	11 137	27 140	2 632	6 409	5 935	14 468
SPAIN													
	<i>to SPA PT 4</i>			<i>to SPA PT 4</i>			<i>to SPA PT 4</i>						
PT 4	3.16	1.00	499	1 577	499	1.3	649	2 050	649	No reduction below minimum number of days fished			
OT 6	1.68	0.49	475	798	233	1.3 ⁷	618	1 037	303				
Total			974	2 375	732		1 267	3 087	952				
ROMANIA													
	<i>to ROM OTST 7</i>			<i>to ROM OTST 7</i>			<i>to ROM OTST 7</i>						
OTST 7	4.52	1.00	438	1 980	438	1.1	482	2 178	482	No reduction below minimum number of days fished			

Table 2 (continued)

Column numbers	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Relative performance ratio		Actual 1971 days fished	Standardized days fished		Ratio: days on ground to days fished	Raw days on ground	Standardized days on ground		Reduction in standardized days fished		1973 Standardized days fished		1973 Standardized days on ground	
Vessel category	to US OTSI 2			to US OTSI 2				to US OTSI 2		to US OTSI 2		to US OTSI 2		to US OTSI 2	
USA															
OTSI 2	1.0		6 439	6 439						No reduction coastal state					
OTSI 3	1.12		12 827	14 366											
OTSI 4	1.44		2 777	3 999											
Other gear	-		-	6 056 ^a											
Total			-	30 860											
CANADA															
OTSI 4	1.09		353	390						No reduction coastal state					
OTST 5	1.83		454	952											
Other gear	-		-	6 072 ^a											
Total			-	7 414											

¹ Used average of all USSR values.² Used USSR OTSI 5 value.³ Used Poland OTST 7 value.⁴ Used average over all countries in distant-water fleets for gear class.⁵ Obtained by dividing catch by 1971 USA OTSI 2 total catch/day (5.15 MT).⁶ Average for vessel class over all countries.⁷ Used Spain PT 4 value.⁸ Estimated by dividing catch by total US OTSI Class 2 catch/day (5.15 MT).

Explanation of data in Table 2

The standardized "days fished" (hours fished in the case of Japan) in Table 2 were compiled from the raw days in Table 5 of the 1971 *Statistical Bulletin* for all countries (otter trawl catches only for USA and Canada), except the German Democratic Republic, and were standardized by using the average monthly relative catchabilities to US 0-50-ton otter trawlers as given in Table 7 in the Assessments Subcommittee Report (1973 Sp. Comm. Mtg. Proc. 1, App. I). Average monthly catchabilities for Japan (all vessels) and Spain (otter trawlers Class 6) which do not appear in Table 7 have now been calculated. The standardized "days fished" for the German Democratic Republic were estimated by dividing the total catch by the total catch per day of US small otter trawlers which was 5.15 tons. The remainder of the Canadian catch (except by scallop dredges and from the large pelagic fisheries) for which, in general, no effort was reported, was treated similarly as was the remainder of the US catch in Table 5 of the *Statistical Bulletin*, minus that by the fixed gear and from the large pelagics, menhaden, and invertebrate fisheries (including the not-known mixed species category which is primarily invertebrates but includes such miscellaneous inshore fisheries as striped bass, etc.)

Catches which were eliminated for the USA were the same ones omitted from analysis of effort reported in the Assessments Subcommittee Report.

Ratios of "days on ground" to "days fished" were taken from the 1969 (the last year for which they were reported) column in Table 11 of the Assessments Subcommittee Report. Such values were not available for all countries and gears. Where estimates were used, their bases are given in the footnotes to Table 2.

Calculations involved in Table 2

Col 4 = Col 1 × Col 3	2 — vessel tonnage category	0- 50 tons
5 = Col 2 × Col 3	3 — " " "	51- 150 tons
7 = Col 3 × Col 6	4 — " " "	151- 500 tons
8 = Col 4 × Col 6	5 — " " "	501- 900 tons
9 = Col 5 × Col 6	6 — " " "	901-1800 tons
10 = Total Col 4 × 0.307	7 — " " "	over 1800 tons
11 = Total Col 5 × 0.307		
12 = Total Col 4 — Col 10		
13 = Total Col 5 — Col 11		

OTSI = side otter trawler
 OTST = stern otter trawler
 OT = otter trawler
 PT = pair trawler
 PS = purse seine

Annex 27

INTERNATIONAL COMMISSION FOR THE NORTHWEST ATLANTIC FISHERIES,
SPECIAL COMMISSION MEETING, OCTOBER 1973, PROCEEDINGS NO. 5,
REPORT OF THE WORKING GROUP ON CATCH ALLOCATIONS FOR SUBAREA 5
AND STATISTICAL AREA 6

[Not reproduced]

Annex 28

INTERNATIONAL COMMISSION FOR THE NORTHWEST ATLANTIC FISHERIES,
FOURTH SPECIAL COMMISSION MEETING, JANUARY 1974, PROCEEDINGS NO. 3,
REPORT OF MEETINGS OF PANEL 5

[Not reproduced]

Annex 29

PROPOSED FISHING ZONES OF CANADA (ZONES 4 AND 5) ORDER, PROPOSED
ORDER IN COUNCIL, 1 NOVEMBER 1976 (CANADA GAZETTE, PART I, VOLUME 110,
EXTRA NUMBER 101, 1 NOVEMBER 1976, PAGES 1-6)

[Not reproduced]

Annex 30

DEPARTMENT OF STATE [PUBLIC NOTICE 506], MARITIME BOUNDARIES
BETWEEN THE UNITED STATES AND CANADA (UNITED STATES *FEDERAL REGISTER*,
VOLUME 41, NUMBER 214, 4 NOVEMBER 1976, PAGES 48619-48620)

[See II, Annex 64]

Annex 31

"TWENTY-EIGHT TRACTS DROPPED FROM PROPOSED SALE OF NORTH ATLANTIC
OCS OIL AND GAS LEASES", UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT, NEWS RELEASE (7 DECEMBER 1976)

[Not reproduced]

Annex 32

TRANSITIONAL UNITED STATES FISHING VESSEL LICENCE EXEMPTION
REGULATIONS, ORDER IN COUNCIL P.C. 1976-3179, 23 DECEMBER 1976 (*CANADA
GAZETTE*, PART II, VOLUME 111, NUMBER 1, 12 JANUARY 1977, PAGES 99-100)

[Not reproduced]

Annex 33

FISHING ZONES OF CANADA (ZONES 4 AND 5) ORDER, ORDER IN COUNCIL
P.C. 1977-1, 1 JANUARY 1977 (*CANADA GAZETTE*, PART II, VOLUME 111,
EXTRA, 1 JANUARY 1977, PAGES 1-6)

[Not reproduced]

Annex 34

TRANSITIONAL UNITED STATES FISHING VESSEL LICENCE EXEMPTION
REGULATIONS, ORDER IN COUNCIL P.C. 1977-1148, 28 APRIL 1977 (*CANADA
GAZETTE*, PART II, VOLUME 111; NUMBER 9, 11 MAY 1977, PAGES 2063-2065)

[Not reproduced]

Annex 35

TRANSITIONAL UNITED STATES FISHING VESSEL LICENCE EXEMPTION
REGULATIONS, AMENDMENT, ORDER IN COUNCIL P.C. 1977-1695, 16 JUNE 1977
(*CANADA GAZETTE*, PART II, VOLUME 111, NUMBER 13, 13 JULY 1977, PAGE 2732)

[Not reproduced]

Annex 36

**JOINT REPORT BY CHIEF NEGOTIATORS ON CANADA-UNITED STATES MARITIME
BOUNDARIES AND RELATED RESOURCE ISSUES, 15 OCTOBER 1977**

DEPARTMENT OF EXTERNAL AFFAIRS

COMMUNIQUE

**Not for publication before
10:00 Hours, October 21, 1977**

The Secretary of State for External Affairs, the Honourable Don Jamieson, announced today the release of the Joint Report by Chief Negotiators on Canada-U.S. Maritime Boundaries and Related Resource Issues.

The text of a joint release by the Governments of Canada and the United States is attached.

The Governments of Canada and the United States have approved a Joint Report by Chief Negotiators on Canada-United States Maritime Boundaries and Related Resource Issues. The report recommends principles for resolution of maritime resource issues with a view to facilitating settlement of the maritime boundaries between the two countries. The Governments have directed the Negotiators—Ambassador Marcel Cadieux for Canada and Ambassador Lloyd N. Cutler for the United States—to continue their negotiations with a view to recommending detailed terms for a comprehensive settlement by December, 1977.

The Report of the Chief Negotiators, a copy of which is attached, recommends the establishment of a joint Fisheries Commission for the cooperative management of fish stocks of common concern. It also sets out proposed arrangements for the sharing of hydrocarbon resources in boundary areas. The Negotiators express the hope that with satisfactory resolution of resource issues, mutually acceptable agreement on the two countries' maritime boundaries will be possible.

The Fisheries Commission proposed by the Negotiators would comprise separate Atlantic and Pacific Coast panels composed of members appointed by the two Governments. Fish stocks off the two coasts would be divided into three management categories, depending upon stock patterns and the relative interests of the two countries. The categories would provide, respectively, for joint management of some stocks, for jointly agreed management for other stocks based on proposals submitted by the country with the primary interest; and for independent national management of stocks in the third category subject only to consultation. For all stocks, firm entitlements for each country would be fixed in advance by negotiation between the two Governments; these entitlements could be changed by mutual agreement.

The fisheries panels would review annually, and as appropriate, recommend to Governments regulatory measures for the relevant stocks. With stocks under joint management, if either of the two Governments do not agree with panel recommendations, a procedure would be established for prompt conciliation and, if necessary, binding arbitration of outstanding differences. Differences over interpretation and application of the Agreement would also be subject to the arbitration procedure.

The Negotiators' proposals for dealing with hydrocarbon resources call for establishment of "shared access zones" in boundary areas. Each country would be responsible for licencing and development in its portion of the zone, but would follow an agreed timetable for exploration and, if appropriate, for development.

Each country would be entitled to one half of the oil and gas production from the entire zone. The country producing the larger share would sell the other at world market prices amounts necessary to balance the account.

Since the question of offshore hydrocarbon resources in Canada is a matter of direct interest to a number of provinces, the Federal Govern-

ment will be consulting with these provinces on this matter during the next phase of the negotiations.

Details of the Negotiators' recommended arrangements are included in their attached Joint Report.

The Joint Report on proposed principles approved by Governments concludes the first phase of their effort. In the second phase of their negotiations, the Chief Negotiators will seek to work out detailed provisions for the Fisheries Commission, including assignment of stocks to the three management categories, and for the hydrocarbon sharing arrangements they have proposed. They will also address delimitation of the four maritime boundaries shared by Canada and the United States.

During the first phase of discussions, the Chief Negotiators and their aides consulted closely with their respective provincial, state and industry interests. Representatives of the fishing communities and of interested regional government entities participated in the negotiations. Continuing close involvement by regional and industry interests in Phase II of the negotiations is expected.

Attachment:

Joint Report of Ambassador Cadieux and Ambassador Cutler

JOINT REPORT OF
AMBASSADOR CADIEUX AND AMBASSADOR CUTLER
TO THE
GOVERNMENTS OF CANADA AND THE UNITED STATES:
NEGOTIATIONS ON MARITIME BOUNDARIES
AND
RELATED RESOURCE ISSUES

I.

1. On August 1, 1977, the Governments of Canada and the United States appointed special Chief Negotiators to conduct maritime boundary and resource negotiations. The Chief Negotiators were instructed to report by October 15, 1977 on the principles of a comprehensive settlement encompassing delimitation of maritime boundaries, appropriate complementary fishery and hydrocarbon arrangements and other related matters. The terms of reference also directed the Chief Negotiators to develop the substance of a comprehensive settlement for submission to governments by December 1, 1977. This Joint Report of the Chief Negotiators to their governments sets forth principles recommended by them for a comprehensive maritime boundaries and resource settlement.

2. The two Chief Negotiators and their aides met alternatively in Washington and Ottawa on August 15 and 24, September 8 and 22, and October 4 and 14.

3. The two Negotiators consulted with their respective fishing communities on both coasts. In addition, representatives of the fishing communities served as advisors to the Negotiators and participated in that capacity in the discussion of fisheries-related issues. On the USA side, members of the Mid-Atlantic, New England, Pacific and North Pacific Fisheries Management Councils were represented. On the Canadian side, officials from the Governments of the Province of British Columbia, New Brunswick and Nova Scotia, representatives of fishermen's organizations from both coasts, and representatives of fish processors participated.

4. During the first phase of the negotiations, the two sides directed their attention to the basic principles of long-term resource arrangements for fisheries and hydrocarbons as a basis for reaching detailed agreement on these issues and on boundary delimitations during the second phase.

II. FISHERIES

5. The two sides agreed on a text of "Proposed Principles for a Joint Fisheries Commission to be Established by Convention between Canada and the United States" (Attachment I). The Negotiators agreed that these principles should be the basis for further discussion of the substantive details of such an arrangement during the more detailed negotiations to be carried out in the next few months.

6. The agreed approach involves the following:

7. GENERAL FRAMEWORK

There would be three categories of fish stocks covered in the Agreement, to be listed in Annexes A, B and C to Attachment I. These Annexes would also contain agreed entitlements to these stocks as defined in the Annex for fishermen of either country, as appropriate. The stocks listed in each annex would be managed on a different basis:

8. Annex A stocks would include transboundary stocks to be subject to joint management by a Fisheries Commission (see 13 below). The Commission would annually recommend appropriate regulatory measures for these stocks under procedures including provisions for disputes settlement described in Section V.

9. Annex B stocks would be stocks considered appropriate for jointly agreed management as a unit. Management of such stocks, as defined in the Annex, would be based on proposals submitted by the country with the primary interest, as designated in the Annex. In these cases, the Commission would recommend to governments agreed regulations following the submission of proposals by the country designated in the Annex. In making such proposals, the proposing country would be obligated to observe certain criteria, or management standards. The management standards would relate to such matters as criteria for determining optimum sustainable yield, the avoidance of adverse impact on other fisheries, and the need for non-discrimination in regulations. These management standards have not yet been fully developed. If agreement were not reached, the proposals of the country of primary interest would take effect subject to the review procedure described below.

10. Annex C stocks would be those occurring clearly off the coast of only one country. For these stocks, the coastal state would manage the fishery, but consultations on stock assessment and regulations would take place within the Commission forum.

11. Under the aegis of the Commission, the two countries would coordinate the collection of statistics, carry out cooperative research, jointly assess the status of Category A and B stocks, and discuss the disposition of their respective "surpluses" to third countries or to one another.

12. The two sides agreed that further discussion is required with regard to the disposition of surpluses and the areas in which entitlements may be fished.

III. INSTITUTIONAL ARRANGEMENTS

13. FISHERIES COMMISSION

A Fisheries Commission would be established consisting of an Atlantic coast and Pacific coast panel. Each panel would consist of twelve members, six members appointed by each side. In addition, there would be two impartial co-chairmen on each panel (who might, for example, be retired judges from the senior domestic courts of each side or other distin-

guished persons), one appointed by each side subject to the concurrence of the other. The co-chairmen would attend and preside over meetings of each panel, but would not be members of their delegations and would not be entitled to vote with the members of the panels on the adoption of regulations. The major responsibility of the co-chairmen would be to act as conciliators and arbitrators should a dispute arise concerning the interpretation and application of the Agreement or the adoption of regulations for the management of certain stocks of fish, as set out below in paragraphs 20 and 21.

14. The Commission would also have power to recommend to governments the addition of particular stocks to Annex A, B or C, or the transfer of stocks from one annex to another, or changes in the agreed reciprocal fishing entitlements set out in Annexes A, B and C.

15. During the second phase, the negotiations will address the categorization of the fish stocks, management criteria and reciprocal entitlements for inclusion in a long-term fisheries agreement, as well as interim arrangements for the 1978 season. The two sides also agreed to look into the possibility of incorporating the existing International Pacific Halibut Commission into the new structure being developed for bilateral fisheries relations.

IV. HYDROCARBONS

16. As to offshore hydrocarbon resources, the Negotiators agreed on the text of "Proposed Principles for Offshore Hydrocarbon Shared-Access Zones" (Attachment II). As is evident from this text, many of the necessary elements for a definitive Agreement have now been resolved, including: (1) the basic concept of zones in the boundary areas in which each country would licence drilling in its portion of the zone; (2) the right of the country with the lesser production in the zone to purchase from the other country sufficient hydrocarbons to bring its share up to one-half the total production of the zone; (3) the desirability of agreed developmental timetables in each zone; (4) the removal of impediments to transactions under shared-access zone arrangements; (5) the responsibility of the surplus country in making available for purchase the quantities of hydrocarbons necessary to carry out the purpose of the Agreement; (6) the intent to keep separate the determination of the obligations of the surplus country as regards oil versus those as regards natural gas.

17. A number of elements will be taken up during Phase II of the negotiations, including: (1) the question of whether hydrocarbons should be made available for purchase from production in the shared-access zones or from other sources; (2) the question of determination of agreed minimal levels of production in each zone before the shared-access mechanism becomes activated; (3) clarification as to the non-cumulative character of the rights of purchase for the deficit country; (4) specific procedures for disputes settlement as concerns shared-access zone arrangements.

18. The current stage of progress on hydrocarbons has been achieved largely through a Working Group set up to deal with these

aspects of the negotiations. The actual delineation of possible shared-access zones has been touched upon by the Working Group, but agreement has not yet been reached as regards the number, size or configuration of such zones. This matter will be further pursued during Phase II of the negotiations, along with the drafting of developmental timetables for the shared-access zones that may eventually be established. The two sides agreed there should be at least two shared-access zones, in the Gulf of Maine and Beaufort Sea regions, and the Canadian side is of the view that it would probably be desirable to have such a zone for the region off Juan de Fuca Strait as well.

V. DISPUTES SETTLEMENT

19. The two sides agreed that there should be a dispute settlement procedure in the resource agreements to be negotiated.

20. With respect to the fisheries agreement, it was agreed that there should be one procedure for the settlement of all disputes under the Agreement, whether they be economic or policy disputes or legal disputes concerning the interpretation of the Agreement.

21. Any such dispute or any other dispute concerning the interpretation of the Agreement would be referred to the two co-chairmen who would endeavour to settle it. If their conciliation efforts fail, they would endeavour to agree between themselves and their agreement would become final and binding on both governments. If they do not agree on a settlement, they would refer the matter to a previously-agreed neutral arbitrator.

22. The arbitrator would be empowered to decide disputes concerning the management of Annex A stocks. With respect to disputes concerning Annex B stocks, the arbitrator's jurisdiction would be limited to the case where a proposed plan submitted by the country designated in the Annex is clearly erroneous under an applicable standard set forth in the Agreement. The arbitration would be conducted under an agreed timetable designed to produce a decision before the start of the fishing season to which the dispute relates.

23. The two sides have also discussed regulations for salmon trolling off the Pacific coast for 1978. In this connection, arrangements were made for the Canadian position on regulations to be taken into account by the competent USA authorities, and it is hoped that a mutually satisfactory solution can be found that will facilitate the reaching of long-term agreements between the parties.

24. The two sides noted that separate negotiations were underway towards a long-term agreement regarding interceptions of Pacific salmon. They emphasized the significance of such an agreement in the overall framework of Canada/USA fisheries relations.

25. The first phase of the negotiations has proceeded in a spirit of constructive cooperation, and the two Negotiators are pleased with the

substantial progress which has been made in reaching general agreement on the resource issues and related institutional arrangements set out in the attachments. It is hoped that the considerable measure of common ground in these areas will facilitate the negotiation in Phase II of detailed agreement on both resource and boundaries delimitation issues.

Ottawa, October 15, 1977

ATTACHMENT I

PRINCIPLES FOR A JOINT FISHERIES COMMISSION TO BE ESTABLISHED BY A CONVENTION BETWEEN CANADA AND THE UNITED STATES

I. MEMBERSHIP

A) The Commission shall consist of an East Coast Panel and a West Coast Panel. The two Panels may conduct joint sessions from time to time in order to consider problems of common concern.

B) Each Panel shall consist of twelve members, six members appointed by each side.

C) In addition to the twelve members on each Panel, there shall be two impartial Co-Chairmen who shall be jointly agreed by both sides. The Co-Chairmen shall not be nationals of the same Party and shall not be part of their respective delegations. They shall attend all meetings and shall alternate in the Chair and shall perform the functions described in Article V.

D) Panel members shall serve at the pleasure of the appointing side. The Co-Chairmen shall serve for a term of five years, subject to the right of either side to withdraw its consent to the service of either Co-Chairman upon 90 days prior written notice, in which event a successor Co-Chairman shall be jointly agreed by both sides prior to the expiration of that 90-day period.

II. POWERS

Each Panel shall have the following powers:

A) With respect to Annex A stocks, each Panel shall have power to propose annual management measures designed to achieve the optimum yield within the 200-mile zones of both countries. Such management measures shall be brought into force in the following manner:

(1) If a Panel agrees on the management measures to be proposed to the two governments, then:

(a) If neither government objects within ——— days of the transmittal of the proposals, the proposals shall become final and binding on both governments.

(b) If either government objects, the procedure set forth in Article V shall be utilized, and the decisions of the Co-Chairmen or of the Arbitrator shall be final and binding upon both governments.

(2) If a Panel does not agree on the management measures to be proposed, it shall report to the two governments on the measure of agreement and disagreement. The two governments shall consider the matter, in consultation with each other and

with their respective members on the Panel. After ——— days, the Panel shall reconvene unless the two governments have first reached agreement on the management measures to be applied, in which case those measures shall become final and binding upon both governments and shall be transmitted to the Panel for its records.

- (a) If the Panel reaches agreement upon reconsideration, the management measures so agreed shall be proposed to the two governments in accordance with the procedures set out in paragraph 1.
- (b) If a Panel does not reach agreement, the procedure set forth in Article V shall be utilized, and the decision of the Co-Chairmen or the Arbitrator shall be final and binding upon both governments.

B) With respect to Annex B stocks, each Panel shall endeavour in good faith to agree on the annual management measures designed to achieve the optimum yield of the stocks. Such management measures shall be developed in the following manner:

- (1) The country designated in Annex B shall present its proposed management plan to the Panel.
- (2) The Panel shall consider the proposed plan in the light of the management standards set forth in Article III.
- (3) If the Panel agrees on any proposed plan or any modifications thereof, the plan including any such modifications shall be recommended to both governments.
 - (a) If neither government objects, the management measures in the plan shall become final and binding upon both governments ——— days from the receipt of the recommendation.
 - (b) If either government objects, the plan as proposed by the country designated in Annex B shall apply and be binding upon both governments, subject to the review procedures described in Article V.
- (4) If the Panel does not agree on a proposed plan or any modifications thereof, the plan as proposed by the country designated in Annex B shall apply and be binding upon both governments, subject to the review procedure described in Article V.

C) With respect to Annex C stocks, each Panel shall serve as a forum for consultation on the annual management measures proposed by the coastal state. These consultations shall be held before the measures are implemented, except where conservation considerations require their immediate implementation on a provisional basis pending the outcome of consultations.

D) Each Panel shall have power to propose to both governments the addition of stocks to Annex A, B or C, or the transfer of stocks from one Annex to another. If neither government objects, the proposal shall become final and binding on both governments ———

days from the receipt of the proposal and the Annex shall be deemed to have been amended accordingly. If either government objects, the two governments shall consult but in the absence of agreement between the governments, no change shall be made.

E) Each Panel shall have power to propose to governments changes in the reciprocal fishing entitlements set out in Annexes A, B and C on the basis of new circumstances arising after the date of the Convention. If neither government objects, the proposal shall become final and binding on both governments ——— days from the receipt of the proposal, and the Annex shall be deemed to have been amended accordingly. If either government objects, the two governments shall consult but in the absence of agreement between the governments, no change shall be made.

III. MANAGEMENT STANDARDS

(to be developed)

IV. VOTING PROCEDURES

A) On each matter within the jurisdiction of a Panel to decide, each side shall cast one vote as a unit. The vote will be cast by the member of that side designated for the purpose by the government which appointed him. Each side shall determine its own rules as to how the voting member shall be authorized to cast the vote on his side.

B) Two votes shall be needed to decide any matter.

V. ARBITRATION

A) An impartial arbitrator (the Arbitrator) shall be jointly named by the parties at the time the Panel is organized. The Arbitrator shall decide issues referred to him by the Co-Chairmen under Sections B, C and D. Upon his appointment, the Arbitrator shall be entitled to attend all Panel meetings in his discretion and shall receive copies of all Panel minutes and documents at the time they are issued. The Arbitrator shall serve for a term of five years, subject to the right of either side to withdraw its consent to his continued service (apart from pending proceedings) at any time upon 90 days written notice, in which event a successor Arbitrator shall be jointly agreed by both sides.

B) In the circumstances described in Article II A (1)(b) or in Article II A (2)(b), the dispute over the management measures regarding Annex A stocks shall be referred to the two Co-Chairmen who shall attempt to resolve the questions in disagreement. If the two Co-Chairmen reach an agreement within ——— days after the dispute is referred to them, their decision shall become final and binding on both governments. Such a decision by the Co-Chairmen shall be accompanied by a reasoned opinion as to the basis for their views. In the event that the Co-Chairmen are unable to arrive at an

agreed decision, they shall refer the matter to the Arbitrator provided for in Section A above.

C) If in the circumstances described in Article II B (3)(b) or Article II B (4), either side contends that the plan as proposed by the country designated in Annex B is clearly erroneous under an applicable management standard set forth in Article III, the dispute shall be referred to the two Co-Chairmen, who shall attempt to resolve the questions in disagreement. If the two Co-Chairmen reach an agreement within ——— days after the dispute is referred to them, their decision shall become final and binding on both governments. Such a decision by the Co-Chairmen shall be accompanied by a reasoned opinion as to the basis for their views. In the event that the Co-Chairmen are unable to arrive at an agreed decision, they shall refer the matter to the Arbitrator provided for in Section A above.

D) Any other dispute involving the application or interpretation of the Convention shall be referred to the two Co-Chairmen of the Panel concerned, who shall attempt to resolve the questions in disagreement. If the two Co-Chairmen reach an agreement within ——— days after the dispute is referred to them, their decision shall become final and binding on both governments. Such a decision by the Co-Chairmen shall be accompanied by a reasoned opinion as to the basis for their views. In the event that the Co-Chairmen are unable to arrive at an agreed decision, they shall refer the matter to the Arbitrator provided for in Section A above. In the event that a decision of a dispute under this section by the Co-Chairmen of one Panel is based on an interpretation of the Convention that is in conflict with an interpretation contained in a decision by the Co-Chairmen of the other Panel or the Arbitrator, either government may refer to the Arbitrator for a definitive interpretation.

E) (Here insert agreed arbitration procedures, including time-tables for prompt decisions.)

F) The Arbitrator's decisions as to the interpretation of this document, as to its violation by either side, and as to the disputes regarding management plans that are referred to him pursuant to Sections B and C shall be final and binding upon the parties. Every decision by the Arbitrator shall be accompanied by a reasoned opinion as to the basis for his views. The Arbitrator shall recommend appropriate relief, and the parties shall consult with a view to affording the recommended relief or other relief agreed by the parties. If the parties do not agree on the proper relief to be afforded, the Arbitrator shall award relief that shall be binding on the parties.

VI. ACCESS

A) Each side agrees to grant access to fishermen of the other side to exercise the reciprocal fishing rights specified in Annexes A, B and C.

B) (A provision relating to permits, licences and fees for commercial fishermen exercising the reciprocal fishing privileges provided for in the Convention shall be agreed during Phase II.)

C) Recreational fishing by nationals and vessels of each country shall be permitted to continue in all waters of the other country, subject to applicable federal, state or provincial regulations and licence, permit and fee requirements.

VII. ADOPTION OF COMMISSION DECISIONS

Each side, in accordance with its domestic laws, shall issue regulations implementing management measures which become final and binding pursuant to the Convention.

VIII. ENFORCEMENT

Each side shall enforce such regulations against all persons in its 200-mile zone, and may prosecute any violations to the extent permitted by domestic law. (Include provisions relating to inspection, reporting and exchanges of reported data.)

IX. SCIENCE

A) Each Panel may establish a scientific committee.

B) There shall be a complete exchange of relevant scientific information between the two governments.

C) Each Panel shall coordinate the collection of statistics and make proposals to the governments for cooperative research programs. Each Panel shall also facilitate joint consideration of the status of the stocks listed in Annexes A and B.

X. ANNUAL MEETINGS

A) The Panels shall meet not later than the fifteenth of September in each year, and as often as necessary thereafter, in order to develop proposals for the management of Annex A and B stocks for the following year, and to consult regarding Annex C stocks. All proposals for Annex A and B stocks shall be issued three months before the beginning of fishing season for each stock.

B) The Panels shall meet at such other times as they or the governments may agree.

XI. PROVISION ON PORT PRIVILEGES

XII. PROVISION ON CONSEQUENTIAL CHANGES TO OTHER AGREEMENTS

XIII. PROVISION FOR WITHDRAWAL UPON NOTICE

XIV. RATIFICATION

The Convention shall be ratified in accordance with the constitutional processes of both countries.

ANNEX A

Annex A would list: (1) the transboundary stocks on both coasts that are agreed candidates for full joint management; (2) the agreed entitlement to a portion of the allowable catch of each such stock that fishermen of each country would be allowed to catch; and (3) provisions for access into the zone of the other country as may be appropriate.

ANNEX B

Annex B would list: (1) the stocks on both coasts that are candidates for jointly agreed management based on proposals submitted by the designated country with the primary interest; (2) the agreed entitlement to a portion of the allowable catch of each such stock that fishermen of the other country would be allowed to catch; and (3) provisions for access into the zone of the other country as may be appropriate.

ANNEX C

Annex C would list: (1) the stocks on both coasts that are agreed candidates for management by the coastal state, subject only to consultation with the other state; and (2) the agreed entitlement to a portion of the allowable catch of each such stock that fishermen of the other country would be allowed to catch in the 200-mile resource zone of the coastal state.

ATTACHMENT II**PROPOSED PRINCIPLES FOR OFFSHORE HYDROCARBON
SHARED-ACCESS ZONES**

1. In accordance with the principles set out below, each country would assure to the other country the right to purchase hydrocarbons* to the extent required to allow each to receive an amount equal to one-half of the volume of hydrocarbons produced in each shared-access zone (to be described in Annex A).

2. Each country's rights to hydrocarbon resources of each shared-access zone would remain unchanged on its side of the agreed boundary—development and management of hydrocarbon resources in the shared-access zone would take place in accordance with the national laws and regulations of the country within whose jurisdiction the resource is located except as otherwise specifically provided by the Agreement.

3. The two governments would agree on a general timetable (to be described in Annex B) for hydrocarbon development of each shared-access zone. Each government would make its best effort to develop these resources in accordance with the agreed timetable. In the event either country determined it was unable to meet that timetable or believed the other country had failed to meet the timetable, it would inform the other country and the two governments would consult with a view to making any adjustment in the operation of the access regime that might be necessary to carry out equitably the purpose of the Agreement. If an adjustment could not be agreed upon in a reasonable time, usually three months, by the governments in consultation, they would refer the issue for impartial settlement in accordance with paragraph 10. Should it be determined by agreement or arbitration that one country had failed unreasonably to meet an agreed developmental timetable, it would forfeit in whole or in part its rights of purchase under the Agreement in respect of that shared-access zone until the situation was rectified.

4. If the volume of hydrocarbons produced from a shared-access zone by one country exceeded the volume of hydrocarbons produced from that zone by the other country by more than an agreed minimum during the calendar year, during the succeeding year the country with the larger production from that zone would make available for purchase by the other country a volume of hydrocarbons in an amount equal to half the difference.**

5. Any transaction under the Agreement would be exempt from any form of export restriction, and deliveries pursuant to the Agreement would be in addition to exports which would have been permitted in absence of the Agreement.

* Further consideration is to be given to the question of whether hydrocarbons should be made available from the shared-access zones or from other sources.

** Further consideration is to be given to the question of determination of agreed minimums for each zone and to whether clarification is needed as to the non-cumulative character of the rights of purchase.

6. The price and origin of hydrocarbons sold pursuant to the Agreement would be negotiated freely between buyer and seller. However, in the event that either country believed an additional quantity of hydrocarbons should be made available, but had not been, for purchase pursuant to the Agreement, the two governments would consult with a view to discharging the responsibility of the surplus country to make available for purchase at the world market price of oil or the equivalent commodity value of gas any quantity of hydrocarbons necessary to carry out the purpose of the Agreement, and the government of any surplus country would undertake responsibility for making up any remaining deficit.

7. It would be the responsibility of the country with an obligation to make hydrocarbons available for purchase to inform the other country of arrangements made to effectuate the commitment and of sales made pursuant to those arrangements.

8. Sales made pursuant to the Agreement would be free of any export charges or other taxes except income taxes and royalties.

9. For the purposes of this Agreement, obligations to make oil available for purchase would be determined separately from obligations to make natural gas available for purchase.

10. Any dispute arising in respect of the interpretation or application of the Agreement would be resolved by consultation, or failing agreement, by impartial procedures for dispute settlement. (Specific procedures for dispute settlement should be developed for inclusion in the Agreement.)

Annex 37

NORTH ATLANTIC OUTER CONTINENTAL SHELF OIL AND GAS LEASE SALE NO. 42
(UNITED STATES *FEDERAL REGISTER*, VOLUME 42, NUMBER 251, 30 DECEMBER
1977, PAGES 65285-65290)

[Not reproduced]

Annex 38

"27 TRACTS DELETED FROM NORTH ATLANTIC OCS SALE", UNITED STATES
DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY, NEWS RELEASE
(28 JANUARY 1978)

[Not reproduced]

Annex 39**JOINT REPORT BY SPECIAL NEGOTIATORS ON CANADA-UNITED STATES MARITIME
BOUNDARIES AND RELATED RESOURCE ISSUES, 28 MARCH 1978****DEPARTMENT OF EXTERNAL AFFAIRS****COMMUNIQUE****No. 29****Release:****For Immediate Release
March 28, 1978**

The Secretary of State for External Affairs, the Honourable Don Jamieson, announced today the release of the Joint Report by Special Negotiators on Canada-U.S. Maritime Boundaries and Related Resource Issues.

The Governments of Canada and the United States have approved the Joint Report, the text of which is attached. The Governments have instructed the Negotiators — Marcel Cadieux for Canada and Lloyd N. Cutler for the United States — to continue their efforts to seek a comprehensive settlement of trans-boundary maritime issues between the two countries. The Governments have also accepted the Negotiators' recommendation to conclude interim arrangements to govern reciprocal fishing during 1978. It is expected that the proposed agreement will be signed shortly and its text released at the time of signature.

Officials of the two Governments will continue discussions on technical and legal aspects of a long-term agreement and formal negotiations are expected to resume in the summer.

JOINT REPORT TO THE GOVERNMENTS OF CANADA AND
THE UNITED STATES BY SPECIAL MARITIME NEGOTIATORS,
MARCEL CADIEUX AND LLOYD N. CUTLER

On August 1, 1977, the Governments of Canada and the United States appointed Special Negotiators in an effort to reach a comprehensive agreement covering their maritime boundaries and related marine resource issues. In October, 1977, the two Governments approved the basic principles of a comprehensive settlement recommended by the Special Negotiators and directed the Negotiators to continue their discussions with a view to recommending detailed terms. This Joint Report by the Special Negotiators is intended to inform Governments of the current status of the negotiations.

Since October, 1977, the Negotiators and their aides have met regularly in both countries to address the many issues involved. They have consulted closely with their respective provincial, state and industry interests. Together they have reviewed in detail proposals for: (1) the allocation of management responsibilities and the assignment of agreed fishing shares for each country in fish stocks of common interest on both coasts; (2) specific arrangements for the development and sharing of hydrocarbon resources in boundary areas; and (3) delimitation of the four unresolved maritime boundaries between the two countries.

The Negotiators believe that significant progress has been made toward reaching an overall agreement. Of the numerous issues to be dealt with in such an agreement, some admittedly difficult problems yet remain to be resolved and the Negotiators believe that additional reflection and consultation in each country will be required.

The Negotiators have agreed to recommend to Governments the terms of interim arrangements to govern reciprocal fishing during 1978. The proposed arrangements would continue reciprocal fishing as previously agreed with new mechanisms for consultation and resolution of differences and to help ensure that existing fishing patterns are maintained. The arrangements would remain in force through 1978 unless superseded by a comprehensive settlement or terminated by either Government after notice. In the United States, legislative action will be required to bring the interim agreement into force.

The Special Negotiators are of the view that with continuing effort a comprehensive settlement can be reached in 1978. They strongly believe that an agreement which encompasses, in an interrelated framework, the full range of transboundary maritime issues of common concern to Canada and the United States, including salmon interceptions, is the most promising means of assuring that the important maritime resources along our common borders can be effectively managed in our mutual interest.

1. The terms and conditions of Article V of the 1977 Reciprocal Agreement are replaced by the following:

- a. On the Pacific Coast, there shall be no fishing for salmon by nationals and vessels of either Party in the zone of the other, except salmon taken by trolling beyond 12 nautical miles of the coast and salmon taken by trolling between 3 and 12 nautical miles in the area west of a line joining Bonilla Point and Tatoosh Island; north of a line projected due west on 47 degrees 6 minutes North latitude, and south of a line projected from Bonilla Point to latitude 48 degrees 29.7 minutes North, longitude 125 degrees 00.7 minutes West.
- b. Each Party shall have the right to limit such fishing for salmon in its zone by nationals and vessels of the other to the same time periods as its nationals and vessels are permitted such fishing for salmon in the zone of the other.
- c. In light of the number of immature salmon originating in the rivers of the United States found in the Swiftsure Bank area of British Columbia Statistical Area 21, Canada agrees to consult with the United States about the conservation need to close this area to all salmon fishing from April 15, 1978 through June 14, 1978. If the United States concludes that there is a conservation need to close the fishery during such period but Canada does not do so, the United States shall have no obligation to permit salmon fishing in its Pacific Coast waters by nationals and vessels of Canada on more favorable terms than the terms of the 1977 Reciprocal Agreement.
- d. In light of the fact that U.S. and Canadian regulations differ as to the chinook salmon size limit, the United States agrees that Canadian salmon troll vessels, in the U.S. fishery conservation zone off the coast of the State of Washington, north of a line drawn due west from La Push (47 degrees 55 minutes North latitude) may have chinook salmon between 26 and 28 inches on board, subject to the following conditions:

- i) All such fish must be caught in the Canadian zone;
- ii) Upon entering the U.S. fishery conservation zone, all vessels shall report by radio to U.S. authorities on designated frequencies the number of chinook salmon on board the vessel between 26 and 28 inches in length, and shall notify the same authorities upon leaving the zone. The two Parties recognize that in certain areas, salmon fishermen traditionally troll back and forth between the zones of the two countries, and that certain problems could arise with regard to the reporting requirements outlined in this paragraph when vessels are conducting continuous fishing operations in these areas. It is agreed that the appropriate enforcement authorities of the two Governments shall establish uniform procedures which recognize this particular situation and minimize disruption of fishing.
- iii) Such fish shall be segregated or grouped for identification on board the vessel and the location and number of such fish recorded by the Master in order to facilitate inspection and enforcement. U.S. and Canadian enforcement authorities shall make periodic inspections to enforce this provision.

2. The two Parties note that negotiations are continuing toward an agreement on interceptions of Pacific salmon and that both Governments are committed to an intensive effort to conclude these negotiations in 1978. Such an agreement would provide a framework for improved management, development, and utilization of these salmon stocks. In the context of such an agreement, the Canadian authorities would be prepared to work with the U.S. authorities in developing coordinated regulations for the ocean troll fishery, including increased minimum size limits, such as 28 inches for chinook salmon, and other measures, off the Pacific coasts of Canada and the U.S.

3. The Parties note that paragraph 1 of this Annex

provides for Canadian salmon troll fishing in a larger area in the U.S. fishery conservation zone than that provided for originally in the 1977 Reciprocal Agreement. The two Parties agree that this expansion of area shall not provide for an increase in the total Canadian salmon troll fishing effort in the U.S. fishery conservation zone over the existing level as intended in Article II, paragraph 3 of the 1977 Reciprocal Agreement. In accordance with paragraph 5 of this Annex, the two Parties shall consult to ensure that procedures are developed to monitor Canadian effort in the U.S. zone and to exchange information regarding that effort.

4. The United States recognizes that Canadian salmon troll vessels that might lawfully possess chinook salmon between 26 and 28 inches periodically lay-to at night in areas north of La Push, and that because of existing strong southerly currents, they may, while laying-to at night, drift south of 47 degrees 55 minutes North. The U.S. undertakes to assure that U.S. enforcement authorities will take this factor into account, but notes that no Canadian troll vessels with 26-28 inch fish aboard shall be permitted to conduct fishing operations south of La Push, nor drift further south than 47 degrees 46 minutes North latitude.

5. The two Parties recognize that the 1977 Reciprocal Agreement deals principally with the subject of reciprocal fishing privileges in their respective zones and that the rational management of fisheries subject to reciprocal fishing privileges is necessary in order to ensure their effective conservation. The two Parties recognize that their domestic management decisions regarding stocks of mutual interest may have conservation impacts of joint concern and therefore agree to consult quarterly, and at such other times as either may request, regarding appropriate action each may take to limit catches from these stocks. With this in mind, and in order to facilitate the harmonious implementation of this Agreement, the Parties agree that the following consultative mechanisms and procedures shall be established:

- a. There shall be established two Consultative Committees, one for the Atlantic Coast and one for the Pacific Coast (hereinafter referred to as the Committees).
- b. Each Committee shall be composed of members appointed by each Party who may be accompanied by advisors.
- c. The Committees shall serve as fora for consultation on matters concerning the implementation of this Agreement. Unless otherwise agreed between the Parties, all questions shall be referred in the first instance to the appropriate Committee for its consideration. Each Committee shall meet at the request of either Party and at least quarterly.
- d. Each Party agrees to notify the other of proposed regulatory measures affecting fisheries subject to reciprocal fishing privileges and to consult with the other Party on such measures within the Committees referred to above. Such consultations shall take place prior to the implementation of the regulatory measures concerned. Where one Party believes that urgent conservation concerns require immediate action, the Committee shall consider the matter within 48 hours of notification to the other Party during which time the proposed regulatory measure shall not be implemented.
- e. Matters which have not been successfully resolved by a Committee, and matters of general concern which do not pertain solely to either the Atlantic or to the Pacific Coasts, shall be referred to the Special Negotiators of the long-term agreement without delay. In the absence of either Special Negotiator the matter shall be referred to an appropriately designated alternate.

6. In the event that a Party takes any action which, in the view of the other Party, adversely affects its fisheries in the zone of the Party taking action or in the boundary regions in a manner substantially incompatible with this Agreement, the consultative process described in paragraph 5

above shall be utilized. In the event that a matter is not thereby resolved within 14 days of referral to the Special Negotiators or designated alternates, either Party may take reciprocal action with regard to the activities of the fishing vessels of the other Party to an extent sufficient to re-establish the balance of fisheries interests between the two Parties.

7. The two Parties note the importance of exchanging catch and effort statistics on a regular and timely basis and monitoring the fishing activities of the vessels of one country fishing in the zone of the other. The Parties also note the need for vessels to be more conspicuously marked so as to provide for more effective enforcement surveillance. It is agreed that the two Parties will consult, in accordance with Paragraph 5 of this Annex, on these matters in order to establish more effective procedures. In particular, each Party recognizes the interest in establishing reciprocal procedures for reporting by vessels of the other country of entry and departure into its zone and of catches taken in its zone, and agrees to consult in this regard.

8. Noting Article IX of the 1977 Reciprocal Agreement, the two Parties agree that in order to ensure the full and effective enforcement of this Agreement in the boundary region on the Atlantic coast, the enforcement authorities of each will closely coordinate their inspection and enforcement activities, including appropriate steps to facilitate the exchange of observers on the vessels of each Party.

Annex 40

TRANSITIONAL UNITED STATES FISHING VESSEL LICENCE EXEMPTION
REGULATIONS, REVOCATION, ORDER IN COUNCIL P.C. 1978-1833, 2 JUNE 1978
(*CANADA GAZETTE*, PART II, EXTRA, 2 JUNE 1978, PAGE 1)

[Not reproduced]

Annex 41

PROPOSED AMENDMENT TO THE FISHING ZONES OF CANADA (ZONES 4 AND 5)
ORDER, PROPOSED ORDER IN COUNCIL, 15 SEPTEMBER 1978 (*CANADA GAZETTE*,
PART I, VOLUME 112, EXTRA NUMBER 79, 15 SEPTEMBER 1978, PAGES 1-3)

[Not reproduced]

Annex 42

FISHING ZONES OF CANADA (ZONES 4 AND 5) ORDER, AMENDMENT, ORDER IN
COUNCIL P.C. 1979-184, 25 JANUARY 1979 (*CANADA GAZETTE*, PART II,
VOLUME 113, NUMBER 3, 14 FEBRUARY 1979, PAGES 482-483)

[Not reproduced]

Annex 43

MESSAGE OF 3 MAY 1979 FROM THE PRESIDENT OF THE UNITED STATES TO THE
SENATE OF THE UNITED STATES TRANSMITTING THE MARITIME BOUNDARY
SETTLEMENT TREATY AND THE AGREEMENT ON EAST COAST FISHERY RESOURCES,
96TH CONGRESS, 1ST SESSION

96TH CONGRESS
1st Session

SENATE

EXECUTIVE
U AND V

MARITIME BOUNDARY SETTLEMENT TREATY
WITH CANADA AND THE AGREEMENT ON EAST
COAST FISHERY RESOURCES WITH CANADA

MESSAGE

FROM

THE PRESIDENT OF THE
UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF
AMERICA AND THE GOVERNMENT OF CANADA TO SUBMIT TO BINDING
DISPUTE SETTLEMENT THE DELIMITATION OF THE MARITIME BOUND-
ARY IN THE GULF OF MAINE AREA, SIGNED AT WASHINGTON ON MARCH
29, 1979 (EX. U, 96-1) AND THE AGREEMENT BETWEEN THE GOVERNMENT
OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF
CANADA ON EAST COAST FISHERY RESOURCES, SIGNED AT WASHING-
TON ON MARCH 29, 1979 (EX. V, 96-1)

MAY 3, 1979.—Treaty was read the first time and, together with the accompanying papers,
referred to the Committee on Foreign Relations and ordered to be printed for the use of the
Senate

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1979

LETTER OF TRANSMITTAL

THE WHITE HOUSE,
May 3, 1979.

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, two separate but closely related treaties with Canada: the Treaty between the Government of the United States of America and the Government of Canada to Submit to Binding Dispute Settlement the Delimitation of the Maritime Boundary in the Gulf of Maine Area, and the Agreement between the Government of the United States of America and the Government of Canada on East Coast Fishery Resources. Both Treaties were signed at Washington on March 29, 1979, and they will enter into force together upon exchange of instruments of ratification.

I also transmit for the information of the Senate the report of the Secretary of State with respect to these Treaties.

These Treaties will make an important contribution to good relations between the United States and Canada by resolving, in a way that is fair to both Parties, a vexing dispute over fisheries and the maritime boundary in the Atlantic which was brought to the fore when both countries extended fisheries jurisdiction to 200 nautical miles in 1977.

The maritime boundary settlement treaty provides for the delimitation of the maritime boundary in the Gulf of Maine Area by a Chamber of the International Court of Justice or, if such a Chamber cannot be constituted in accordance with the wishes of the Parties, by an *ad hoc* Court of Arbitration. Resolution of the maritime boundary by impartial dispute settlement has proved necessary because the two countries have not been able to agree upon the location of the maritime boundary in the Gulf of Maine Area.

The fisheries treaty contains provisions for the conservation, management and utilization of fish stocks of mutual interest off the east coast of both countries. Detailed entitlement shares for various fish stocks are set forth in the agreement, with the shares subject to review every ten years. A joint fisheries commission will be established to implement the agreement, and dispute settlement mechanisms will be included as part of the institutional framework to resolve differences that might arise in the interpretation or implementation of the agreement.

I believe that these treaties are in the best interests of the United States. The fisheries treaty protects United States interests in the important fisheries on Georges Bank; and settlement of the boundary will facilitate development of the non-living resources of the continental shelf. Further delay in resolution of these issues would be detrimental to conservation of the fishery resources and could lead to serious irritants in United States relations with Canada.

I recommend that the Senate give early and favorable consideration to these treaties and give its advice and consent to their ratification.

JIMMY CARTER.

Annex 44

**PREPARED STATEMENT OF LLOYD N. CUTLER SUBMITTED TO THE SUBCOMMITTEE ON
FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT, COMMITTEE ON
MERCHANT MARINE AND FISHERIES, UNITED STATES HOUSE OF REPRESENTATIVES,
96TH CONGRESS, FIRST SESSION ON THE UNITED STATES-CANADIAN FISHING
AGREEMENTS, 22 JUNE 1979**

[The following was submitted for the record:]

PREPARED STATEMENT OF LLOYD N. CUTLER

The treaties signed on March 29 with Canada represent the culmination of two years of intensive negotiations on the issue of conservation and management of East Coast fisheries resources and the delimitation of the maritime boundary between the United States and Canada in the Gulf of Maine area. These negotiations were undertaken in light of the extension by both countries of fisheries jurisdiction to a distance of 200 nautical miles from their coasts. It should be pointed out, prior to 1976 the United States and Canada discussed the delimitation of the continental shelf in the Gulf of Maine Area. However, an agreement on the continental shelf delimitation had not been achieved when, in 1976, both the United States and Canada enacted legislation extending fisheries jurisdiction to 200 miles. The establishment of fisheries zones by both countries made the delimitation issue of pressing importance, most particularly in light of the fact that the area of jurisdiction claimed by both the United States and Canada overlapped in the extremely rich fishing area of Georges Bank. We have now concluded treaties which provide for the coordinated conservation and management of East Coast fisheries of mutual concern to both countries and, having failed to reach a negotiated settlement of the boundary itself, we have agreed with Canada to submit the issue of the maritime boundary delimitation to binding third party dispute settlement.

Before going into the specifics of the fisheries agreement, let me outline for you the interrelationship of the boundary settlement and fisheries treaties. The two treaties will enter into force simultaneously, that is by their own provisions neither can enter into force until such time as the other enters into force. This provision ensures that the maritime boundary will be established and that we will not find ourselves bound by a long term fisheries agreement while the dispute over the maritime boundary lingers on.

The maritime boundary settlement treaty provides for the submission of the maritime boundary dispute to a chamber of the World Court on terms set out in the Special Agreement annexed to the treaty. That Special Agreement asks a special chamber of the Court to be composed of five persons, three of whom shall be elected by and from the members of the Court, and two of whom shall be chosen by the United States and Canada, to draw the line which shall divide the continental shelf and fisheries zones of the United States and Canada in the Gulf of Maine area.

The settlement of the maritime boundary and fisheries issues is vital. The existence of a disputed area in which both the United States and Canada claim jurisdiction over fisheries prevents effective conservation and management of important living resources. In the absence of an agreement two unilateral and uncoordinated sets of fisheries management regulations are in effect in the disputed area for some stocks. For other stocks differing national views over what each country should harvest, or differing views over how a stock should be managed, have hindered or frustrated the implementation of conservation programs. In this situation there is a tendency on the part of each country's fishermen to increase their fishing effort to levels which if unabated may prejudice future uses of the fish stocks by both countries. The effect of increased effort was dramatically evidenced in 1978, when Canada increased its take of cod, haddock and lobster in the disputed area to such an extent that its share of Georges Bank-southern New England cod rose from 17 percent for the 1965-76 period to 26 percent in 1978, its haddock share off New England increased from 15 percent to 38 percent and its share of lobsters in the disputed area from 29.3 percent in 1976 to 59 percent in 1977. From fishermen to consumer, it is in everyone's best interest to establish a means of enabling fishermen of both countries to fish for guaranteed shares in a non-competitive manner which will protect the resources from over-exploitation and the consequent economic hardship. Continuation of the status quo for a protracted period may exacerbate existing tensions and lead to serious problems in U.S.-Canadian relations. Additionally, the uncertainty created by the dispute precludes development of hydrocarbon resources of significant potential.

The basic objective of the Fisheries Agreement is to protect the established fisheries of both countries in the disputed area and ensure the orderly growth of fisheries for stocks which have been depleted by third country fishing or not fully utilized by U.S. fishermen. The Agreement sets forth specific principles, based on the U.S. Fishery Conservation and Management Act of 1976, which will govern fisheries management and ensure that each stock will be managed in a coordinated manner.

The fisheries agreement establishes a joint United States-Canadian fisheries commission through which the many stocks of mutual concern to both the United States

and Canada occurring off our East Coast can be effectively managed. The commission would have 14 members, 7 appointed by each Party, and 2 co-chairmen who would not be part of the national sections. Each national section will have one vote, which will be cast as decided by a majority of its members. The U.S. section would include three representatives from the New England Regional Fishery Management Council, two representatives from the Mid-Atlantic Regional Fishery Management Council and two Government officials from the National Oceanic and Atmosphere Administration. This commission will provide a forum for continuing consultations on fishery matters and will be responsible for the management of stocks listed in the annexes to the Agreement. The stocks listed in Annex A are those which where normally regarded as transboundary stocks, which will be jointly managed by the two Parties through the commission. The stocks listed in Annex B are those in which one Party has a primary interest and for which that one Party will be responsible for proposing management measures. The stocks listed in Annex C are those in which one Party has an overriding interest and for which the commission will provide a forum for consultation. The Agreement provides for different procedures tailored to each management regime for resolving disputes.

As I mentioned earlier, Mr. Chairman, the management mechanism established by the Agreement provides for a joint management to transboundary stocks such as mackerel and pollock, which migrate off the coasts of both Canada and the United States, and management by either Canada or the United States of stocks in which it has the primary interest. Under the Agreement the United States has primary management responsibility, and the greater share of the allowable catch, of the great majority of stocks in the disputed area of Georges Bank. U.S. fishermen will maintain their dominance in the cod, haddock, yellowtail flounder, redfish and white hake fisheries off New England and will reap the main benefit from herring and mackerel as those stocks are replenished.

In light of the distribution of stocks and the U.S. historical catches, as well as the opportunities for increased fishing which results from the exclusion of third country vessels which formerly engaged in unrestricted fishing in the area, the entitlement shares established by the Agreement are fair and equitably balanced. With one minor exception, each U.S. entitlement to stocks found on Georges Bank exceeds the share of the total catch which the U.S. took over the 1965-77 period. For example, while the U.S. 1965-77 share for haddock off New England was 52.8 percent, the U.S. share under the Agreement is 79 percent; the U.S. 1965-77 share for Georges Bank—southern New England cod was 47.4 percent, while under the Agreement the U.S. share is 83 percent; and, the U.S. share for Georges Bank scallops under the Agreement is 26.65 percent, while the U.S. share for 1965-77 was 19.9 percent. Additionally, it should be noted that the U.S. entitlement under the Agreement is in the area of 90 percent for many species which the U.S. has never fished in any large amount, thus affording an opportunity for substantial growth and development in the U.S. fishing industry. For example, the U.S. entitlement for both red and silver hake is 90 percent in area 5Ze while the U.S. historical share of the total catch was 1.08 percent and 7.66 percent respectively. The U.S. share for many important stocks covered by the Agreement is similarly enhanced when viewed from the perspective of the ratio of U.S. historical shares to Canadian historical shares. In the case of sixteen stocks, the U.S. share exceeds the historical U.S. share of the combined U.S. and Canadian catch. These stocks include scallops in 5Ze, mackerel in 3, 4, 5 and 6, white hake in 4VWX, cod in 5Z, 4VsW and 4X, haddock in 4VW, 4X, and 5, and redfish in 4VWX and 5.

At this time, allow me to say a brief word about the determination of U.S. historical shares. It is obvious that including catch data prior to 1965 would tend to increase the U.S. average proportion of the long-term combined U.S.-Canadian catches from a number of stocks, particularly those stocks on Georges Bank and off New England, since Canada did not enter these fisheries until the late 1950's and early 1960's. However, these negotiations were conducted under the premise that it was essential to reach a sharing arrangement for resources that are vulnerable to overfishing and are available to both countries as boundary or transboundary stocks. This is essential if the resources are to be sustained at productive levels over the long term.

For those stocks subject to substantial existing U.S. and Canadian fisheries, it could not be expected that any sharing arrangement could be negotiated that would cause a major dislocation in the existing fisheries of one country that would rebound to the benefit of the other country. Thus, the recent historical catch data was considered to be of more relevance to the negotiation of entitlement shares than data from earlier periods. For example, the United States successfully maintained

that its share of Georges Bank scallops should be the approximate share it took in the last couple of years rather than the 15 percent it took during 1971-76.

The terms of the Agreement neither present an imbalance in favor of Canada, nor are they inconsistent with the intent of the Fishery Conservation and Management Act. Again, the principles on which management is to be based are fully consistent with those contained in our own fisheries legislation. Now, let me discuss the benefits of reciprocal fishing under this agreement.

At the present time we have no fisheries agreement with Canada. There is no fishing by either country in the undisputed fishing zone of the other. Without an agreement, U.S. fishermen can no longer fish off Canada for cod, haddock, redfish and pollock.

The Agreement would allow U.S. fishermen to resume fishing for redfish off Canada for a 10 year period. In return Canadian vessels would be permitted to fish for 9 percent of the total allowable catch established by the U.S. for *Loligo* squid for a similar period off the coast of the U.S. The Agreement would restore to U.S. fishermen permanent access to cod and haddock in Canadian waters. Under the Agreement U.S. fishermen will fish the redfish in the Canadian zone under the same terms and conditions as the Canadian redfish fishermen. On the other hand, under the Agreement the U.S. may impose more stringent restrictions on the Canadian *Loligo* fishermen than on the U.S. *Loligo* fishermen in order to assure, particularly, strict limits on the Canadian *Loligo* fishermen's incidental catch of other fish such as butterfish. While it is always difficult to make a comparison of the relative economic worth of particular fisheries, it is clear that the 9 percent *Loligo* entitlement is a fair trade for the 35 percent redfish entitlement in 4V, 4W, and 4X, not to speak of the redfish entitlement in 4R, 4S, 4T and 30 or 3P.

As I mentioned, access to cod and haddock in Canadian waters would also be restored under the Agreement. The Agreement gives the U.S. an entitlement to 10 percent of the haddock in Area 4X and 4VW, and 7.5 percent of the cod in 4X, allowing approximately a hundred U.S. vessels to resume their traditional fishery for these species. We estimate that in 1980 the redfish, cod, and haddock entitlements in Canadian waters will be worth well over \$4 million in revenues to fishermen, and almost \$7 million to processors and wholesalers. We believe this would result in a gain of over a hundred full-time jobs in the processing sector alone.

There are some particular aspects of the Fisheries Agreement which warrant specific analysis, especially in light of the criticisms which have been expressed by some segments of the fishing industry. These include the U.S. scallop entitlement under the Agreement, the role of the Regional Councils and the duration of the Agreement.

Mr. Chairman, first let me address the subject of scallops. Prior to 1960 the U.S. has the predominant scallop interest on Georges Bank. Through a subsidy program, however, the Canadian fleet was able to expand substantially, while U.S. scallopers were turning their efforts away from Georges Bank to the mid-Atlantic grounds. As a result, since the early 1960's Canada has taken the predominant share of scallops on Georges Bank.

There are three important facts to bear in mind in analysing the initial U.S. entitlement under the Agreement to 26.65 percent of the scallops on Georges Bank. First, the U.S. 26.65 percent entitlement approximates the recent U.S. catch levels of approximately 20 percent. Second, some 70-80 percent of the scallops on Georges Bank come from the disputed area. Third, although the provisional estimate for a potential long term sustainable catch level for Georges Bank scallops is 10,000 metric tons, the average annual combined U.S. and Canadian catch for 1977-78 was over 17,000 metric tons.

Because this is presently Canada's largest fishery on Georges Bank and because it takes place mostly in the disputed area, Canada would not agree to any U.S. entitlement higher than that basically reflecting the status quo. In assessing the scallop provisions of the agreement it must be noted that the New England Regional Fishery Management Council is only now developing a scallop management plan, with the result that since the passage of the Fishery Conservation and Management Act the U.S. scallop fleet has been unregulated. Furthermore, because of the very high prices which scallops are bringing, many new vessels have entered the fishery and more can be expected. If constraints are not placed on both the U.S. and Canadian scallop fleets, the resource may be seriously, if not critically, depleted to the detriment of all of us, most particularly the scallop industry.

While it is not difficult to understand the motivation of the critics of the Agreement who wish to see Canadian vessels expelled from the scallop fishery which they have conducted on Georges Bank over the past twenty years, this is simply an

unrealistic objective. And there can be no question that continuation of an unregulated scallop fishery, while clearly attractive in the very short run to those vessels presently engaged in this highly lucrative fishery, is not in the long-term interest of the United States.

On the subject of the role of the Regional Councils under this Agreement, critics of the Agreement have argued that it will create an impractical management bureaucracy which will weaken the role of the Regional Councils. This criticism does not take into account the nature of the issues and misrepresents the provisions of the Agreement.

The Agreement ensures that under the proposed East Coast Fisheries Commission necessary management decisions concerning those stocks affected by the fisheries of both countries will be made in a timely and coordinated manner. If the Commission, or Government, cannot come to a meeting of the minds, decisions will be referred to a dispute settlement procedures, thereby, both guaranteeing that decisions will in fact be made and promoting decision-making at the Commission level. It should be noted that while Annex A stocks will be jointly managed through the Commission, U.S. management measures for Annex B stocks for which the U.S. has primary management responsibility will be reviewed in the Commission and put into effect, subject to change only if they are found to be "clearly inconsistent" with the governing principles set forth in the Agreement. With respect to Annex C stocks for which the U.S. has management responsibility, the Commission will serve only as a forum for consultation on the management measures developed by the U.S. The role of the Regional Councils will not be subordinated under the Agreement, but will be enhanced because the U.S. will have a voice in the management of several stocks found in the Canadian zone.

Under the Fishery Conservation and Management Act the Regional Councils initiate the management process, for which the Secretary of Commerce has final authority and responsibility. Under the Agreement the Councils will initiate and otherwise have a significant voice in implementing the U.S. position. Preparation of management proposals for the many stocks for which the U.S. has primary management responsibility will be the task of the Regional Councils. Since the U.S. national section, five of whose seven members will come from the Regional Councils, will cast a single vote on all decisions in the Commission, it is clear that the Council members will have the majority voice in determining the U.S. position.

Let me now say a few words on the duration of the Agreement. It has been argued by critics of the Agreement that it is unbalanced and, therefore, should be of limited duration.

Balance depends upon perspective. For example, if we had no fisheries agreement, and in an adjudication of the boundary the U.S. position was fully upheld, we would be under no obligation to allow Canada access to any of the fisheries resources of Georges Bank, and we could have a free hand in the management of those fisheries. On the other hand, what if the Canadian position prevailed? In that case U.S. fishermen would be barred from the northeastern third of Georges Bank, an important area for scallops, cod, haddock and many other species. Moreover, because in that circumstance all the stocks on Georges Bank would be transboundary in nature, we would still have to manage the entire Georges Bank jointly with Canada. The Fishery Agreement provides insurance against the inherent risks of the boundary adjudication. As such it should be permanent, since the boundary will be permanent.

Furthermore, it must be recognized that the entitlement shares of each country are not frozen for all time, but are subject to a readjustment every ten years based primarily on the location of the stocks with respect to the maritime boundary, once that boundary has been determined. In order to avoid sudden disruption and to provide insurance in the event of an adverse decision in the boundary adjudication, the Agreement provides that neither country's share of any particular stock can in the long run be reduced by more than one-third.

There are those who have argued that the U.S. should have concluded an agreement with Canada simply to delimit the maritime boundary, letting the chips fall where they may with each side fishing on its own side of the line. There are several reasons we have concluded two agreements rather than one. First, it was not possible to reach agreement with Canada for resolution of the boundary issue absent a long term fisheries agreement. Second, while good fences may make good neighbors in some situations, many of the fish in question simply do not respect such boundaries and their conservation is dependent upon a cooperative effort. Without such a cooperative effort the fishermen of either country could thwart the well-intentioned conservation measures undertaken by the other and both the fishermen and fish would suffer. But bearing in mind the relevance of the location of the

boundary to just entitlement shares, we have included in the Agreement provisions for readjustment of those entitlements following delimitation of the boundary. Such redeterminations can be made every 10 years, based on the location of the stocks and certain other factors.

The Agreement establishes an equitable balance in terms of entitlements and access viewed in historical context. It provides a very significant opportunity for growth in the U.S. harvest and establishes a mechanism for effective conservations and management. This will mean long term gains for all concerned. The stability that results from sound conservation and management will provide for orderly expansion of the industry and for the preservation and growth of valuable fishery resources off our coast.

U.S. GOVERNMENT COMMENTS ON CRITICISMS OF THE UNITED STATES-CANADIAN AGREEMENT ON EAST COAST FISHERY RESOURCES

On May 15, 1979, the American Fisheries Defense Committee, an organization representing segments of the U.S. fishing industry, issued a press release attacking the recently concluded U.S.-Canadian Agreement on East Coast Fisheries and the related Treaty providing for settlement of the U.S. Maritime Boundary with Canada in the Gulf of Maine Area. In the view of the U.S. Government the press release of the American Fisheries Defense Committee is inaccurate in many respects and seriously misleading.

1. The Defense Committee argues that "the State Department would trade away this country's stake in the valuable fishery resources of Georges Bank" for Canada's cooperation in submitting to arbitration a minor seabed boundary dispute covering a "small fraction of the fishing grounds of concern . . . (about 12 percent)."

The United States did not trade away U.S. fisheries on Georges Bank. Under the Agreement the U.S. entitlement share for every stock which is found in the area of overlapping claims is equal to or higher than the percentage of the total catch which has been taken by U.S. fishermen from 1965-77, and with respect to many stocks covered by the Agreement the U.S. entitlement share far exceeds, by as much as ten times, the share the U.S. has historically taken. The U.S. share for many important stocks covered by the Agreement is similarly enhanced when viewed from the perspective of the ratio of U.S. historical shares to Canadian historical shares. In the case of sixteen stocks, including scallops in 5Ze, mackerel in 3, 4, 5 and 6, white hake in 4VWX, cod in 5Z, 4VsW and 4X, haddock in 4VW, 4X and 5, and redfish in 4VWX and 5 the U.S. share vis-à-vis Canada exceeds the ratio of U.S.-Canadian historical catches.

The boundary dispute is not "minor." The area of overlapping claims covers approximately 32 percent of Georges Bank, and 42 percent if the new Canadian claim is considered, embracing one of the richest fishing grounds in the world. That area also has significant oil and gas potential. Settlement of the issue is extremely important to U.S.-Canadian relations. The two treaties now before the Senate provide a means of settling the dispute and for increased entitlement shares for stocks found in the boundary region to either country depending on the outcome of the boundary adjudication.

At the same time the Fishery Agreement protects the essential fishery interests of both countries in the event of a disadvantageous outcome of the boundary adjudication by limiting the amount of the adjustment of stock shares and stretching out the time over which the full adjustment would occur, while providing for coordinated management and long term conservation of the stocks. Opponents of the treaties apparently prefer a winner take all approach.

2. The Defense Committee claims that the fisheries agreement would "grant heavily subsidized Canadian fishermen permanent access to *exclusive* United States fisheries which have historically yielded a substantial share of the overall East Coast fisheries catch" (Emphasis added).

The Agreement does not grant Canada permanent access to any *exclusive* U.S. fishery. Every fishery for which Canada has an entitlement under the Agreement, with the single exception of the ten year fishery for *Loligo squid*, is a fishery which Canada has established over the years in the boundary region or which Canada could pursue in the absence of an agreement. The fish stocks concerned are distributed throughout Georges Bank, including the disputed area, or migrate across the Fundian Channel to the waters off Nova Scotia. Under the Agreement the United States is entitled to the greater share of every fish stock found south of the Fundian Channel except scallops, pollock and cusk.

3. The Defense Committee claims that the Agreement provides for co-management and in some cases gives Canada *primary* control over a substantial area of the U.S. 200-mile fisheries zone.

Annex 45

"INTERIOR DEPARTMENT ACCEPTS HIGH BIDS TOTALING \$816,516,546 FOR OFFSHORE OIL AND GAS LEASES ON GEORGES BANK IN THE NORTH ATLANTIC", UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, NEWS RELEASE (31 DECEMBER 1979)

[Not reproduced]

Annex 46

"TREATY DELAY SNAGS U.S. TIES TO CANADA", BY HENRY GINIGER
(*THE NEW YORK TIMES*, 15 JUNE 1980)

[Not reproduced]

Annex 47

TELEX FROM THE UNITED STATES SECRETARY OF STATE TO THE UNITED STATES COAST GUARD CONCERNING ENFORCEMENT OF UNITED STATES FISHERY LAWS IN THE GULF OF MAINE (19 NOVEMBER 1981)

[Not reproduced]

Annex 48

**CANADA-NOVA SCOTIA AGREEMENT ON OFFSHORE OIL AND GAS RESOURCE
MANAGEMENT AND REVENUE SHARING (2 MARCH 1982)**

[Not reproduced]

Annex 49

CANADA OIL AND GAS EXPLORATORY PERMITS (1964-1971)

[Not reproduced]

Annex 50

**CORRESPONDENCE BETWEEN CANADIAN AUTHORITIES AND UNITED STATES
COMPANIES CONCERNING CANADIAN REGULATIONS WITH RESPECT TO OFFSHORE
EXPLORATION (ATTACHMENTS OMITTED) (1969 AND 1975)**

6400 North Central Expressway,
P.O. Box 64400,
Dallas, Texas 75206.

October 13, 1969.

Mr. M. Bell,
Conservation Engineer,
Resource Administration Division,
Department of Energy, Mines and Resources,
Ottawa, Alberta, Canada.

Dear Mr. Bell:

After beginning operations as scheduled early in August, ESI has now completed 3,731 miles of new, detailed control for addition to the 14,391 mile reconnaissance survey completed during 1968. This work effectively provides a $2\frac{1}{2} \times 5$ mile grid of gravity and magnetic control offshore New Jersey and Long Island as shown on the attached plat. All bathymetry, navigation gravity and magnetic channels were digitally recorded at six-second intervals for computer processing at our Dallas headquarters.

This completes one of the two major blocks of new control ESI proposed to the industry earlier this year. Operation of our MV PEGASUS is now continuing on some specialized projects for specific clients, after which we plan to complete 3,485 miles of new detailed work on the second block of control outlined over the Georges Bank Area.

Representatives of your company are invited to visit our Dallas office to discuss our 1968 and 1969 work with our staff.

May we set an appointment for your visit?

Very truly yours,

EXPLORATION SURVEYS INC.

(Signed) SHELBY D. PITTS,
Senior Vice President,
National Sales Manager.

SDP/ps
Enclosure: Map

Department of Energy, Mines and Resources
Ministère de l'Énergie, des Mines et des Ressources

File Number 970-62
N° à rappeler 970-23-2

OTTAWA 1, November 5, 1969.

Mr. Shelby D. Pitts,
Senior Vice President,
National Sales Manager,
Exploration Surveys Inc.,
6400 North Central Expressway,
P.O. Box 64400,
Dallas, Texas 75206,
U.S.A.

Dear Mr. Pitts:

I refer to your letter of October 13, 1969, apparently inviting this Division to purchase certain geophysical data acquired by your Company during operations off the East Coast in 1968 and 1969.

We note from the map accompanying your letter that the geophysical surveys in question were undertaken in part over areas for which Canada Oil and Gas Permits have been issued by the Federal Government of Canada, and that additional surveys are planned for these areas. Your attention is drawn to the fact that under the federal Regulations in force for offshore areas with respect to which Canada has sovereign rights to explore and exploit the resources of the seabed and subsoil, such exploration can be legally undertaken only by the holder of an exploratory licence. Moreover, a licensee who carries out exploratory work on Canada Lands is required to supply this office with certain information and materials as set out in the Regulations, including a duly completed Offshore Program Notice for prior approval. A copy of the relevant Regulations, the Canada Oil and Gas Land Regulations, is attached for your information, along with a copy of our publication, OFFSHORE EXPLORATION — INFORMATION AND PROCEDURES, which sets out the manner in which parties contemplating offshore work must first comply with certain Canadian requirements.

The governmental records indicate that your Company has neither applied for nor been issued an exploratory licence. It would appear, therefore, that unauthorized surveys have been conducted and that additional as yet unauthorized surveys may be planned by your Company with respect to certain Canada Lands off the East Coast. We have brought this information to the attention of our Department of External Affairs, as well as to the other governmental Departments that have important responsibilities concerning the Canadian Offshore and from whom all operators are required to obtain clearances before conducting offshore work.

I would suggest that you get in touch with this Division as soon as possible in order to try to effect some sort of resolution of this situation.

Yours very truly,

(Signed) D. G. CROSBY,
Chief,
Resource Administration Division.

6400 North Central Expressway,
P.O. Box 64400,
Dallas, Texas 75206.

December 3, 1969.

Mr. D. G. Crosby,
Chief,
Resource Administration Division,
Department of Energy, Mines and Resources,
Ottawa, Ontario, Canada.

RE: 970-62
970-23-2

Dear Mr. Crosby:

Thank you for your letter of November 5, 1969 regarding our 1968 operations in the Georges Bank Area, east of Cape Cod, Massachusetts. We especially appreciate receiving your publications covering the "Canadian Oil and Gas Land Regulations", and "Offshore Exploration Information and Procedures".

Exploration Surveys Inc. requested and received a permit from the U.S. Geological Survey for our 1968 and 1969 operational areas, and supplied regular reports to that agency, the U.S. Coast Guard, U.S. Navy and the Bureau of Commercial Fisheries. You are aware of the location of our work in 1968. No work was done in the area in question during 1969 as our projected operations did not fully materialize.

Our 1968 exploration permit, which was requested from the U.S. Geological Survey on April 3, 1968, included a detailed map of the proposed tracklines over our area of projected operations. The program was laid out to encompass the Outer Continental Shelf adjacent to the United States out to a water depth of 200 meters. Although we saw no reason to refer to the 1958 Geneva Convention in our request, the program appeared to us to be laid out in accordance with the Convention to cover the U.S. Continental Shelf. Our OCS Permit No. E-2-68, issued April 23, 1968, does not refer to the Convention, but recognizes that our operations will lie in the "Outer Continental Shelf".

All our operations in the Georges Bank area were conducted in international waters, using a radio-navigation network consisting of two transmission towers established on the Massachusetts coastline. We took no samples, established no buoys, used no explosives or chemicals, and in fact did nothing to disturb any commercial or natural activity.

The operations of our company are speculative in nature, in that we are interested only in the gathering of potential-field geophysical data at our own expense, which is offered for sale to companies who may be interested in using our data for guidance in further exploration activity. It is not our intent to acquire any interest in lands, leases, or to participate in causing exploratory wells to be drilled, as such activity would probably constitute a conflict of interest in our relationship with our many clients.

During the course of our work in 1968, we learned that exploration licenses covering certain specific areas may have been issued by the government of Canada. We felt that if valid licenses had indeed been issued, then the possibility of future multiple sales of our data might be attenuated over such areas. We therefore asked for boundary information from the U.S. Department of State which informed us, on September 5, 1968, that a United States-Canadian boundary had not been determined. On the basis of this information, we decided that additional speculative work in the eastern limits of Georges Bank would not be to our best economic interest.

Information gathered and owned by Exploration Surveys Inc. is not used by us for any purpose other than to provide the information directly to those who

can usefully employ the data toward exploration of the seabed and subsoil. Naturally, we hope that there will be some Canadian operators interested in the data we have available for sale in international waters. If such purchases are made, we presume the monies spent by such operators will be credited against any obligations they may have to the Canadian government for expenditures over their license areas. In any case, if you will provide us an accurate map of license areas over seabeds claimed by Canada, we will be happy to inform any prospective purchasers that they will be expected to advise your office about the acquisition and use of any information they may acquire from us.

Very truly yours,

EXPLORATION SURVEYS INC.

(Signed) SHELBY D. PITTS,
Senior Vice President.

SDP/bcm

970-62
970-23-2

OTTAWA 1, December 10, 1969.

Mr. Shelby D. Pitts,
Senior Vice President,
Exploration Surveys Inc.,
6400 North Central Expressway,
P.O. Box 64400,
Dallas, Texas 75206,
U.S.A.

Dear Mr. Pitts:

I refer to your letter of December 3, 1969, concerning certain geophysical surveys carried out by your Company off the East Coast.

As stated in my letter to you of November 5, 1969, according to the map enclosed with your letter of October 13, 1969, the geophysical surveys in question were undertaken in part over areas for which Canada Oil and Gas Permits have been issued by the Federal Government of Canada, and it would appear that additional work is planned for these areas. I draw your attention once again to the fact that your Company has not fulfilled certain necessary Canadian requirements, as set out in the Canada Oil and Gas Land Regulations, a copy of which was sent to you with my November 5 letter.

In the last paragraph of your December 3 letter, you assume that if Canadian permittees purchase data obtained from the subject surveys, such expenditures will be allowed against the work requirements of their Canada Oil and Gas Permits in the Georges Bank area. Please be informed that this is not the case, at least not under the circumstances that now prevail.

According to our records, your Company has neither applied for nor been issued a federal exploratory license, which is required under the Canadian Regulations before offshore exploration work is carried out, whether or not a party is already a permittee. The subject surveys are, therefore, unauthorized. Until such time as this situation is rectified by your Company, as much as it is possible to do so after the fact, i.e. by obtaining a Canadian exploratory license and supplying this office with the necessary reports, expenditures for this data are not applicable to the work requirements of Canadian permits. I

should mention here that when work is done on a speculative or participation basis, as in this case, we not only require prior approval of the proposed programme, we require technical reports from the operator upon completion of the exploration programme, and in addition the operator must supply us with a duly certified statement of expenditures to ensure that cumulative permit work credits allowed as a result of purchases of the data by Canadian permittees do not exceed the cost of the programme.

In your December 3 letter you request a map showing the areas claimed by Canada in the Georges Bank area. We are sending under separate cover a detailed permit map that includes this area, along with an Index listing the permittees and indicating the size, distribution and other details of their permit holdings. However, I might comment that your Company would appear to be familiar already with the distribution of these permits since they are indicated in some detail on the map that accompanied your letter of October 13.

I would suggest that you contact our Senior Conservation Engineer, Mr. H. D. Bell, for the purpose of effecting some sort of resolution of this situation (his telephone number is 994-5444, area code 613, and his address is this Division, Ottawa).

Yours very truly,

(Signed) D. G. CROSBY,
Chief,
Resource Administration Division.

D. G. Crosby/cm
c.c.: Mr. J. A. Beesley

Energy, Mines and Resources Canada
Energy

Energie, Mines et Ressources Canada
Energie

Your No. *Votre référence*
Our No. *Notre référence* 8145-7

580 Booth Street,
Ottawa, Ontario,
K1A 0E4.

June 27, 1975.

ERICO Incorporated,
The Halbouty Center,
5100 Westheimer, Suite 250,
Houston, Texas 77027,
U.S.A.

Dear Sirs:

A brochure issued by your company (copy attached) which has recently been brought to our attention, indicates that you are planning to undertake geophysical and sample coring programs in the Atlantic offshore including the Georges Bank area over the northeast portion of which exploratory permits for oil and gas have been issued by the Federal Government of Canada.

We wish to draw your attention to the fact that, under the federal Regulations in force for offshore areas with respect to which Canada has sovereign rights to explore and exploit the resources of the seabed and subsoil in accordance with the 1958 Geneva Convention on the Continental Shelf, such exploration can be legally undertaken only by the holder of a Canadian exploratory licence. Moreover, a licensee who carries out exploratory work on Canada Lands is required to supply this office with certain information and materials as set out in the Canadian Regulations, including a duly completed Offshore Program Notice for prior approval. Copies of this form are enclosed. A copy of the relevant Regulations, the *Canada Oil and Gas Land Regulations*, is also enclosed for your information, along with a set of permit maps illustrating the areas covered by Canada Oil and Gas Permits and a copy of our publication, *OFFSHORE EXPLORATION - INFORMATION AND PROCEDURES*, which sets out the manner in which parties contemplating offshore work must first comply with certain Canadian requirements.

The governmental records indicate that your Company has neither applied for nor has been issued a Canadian exploratory licence. It would appear, therefore, that unauthorized surveys may be planned by your Company with respect to certain Canada Lands in the Georges Bank region. We have brought this information to the attention of our Department of External Affairs, as well as to other governmental departments that have important responsibilities concerning the Canadian Offshore which operators are required to take into account before conducting offshore work.

I would suggest that you get in touch with this Branch as soon as possible in order to try to effect some sort of resolution of this situation. We will be pleased to answer any questions you may have.

Yours sincerely,

(Signed) D. G. CROSBY,
Director,
Resource Management and
Conservation Branch.

Encl.

ERICO Incorporated,
The Halbouty Center,
5100 Westheimer, Suite 250,
Houston, Texas 77027.

July 3, 1975.

Mr. D. G. Crosby, Director,
Resource Management & Conservation Branch,
Energy, Mines, and Resources Canada,
580 Booth Street,
Ottawa, Canada K1A 0E4.

RE: 8145-7

Dear Mr. Crosby:

I apologize for any recent problems that may have resulted from ERICO's Atlantic Coast proposals in the Georges Bank area. We were assured by our

geophysical subcontractors that obtaining a permit to shoot one regional seismic line in Canadian waters would be achieved through the proper channels and that issuance of such a permit would most likely pose no major obstacles to our program.

In any event, ERICO's program in Georges Bank (as described in our Atlantic Coast Projects brochure) has been cancelled due to a lack of industry support.

Thank you for sending copies of the Offshore Program Notice, Canada Oil and Gas Land Regulations, and Offshore Exploration Information and Procedures. With this information in hand, we will take care to avoid potential misunderstandings in the future.

Very truly yours,

(Signed) DR. CLIFTON F. JORDAN,
Research Coordinator.

CFJ/bn

Energy, Mines and Resources Canada
Energy

Energie, Mines et Ressources Canada
Energie

Your No. *Votre référence*
Our No. *Notre référence* 8145-7

580 Booth Street,
Ottawa, Ontario,
K1A 0E4.

July 30, 1975.

President,
Digicon Inc.,
3701 Kirby Drive,
Houston, Texas 77006,
U.S.A.

Dear Sir:

It has recently come to our attention that you may be planning to undertake geophysical work over an area in the Atlantic offshore that includes the northeast portion of Georges Bank where exploratory permits for oil and gas have been issued by the Federal Government of Canada.

We wish to draw your attention to the fact that, under the federal Regulations in force for offshore areas with respect to which Canada has sovereign rights to explore and exploit the resources of the seabed and subsoil in accordance with the 1958 Geneva Convention on the Continental Shelf, such exploration can be legally undertaken only by the holder of a Canadian exploratory licence. More-

over, a licensee who carries out exploratory work on Canada Lands is required to supply this office with certain information and materials as set out in the Canadian Regulations, including a duly completed Offshore Program Notice for prior approval. Copies of this form are enclosed. A copy of the relevant Regulations, the *Canada Oil and Gas Land Regulations*, is also enclosed for your information, along with a set of permit maps illustrating the areas covered by Canada Oil and Gas Permits and a copy of our publication, *OFFSHORE EXPLORATION — INFORMATION AND PROCEDURES*, which sets out the manner in which parties contemplating offshore work must first comply with certain Canadian requirements.

The governmental records indicate that your Company is not at present holding a Canadian exploratory licence. It would appear, therefore, that unauthorized surveys may be planned by your Company with respect to certain Canada Lands in the Georges Bank region. We are bringing this information to the attention of our Department of External Affairs, as well as to other governmental departments that have important responsibilities concerning the Canadian Offshore which operators are required to take into account before conducting offshore work.

I would suggest that you get in touch with this Branch as soon as possible in order to try to effect some sort of resolution of this situation. We will be pleased to answer any questions you may have.

Yours sincerely,

(Signed) D. G. CROSBY,
Director,
Resource Management and
Conservation Branch.

Encl.

Energy, Mines and Resources Canada
Deputy Minister
Energie, Mines et Ressources Canada
Sous-ministre

Ottawa, Ontario
K1A 0E4.

MEMORANDUM TO THE MINISTER

In a recent memorandum we mentioned that another geophysical company, DIGICON, Houston, was planning a seismic program on the Canadian side of the equidistance line in the Georges Bank area without first obtaining Canadian authorization. It was also mentioned that a letter had been sent to DIGICON along lines similar to that sent previously to ERICO, and a copy was attached for your interest.

Don Crosby now informs me that DIGICON has since obtained a federal Exploratory Licence and has in addition submitted the requisite Offshore Program Notice. The program involves 3,000 miles of seismic survey. With the

approval of the Offshore Program Notice on August 13, DIGICON is now conforming with Canadian requirements and the matter is under control as regards conforming to the relevant Canadian Regulations.

(Signed) [Illegible]
(for) G. M. MACNABB.

cc:

Mr. E. G. Lee — External Affairs

Mr. P. Purcell — A.G.C.

M. L. H. J. Legault — D.O.E.

Cdr. R. A. Evans — D.N.D.

DGCROSBY/dc

8145-7

Canada-U.S.

August 13, 1975

CERTIFICATION

I, the undersigned, L. H. Legault, Q.C., Agent for Canada, hereby certify that the copy of each document attached as a Documentary Annex in Volume II of the Annexes to the Memorial Submitted by Canada is an accurate copy, whether prepared by photographic means or by transcription.

(Signed) L. H. LEGAULT, Q.C.

Volume III
DIPLOMATIC AND OFFICIAL CORRESPONDENCE

Annex 1

LETTER OF 1 APRIL 1965 FROM THE UNITED STATES DEPARTMENT OF THE INTERIOR
TO THE CANADIAN DEPARTMENT OF NORTHERN AFFAIRS AND NATIONAL
RESOURCES (THE REGULATIONS ORIGINALLY ATTACHED TO THIS LETTER HAVE
BEEN OMITTED)

[See II, Annex 53]

Annex 2

LETTER OF 8 APRIL 1965 FROM THE CANADIAN DEPARTMENT OF NORTHERN AFFAIRS AND NATIONAL RESOURCES TO THE UNITED STATES DEPARTMENT OF THE INTERIOR (THE REGULATIONS ORIGINALLY ATTACHED TO THIS LETTER HAVE BEEN OMITTED)

Ottawa, April 8, 1965.

L.T. Hoffman, Esq.,
Assistant Director — Lands and Minerals,
Bureau of Land Management,
United States Department of the Interior,
Washington, D.C. 20240,
U.S.A.

900-23

Dear Mr. Hoffman:

Thank you for your letter of April 1, with which you enclosed a copy of your Regulations, Mineral Leasing and Pipelines on the Outer Continental Shelf, and a set of your leasing maps for the Cape Flattery and Copalis Beach Areas off the west coast.

The disposition of oil and gas rights for the submerged lands off Canada's sea-coast is administered by the Department of Northern Affairs and National Resources. Accordingly, the Department has issued Canada Oil and Gas Permits off Canada's Atlantic, Pacific and Arctic coasts and in Hudson Bay. The attached small-scale sketch map indicates the areas in which these off-shore Permits have been issued.

Enclosed is a copy of the Canada Oil and Gas Land Regulations, as amended. We are sending you, under separate cover, complimentary copies of our maps showing off-shore Canada Oil and Gas Permits issued off the east and west coasts. These materials are available to the public at the offices of the Resources Division. There is no charge for the Regulations, but there is a charge of \$3.00 per copy for the maps. Enclosed with the maps you will find an index listing the holders of off-shore Canada Oil and Gas Permits. Please note that each Permit is referred to in the index by the co-ordinates of its northeast corner.

I believe the above materials will meet the request for information in your letter. We will be pleased to be of further assistance as may be possible.

We notice that the maps accompanying your letter of April 1 outline your system of leasing blocks but do not show the leases that have been issued to petroleum companies, for example, those purchased at the Sale of October 1, 1964. We would appreciate receiving maps from you

indicating the locations of such leases, as well as maps showing any leases you may have issued off the east coast.

Yours sincerely,

(Signed) [illegible]
for A.D. Hunt,
Chief,
Resources Division

cc: A.E. Gottlieb, Esq.,
Legal Division,
Dept. of External Affairs,
Ottawa, Ont.

D.G. Crosby/jn/D

Annex 3

**(20) RECONSTRUCTIONS OF PORTIONS OF PERMIT MAPS SHOWING OFFSHORE CANADA
OIL AND GAS PERMITS ISSUED OFF THE EAST AND WEST COASTS OF CANADA AS AT
8 APRIL 1965 AND RECONSTRUCTIONS OF INDEXES LISTING THE HOLDERS OF
THESE PERMITS**

(These reconstructions reproduce the information provided on large-scale maps and accompanying indexes which were sent to the United States Department of the Interior pursuant to the letter of 8 April 1965 from the Canadian Department of Northern Affairs and National Resources.)

**PORTION OF
PERMIT INDEX
RECONSTRUCTED TO INDICATE
EXPLORATORY PERMITS
ISSUED AS AT
8 APRIL 1965**

NOTES

1. All permits six years, unless otherwise noted.
2. The grid area involved in each permit is located by the co-ordinates of its northeast corner.

Addition of the letter N., S., E., or W., indicates that the permit covers only the North, South, East or West half of the grid area.

Addition of the letter P indicates that only part of the grid area, or half grid area, is involved.

EXAMPLE

Permit No. W-000 52-50, 133-30 S would mean Permit No. W-000 covers the south half of the grid area whose northeast corner is 52° 50' north latitude and 133° 30' west longitude.

(20)

EAST COAST — GEORGES BANK

Permit No.	Location	Date of Issue	Permittee	Acreage
W-417	43-40, 64-15	6-11-63	Shell Canada Limited	92,393
W-438	43-30, 64-30	"	"	92,644
W-439	43-30, 64-15	"	"	92,644
W-454	43-20, 65-00	"	"	92,895
W-455	43-20, 64-45	"	"	92,895
W-456	43-20, 64-30	"	"	92,895
W-457	43-20, 64-15	"	"	92,895
W-470	43-10, 65-45	"	"	93,146
W-471	43-10, 65-30	"	"	93,146
W-472	43-10, 65-15	"	"	93,146
W-473	43-10, 65-00	"	"	93,146
W-474	43-10, 64-45	"	"	93,146
W-475	43-10, 64-30	"	"	93,146
W-476	43-10, 64-15	"	"	93,146
W-488	43-00, 65-45	"	"	93,396
W-489	43-00, 65-30	"	"	93,396
W-490	43-00, 65-15	"	"	93,396
W-491	43-00, 65-00	"	"	93,396
W-492	43-00, 64-45	"	"	93,396
W-493	43-00, 64-30	"	"	93,396
W-494	43-00, 64-15	"	"	93,396
W-500	42-50, 65-45	"	"	93,644
W-501	42-50, 65-30	"	"	93,644
W-502	42-50, 65-15	"	"	93,644
W-503	42-50, 65-00	"	"	93,644
W-504	42-50, 64-45	"	"	93,644
W-505	42-50, 64-30	"	"	93,644
W-506	42-40, 65-45	"	"	93,891
W-507	42-40, 65-30	"	"	93,891
W-508	42-40, 65-15	"	"	93,891
W-509	42-40, 65-00	"	"	93,891
W-510	42-40, 64-45	"	"	93,891
W-511	42-30, 65-45	"	"	94,138
W-512	42-30, 65-30	"	"	94,138
W-513	42-30, 65-15	"	"	94,138
W-514	42-30, 65-00	"	"	94,138
W-515	42-20, 65-30	"	"	94,384
W-516	42-20, 65-15	"	"	94,384
W-928	41-20, 66-15	20-5-64	Texaco Exploration Company	95,844
W-929	41-30, 66-15	"	"	95,602
W-930	41-40, 66-00	"	"	95,360
W-931	41-40, 66-15	"	"	95,360
W-932	41-40, 66-30	"	"	95,360
W-933	41-50, 65-45 W	"	"	47,559
W-934	41-50, 66-00	"	"	95,118
W-935	41-50, 66-15	"	"	95,118
W-936	41-50, 66-30	"	"	95,118
W-937	42-00, 65-45 W	"	"	47,437
W-938	42-00, 66-00	"	"	94,875

Permit No.	Location	Date of Issue	Permittee	Acreage
W-939	42-00, 66-15	20-5-64	Texaco Exploration Company	94,875
W-940	42-00, 66-30	"	"	94,875
W-941	42-10, 66-00 S	"	"	47,346
W-942	42-10, 66-15 S	"	"	47,346
W-1913	41-20, 66-30	30-12-64	The California Standard Company	95,844
W-1914	41-30, 66-30	"	"	95,602
W-1915	41-30, 66-45	"	"	95,602
W-1916	41-40, 66-45	"	"	95,360
W-1917	41-50, 66-45	"	"	95,118
W-1918	42-00, 66-45	"	"	94,875
W-1919	41-50, 67-00	"	"	95,118
W-1920	42-00, 67-00	"	"	94,875
W-1921	41-20, 66-45 E	"	"	47,922
W-1998	42-00, 67-15 E	"	"	47,437
W-1999	41-40, 67-00 E	"	"	47,680
W-2000	42-10, 66-30	13-1-65	"	94,630
W-2001	42-10, 66-45	"	"	94,630
W-2002	42-10, 67-00	"	"	94,630
W-2003	42-10, 67-15 S	"	"	47,346
W-2004	41-10, 66-30	14-1-65	"	96,084
W-2212	42-00, 67-15 W	15-1-65	Socony Mobil Oil of Canada, Ltd.	47,437
W-2213	41-50, 67-15 E	"	"	47,559
W-2214	41-40, 67-00 W	"	"	47,680
W-2215	41-30, 67-00 E	"	"	47,801
W-2220	43-00, 66-00 S	27-1-65	The California Standard Company	46,729
W-2221	43-00, 66-15 S	"	"	46,729
W-2222	42-50, 66-00	"	"	93,644
W-2223	42-50, 66-15	"	"	93,644
W-2224	42-40, 66-00 N	"	"	46,915
W-2225	42-40, 66-15 N	"	"	46,915

WEST COAST — JUAN DE FUCA STRAIT

Permit No.	Location	Date of Issue	Permittee	Acreage
W-88	48-40, 125-00	8-8-61	Shell Oil Company of Canada, Limited	84,477
W-89	48-40, 125-15	"	"	84,477
W-90	48-40, 125-30	"	"	84,477
W-91	48-40, 125-45	"	"	84,477
W-92	48-40, 126-00	"	"	84,477
W-93	48-50, 125-15	"	"	84,202
W-94	48-50, 125-30	"	"	84,202
W-95	48-50, 125-45	"	"	84,202
W-96	48-50, 126-00	"	"	84,202
W-97	48-50, 126-15	"	"	84,202
W-98	49-00, 125-45	"	"	83,926
W-99	49-00, 126-00	"	"	83,926
W-100	49-00, 126-15	"	"	83,926
W-101	49-10, 126-00 P	"	"	83,300
W-102	49-10, 126-15	"	"	83,649
W-105	49-20, 126-15	"	"	83,371
W-237	48-40, 124-45 W	16-8-61	Husky Oil Canada Ltd.	42,239
W-238	48-50, 125-00 S	"	"	34,800
W-239	49-00, 125-30 S	"	"	41,800
W-240	49-00, 125-30 N	23-8-61	The Calgary & Edmonton Corporation Limited	29,500
W-241	49-10, 125-45	"	"	59,000
W-293	49-20, 126-00 P-S	17-6-63	Shell Oil Company of Canada Limited	38,250
W-541	48-20, 125-15	1-11-63	Shell Canada Limited	85,026
W-542	48-20, 125-30	"	"	85,026
W-543	48-20, 125-45 E	"	"	42,513
W-544	48-30, 125-00	"	"	84,752
W-545	48-30, 125-15	"	"	84,752
W-546	48-30, 125-30	"	"	84,752
W-547	48-30, 125-45	"	"	84,752
W-595	48-30, 126-00 E	3-3-64	Western Minerals Ltd.	42,376
W-606	49-10, 125-30 S	"	"	6,300
W-607	49-00, 125-15 S	"	"	39,100
W-608	48-50, 125-00 P-N	"	"	14,900
W-609	48-50, 124-45 P-S	"	"	6,750
W-610	48-40, 124-45 P-E	"	"	34,050
W-611	48-40, 124-30 P-S	"	"	35,500
W-1901	48-30, 124-00 P	10-12-64	John G.M. Hooper	37,300
W-1902	48-30, 124-15 P	"	"	37,500
W-1903	48-30, 124-30 P	"	"	17,100
W-2228	49-20, 124-00 P-N	5-2-65	British American Oil Company Limited	30,000

WEST COAST — DIXON ENTRANCE

Permit No.	Location	Date of Issue	Permittee	Acreage
W-224	53-50, 130-45	8-8-61	Shell Oil Company of Canada, Ltd.	75,601
W-225	53-50, 131-00	"	"	75,601
W-226	54-00, 130-45	"	"	75,304
W-227	54-00, 131-00	"	"	75,304
W-235	54-10, 131-00	16-8-61	Canadian Husky Oil Ltd.	75,006
W-236	54-20, 131-00 W	"	"	37,354
W-582	53-20, 131-30 N	30-1-64	Shell Canada Limited	38,208
W-584	53-30, 131-30	"	"	76,193
W-585	53-30, 131-45 P	"	"	52,160
W-586	53-40, 131-30	"	"	75,897
W-587	53-40, 131-45 P	"	"	52,774
W-589	53-50, 131-15	"	"	75,601
W-590	53-50, 131-30	"	"	75,601
W-591	53-50, 131-45 P-E	"	"	35,386
W-592	54-00, 131-15	"	"	75,304
W-593	54-00, 131-30 P	"	"	70,155
W-594	54-00, 131-45 P-S	"	"	6,073
W-1858	54-30, 131-15	10-12-64	John G.M. Hooper	74,407
W-1859	54-40, 131-30	"	"	74,107
W-1860	54-30, 131-30	"	"	74,407
W-1861	54-40, 131-45	"	"	74,107
W-1862	54-30, 131-45	"	"	74,407
W-1863	54-20, 131-45 N	"	"	37,316
W-1864	54-40, 132-00	"	"	74,107
W-1865	54-30, 132-00	"	"	74,407
W-1866	54-20, 132-00 N	"	"	37,316
W-1867	54-40, 132-15	"	"	74,107
W-1868	54-30, 132-15	"	"	74,407
W-1869	54-20, 132-15 N	"	"	37,316
W-1870	54-40, 132-30	"	"	74,107
W-1871	54-30, 132-30	"	"	74,407
W-1872	54-20, 132-30 N	"	"	37,316
W-1873	54-40, 132-45	"	"	74,107
W-1874	54-30, 132-45	"	"	74,407
W-1875	54-20, 132-45 P	"	"	71,200
W-1876	54-40, 133-00	"	"	74,107
W-1877	54-30, 133-00	"	"	74,407
W-1878	54-20, 133-00 P	"	"	67,600
W-1879	54-10, 133-00 P	"	"	52,400
W-1880	54-40, 133-15 S	"	"	37,091
W-1881	54-30, 133-15	"	"	74,407
W-1882	54-20, 133-15	"	"	74,707
W-1883	54-10, 133-15	"	"	75,006
W-1884	54-00, 133-15	"	"	75,304

Permit No.	Location	Date of Issue	Permittee	Acreage
W-1885	53-50, 133-15	10-12-64	John G.M. Hooper	75,601
W-1886	53-40, 133-15	"	"	75,897
W-1887	53-50, 133-00 W	"	"	37,800
W-1888	53-40, 133-00	"	"	75,700
W-1889	53-30, 133-00	"	"	76,193
W-1890	53-20, 133-00 N	"	"	38,208
W-1891	53-30, 132-45 P	"	"	69,700
W-1892	53-20, 132-45 P	"	"	37,800
W-1893	53-30, 132-30 P	"	"	22,100
W-1894	54-30, 133-30	"	"	74,407
W-1895	54-20, 133-30	"	"	74,707
W-1896	54-10, 133-30	"	"	75,006
W-1897	54-00, 133-30	"	"	75,304
W-1898	53-50, 133-30 N	"	"	37,763
W-1899	54-30, 133-45 S	"	"	37,241
W-1900	54-20, 133-45 E	"	"	37,353

Annex 4

**LETTER OF 14 MAY 1965 FROM THE UNITED STATES DEPARTMENT OF THE INTERIOR
TO THE CANADIAN DEPARTMENT OF NORTHERN AFFAIRS AND NATIONAL
RESOURCES**

[See II, Annex 53]

Annex 5

LETTER OF 28 MAY 1965 FROM THE CANADIAN DEPARTMENT OF NORTHERN
AFFAIRS AND NATIONAL RESOURCES TO THE UNITED STATES DEPARTMENT OF THE
INTERIOR

Resource Development
Branch

Direction du développement
des ressources

Ottawa, May 28, 1965

L.T. Hoffman, Esq.,
Assistant Director — Lands and Minerals,
Bureau of Land Management,
United States Department of the Interior,
Washington, D.C. 20240,
U.S.A.

900-23-2 900-27

Dear Mr. Hoffman:

I wish to acknowledge receipt of your letter of May 14 concerning the matter of permits and leases in off-shore areas on the continental shelf. I hope to be able to send you a reply answering the specific points raised in your letter within the next few days.

Yours sincerely,

(Signed) [illegible]
for A.D. Hunt,
Chief,

D.G. Crosby/jn/D

Resource Management Division

Annex 6

LETTER OF 16 JUNE 1965 FROM THE CANADIAN DEPARTMENT OF NORTHERN
AFFAIRS AND NATIONAL RESOURCES TO THE UNITED STATES DEPARTMENT OF THE
INTERIOR

Ottawa, June 16, 1965.

L.T. Hoffman, Esq.,
Assistant Director — Lands and
Minerals,
Bureau of Land Management,
United States Department of
the Interior,
Washington, D.C. 20240,
U.S.A.

900-23-2
900-27

Dear Mr. Hoffman:

Thank you for your letter of May 14, concerning the matter of Canada Oil and Gas Permits and United States Leases in off-shore areas on the continental shelf.

We can appreciate your concern respecting the positions of the lines of demarcation of the resources of the seabed on the continental shelf off the east and west coasts. We wish to assure you that we have utilized a median line as described in the third paragraph of your letter, constructed in accordance with the equidistance principle as defined in Article 6 of the Convention on the Continental Shelf, to determine the limits of the off-shore areas within which to issue Canada Oil and Gas Permits. It may help clarify matters somewhat to explain that since the exact position of such a median line may be open to some interpretation, we issue permits covering grid areas up to and straddling these off-shore median lines. In the case of a permit straddling a median line, a cautionary statement is included in the permit to the effect that it is issued subject to the lands covered thereby being Canada Lands.

I believe the foregoing answers the various points raised in your letter.

Yours sincerely,

(Signed) [illegible]
for A.D. Hunt,
Chief,
Resource Management Division

D.G. Crosby/pb

Annex 7

**LETTER OF 16 AUGUST 1966 FROM THE UNITED STATES EMBASSY IN OTTAWA
TO THE CANADIAN DEPARTMENT OF MINES AND TECHNICAL SURVEYS**

[See II, Annex 54]

Annex 8

LETTER OF 30 AUGUST 1966 FROM THE CANADIAN DEPARTMENT OF
EXTERNAL AFFAIRS TO THE UNITED STATES EMBASSY IN OTTAWA
(WITH ATTACHMENTS, AS RECONSTRUCTED)File
Div.
Diary

Legal/P.A. Lapointe/de

Ottawa, August 30, 1966

Dear Mr. Olson:

I wish to refer to your letter of August 16 which you addressed to Mr. J.W. McNeil, Director, Research Development Branch, Department of Mines and Technical Surveys, concerning Canadian exploratory permits in that part of the Continental Shelf which is situated off the Eastern Coast of Canada. In view of this Department's general interest in the exploration activities being carried out on the Canadian Continental Shelf in close proximity to areas under the jurisdiction of foreign countries, it was deemed preferable that this Department should answer your query. In order to avoid unnecessarily long delays, we would very much appreciate your directing any future enquiries of a similar nature to the Legal Division of this Department.

As we have commented previously in a letter to the United States Department of the Interior, the policy of the Canadian Government has been to issue permits covering grid areas up to and straddling the medium (*sic*) line which divides the areas of jurisdiction between Canada and the United States since the exact position of that line might be open to some interpretation. However, when such is the case a cautionary statement is included in the permit to the effect that it is issued subject to the lands covered thereby being Canada Lands. The attached map and index will provide you with all available information concerning permits which have been issued under the Oil and Gas Land Regulations off the Southeast Coast of Canada.

As to your request for information on operational plans and schedules of oil companies holding permits in the above mentioned area, our policy has been to regard the question of the publicity to be given to such plans as the permit holders may have as the exclusive responsibility of the companies concerned. The competitive nature of their business is of such scope that only they can reasonably establish the criteria for their publicity requirements. The Canadian Government is, of course, made aware of these plans but only insofar as it is necessary to exercise proper jurisdictional control over such operations in accordance with existing legislation. While we cannot, therefore, make such information public, the fact is that a considerable amount of information has over the years

been released through the press and we call your attention in particular to the trade magazine "Oilweek".

Please do not hesitate to call upon us if we can be of further assistance.

Yours sincerely,

(Signed) P.A. LAPOINTE
for Under-Secretary of State
for External Affairs

Robert K. Olson, Esq.,
Second Secretary,
United States Embassy,
100 Wellington Street,
Ottawa, Ontario

PORTION OF
PERMIT INDEX
RECONSTRUCTED TO INDICATE
EXPLORATORY PERMITS
ISSUED AS AT
30 AUGUST 1966

NOTES

1. All permits six years, unless otherwise noted.
2. The grid area involved in each permit is located by the co-ordinates of its northeast corner.

Addition of the letter N., S., E., or W., indicates that the permit covers only the North, South, East or West half of the grid area.

Addition of the letter P indicates that only part of the grid area, or half grid area, is involved.

EXAMPLE

Permit No. W-000 52-50, 133-30 S would mean Permit No. W-000 covers the south half of the grid area whose northeast corner is 52° 50' north latitude and 133° 30' west longitude.

EAST COAST — GEORGES BANK

Permit No.	Location	Date of Issue	Permittee	Acreage
W-417	43-40, 64-15	6-11-63	Shell Canada Limited	92,393
W-438	43-30, 64-30	"	"	92,644
W-439	43-30, 64-15	"	"	92,644
W-454	43-20, 65-00	"	"	92,895
W-455	43-20, 64-45	"	"	92,895
W-456	43-20, 64-30	"	"	92,895
W-457	43-20, 64-15	"	"	92,895
W-470	43-10, 65-45	"	"	93,146
W-471	43-10, 65-30	"	"	93,146
W-472	43-10, 65-15	"	"	93,146
W-473	43-10, 65-00	"	"	93,146
W-474	43-10, 64-45	"	"	93,146
W-475	43-10, 64-30	"	"	93,146
W-476	43-10, 64-15	"	"	93,146
W-488	43-00, 65-45	"	"	93,396
W-489	43-00, 65-30	"	"	93,396
W-490	43-00, 65-15	"	"	93,396
W-491	43-00, 65-00	"	"	93,396
W-492	43-00, 64-45	"	"	93,396
W-493	43-00, 64-30	"	"	93,396
W-494	43-00, 64-15	"	"	93,396
W-500	42-50, 65-45	"	"	93,644
W-501	42-50, 65-30	"	"	93,644
W-502	42-50, 65-15	"	"	93,644
W-503	42-50, 65-00	"	"	93,644
W-504	42-50, 64-45	"	"	93,644
W-505	42-50, 64-30	"	"	93,644
W-506	42-40, 65-45	"	"	93,891
W-507	42-40, 65-30	"	"	93,891
W-508	42-40, 65-15	"	"	93,891
W-509	42-40, 65-00	"	"	93,891
W-510	42-40, 64-45	"	"	93,891
W-511	42-30, 65-45	"	"	94,138
W-512	42-30, 65-30	"	"	94,138
W-513	42-30, 65-15	"	"	94,138
W-514	42-30, 65-00	"	"	94,138
W-515	42-20, 65-30	"	"	94,384
W-516	42-20, 65-15	"	"	94,384
W-928	41-20, 66-15	20-5-64	Texaco Exploration Company	95,844
W-929	41-30, 66-15	"	"	95,602
W-930	41-40, 66-00	"	"	95,360
W-931	41-40, 66-15	"	"	95,360
W-932	41-40, 66-30	"	"	95,360
W-933	41-50, 65-45 W	"	"	47,559
W-934	41-50, 66-00	"	"	95,118
W-935	41-50, 66-15	"	"	95,118
W-936	41-50, 66-30	"	"	95,118
W-937	42-00, 65-45 W	"	"	47,437
W-938	42-00, 66-00	"	"	94,875
W-939	42-00, 66-15	"	"	94,875
W-940	42-00, 66-30	"	"	94,875

GULF OF MAINE

Permit No.	Location	Date of Issue	Permittee	Acreage
W-941	42-10m 66-00 S	20-5-64	Texaco Exploration Company	47,346
W-942	42-10, 66-15 S	"	"	47,346
W-1913	41-20, 66-30	30-12-64	The California Standard Company	95,844
W-1914	41-30, 66-30	"	"	95,602
W-1915	41-30, 66-45	"	"	95,602
W-1916	41-40, 66-45	"	"	95,360
W-1917	41-50, 66-45	"	"	95,118
W-1918	42-00, 66-45	"	"	94,875
W-1919	41-50, 67-00	"	"	95,118
W-1920	42-00, 67-00	"	"	94,875
W-1921	41-20, 66-45 E	"	"	47,922
W-1998	42-00, 67-15 E	"	"	47,437
W-1999	41-40, 67-00 E	"	"	47,680
W-2000	42-10, 66-30	13-1-65	"	94,630
W-2001	42-10, 66-45	"	"	94,630
W-2002	42-10, 67-00	"	"	94,630
W-2003	42-10, 67-15 S	"	"	47,346
W-2004	41-10, 66-30	14-1-65	"	96,084
W-2212	42-00, 67-15 W	15-1-65	Socony Mobil Oil of Canada, Ltd.	47,437
W-2213	41-50, 67-15 E	"	"	47,559
W-2214	41-40, 67-00 W	"	"	47,680
W-2215	41-30, 67-00 E	"	"	47,801
W-2220	43-00, 66-00 S	27-1-65	The California Standard Company	46,729
W-2221	43-00, 66-15 S	"	"	46,729
W-2222	42-50, 66-00	"	"	93,644
W-2223	42-50, 66-15	"	"	93,644
W-2224	42-40, 66-00 N	"	"	46,915
W-2225	42-40, 66-15 N	"	"	46,915
W-2445	41-40, 65-45	16-7-65	Texaco Exploration Company	95,360
W-2446	41-50, 65-45 E	"	"	47,559
W-2447	41-50, 65-30	"	"	95,118
W-2448	42-00, 65-45 E	"	"	47,437
W-2449	42-00, 65-30	"	"	94,875
W-2450	42-10, 65-15	"	"	94,630
W-2451	42-10, 65-30	"	"	94,630
W-2452	42-10, 65-45	"	"	94,630
W-2453	42-10, 66-10 N	"	"	47,284
W-2454	42-10, 66-15 N	"	"	47,284
W-2455	42-20, 65-45	"	"	94,384
W-2456	42-20, 66-00	"	"	94,384
W-2457	42-20, 66-15	"	"	94,384

Annex 9

LETTER OF 22 NOVEMBER 1966 FROM THE CANADIAN DEPARTMENT OF ENERGY,
MINES AND RESOURCES TO THE UNITED STATES EMBASSY IN OTTAWA
(WITH ATTACHMENTS, AS RECONSTRUCTED)

900-23-2

Ottawa 4, November 22, 1966

Mr. Robert K. Olson,
Second Secretary,
United States Embassy,
100 Wellington Street,
Ottawa, Ontario.

Dear Mr. Olson:

In accordance with our recent telephone conversations, enclosed please find the following publications:

Canada Oil and Gas Permit Map No. 100 — West Coast

Canada Oil and Gas Permit Map No. 150 — East Coast

Index for Water Permits (Except Arctic).

I am sorry for the delay in supplying these materials. As explained over the telephone, we have just completed bringing the maps and indexes up-to-date. Additional copies of the maps may be obtained for \$3.00 each — the index is supplied free of charge.

Yours sincerely,

(Signed) [illegible]
D.G. Crosby,
Chief,
Resource Administration
Division

D.G. Crosby/jc

PORTION OF
PERMIT INDEX
RECONSTRUCTED TO INDICATE
EXPLORATORY PERMITS
ISSUED AS AT
22 NOVEMBER 1966

NOTES

1. All permits six years, unless otherwise noted.
2. The grid area involved in each permit is located by the co-ordinates of its northeast corner.

Addition of the letter N., S., E., or W., indicates that the permit covers only the North, South, East or West half of the grid area.

Addition of the letter P indicates that only part of the grid area, or half grid area, is involved.

EXAMPLE

Permit No. W-000 52-50, 133-30 S would mean Permit No. W-000 covers the south half of the grid area whose northeast corner is 52° 50' north latitude and 133° 30' west longitude.

EAST COAST — GEORGES BANK

Permit No.	Location	Date of Issue	Permittee	Acreege
W-417	43-40, 64-15	6-11-63	Shell Canada Limited	92,393
W-438	43-30, 64-30	"	"	92,644
W-439	43-30, 64-15	"	"	92,644
W-454	43-20, 65-00	"	"	92,895
W-455	43-20, 64-45	"	"	92,895
W-456	43-20, 64-30	"	"	92,895
W-457	43-20, 64-15	"	"	92,895
W-470	43-10, 65-45	"	"	93,146
W-471	43-10, 65-30	"	"	93,146
W-472	43-10, 65-15	"	"	93,146
W-473	43-10, 65-00	"	"	93,146
W-474	43-10, 64-45	"	"	93,146
W-475	43-10, 64-30	"	"	93,146
W-476	43-10, 64-15	"	"	93,146
W-488	43-00, 65-45	"	"	93,396
W-489	43-00, 65-30	"	"	93,396
W-490	43-00, 65-15	"	"	93,396
W-491	43-00, 65-00	"	"	93,396
W-492	43-00, 64-45	"	"	93,396
W-493	43-00, 64-30	"	"	93,396
W-494	43-00, 64-15	"	"	93,396
W-500	42-50, 65-45	"	"	93,644
W-501	42-50, 65-30	"	"	93,644
W-502	42-50, 65-15	"	"	93,644
W-503	42-50, 65-00	"	"	93,644
W-504	42-50, 64-45	"	"	93,644
W-505	42-50, 64-30	"	"	93,644
W-506	42-40, 65-45	"	"	93,891
W-507	42-40, 65-30	"	"	93,891
W-508	42-40, 65-15	"	"	93,891
W-509	42-40, 65-00	"	"	93,891
W-510	42-40, 64-45	"	"	93,891
W-511	42-30, 65-45	"	"	94,138
W-512	42-30, 65-30	"	"	94,138
W-513	42-30, 65-15	"	"	94,138
W-514	42-30, 65-00	"	"	94,138
W-515	42-20, 65-30	"	"	94,384
W-516	42-20, 65-15	"	"	94,384
W-928	41-20, 66-15	20-5-64	Texaco Exploration Company	95,844
W-929	41-30, 66-15	"	"	95,602
W-930	41-40, 66-00	"	"	95,360
W-931	41-40, 66-15	"	"	95,360
W-932	41-40, 66-30	"	"	95,360
W-933	41-50, 65-45 W	"	"	47,559
W-934	41-50, 66-00	"	"	95,118
W-935	41-50, 66-15	"	"	95,118
W-936	41-50, 66-30	"	"	95,118
W-937	42-00, 65-45 W	"	"	47,437
W-938	42-00, 66-00	"	"	94,875
W-939	42-00, 66-15	"	"	94,875

Permit No.	Location	Date of Issue	Permittee	Acreage
W-940	42-00, 66-30	20-5-64	Texaco Exploration Company	94,875
W-941	42-10, 66-00 S	"	"	47,346
W-942	42-10, 66-15 S	"	"	47,346
W-1913	41-20, 66-30	30-12-64	The California Standard Company	95,844
W-1914	41-30, 66-30	"	"	95,602
W-1915	41-30, 66-45	"	"	95,602
W-1916	41-40, 66-45	"	"	95,360
W-1917	41-50, 66-45	"	"	95,118
W-1918	42-00, 66-45	"	"	94,875
W-1919	41-50, 67-00	"	"	95,118
W-1920	42-00, 67-00	"	"	94,875
W-1921	41-20, 66-45 E	"	"	47,922
W-1998	42-00, 67-15 E	"	"	47,437
W-1999	41-40, 67-00 E	"	"	47,680
W-2000	42-10, 66-30	13-1-65	"	94,630
W-2001	42-10, 66-45	"	"	94,630
W-2002	42-10, 67-00	"	"	94,630
W-2003	42-10, 67-15 S	"	"	47,346
W-2004	41-10, 66-30	14-1-65	"	96,084
W-2212	42-00, 67-15 W	15-1-65	Socony Mobil Oil of Canada, Ltd.	47,437
W-2213	41-50, 67-15 E	"	"	47,559
W-2214	41-40, 67-00 W	"	"	47,680
W-2215	41-30, 67-00 E	"	"	47,801
W-2220	43-00, 66-00 S	27-1-65	The California Standard Company	46,729
W-2221	43-00, 66-15 S	"	"	46,729
W-2222	42-50, 66-00	"	"	93,644
W-2223	42-50, 66-15	"	"	93,644
W-2224	42-40, 66-00 N	"	"	46,915
W-2225	42-40, 66-15 N	"	"	46,915
W-2445	41-40, 65-45	16-7-65	Texaco Exploration Company	95,360
W-2446	41-50, 65-45 E	"	"	47,559
W-2447	41-50, 65-30	"	"	95,118
W-2448	42-00, 65-45 E	"	"	47,437
W-2449	42-00, 65-30	"	"	94,875
W-2450	42-10, 65-15	"	"	94,630
W-2451	42-10, 65-30	"	"	94,630
W-2452	42-10, 65-45	"	"	94,630
W-2453	42-10, 66-00 N	"	"	47,284
W-2454	42-10, 66-15 N	"	"	47,284
W-2455	42-20, 65-45	"	"	94,384
W-2456	42-20, 66-00	"	"	94,384
W-2457	42-20, 66-15	"	"	94,384

WEST COAST — JUAN DE FUCA STRAIT

Permit No.	Location	Date of Issue	Permittee	Acreage
W-88	48-40, 125-00	8-8-61	Shell Oil Company of Canada, Limited	84,477
W-89	48-40, 125-15	"	"	84,477
W-90	48-40, 125-30	"	"	84,477
W-91	48-40, 125-45	"	"	84,477
W-92	48-40, 126-00	"	"	84,477
W-93	48-50, 125-15	"	"	84,202
W-94	48-50, 125-30	"	"	84,202
W-95	48-50, 125-45	"	"	84,202
W-96	48-50, 126-00	"	"	84,202
W-97	48-50, 126-15	"	"	84,202
W-98	49-00, 125-45	"	"	83,926
W-99	49-00, 126-00	"	"	83,926
W-100	49-00, 126-15	"	"	83,926
W-101	49-10, 126-00 P	"	"	83,300
W-102	49-10, 126-15	"	"	83,649
W-105	49-20, 126-15	"	"	83,371
W-237	48-40, 124-45 W	16-8-61	The Calgary & Edmonton Corporation Limited 50%	42,239
W-238	48-50, 125-00 S	"	Western Minerals Ltd. 50%	34,800
W-239	49-00, 125-30 S	"	"	41,800
W-240	49-00, 125-30 N	23-8-61	"	29,500
W-241	49-10, 125-45	"	"	59,000
W-293	49-20, 126-00 P-S	17-6-63	Shell Oil Company of Canada Limited	38,250
W-541	48-20, 125-15	1-11-63	Shell Canada Limited	85,026
W-542	48-20, 125-30	"	"	85,026
W-543	48-20, 125-45 E	"	"	42,513
W-544	48-30, 125-00	"	"	84,752
W-545	48-30, 125-15	"	"	84,752
W-546	48-30, 125-30	"	"	84,752
W-547	48-30, 125-45	"	"	84,752
W-595	48-30, 126-00 E	3-3-64	Western Minerals Ltd.	42,376
W-606	49-10, 125-30 S	"	"	6,300
W-607	49-00, 125-15 S	"	"	39,100
W-608	48-50, 125-00 P-N	"	"	14,900
W-609	48-50, 124-45 P-S	"	"	6,750
W-610	48-40, 124-45 P-E	"	"	34,050
W-611	48-40, 124-30 P-S	"	"	35,500
W-1901	48-30, 124-00 P	10-12-64	Pan American Petroleum Corporation	37,300
W-1902	48-30, 124-15 P	"	"	37,500
W-1903	48-30, 124-30 P	"	"	17,100
W-2228	49-20, 124-00 P-N	5-2-65	British American Oil Company Limited	30,000

Permit No.	Location	Date of Issue	Permittee	Acreage
W-2277	48-40, 124-15 P-S	7-5-65	Herbert A. Ripley	11,500
W-2278	48-30, 124-15 P-S	"	"	7,600
W-2279	48-30, 124-00 P-N	"	"	12,000
W-2280	48-20, 124-00 P-N	"	"	3,000
W-2281	48-30, 123-45 P-S	"	"	22,900
W-2282	48-20, 123-45 P-N	"	"	30,300
W-2458	49-00, 125-00 P-S	30-8-65	Raddison Oil & Gas Ltd.	26,400
W-2565	49-20, 126-00 N	1-6-66	Abrams Oil Management Ltd.	11,000

WEST COAST — DIXON ENTRANCE

Permit No.	Location	Date of Issue	Permittee	Acreage
W-224	53-50, 130-45	8-8-61	Shell Oil Company of Canada, Ltd.	75,601
W-225	53-50, 131-00	"	"	75,601
W-226	54-00, 130-45	"	"	75,304
W-227	54-00, 131-00	"	"	75,304
W-582	53-20, 131-30 N	30-1-64	Shell Canada Limited	38,208
W-584	53-20, 131-30	"	"	38,208
W-585	53-30, 131-45 P	"	"	52,160
W-586	53-40, 131-30	"	"	75,897
W-587	53-40, 131-45 P	"	"	52,774
W-589	53-50, 131-15	"	"	75,601
W-590	53-50, 131-30	"	"	75,601
W-591	53-50, 131-45 P-E	"	"	35,386
W-592	54-00, 131-15	"	"	75,304
W-593	54-00, 131-30 P	"	"	70,155
W-594	54-00, 131-45 P-S	"	"	6,073
W-1858	54-30, 131-15	10-12-64	Pan American Petroleum Corporation	74,407
W-1859	54-40, 131-30	"	"	74,107
W-1860	54-30, 131-30	"	"	74,407
W-1861	54-40, 131-45	"	"	74,107
W-1862	54-30, 131-45	"	"	74,407
W-1863	54-20, 131-45 N	"	"	37,316
W-1864	54-40, 132-00	"	"	74,107
W-1865	54-30, 132-00	"	"	74,407
W-1866	54-20, 132-00 N	"	"	37,316
W-1867	54-40, 132-15	"	"	74,107
W-1868	54-30, 132-15	"	"	74,407
W-1869	54-20, 132-15 N	"	"	37,316
W-1870	54-40, 132-30	"	"	74,107
W-1871	54-30, 132-30	"	"	74,407
W-1872	54-20, 132-30 N	"	"	37,316
W-1873	54-40, 132-45	"	"	74,107
W-1874	54-30, 132-45	"	"	74,407
W-1875	54-20, 132-45 P	"	"	71,200
W-1876	54-40, 133-00	"	"	74,107
W-1877	54-30, 133-00	"	"	74,407
W-1878	54-20, 133-00 P	"	"	67,600
W-1879	54-10, 133-00 P	"	"	52,400
W-1880	54-40, 133-15 S	"	"	37,091
W-1881	54-30, 133-15	"	"	74,407
W-1882	54-20, 133-15	"	"	74,707
W-1883	54-10, 133-15	"	"	75,006
W-1884	54-00, 133-15	"	"	75,304
W-1885	53-50, 133-15	"	"	75,601
W-1886	53-40, 133-15	"	"	75,897
W-1887	53-50, 133-00 W	"	"	37,800
W-1888	53-40, 133-00	"	"	75,700
W-1889	53-30, 133-00	"	"	76,193

Permit No.	Location	Date of Issue	Permittee	Acreage
W-1890	53-20, 133-00 N	10-12-64	Pan American Petroleum Corporation	38,208
W-1891	53-30, 132-45 P	"	"	69,700
W-1892	53-20, 132-45 P	"	"	37,800
W-1893	53-30, 132-30 P	"	"	22,100
W-1894	54-30, 133-30	"	"	74,407
W-1895	54-20, 133-30	"	"	74,707
W-1896	54-10, 133-30	"	"	75,006
W-1897	54-00, 133-30	"	"	75,304
W-1898	53-50, 133-30 N	"	"	37,763
W-1899	54-30, 133-45 S	"	"	37,241
W-1900	54-20, 133-45 E	"	"	37,353
W-2473	53-20, 131-30 S	26-11-65	Shell Canada Limited	38,281
W-2559	54-20, 131-15 S	11-5-66	Offshore Oil and Gas Corporation Ltd.	37,391
W-2560	54-10, 131-15	"	"	75,006
W-2561	54-10, 131-30 P	12-5-66	Pan American Petroleum Corporation	57,924
W-2562	54-20, 131-30 P-S	"	"	37,053
W-2563	54-10, 131-45 P	"	"	49,941
W-2564	54-10, 132-00 P	"	"	58,994

Annex 10

**LETTER OF 28 NOVEMBER 1966 FROM THE UNITED STATES EMBASSY IN OTTAWA
TO THE CANADIAN DEPARTMENT OF ENERGY, MINES AND RESOURCES**

**EMBASSY
OF THE
UNITED STATES OF AMERICA**

Ottawa, Ontario

November 28, 1966

Dr. D. G. Crosby
Chief, Resource Administration Division
Department of Energy, Mines and Resources
Centennial Tower — 13th floor
Ottawa

Dear Dr. Crosby:

Many thanks for the permit maps which you enclosed with your letter of November 22. Your cooperation in this matter is deeply appreciated.

I have not received a reply to your question regarding nationality restrictions on U.S. offshore leases but will contact you as soon as it is received.

Sincerely yours,

(Signed) [illegible]
Robert K. Olson
Second Secretary
of Embassy

Annex 11**UNITED STATES AIDE-MÉMOIRE OF 10 MAY 1968***[See II, Annex 55]*

Annex 12

LETTER OF 13 SEPTEMBER 1968 FROM THE CANADIAN DEPARTMENT OF EXTERNAL AFFAIRS TO THE CANADIAN EMBASSY IN WASHINGTON (ATTACHMENT OMITTED)

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

To: Canadian Embassy, Washington
From: Under-Secretary of State for
External Affairs, Ottawa
Reference: Our telex L-744 of Sept. 5
and your telexes 1856 and 1857 of May 10

Security: CONFIDENTIAL

Date: September 13, 1968

Number: L-761

Subject: Canada-U.S.A. Continental Shelf

1. As already explained in telephone conversations between your Miss Burwash and Mr. Lapointe of our Legal Division, we are not yet in a position, pending consideration of the subject matter by Cabinet, to answer in a formal way the U.S. Aide-Mémoire of May 10. It is of course the opinion of all officials concerned that the talks formally proposed by the United States for delineating the boundaries between the United States and Canada on the continental shelf in the Gulf of Maine and in the Juan de Fuca Strait, will eventually take place, and the sooner the better.

2. In the meantime and in order to get things started, we would be grateful if you would pass on to State Department the attached copy of the Canadian regulations concerning offshore exploration. By so doing, we will be answering the request made by the United States in their Aide-Mémoire where they suggest that consultations take place with regard to the necessity of protecting the living resources of the sea against the pollution and disturbance which might result from mineral exploration and exploitation. You should draw the attention of State Department officials to page 2 of the schedule attached to the form-letter, "Federal Agencies Concerned with Offshore Exploration", which provides that offshore operators are obliged to give the Department of Fisheries 90 days advance notice before the commencement of marine seismic surveys. We are advised by the Department of Fisheries that these arrangements have been quite satisfactory. The Department of Fisheries, whenever necessary, sends observers on seismic operations who are provided with electronic fish-finding devices which indicate the presence of concentrations of fish. If large numbers of fish are present, the fishery observer is empowered to call for a postponement of operations. Through the cooperation of the exploration companies with the Department of Fisheries, it has been possible to keep fish kills to an acceptable level.

3. We would be grateful to receive any comments the United States authorities may have in respect of these regulations, as well as copies of their own regulations. We are, of course, prepared to discuss these matters at any time which might be convenient to both governments.

(Signed) J.A. BEESLEY
for Under-Secretary of State
for External Affairs

Annex 13

UNITED STATES AIDE-MÉMOIRE OF 5 NOVEMBER 1969

*[See II, Annex 56, "Note from the Department of State to the Embassy of Canada,
dated 5 November 1969"]*

Annex 14

CANADIAN DIPLOMATIC NOTE NO. 366 OF 1 DECEMBER 1969

No. 366

The Canadian Embassy refers to the Note from the Department of State dated November 5, 1969, concerning activities on the continental shelf in the Gulf of Maine and the delimitation of Canada-United States continental shelf boundaries.

The Canadian Government has noted the views expressed by the United States Government with respect to the Gulf of Maine. The Government of Canada shares the concern of the Government of the United States with respect to pollution hazards arising from offshore mineral exploration and exploitation. In response to the United States Aide-Mémoire of May 10, 1968, on this subject, the Canadian Embassy on September 23, 1968, transmitted to the State Department copies of the Canadian regulations concerning offshore exploration. No pollution damage has resulted from offshore operations under these regulations, and fish kills resulting from marine seismic surveys have been kept to an acceptable level.

The Canadian Government is unable to accept the suggestion of the United States Government for a temporary suspension of all mineral exploration and exploitation or drilling activities in the Gulf of Maine, pending agreement on the boundary line. The Canadian Government must also emphasize that it has not agreed at any time to a moratorium on mineral exploitation on Georges Bank.

With respect to exploration permits issued by the Government of Canada in the Gulf of Maine, the Canadian authorities on a number of occasions have pointed out that the procedure followed by Canada was in accordance with the principle of equidistance established by the Geneva Convention on the Continental Shelf. The United States authorities did not register any protest to this procedure.

The Canadian Government welcomes the proposal of the United States Government for consultations on measures to safeguard fisheries from possible oil pollution in the Gulf of Maine, and will propose a time and place of meeting for this purpose early in 1970.

The Canadian Government will also be pleased to receive the suggestions of the United States Government concerning possible dates for the initiation of formal negotiation of the Canada-United States continental shelf boundaries. The Canadian Government proposes, however, that the first phase of the negotiations should deal only with the offshore boundaries in the Gulf of Maine and the region of Juan de Fuca Strait.

Washington, D.C.,
December 1, 1969.

Annex 15**UNITED STATES DIPLOMATIC NOTE OF 19 FEBRUARY 1970**

The Department of State refers to its note of November 5, 1969, to the Embassy of Canada indicating that it would suggest in the near future dates for the initiation of formal negotiation of the United-States (*sic*) Canada continental shelf boundaries. The Canadian Government, in a note dated December 1, 1969, agreed to these negotiations and proposed that the first phase of the negotiations should deal with the offshore boundaries in the Gulf of Maine and the region of the Juan de Fuca Strait.

The United States is now pleased to suggest initiation of these negotiations in Washington during either the week of April 20-24, 1970 or the following week. If either of these times is inconvenient, the United States would welcome suggestions for alternative dates. An initial one-day session is envisaged. The United States Delegation will be headed by Assistant Secretary of State for European Affairs Martin J. Hillenbrand.

The United States considers that it would be best to negotiate all four United States-Canada offshore boundaries at the same time since any settlement reached with respect to one of these boundaries might provide guiding principles for the remaining boundaries. However, the United States would be willing to initiate the negotiations as suggested by Canada with consideration of the offshore boundaries in the Gulf of Maine and the region of the Juan de Fuca Strait.

Department of State,
Washington, February 19, 1970

Annex 16

UNITED STATES DIPLOMATIC NOTE OF 18 JANUARY 1974 (WITH ATTACHMENT)

[See II, Annex 59]

Annex 17

CANADIAN DIPLOMATIC NOTE NO. 47 OF 8 FEBRUARY 1974

No. 47

The Ambassador of Canada presents his compliments to the Secretary of State and has the honor to refer to the Secretary's Notes of January 18 concerning lobster fishing.

The Canadian Government, while sympathizing with the principles of resource conservation and maximum suitable (*sic*) yield underlying Public Law 93-242, reserves its position as to the interpretation by the United States of the relevant provisions of the 1958 Convention on the Continental Shelf and further reserves all its rights in this matter.

The Canadian Government notes with satisfaction, that the United States will not, at this time, seek to apply this legislation to Canadian vessels engaged in lobster fishery in areas of the continental shelf which might appertain to the United States under Article 6 of the Convention on the Continental Shelf. The Canadian Government is prepared to enter into any discussion on this matter which might be proposed by the United States authorities.

The Ambassador of Canada avails himself of this opportunity to renew to the Secretary of State the assurances of his highest consideration.

Washington, D.C.
February 8, 1974.

Annex 18

UNITED STATES CIRCULAR NOTE OF 2 MAY 1974

The Acting Secretary of State presents his compliments to Their Excellencies and Messieurs the Chiefs of Mission of the Governments whose fishermen have been known to or currently do fish in the Northwest Atlantic Ocean off the coast of the United States and others concerned with Northwest Atlantic fisheries, and has the honor to inform the Chiefs of Mission that the United States Government considers that a sufficient period of time has elapsed to allow fishermen operating in the region to become familiar with the new legislative requirements regarding American lobster as described in the Secretary of State's circular note of January 18, 1974.

United States enforcement officers have been informing fishermen of the new requirements concerning American lobster and of United States policy concerning continental shelf fishery resources generally. They have reported that the fishermen contacted were aware of the new requirements.

The United States Government appreciates the cooperation extended by other governments in bringing the contents of the Secretary's note to the attention of their fishermen and requests that they be informed that United States enforcement officers will now begin to enforce United States continental shelf fishery resource rights to the fullest extent. In this connection, it is recalled from the January 18 note that "fishermen are expected to return to the sea immediately any American lobsters which may be taken incidentally in the course of directed fisheries for other species found in the region. Fishermen who encounter concentrations of American lobsters in the course of their fishing operations should take immediate steps to avoid such concentrations in future tows." Continental shelf fishery resources should be returned to the sea with a minimum of injury. We wish to note that these provisions apply for all United States continental shelf fishery resources, a list of which was enclosed with the Secretary's note of January 18, off any coast of the United States.

Enclosure:

List of Addressees

Department of State
Washington, May 2, 1974

Annex 19

UNITED STATES DIPLOMATIC NOTE OF 11 SEPTEMBER 1974 (WITH ATTACHMENT)

[See II, Annex 59]

Annex 20

CANADIAN DIPLOMATIC NOTE NO. 1126 OF 19 SEPTEMBER 1974

No. 1126

The Department of External Affairs presents its compliments to the Embassy of the United States and wishes to advise the Embassy that the Government of Canada has been given to understand that the Government of the United States has granted a permit to a group of companies for the purpose of carrying out marine seismic exploration relating to the continental shelf in the Gulf of Maine, in particular, in that area known as Georges Bank. The permit referred to is understood to cover an area beyond the equidistance line and consequently extends into an area of the continental shelf which is regarded by the Government of Canada as being within Canadian jurisdiction.

The Department of External Affairs wishes to reiterate the position of the Government of Canada that the equidistance line constitutes the proper basis for the demarcation of the continental shelf boundary in the Georges Bank area, in accordance with Article 6(2) of the *Convention on the Continental Shelf (Geneva 1958)*, as stated during the first phase of the negotiations undertaken between the two countries and which have yet to be concluded.

The Department of External Affairs therefore wishes to express to the Embassy of the United States its concern with regard to granting a permit for these activities, which have no basis in international law, and would accordingly be grateful if the Government of the United States, pending the conclusion of bilateral negotiations, took appropriate measures to prohibit exploration activities being carried out pursuant to this permit on the Canadian continental shelf in the Georges Bank area.

The Department of External Affairs avails itself of this opportunity to renew to the Embassy of the United States the assurances of its highest consideration.

Ottawa,
September 19, 1974.

Annex 21

UNITED STATES DIPLOMATIC NOTE NO. 216 OF 16 OCTOBER 1974

[See II, Annex 60, "Note from the Embassy of the United States to the Department of External Affairs, dated 11 October 1974"]

Annex 22

UNITED STATES DIPLOMATIC NOTE OF 15 MAY 1975

[See II, Annex 61]

Annex 23

CANADIAN DIPLOMATIC NOTE NO. 180 OF 3 JUNE 1975

Canadian Embassy

Ambassade du Canada

Note No. 180

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to the Department of State's Note of May 15, 1975, concerning certain actions that the United States Government intends to take with respect to the continental shelf in the Gulf of Maine area. The Canadian Government shares the interest of the United States Government in arriving at a mutually satisfactory solution of the problems raised by the question of the delimitation of the continental shelf in the Gulf of Maine region. The Canadian Government is, therefore, prepared to consult with the United States Government in order to resume continental shelf boundary negotiations, at the earliest possible date, taking into account relevant domestic and international circumstances.

Pending such amicable resolution of the issue, however, the Canadian Government cannot acquiesce in any measure taken by the United States Government intended to constitute an exercise of jurisdiction or sovereign rights over that portion of the continental shelf in the Gulf of Maine region which lies on the Canadian side of the line of equidistance. On the basis of the Geneva Convention of 1958 on the Continental Shelf, the principle of equidistance is the applicable principle of international law, since there is no agreement yet between the two countries and no special circumstances of relevance to the issue. Action of the nature contemplated by the United States of America, be it through the solicitation of nominations by the United States Department of the Interior or through actual leasing, would run counter to these principles, to which the Canadian Government continues to adhere, and its validity cannot be recognized. The Canadian Government, therefore, reserves its rights and the rights of its nationals including the rights already granted under Canada Oil and Gas Permits, in respect of the whole of the area of the continental shelf in the Gulf of Maine region lying on the Canadian side of the line of equidistance. Should the United States Government proceed with its contemplated action, the Canadian Government intends to make its position a matter of public record so that individuals and companies concerned with exploration and exploitation in the area may be aware of this position.

The Canadian Government also takes note of the United States Geological Survey's intention "to conduct certain deep sea drilling operations within the Gulf of Maine during the course of the coming summer as a portion of the deep sea drilling program". If any or all of such operations were to be related to that portion of the continental shelf lying on the Canadian side of the line of equidistance, the consent of the Canadian

Government should be sought in accordance with the provisions of Article 5, Paragraph 8, of the 1958 Geneva Convention on the Continental Shelf.

The Canadian Government is ready at any time to enter into negotiations with the United States Government with a view to finding appropriate solutions to these and other related issues.

The Embassy of Canada avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

WASHINGTON, D.C.

June 3, 1975

Annex 24

CANADIAN AIDE-MÉMOIRE OF 12 SEPTEMBER 1975

The office of the United States Coast Guard in Washington were kind enough recently to provide an official of the Canadian Embassy with a copy of Commandant Instruction 5921.1D of March 19, 1975, regarding the enforcement of United States legislation on lobster fishing by foreign fleets. The Canadian authorities are most grateful for the information so provided. They deem it imperative, however, to state their position on the so-called "boundary lines" delimiting the respective continental shelf jurisdictions of Canada and the USA for the purpose of the Instruction. These lines appear in Attachment (2) to the Instruction, entitled "Boundaries that Delimit What Is Clearly the U.S. Continental Shelf".

The Atlantic "boundary line" suggested in numbered paragraph 1 of the Attachment takes Machias Seal Island as its starting point. It has been universally recognized over the years that Machias Seal Island forms an integral part of Canada's territory and clearly falls within the full sovereignty of Canada. Any continental shelf boundary between Canada and the USA in this area would have to take into account that Machias Seal Island is Canadian territory and that Canada's territorial sea, and, beyond, its continental shelf, extend along the Island's coastline facing the Gulf of Maine.

As to the other points of this same "boundary line", most of them lie considerably eastward of the line that should apply. Under international law Canada claims and exercises exclusive sovereign rights to the continental shelf in this area up to the line of equidistance. Article 6 of the 1958 Continental Shelf Convention, to which both Canada and the USA are parties, lays down that in the absence of an agreement between neighbouring states, and unless another boundary line is justified by special circumstances, the boundary line is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea is measured. In the Canada/USA Atlantic area no special circumstances exist that might justify some other boundary than the line of equidistance.

The Canadian authorities have noted that numbered paragraph 6 of the Attachment has the "boundary line" in the British Columbia/Washington area run along the parallel of 48° 20" (*sic*) North Latitude. This line has no basis in international law. Once again the only valid line for dividing the continental shelf in this area would be one based on the provisions of Article 6 of the 1958 Continental Shelf Convention.

The Canadian Government wishes to record formally that it reserves all its rights in respect of all matters relating to the delimitation of the continental shelf boundary in the areas referred to above. The purported "boundary lines" unilaterally advanced by the USA have no force

and effect under international law and are without precedential value or significance; they cannot properly be applied against Canada, Canadian vessels or Canadian licensees for any purpose whatever. As to the other "boundary lines" set out in numbered paragraphs 7 and 9 of the Attachment, they too constitute unilateral delimitations and therefore can be taken only as evidence of what the United States may consider to be appropriate continental shelf boundaries in the Dixon Entrance and Beaufort Sea regions.

The Canadian authorities have noted with satisfaction that the U.S. authorities have decided not to seek to enforce against Canadian vessels the U.S. legislation on lobster fishing by foreign fleets. While recognizing the desire of the U.S. authorities in this way to avoid raising associated boundary questions, the Canadian authorities must point out that these questions would also arise if the USA were to seek to enforce its legislation against third states in areas of the continental shelf appertaining to Canada under international law. No such enforcement action by the USA in the areas concerned could be based on or support a claim to sovereign rights therein.

The Canadian authorities trust that the views expressed above will be taken into due account in the application and enforcement of the U.S. lobster legislation.

Annex 25

CANADIAN DIPLOMATIC NOTE NO. 52 OF 2 FEBRUARY 1976

No. 52

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to the intention of the United States Department of the Interior, as announced on January 2, 1976 to open areas on the Continental Shelf in the Gulf of Maine region for leasing for the exploration and exploitation of mineral resources.

According to the announcement, 206 tracts have been selected by the United States Department of the Interior for intensive study in the process of preparing a draft environmental impact statement preliminary to the proposed sale of oil and gas leases on the Continental Shelf. A number of these fall on the Canadian side of the line of equidistance.

The Embassy wishes to refer the Department to its Note No. 180 of June 3, 1975 outlining in detail the Canadian position concerning actions by the United States in respect of Continental Shelf areas on the Canadian side of the equidistance line. The Embassy wishes once again to point out that the 1958 Convention on the Continental Shelf, to which Canada and the United States are both parties, provides in Article 6 that when no agreement exists concerning the delimitation of the Continental Shelf and, as in the case of the Gulf of Maine area, in the absence of special circumstances, the applicable boundary line is to be drawn on the basis of the principle of equidistance. In these circumstances, it is the view of the Canadian authorities that the Department of the Interior should limit its environmental studies and its proposed sale of tracts to Continental Shelf areas falling on the United States side of the line of equidistance.

The Embassy wishes to express the concern of the Canadian authorities that if the Department of the Interior were to proceed with its plans in respect of areas lying beyond the line of equidistance, this could seriously hamper the progress of the discussions now underway to reach agreement on the delimitation of the Continental Shelf in the Gulf of Maine region. Notwithstanding the difficulties to be overcome in these discussions, the Canadian authorities consider that an acceptable delimitation on the basis of the principles of international law is possible, provided both parties avoid measures contrary to the positive spirit which characterized the exploratory discussions on December 15, 1975, which latter are expected to continue on February 17, 1976 in Washington, D.C.

The Embassy of Canada avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, D.C.
February 2, 1976

Annex 26

UNITED STATES DIPLOMATIC NOTE OF 10 FEBRUARY 1976

[See II, Annex 62]

Annex 27

CANADIAN AIDE-MÉMOIRE OF 8 MARCH 1976

The United States authorities are referred to the meeting of the Canadian and United States fisheries officials held in Ottawa on October 22, 1975.

Discussions at that meeting underlined the importance both countries attached to the continuation of their good fisheries relations and significance of reciprocal fishing arrangements in this context, particularly in light of anticipated extensions of fisheries jurisdiction. Both sides noted the relationship between the reciprocal fishing arrangements and our Canada-United States fisheries questions, especially regarding salmon. It was agreed that the representatives of the two countries would meet at an early opportunity to consider the possibility of working out more comprehensive reciprocal arrangements to be put into effect following the establishment of the new jurisdictional limits. In the interim, in view of the many commitments which the Canadian and the United States officials have for the coming months, both sides expressed a mutual interest in the possibility of extending the present reciprocal fishing privileges Agreement for a period of one year. This Agreement was signed and came into force on April 24, 1970; it has since been extended, with amendments, on four occasions, most recently as of April 24, 1975.

Accordingly, pursuant to the understanding reached in October, Canadian authorities propose that the necessary steps for suggested extension of reciprocal fishing privileges agreement now be initiated. At the same time they propose that the Canadian and United States officials should meet at an early date to begin consideration of more comprehensive reciprocal arrangements as indicated above. Canadian officials would be prepared to host such a meeting in Ottawa.

The Canadian Government would be grateful to receive comments of the United States Government on these proposals at an early date.

Washington, D.C.
March 8, 1976.

Annex 28**UNITED STATES AIDE-MÉMOIRE OF 31 MARCH 1976**

The Department of State refers to the Canadian Embassy's Aide-Mémoire of March 8, the meeting of the Canadian and United States fisheries officials held in Ottawa on October 22, 1975, and the meeting between Canadian and United States officials in Seattle on February 18-20.

The Government of the United States of America agrees that in view of substantial progress made in furthering the understanding of salmon problems of mutual concern at the meeting that culminated in scheduling of formal negotiations for May 17, it is to the mutual interest of both countries to extend the present reciprocal fishing privileges agreement for a period of one year. The Government of the United States proposes that this be arranged through an exchange of Notes.

In this connection, the Government of the United States notes the possibility that after February 28, 1977, certain domestic legislation, though recognizing Canadian fishing in accordance with the terms of reciprocal agreement, may require that Canadian vessels obtain a registration permit from the Secretary of State which must be displayed in the wheelhouse of such vessels. Should this requirement become applicable, the United States authorities would, of course, make every effort to facilitate compliance with any procedures that may be necessary to obtain registration permits.

The Government of the United States of America agrees with the proposal of the Government of Canada that Canadian and United States officials should begin consideration of more comprehensive reciprocal arrangements to be put into effect following the establishment of the new jurisdictional limits and looks forward to the commencement of such discussion agreed to between the Governments of the United States and Canada on May 10-12 in Vancouver, British Columbia.

Department of State,
Washington, March 31, 1976.

Annex 29

LETTER FROM THE UNITED STATES SECRETARY OF STATE HENRY KISSINGER TO THE
CANADIAN SECRETARY OF STATE FOR EXTERNAL AFFAIRS ALLAN MACEachEN
TRANSMITTED IN THE LETTER OF 7 APRIL 1976 FROM THE UNITED STATES
AMBASSADOR THOMAS ENDERS TO THE CANADIAN SECRETARY OF STATE FOR
EXTERNAL AFFAIRS ALLAN MACEachEN

**EMBASSY OF THE
UNITED STATES OF AMERICA**

Ottawa, April 7, 1976

Dear Mr. Minister:

I have been asked to convey to you the following message from
Secretary Kissinger:

"Dear Allan:

"During our discussions in Ottawa last October, I undertook to keep you informed of the position of the Administration on 200-mile fisheries zone legislation in the U.S. The Congress has recently passed the Fisheries Conservation and Management Act of 1976 which would establish a 200-mile fisheries conservation zone effective March 1, 1977.

"As you know, the Administration has consistently opposed any such unilateral U.S. action while the Law of the Sea Conference negotiations are continuing. We hope that the delayed effective date contained in the U.S. legislation allows time for the Law of the Sea Conference to resolve this issue on an international basis. We have reservations about certain provisions of the bill, and are hopeful these problem areas can be corrected before extended jurisdiction enters into effect. Given these considerations, the President may not make a final decision on whether to sign this legislation until the deadline approaches next week.

"Officials of the Department of State have been in close touch with your Embassy in Washington regarding the details of the U.S. legislation and will continue these consultations in the days ahead. I know that you and I share an appreciation of the importance of this issue in our bilateral relations. Canadian intentions with regard to the establishment of a 200-mile zone are of

great importance to us and I would appreciate your keeping me informed of your plans in this regard.

"Warm regards,

Henry A. Kissinger"

Sincerely, *with much regard*

(Signed) [illegible]
Thomas Ostrom Enders

The Honorable
Allan J. MacEachen, P.C., M.P.,
Secretary of State
for External Affairs,
Ottawa.

Annex 30

CANADIAN AIDE-MÉMOIRE OF 13 APRIL 1976

The Department of External Affairs refers to the Department of State's Aide-Mémoire of March 31, 1976 agreeing to the extension of the present Canada/USA Reciprocal Fishing Privileges Agreement for a period of one year. The Department is pleased to accept the proposal that this extension be arranged through an immediate exchange of notes.

The Government of Canada has noted the possibility that after February 28, 1977 certain USA legislation may require that Canadian vessels operating pursuant to the Reciprocal Fishing Privileges Agreement obtain a registration permit from the Secretary of State. The Government of Canada understands from the Department of State's Aide-Mémoire that the purpose of a requirement of this nature would be to give continued effect to the Reciprocal Agreement as it applies to Canadian fishing in the U.S. zone.

The Government of Canada wishes to draw to the attention of the Government of the U.S. of A. the possibility that, should the Canadian fisheries jurisdiction be extended during the period in which the Reciprocal Fisheries Agreement is in force, a similar administrative requirement may apply with respect to U.S. vessels under Canadian legislation. The application of U.S. and Canadian laws in respect to such matters as registration permits would, of course, be without prejudice to the resolution of maritime boundary questions between the two countries.

With respect to the question of more comprehensive reciprocal arrangements to be put into effect following establishment of new jurisdictional limits, the Government of Canada is gratified that the Government of the USA has agreed that Canadian and USA officials should begin consideration of such arrangements at a meeting to be held from May 10 to May 12 in Vancouver, B.C.

Ottawa,
April 13, 1976

Annex 31

CANADIAN AIDE-MÉMOIRE OF 28 APRIL 1976

The Canadian authorities have taken note of recent press reports indicating that stratigraphic drilling is now underway on the Continental Shelf in the Gulf of Maine area. The Canadian authorities are of the view that this drilling activity may add to the complexity of current talks between Canada and the United States on the delimitation of the boundary in the area and affect the consideration of appropriate solutions.

The Canadian authorities are concerned by the United States decision to authorize drilling on George's (*sic*) Bank at this time and wish to make clear that such drilling cannot be considered as prejudicing in any way the final settlement of the boundary between the two countries.

Washington, D.C.
April 28, 1976

Annex 32

UNITED STATES DIPLOMATIC NOTE NO. 103 OF 20 MAY 1976

No. 103

The Embassy of the United States of America presents its compliments to the Department of External Affairs and refers to the matter of continental shelf boundaries between the United States and Canada.

It has only recently come to the attention of the Government of the United States that the Government of Canada has granted oil and gas concession (*sic*) in the Beaufort Sea as far west as 141 degrees west longitude. Furthermore, the Government of the United States has heard from public sources that the Government of Canada has granted similar concessions in the Dixon Entrance and Strait of Juan de Fuca areas. Reportedly, some of these concessions were granted as many as ten years ago.

The United States notes these actions with concern, since they occur in areas where the continental shelf boundaries between the United States and Canada have not been determined. The United States was neither consulted nor notified concerning Canadian intentions in these areas of common interest. The Government of the United States recalls that in its Note of November 5, 1969, in which it reserved its rights and those of its nationals with respect to the Gulf of Maine continental shelf boundary, it also reserved its rights and those of its nationals with respect to areas in the vicinity of other continental shelf boundaries between the United States and Canada.

The United States wishes to emphasize that since the Truman Proclamation of 1945 Canada has known that the position of the United States with respect to continental shelf boundaries with Canada is that they shall be determined by agreement in accordance with equitable principles, and that this is confirmed by the 1958 Geneva Convention on the Continental Shelf and Other Relevant Principles of International Law. Unilateral acts of Canada cannot lay a foundation for a Canadian claim to specific boundary areas.

Until the exact location of the United States-Canada continental shelf boundaries in the Beaufort Sea, Dixon Entrance and Strait of Juan de Fuca areas are determined, the United States can neither accept nor recognize as valid any Canadian authorization of exploration or exploitation of the natural resources of the continental shelf in areas that are or may be subject to the jurisdiction of the United States. The United States once again reserves its rights and those of its nationals with respect to those areas, particularly in the Beaufort Sea.

The Government of the United States also wishes to note that the views regarding presumptions in favor of equidistance expressed by the Canadian delegation in the negotiations concerning the continental shelf

boundary in the Gulf of Maine area, and the views which were expressed in the Embassy of Canada Note No. 52 of February 2, 1975 (*sic*), are not consistent with the Canadian action in the Beaufort Sea area. The United States, for its part, is not aware of circumstances that would justify assertions of Canadian jurisdiction as far west as the 141st meridian. Moreover, the use of the meridian raises questions regarding the so-called sector theory which as the Government of Canada is aware, has been associated with attempts to interfere unlawfully with navigational and other freedoms. Accordingly, the United States must restate its long-standing position that the so-called "sector" theory is not an accepted principle of international law.

The Government of the United States requests that the Government of Canada furnish to the United States information concerning the western extent of Canadian oil and gas leases or other permits in the Beaufort Sea, the northern extent of any such leases or permits in the Dixon Entrance area, and the southern extent of any such leases or permits in the Strait of Juan de Fuca area. In this connection the Government of the United States would welcome an explanation of the legal arguments regarding delimitation upon which the Government of Canada is relying to justify those actions in each case. The Government of the United States expresses its willingness to enter negotiations concerning these continental shelf boundary areas at an appropriate and mutually convenient time.

The Embassy of the United States takes this opportunity to again convey to the Department of External Affairs the assurances of its highest consideration.

Embassy of the United States of America,
Ottawa, May 20, 1976.

Annex 33

CANADIAN AIDE-MÉMOIRE OF 3 JUNE 1976

Canadian Embassy**Ambassade du Canada**

The Embassy of Canada refers to a proposal by the United States National Science Foundation concerning an inter-disciplinary study of the cultural impact of the changing environment in the Gulf of Maine area.

The Canadian authorities understand that the study will involve the taking of samples of the continental shelf in the Gulf of Maine area. In this connection, they wish to bring to the attention of the Department of State that if sampling is to occur on the Canadian side of the line of equidistance in the Gulf of Maine area, prior consent of the Canadian authorities should be sought for such research activities as provided in Article 5 of the 1958 Geneva Convention on the Continental Shelf.

Washington, D.C.
June 3, 1976

Annex 34

LETTER FROM THE CANADIAN SECRETARY OF STATE FOR EXTERNAL AFFAIRS ALLAN
MACEachen TO THE UNITED STATES SECRETARY OF STATE HENRY KISSINGER
TRANSMITTED IN THE LETTER OF 4 JUNE 1976 FROM THE CANADIAN AMBASSADOR
J. H. WARREN TO THE UNITED STATES SECRETARY OF STATE HENRY KISSINGER

Canadian Embassy**Ambassade du Canada**

1746 Massachusetts Ave N.W.,
Washington, D.C. 20036

June 4, 1976

Dear Mr. Secretary,

I have been requested to convey to you the following message from the Secretary of State for External Affairs regarding the extension of Canadian fisheries jurisdiction.

Text begins:

Dear Henry,

I am writing to you concerning the extension of Canadian fisheries jurisdiction to 200 miles. You will recall that in my earlier communication in reply to your letter of April 7, 1976, announcing your Government's new legislation on extended fisheries jurisdiction, I said that I would keep you informed of developments concerning Canada's plans for eventual extension of jurisdiction over fisheries. In the course of our discussions in Nairobi we again had an opportunity to exchange views on this subject.

You are already well aware that the state of the fisheries resource off the North American Atlantic coast has deteriorated to dangerously low levels and that there is great concern that unless action is taken soon, there will be no resource left to protect in the future. It is with this in mind, that the Canadian Government has decided that it will take action to extend Canadian fisheries jurisdiction out to 200 miles. Implementation of this decision under existing Canadian legislation will come later this year and in any event will be in place by January 1, 1977. I intend to announce this decision in the House of Commons today, June 4. The text of my statement will be communicated to you as soon as possible.

Extension of jurisdiction by both our countries presents us with new opportunities and new challenges in our fisheries relations. It also lends greater urgency to resolving unsettled boundary problems. Meaningful consultations are needed if we are to take advantage of these opportunities and avoid potentially serious difficulties. In my view, we should be working together for the establishment of a comprehensive bilateral treaty framework, to be in

place by early 1977, that would provide for cooperation on a mutually beneficial basis in the conservation, management and utilisation of fish stocks of mutual interest.

In view of the importance of these matters, I will be following developments closely and would hope that both of us might ensure that priority consideration is given to them by our Governments.

Yours sincerely,

Allan J. MacEachen

Text ends.

The Minister's statement will, I can assure you, be sent to your office at the earliest possible moment.

Yours sincerely,

(Signed) [illegible]
J.H. Warren,
Ambassador

The Honourable
Henry A. Kissinger,
Secretary of State,
Washington, D.C.

Annex 35

LETTER FROM THE UNITED STATES SECRETARY OF STATE HENRY KISSINGER TO THE
CANADIAN SECRETARY OF STATE FOR EXTERNAL AFFAIRS ALLAN MACEACHEN
TRANSMITTED IN THE LETTER OF 7 JUNE 1976 FROM THE UNITED STATES
AMBASSADOR THOMAS ENDERS TO THE CANADIAN SECRETARY OF STATE FOR
EXTERNAL AFFAIRS ALLAN MACEACHEN

Ottawa

June 7, 1976

Allan

Dear Mr. Minister:

I have been requested to deliver to you the following letter from the Secretary of State:

"Dear Allan:

"I appreciated very much your letter of June 4 informing me of Canada's decision establishing a 200-mile fishing zone no later than January 1, 1977. We understand the reasons for this action, which, like our own recently passed legislation, has been taken with the continuing hope that a multilateral solution can yet be reached in the LOS negotiations this year.

"I particularly welcome your mention of your own concern that establishment of a 200-mile fisheries zone by both of our countries lends greater urgency to our ongoing bilateral discussions on unsettled boundary issues and on fisheries issues. Your concern is shared completely by me and I believe we should redouble our mutual efforts to achieve solutions to both problems before the 200-mile zones go into effect.

"I understand that our respective fisheries negotiators plan to meet in Washington toward the end of July and I will instruct the U.S. side to seek maximum progress in these consultations.

"With regard to the boundary settlement question, I believe this is an especially propitious time for coming to grips with these long-standing issues. Moreover, a boundary settlement in the Gulf of Maine area would greatly facilitate agreement on a fisheries treaty. I am informed that our legal advisers have agreed that it would be desirable to establish a single boundary for both Continental Shelf and fisheries jurisdiction in the Gulf of Maine. We would also be prepared to include other boundary settlements in an overall solution if broadening the scope of our negotiations would facilitate agreement. In order to move expeditiously on this problem, we would like to schedule talks at the end of this month and would be willing to keep at it as frequently as necessary to resolve the problem this fall. If it should prove impossible to arrange a

meeting of the full Delegation in the next few weeks, it might be feasible for our chief negotiators to meet informally provided we can give them the necessary guidance to make progress.

"I would be interested in your thoughts on these issues and particularly on my suggestions regarding the way we might proceed on the boundary settlement question.

"Warm regards,

Henry A. Kissinger"

(Signed) Sincerely,
{illegible}
Thomas Ostrom Enders

The Honorable
Allan MacEachen, P.C.,
Secretary of State for
External Affairs,
Ottawa.

Annex 36**CANADIAN DIPLOMATIC NOTE NO. FLP-63 OF 8 JUNE 1976
(ATTACHMENTS OMITTED)**

No. FLP-63

The Department of External Affairs presents its compliments to the Embassy of the United States of America and has the honour to refer to its note of May 20, 1976 concerning the matter of continental shelf boundaries between the United States and Canada.

As the Embassy is aware there were discussions in Ottawa on May 25 between United States and Canadian officials on continental shelf boundary delimitation in the Gulf of Maine area at which time consideration was given to the broadening of these discussions to cover other unsettled maritime boundaries between the two countries.

The Department has taken note of the questions and concerns expressed in the Embassy's note. The Department reserves its right to reply at a later date concerning Canadian jurisdiction in the areas in question, the characterization of Canadian actions made in the note and the relevance and applicability of international law.

With regard to the information requested concerning Canadian oil and gas exploration permits in other areas than the Gulf of Maine, the Department understands that the appropriate Canadian authorities have exchanged such information with their counterparts some time ago. Nevertheless the Department is pleased to enclose this information again.

The Department of External Affairs avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

Ottawa, June 8, 1976

Annex 37

LETTER FROM THE CANADIAN SECRETARY OF STATE FOR EXTERNAL AFFAIRS ALLAN
MACEachEN TO THE UNITED STATES SECRETARY OF STATE HENRY KISSINGER
TRANSMITTED IN THE LETTER OF 15 JUNE 1976 FROM THE CANADIAN AMBASSADOR
J. H. WARREN TO THE UNITED STATES SECRETARY OF STATE HENRY KISSINGER

Canadian Embassy

Ambassade du Canada

1746 Massachusetts Ave., N.W.,
Washington, D.C. 20036

June 15, 1976

Dear Mr. Secretary,

I have been requested to convey to you the following message from the Secretary of State for External Affairs regarding the extension of Canadian fisheries jurisdiction.

Text begins:

Dear Henry,

I am pleased to note from your letter of June 7 that you share my concern for an expeditious resolution of the problems which arise as a result of the prospective extension of our fisheries jurisdictions. As I indicated in my recent letter, I believe an early accord on fisheries should be a matter of high priority. I am sure this sense of urgency will be shared by our delegates at the next round of bilateral talks scheduled for Washington in July.

In discussing Canada's decision on the extension of fisheries jurisdiction in the House of Commons on June 4, I stated that it would be a major concern of mine that Canada reach a satisfactory conclusion of our outstanding boundaries questions. While a settlement of these issues, especially in the Gulf of Maine, could constitute an important factor in the attainment of long-term fisheries arrangements, such a settlement would not in itself resolve all of the immediate problems arising from the imminent extension of our fisheries limits. Moreover, it may well prove impossible to conclude in such a short period of time a final settlement of the complex boundary issues which have been outstanding for so many years, and the lack of such a settlement should not prevent us from entering into fisheries arrangements. In view of the possibility that final boundary solutions might take longer to put into place I would suggest that, while pursuing long-term fisheries solutions, we should also keep open the prospect of interim arrangements, as was recently discussed by Canadian and United States officials in Vancouver.

In order to move forward as quickly as possible on the boundaries issue, I would agree that officials should meet at the earliest feasible date, which for our side would be around mid-July. Moreover, I agree, as you have indicated, that we should now be moving towards more comprehensive negotiations. In the meantime, it could be useful and, from our point of view, is certainly feasible, for informal contacts to be maintained between the two sides.

Yours sincerely,
Allan J. MacEachen

Text ends.

(Signed) Yours sincerely,
[illegible]
J. H. Warren,
Ambassador

The Honourable
Henry A. Kissinger,
Secretary of State,
Washington, D.C.

Annex 38**UNITED STATES AIDE-MÉMOIRE OF 2 AUGUST 1976**

The Department of State refers to the Embassy of Canada's Aide-Mémoire of June 3, 1976, concerning "a proposal by the United States National Science Foundation concerning an interdisciplinary study of the cultural impact of the changing environment in the Gulf of Maine area."

The Department of State takes the occasion to reiterate to the Embassy of Canada that the United States Government does not accept the proposition that the continental shelf of the United States of America in the Gulf of Maine area is delimited by the "line of equidistance." The position of the United States Government concerning an appropriate delimitation of the continental shelf in the Gulf of Maine area is well known to the Government of Canada and need not be reiterated here. However, the Department of State does wish to emphasize the importance it attaches to a negotiated delimitation of the continental shelf in the Gulf of Maine area at the earliest possible date. It hopes that the boundary issue will be settled well before the research in question gets underway.

Department of State,
Washington, August 2, 1976.

Annex 39

CANADIAN AIDE-MÉMOIRE OF 19 AUGUST 1976

The Canadian authorities have taken note of a recent Press Release of the U.S. Department of the Interior indicating that USGS is carrying out a corehole drilling programme on the continental margin off the east coast of North America this summer. Canadian authorities understand that four of the proposed sites for drilling are on George's (*sic*) Bank. As already indicated in our Aide-Mémoire of April 28 concerning stratigraphic drilling in the area, Canadian authorities are concerned that such activities may add to the complexity of current talks on delimitation of the boundary in the area.

The Canadian authorities wish to bring to the attention of the Department of State the fact that the Canadian Government has not to date authorized any form of drilling in the area. The Canadian authorities hope that the United States authorities will not authorize any further activities which may affect an appropriate solution of the boundary issue and wish to make it clear that such activities cannot be considered as prejudicing in any way the final settlement of the boundary between the two countries.

Washington, D.C.
August 19, 1976

Annex 40

UNITED STATES AIDE-MÉMOIRE OF 10 SEPTEMBER 1976

The Department of State refers to the Embassy of Canada's Aide-Mémoire of August 19, 1976, concerning the United States Geological Survey core drilling program on the continental shelf in the Gulf of Maine area.

The selected sites referred to in the Embassy's Aide-Mémoire all fall on the United States side of a line developed using the principle of equidistance. None of the selected sites is located in continental shelf areas claimed by both Governments. Although the United States Government reserves the right to take appropriate steps to explore and exploit the resources of the entire continental shelf appertaining to the United States of America under international law, the Government of the United States has taken pains to avoid any actions at this time that might complicate the efforts being made by both Governments to resolve the Gulf of Maine area boundary question at an early date.

The Department of State notes the positions taken by the Government of Canada in its notes of June 3, 1975, and February 2, 1976, and expresses the hope that the Canadian Aide-Mémoire does not portend developments that could further complicate the resolution of the maritime boundaries in the Gulf of Maine area.

The position of the Government of the United States concerning the appropriate delimitation of the continental shelf in the Gulf of Maine area is well known to Canadian authorities and need not be reiterated here. However, the Department wishes to emphasize again the importance it attaches to a negotiated delimitation at the earliest possible date.

Department of State
Washington, September 10, 1976.

Annex 41

LETTER OF 22 OCTOBER 1976 FROM THE CANADIAN SECRETARY OF STATE FOR
EXTERNAL AFFAIRS DON JAMIESON TO THE UNITED STATES SECRETARY OF STATE
HENRY KISSINGER

October 22, 1976

Dear Henry,

I write to thank you for suggesting we get together as we did last week and to express my appreciation for your hospitality. It was a most useful meeting and I look forward to other occasions of this kind in the future.

I think we both agreed that the most important and urgent subject discussed was that of maritime boundaries and fisheries. It was my understanding that by the end of our discussion we had made some progress on what is admittedly a most complicated subject. I had hoped that the bilateral fisheries discussion on Tuesday of this week could build upon the measure of understanding reached between us last Friday. You will recall that throughout our discussions I stressed that the possibility of a negotiated line somewhere between the boundaries claimed by the two sides could only be considered if this were coupled with resource sharing arrangements, including joint fisheries management, for a zone extending beyond the area bounded by the claims of each side. I wonder if this latter part of the proposed basis for negotiation was fully taken into account by your officials engaged in the fisheries discussions this week. It would be helpful if you would let me know whether your understanding of the proposed basis of negotiation is similar to mine on this point. I should be interested in your views also as to whether it would be useful to prepare an agreed minute of the understanding reached in our discussion.

Yours sincerely,

(Signed) Don JAMIESON

Annex 42

LETTER FROM THE UNITED STATES SECRETARY OF STATE HENRY KISSINGER TO THE
CANADIAN SECRETARY OF STATE FOR EXTERNAL AFFAIRS DON JAMIESON
TRANSMITTED IN THE LETTER OF 12 NOVEMBER 1976 FROM THE UNITED STATES
AMBASSADOR THOMAS ENDERS TO THE CANADIAN SECRETARY OF STATE FOR
EXTERNAL AFFAIRS DON JAMIESON

EMBASSY OF THE
UNITED STATES OF AMERICA

Ottawa

November 12, 1976

Don

Dear Mr. Minister:

I have been asked to deliver to you the following letter from the Secretary of State:

"Dear Don:

"Thank you for your letter of October 22 concerning our discussion of maritime boundaries and related resource issues. I certainly share your understanding that we had made progress on these issues, and I regret that some differences of interpretation apparently have arisen.

"My understanding is that we agreed to continue our efforts to negotiate a comprehensive settlement of our various maritime boundaries and related resource issues. To facilitate this effort, I understood that we agreed on four basic points with particular reference to the Gulf of Maine area:

- "(1) to try to find a mutually agreeable boundary line;
- "(2) in the interval, while negotiations are going on, to work out mutually agreeable procedures for dealing with the fishery activities of third parties;
- "(3) to negotiate reciprocal fishery arrangements not necessarily bound by our two claimed boundary lines;
- "(4) to work out cooperative arrangements concerning hydrocarbons on similar terms.

"In my view these four points represent important progress, but they obviously do not answer all the hard questions, including the one put in your letter. You did indeed make clear that such an agreement by Canada on a compromise boundary line would be possible only if coupled with a satisfactory long-term fisheries agreement. My understanding of the basis on which we agreed to

- continue our fishery negotiations toward a long-term agreement was that we would seek arrangements that would be reciprocal and mutually agreeable and would not necessarily be limited to the zone between our two lines. It was not my understanding that our fisheries negotiations for short-term arrangements would be premised on joint fisheries management in an area extending beyond the zone of overlapping claims, but that access to fisheries of interest in an area not necessarily bound by our two claimed boundary lines could be negotiated for the short-term.

"I would hope that our agreement on the general principles such as those I have outlined above could serve as a framework for continuing negotiations for the short-term arrangements and long-term agreement — in effect as the agreed minute of understanding you suggested.

"I am confident that you share my view that at this stage the important point is to get the talks moving both on specific boundary lines and on the important related resources issues. If you agree, let us instruct our negotiators to resume their work at once, recognizing that with respect to fisheries, the immediate need is the negotiation for short-term arrangements which will avoid conflict while we pursue our longer term objectives.

Warm regards,

Henry A. Kissinger"

With much regard
(Signed)

Sincerely,
[illegible]
Thomas Ostrom Enders

The Honorable
Donald Campbell Jamieson,
Secretary of State for
External Affairs,
Ottawa.

Annex 43

LETTER OF 3 DECEMBER 1976 FROM THE CANADIAN SECRETARY OF STATE FOR
EXTERNAL AFFAIRS DON JAMIESON TO THE UNITED STATES SECRETARY OF STATE
HENRY KISSINGER

OTTAWA, December 3, 1976.

Dear Henry,

Thank you for your letter of November 12, 1976 concerning maritime boundaries and related resource questions.

I appreciate your initiative in setting out general principles to serve as a framework for continuing negotiations. Although I am in substantial agreement with the suggested framework, I have noted that certain elements on which I thought we had reached an understanding in Washington — in particular long-term joint fisheries management — are not addressed. Nevertheless I instructed Canadian officials to develop proposals for the November 18-19 bilateral fisheries consultations which would build on the points set out in your letter and which would be non-prejudicial to the boundaries positions of both sides. I had thought that the approach put forward by Canadian officials suggesting the use of an ICNAF sub-area or areas met both criteria and consequently, was concerned to hear that United States officials were unable to accept it.

As it appears that further fisheries negotiations cannot be arranged before the end of December, it is now clear that the extended Canadian fisheries jurisdiction will come into effect on January 1, 1977 without either interim or long-term agreement having been concluded. In these circumstances it would be my intention to recommend to my colleagues that Canada show restraint and forbearance in the enforcement of its extended jurisdiction, vis-à-vis the United States and thereby avoiding action which might lead to conflict in the boundary areas and/or prejudice the maritime boundaries and fisheries negotiations.

I am advised, however, that some United States officials have expressed the view that the United States may not be in a position to exercise reciprocal forbearance when the United States extended fisheries jurisdiction comes into effect on March 1, 1977. In my opinion it would be most unfortunate if this were the case. Moreover, I have some difficulty in seeing how we on the Canadian side could be expected to exercise forbearance in the absence of an understanding from the United States side to act in a parallel manner. Such an understanding would of course be far short of the permanent agreement or interim arrangement that we had earlier hoped for, but I am confident that it would go some way to avoiding the occurrence of incidents that could greatly complicate the work of our boundaries and fisheries negotiators.

I look forward to the opportunity of discussing with you at next week's meeting in Brussels, both the idea of adopting an ICNAF sub-

area for our short-term purposes and secondly, an understanding on mutual forbearance.

Yours sincerely,

(Signed) Don JAMIESON

The Honourable Dr. Henry A. Kissinger,
Secretary of State,
Washington.

Annex 44

CANADIAN AIDE-MÉMOIRE OF 6 DECEMBER 1976

The Canadian authorities wish to confirm that they are prepared to pursue full-scale negotiations (including representatives of the affected interests) with the United States, for a period of two weeks beginning January 17, 1977, with a view to working out short-term or interim fisheries arrangements intended to avoid conflict in maritime boundary areas and allow the time needed for the negotiation of long-term arrangements. While fully appreciating the efforts the United States authorities have made to reach a mutually agreeable accommodation of the respective fisheries interests of the two countries, the Canadian authorities at the same time must reaffirm the doubts they have previously expressed concerning certain elements of the United States proposals outlined in a document conveyed to the Embassy of Canada on October 28, 1976.

With regard to the Aide-Mémoire (*sic*) transmitted to the Canadian Embassy on November 18, the Canadian authorities would only add, to the views they have already stated, that they are grateful for the assurance provided concerning the United States Government's position, under United States legislation, in respect to ensuring compliance by its own nationals with the provisions of any agreement entered into with the Government of Canada.

Washington,
December 6, 1976.

Annex 45

CANADIAN AIDE-MÉMOIRE OF 22 DECEMBER 1976
(ATTACHMENT OMITTED)

The two hundred mile fisheries jurisdictions of Canada and of the United States of America will come into effect on January 1 and March 1, 1977 respectively.

As the Department of State is aware, negotiations have been underway for some time between Canadian and United States officials to work out both interim and long-term fisheries arrangements to govern fisheries zones. Separate negotiations have also been underway on maritime boundary delimitation which would *inter alia* establish the lateral limits of our extended fisheries zones upon an agreed basis. Unfortunately, agreement has not yet been reached either on interim or long-term fisheries arrangements or on maritime boundary delimitation.

With respect to the questions of interim and long-term fisheries arrangements, the Canadian authorities have agreed that, in view of the fact that mutually acceptable fisheries and boundaries arrangements may not yet be in place as of January 1, 1977 when Canada's extended fisheries jurisdiction comes into effect, Canada will, for the time being, waive the requirement for United States fishing vessels to obtain Canadian licences when engaged in pursuing current fisheries activities in the proposed Canadian fisheries waters, and will exercise restraint as appropriate in the enforcement of Canadian laws against United States vessels and fishermen in the proposed Canadian fisheries waters, on the understanding that the United States authorities will act in a similar manner on and after March 1, 1977 with respect to Canadian vessels and fishermen engaged in pursuing current fisheries activities in the proposed United States fishing zone, in the event that there has been no agreement on interim bilateral or permanent fisheries arrangements by the date of the coming into force of the United States Fisheries Management and Conservation Act. Accordingly attached to this Note is a copy of the Canadian regulations entitled "The Transitional United States Fishing Vessel Licence Exemption Regulations" [*For the text of the Regulations see Annexes to the Memorial Submitted by Canada, Volume II, Annex 32*].

The Canadian authorities will continue to pursue negotiations in both fisheries and maritime boundaries issues in the spirit of the talks between the Canadian Secretary of State for External Affairs and the United States Secretary of State and the longstanding friendship and co-operation which has characterized Canada/United States relations.

Washington, D.C.
December 22, 1976.

Annex 46

CANADIAN DIPLOMATIC NOTE NO. 626 OF 22 DECEMBER 1976
(ATTACHMENTS RELATING TO BOUNDARY AREAS OTHER THAN THE GULF OF MAINE
AREA HAVE BEEN OMITTED)

No. 626

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to Note No. 103 of May 20, 1976 from the United States Embassy in Ottawa to the Department of External Affairs concerning continental shelf boundaries and to Public Notice No. 506 entitled "Maritime Boundaries Between the United States and Canada" published in the United States Federal Register of November 4, 1976.

The Embassy notes that in a number of areas the co-ordinates of the limits of the continental shelf and prospective fisheries jurisdiction set out in Notice No. 506 differ from the co-ordinates for the relevant areas set out in the text of the proposed Order-in-Council published in the Canada Gazette on November 1, 1976, a copy of which is enclosed [*For the text of the proposed Order in Council see Annexes to the Memorial Submitted by Canada, Volume II, Annex 29*]. While the Order-in-Council relates to fisheries jurisdiction only, the co-ordinates set out therein in respect of boundary regions also encompass areas of the continental shelf over which Canada has exercised jurisdiction for a number of years. The Government of Canada does not accept or recognize as valid, for the reasons set out below, the co-ordinates set out in the United States Notice where they encroach upon the prospective Canadian fishing zones as described by the co-ordinates set out in the proposed Order-in-Council.

The Embassy wishes to take this opportunity to make clear the views of the Government of Canada on each of the boundary areas in question. The Department of State will note from the following that Canada has used the median or equidistance approach in each case except where the boundary has already been regulated by international agreement or international arbitral award:

- (a) In the Gulf of Maine/Georges Bank area most of the United States co-ordinates fall north-east of a line of equidistance. The Canadian co-ordinates have been drawn in conformity with the equidistance principle in accordance with the provisions of the 1958 Geneva Convention on the Continental Shelf to which both the United States and Canada are parties. It will be recalled that Article 6(2) of the Convention provides:

"Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the

boundary shall be determined by application of the rule of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured."

Canada has for many years exercised jurisdiction over the resources of its continental shelf in accordance with the terms of the Convention. Since 1964 Canada has issued oil and gas exploration permits up to and straddling the line of equidistance, with the permits for tracts straddling the line being conditional upon their falling under Canadian jurisdiction. This practice was confirmed in an exchange of letters between Canadian and United States officials in 1965, when the United States Department of the Interior concurred in the median line as the appropriate basis for the delimitation of the continental shelf as between Canada and the United States off both the East and West Coasts. During the ensuing period of state practice, no protest or objection was made by the United States until 1969.

- (b) In Grand Manan Channel the United States co-ordinates fall on the Canadian side of the equidistance line. The Canadian co-ordinates have been drawn in conformity with the equidistance principle as reflected in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone and, pending agreement between the two countries by negotiation or third party settlement procedures, at no point go beyond the median line. It will be recalled that Article 12(1) of the Convention provides:

"Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. . . ."

The proposed United States co-ordinates appear to constitute a new claim to jurisdiction over areas which are subject to Canadian jurisdiction or sovereignty, including Canadian internal waters. Canada has long exercised sovereignty over its internal and territorial waters in the Bay of Fundy and adjacent areas, including the waters around Grand Manan Island.

- (c) The United States co-ordinates do not take into account Canadian sovereignty over Machias Seal Island. The Embassy refers the Department of State to previous communications from the Government of Canada on this matter and in particular to the Department of External Affairs Aide-Mémoire of September 22, 1976 which reiterated that there is no evidence

either to bring into question the long standing Canadian sovereignty over Machias Seal Island or to support any United States claim to the Island.

- (d) Seaward of Juan de Fuca Strait the proposed Canadian co-ordinates do not go beyond the equidistance line, pending agreement between the parties by negotiation or third party settlement procedures. The United States co-ordinates, while based on the principle of equidistance, do not take into account Canadian territorial sea baselines drawn in accordance with established principles of international law, as reflected in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. It will be recalled that Article 4(1) of the Convention provides:

"In localities where the coast line is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured."

- (e) The United States co-ordinates inside Dixon Entrance do not take into account the AB Line established by the Alaska Boundary Arbitration Award of 1903. In the Order-in-Council published November 1, 1976 the Canadian Government has not published co-ordinates inside the Dixon Entrance since the international boundary in the areas has already been delineated by that Award. Canada has long exercised sovereignty over its internal and territorial waters in the Dixon Entrance area on the basis of the 1903 Award.
- (f) The United States co-ordinates in the Beaufort Sea do not take into account the international boundary established by the Treaty of 1825 between Great Britain and Russia and confirmed in the Treaty of 1867 between the United States and Russia. The Government of Canada has for many years exercised jurisdiction in the Beaufort Sea up to the 141° meridian boundary including sovereign rights over the continental shelf.

While Canada has refrained from asserting jurisdiction beyond the equidistance line for the delimitation of those maritime boundaries between Canada and the United States not already delimited by treaty or arbitration, it reserves its rights with respect to areas beyond the equidistance line in those cases where there exist circumstances comparable to those on which the United States' claim in the Gulf of Maine area is based. (Attached are charts setting out the limits of Canadian claims based on the same principles as those on which the United States' claims are based, and which would be relevant in the event of a reference of this question to third party settlement.)

The Embassy is pleased to note that the co-ordinates set forth in the United States Notice are intended to be without prejudice to any negotiations with Canada. It will be recalled that the Canadian Order-in-

Council published on November 1, 1976 similarly states that "...the limits of the fishing zones of Canada as established in the annexed Order are intended to be without prejudice to any negotiations or to any positions which may have been or may be adopted respecting the limits of maritime boundary jurisdiction..."

Canada will continue to pursue negotiations with the United States towards a mutually acceptable settlement in the spirit of long-standing friendship and co-operation which has characterized Canada/United States relations.

The Embassy of Canada avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, D.C.

December 22, 1976

Annex 47

UNITED STATES DIPLOMATIC NOTE OF 30 DECEMBER 1976

The Department of State refers the Embassy of Canada to discussions between Secretary Jamieson and Secretary Kissinger on October 15 regarding the desirability of exercising restraint concerning development of non-living resources in the boundary area of the Gulf of Maine. On November 4 the United States Government announced that both countries would avoid steps for the time being relating to the development of non-living resources in the boundary areas concerned which could prejudice negotiation of a boundary settlement.

In this connection, the Department is pleased to inform the Embassy that the Bureau of Land Management of the Department of the Interior announced on December 7 that 28 tracts have been removed from a proposed summer 1977 sale of North Atlantic Outer Continental Shelf oil and gas leases. The announcement noted that this action was designed to assure for a short period of time that ongoing boundary negotiations between the two countries are not prejudiced.

Department of State,
Washington, December 30, 1976

Annex 48

UNITED STATES AIDE-MÉMOIRE OF 8 JANUARY 1977

The Embassy of the United States refers to the U.S.-Canada Government-to-Government Fisheries Consultations held in Ottawa, November 17-19, 1976, the Canadian Embassy's Aide-Mémoire of December 22, 1976, the Department of State's Aide-Mémoire of December 30, 1976, and the U.S.-Canada Fisheries Negotiations on a Short-term Agreement scheduled for January 17-31, in Los Angeles.

The United States Government believes the task now before negotiators of our two Governments is to define appropriate short-term arrangements to be in place by March 1, 1977, so that negotiations can be resumed on long-term fisheries arrangements to be effective after January 1, 1978.

As the Department of State informed the Embassy of Canada in its Aide-Mémoire of December 30, 1976, in any event, after March 1, 1977, Canadian fishing in the United States fishery conservation zone needs to be pursuant to an international agreement which recognizes United States jurisdiction south of the equidistance line in the Gulf of Maine area.

The Canadian Government has taken the view that short-term fisheries arrangements must include provision for joint U.S.-Canadian management of fisheries stocks on the whole of Georges Bank.

As previously made clear, the United States cannot enter into a short-term fisheries arrangement that involves joint management south of the equidistance line in the Gulf of Maine area.

The United States Government is of the view that elements of a short-term arrangement should include: An expiration date of December 31, 1977; no third-party fishing in the areas between our two lines; mutual forbearance in the areas between our two lines vis-à-vis fishermen of our two countries; access on a reciprocal basis for fishermen of our two countries to the respective fishery zones of each that lie beyond the published lines; arrangements that would ease, on a reciprocal basis the administrative burdens which otherwise would apply; enforcement by each country in its own fishery zone outside of the areas between our two lines; and in the areas between our two lines flag state enforcement against nationals of our two countries and enforcement by either Government against third flag vessels. Such short-term arrangements obviously must provide for reciprocal access to fisheries on terms which do not prejudice published claims or the outcome of subsequent negotiations for long-term arrangements.

If it is not possible to reach agreement on arrangements which would provide for reciprocal access to fisheries on terms which do not prejudice published claims, nor prejudice the outcome of subsequent

negotiations for long-term arrangements, a further question arises as to the basis on which the two Governments should proceed after March 1, 1977. It would appear that if the two Governments are not able to reach agreement on arrangements which reflect the special character of the relationship between our fishermen, they should at least be prepared to offer the same terms as have been offered third parties. For its part, absent a reciprocal agreement, the United States Government is prepared to negotiate a governing International Fishery Agreement with Canada concerning Canadian fishing in the United States Fishery Conservation Zone after March 1, 1977. In order to become effective on or about March 1, 1977 such an agreement should be concluded as expeditiously as possible. The necessity for such an agreement, of course, is a judgment for the Canadian Government to make. In that instance, the United States Government also would wish to negotiate for access, on terms no more restrictive, to fisheries within the Canadian fisheries zone.

The United States Government is prepared to proceed on either basis. It would be of assistance in preparing for the January 17 negotiations, however, to know beforehand how the Canadian Government intends to proceed.

Embassy of the United States of America,
Ottawa, January 8, 1977.

Annex 49

UNITED STATES AIDE-MÉMOIRE OF 14 JANUARY 1977

The Embassy of the United States of America has the honor to refer to the recent discussions between the Canadian Secretary of State for External Affairs and the American Ambassador concerning fisheries and maritime boundary issues, and is pleased to confirm that the Government of the United States is prepared to proceed on the basis of the following understandings, which we believe are consistent with the positions taken by the Canadian Secretary of State during that meeting.

The Government of the United States is prepared to endeavor to conclude a short-term fishery agreement which would expire on December 31, 1977, and would not be extended. The Government of the United States is prepared to negotiate this agreement to reflect a pattern of fishing which is consistent with the status quo. The short-term agreement would not provide for joint management or joint surveillance and would be structured in a way to be consistent with coastal state jurisdiction outside the area between the lines published by the two Governments.

The Government of the United States continues to believe that the elements of a short-term agreement are apparent and that they are set forth in the Embassy's Aide-Mémoire of January 8, 1977. The Government of the United States is pleased to learn that the Government of Canada can agree that the short-term agreement need not provide for joint management or joint enforcement in the areas outside the lines published by the two countries.

During 1977, the Government of the United States is prepared to proceed with negotiations on long-term arrangements for each of the four maritime boundary areas. In the Gulf of Maine, these arrangements would consist of four elements: boundaries, long-term fishery arrangements, long-term hydrocarbon arrangements, and arrangements regarding marine pollution. These four elements would be considered, as appropriate, for the other three maritime boundary areas.

The Government of the United States welcomes the suggestion of the Canadian Secretary of State with regard to third party settlement and is prepared to reach a mutual understanding now to submit the Gulf of Maine area maritime boundary, and other maritime boundaries as may be agreed, to binding third party settlement if the two countries cannot reach agreement by the end of 1977. The Government of the United States would wish to resume discussion of boundary issues including reference to third party dispute settlement procedures, should that prove necessary, as soon as possible.

Embassy of the United States of America,
Ottawa, January 14, 1977.

Annex 50**CANADIAN AIDE-MÉMOIRE OF 17 JANUARY 1977**

The Department of External Affairs refers to the Embassy's Aide-Mémoires of January 8 and January 14, 1977, to the related discussions concerning fisheries and maritime boundaries, and in particular, to the Canada-USA negotiations for a short-term fisheries agreement being held from January 17-31, 1977, in Los Angeles.

With regard to the suggestion in the Aide-Mémoire of January 8 that the Canadian Government is of the view that short-term fisheries arrangements would include provisions for joint Canada-USA management of fish stocks on the whole of Georges Bank, the Department wishes to confirm that Canada is not seeking joint management in the short term. Rather, what is essential in the view of the Canadian Government is that these arrangements should not be prejudicial to the positions of either Government on the boundaries issue.

In this connection the Department recalls the parallel statements issued by the two Governments in the Canada Gazette on November 1, 1976 and the Federal Register on November 4, 1976, respectively, intended to avoid prejudice "to any negotiations or any positions which may have been or may be adopted respecting the limits of maritime jurisdiction". It wishes to reiterate its view that certain basic elements in the United States proposals of October 28 for short-term fisheries arrangements were prejudicial to the position of the Canadian Government with regard to the settlement of the boundaries and that from a Canadian perspective this approach is therefore not an appropriate basis for negotiations. The Department notes with interest the revised wording on coastal state jurisdiction in paragraph 2 of the Aide-Mémoire of January 14 and is prepared to discuss this approach in the hope that when developed in concrete terms, it could provide a framework that avoids prejudice to the positions of either Government with regard to the settlement of boundaries and related long-term arrangements.

The Canadian Government is in general agreement with the elements to be addressed in short-term arrangements as set out in paragraph 6 of the Aide-Mémoire of January 8, on the understanding that they would be incorporated within such a non-prejudicial framework.

Turning to other elements in the Aide-Mémoire of January 14:

- A) It is the Department's view that the short-term fishing arrangements would have to be extended beyond December 31, 1977 if a permanent boundary settlement has not been achieved in the meantime and the matter is being referred to a third party.
- B) The Department assumes the reference to a pattern of fishing consistent with the status quo involves the use of the allocations already agreed between Canada and the United States in the ICNAF context.

- C) With regard to the references to "joint management", "joint surveillance" and "joint enforcement", the Department's view is that the Canadian proposals at the November 18-19 fisheries consultations do not constitute joint management, joint surveillance, or joint enforcement in any sense implying dual jurisdiction.
- D) The Department notes that third party procedure has so far been addressed in principle but as yet only in general terms. In particular, further consideration is needed as to which boundaries might be referred to third party procedure. Moreover, with regard to the assumption in the Aide-Mémoire concerning the binding nature of third party procedure, it is the view of the Department that agreement will be needed on the nature of the process including its various stages.
- E) For the longer term, the Department notes the reference in the penultimate paragraph of the Aide-Mémoire of January 14 to four elements which, it is suggested, would comprise arrangements to be negotiated in respect to the Gulf of Maine and would be considered, as appropriate, for the other three maritime boundary areas. The Department notes the USA agreement that these four elements — boundaries, long-term fishery arrangements, long-term hydrocarbons arrangements, and arrangements regarding marine pollution — are interrelated and will need to be addressed. The Department wishes to point out that no agreement had yet been reached as to how these elements might be treated; nor has it yet been agreed that there should be a similar treatment for the various boundary areas. These are matters for further consideration.

The efforts of the Government of the United States to facilitate negotiation of maritime boundaries and related issues are appreciated. The Canadian Government for its part is equally concerned that negotiations move forward expeditiously. To this end, the Government of Canada is approaching the January 17 negotiations with every intention of concluding a short-term fisheries agreement that will allow time for negotiations to proceed in a favourable atmosphere towards the settlement of the boundaries and long-term reciprocal resource arrangements.

OTTAWA, January 17, 1977.

Annex 51**UNITED STATES DIPLOMATIC NOTE OF 18 FEBRUARY 1977**

*[See II, Annex 66, "Note from the Department of State to the Embassy of Canada,
dated 16 February 1977"]*

Annex 52**CANADIAN DIPLOMATIC NOTE NO. 97 OF 1 MARCH 1977**

No. 97

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to the reciprocal fisheries agreement between the Government of Canada and the Government of the United States signed in Washington on February 24, 1977.

The Embassy is pleased to notify the Department of State that, in accordance with the provisions of Article XVIII of the agreement, the Government of Canada has completed all internal procedures necessary to bring this agreement into force.

The Embassy of Canada avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, D.C.
March 1, 1977

Annex 53

CANADIAN AIDE-MÉMOIRE OF 26 MAY 1977

The Canadian authorities have taken note of the press release issued by the United States Department of the Interior on December 20, 1976, announcing approval by the United States Geological Survey for a second deep stratigraphic (*sic*) test well to be drilled in the Georges Bank area. As already indicated in Aide-Mémoires of April 28 and August 16, 1976, and in a recent discussion between the Minister of Energy, Mines and Resources Gillespie and Secretary of the Interior Andrus concerning drilling in this area, the Canadian authorities are concerned that such activities may add to the complexity of continuing negotiations on maritime boundaries delimitation since they occur in an area where the boundary between Canada and the United States has not been settled. In the Canadian Embassy Note 626 of December 22, 1976, the Government of Canada reserved its position in this area.

The Canadian authorities question whether United States authorizations of exploratory drilling in the Gulf of Maine area are consistent with the position of the United States as set out in the United States Embassy's Note No. 103 of May 20, 1976, and in the State Department's Note of February 18, 1977, that maritime boundaries are to be determined by agreement or with the views expressed by the United States delegation during informal legal discussions on maritime boundary delimitation that there is no presumption in favour of the principle of equidistance. In the absence of agreement between the United States and Canada regarding the applicable rules of law, the fact that the drilling sites in question fall on the United States side of the line of equidistance does not exclude the possibility that such sites are located in areas which may be subject to the jurisdiction of Canada. It is for this reason that the Government of Canada has reserved its rights with respect to areas beyond the equidistance line in those cases where there exist circumstances comparable to those on which the United States' claim in the Gulf of Maine is based. Until the exact location of the Canada/United States maritime boundary in the Gulf of Maine/Georges Bank area is settled, Canada can neither accept nor recognize as valid any United States authorization of exploration or exploitation of the natural resources of the Continental Shelf in such areas.

The position of the Government of Canada concerning the appropriate delimitation of the Continental Shelf in the Gulf of Maine area is well known to the United States authorities and need not be reiterated here. The Government of Canada, however, continues to favour negotiated settlements of the maritime boundaries between the two countries and, therefore, believes it is important that no action be taken, pending a final determination of the boundaries, which could prejudice such settlements. In this connection, the Canadian authorities wish to bring to the attention of the State Department once again the fact that the Canadian

Government has not, to date, authorized any form of drilling in the boundary areas. The Canadian authorities have taken note of the information contained in the Department of State Note of December 30, 1976, concerning the removal of certain tracts in the boundary area in the Gulf of Maine from a proposed sale of oil and gas leases. It is hoped that the United States authorities will similarly refrain from drilling throughout the boundary areas.

Washington, D.C.
May 26, 1977

Annex 54**CANADIAN DIPLOMATIC NOTE NO. 221 OF 26 MAY 1977
(WITH ATTACHMENT)**

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to the Department of State Note of February 18, 1977. The Embassy does not propose to address at this stage all the points raised in the Department of State's Note and reserves the right to make further comments at a later date. However, the Embassy considers it important, to avoid misunderstandings, to address at this time certain questions of fact concerning the Canadian position as advanced in negotiations to date and certain questions of international law raised by the Note.

With respect to an important question of fact as to positions taken by the Government of Canada in the course of the negotiations between officials of the two countries, the Note of February 18, 1977 reads in part:

"In the area seaward of the Strait of Juan de Fuca, and the area seaward of Dixon Entrance, the two Governments have taken the same basic position that equidistance is an appropriate means for determining a maritime boundary in accordance with special circumstances. There are no special circumstances in those areas."

"...(D)uring the course of the aforementioned legal discussions, the Canadian negotiators repeatedly asserted that there were no special circumstances in the maritime boundary areas between Canada and the USA. Of course, the Government of Canada is free to change its position regarding these matters. . ."

The records of the Canadian negotiating team on the position of the Government of Canada as to the principles of international law applicable in the areas seaward of the Strait of Juan de Fuca and seaward of Dixon Entrance make clear that in the legal discussions between Canadian and USA officials begun in 1970 and resumed in 1975/76, the Canadian Government has consistently pointed out that factors deemed to be special circumstances by the USA in the Gulf of Maine could have equal application in other areas. This, however, cannot be taken to suggest that the factors deemed to be special circumstances by the USA in the Gulf of Maine are indeed special circumstances in fact or in law, or, assuming the existence of special circumstances in this region, which the Canadian Government does not admit, that they are necessarily those advanced by the USA or would give the effect asserted by the USA. The Canadian Government has not changed its position but rather, from the outset, has reserved all its rights in these matters. As an example of such reservations, the Embassy would point to the relevant preambular paragraph in the Fishing Zones of Canada (Zones 4 and 5) Order PC 1977-1

of January 1, 1977 and various statements made by the Canadian side in the course of negotiations with the USA. Relevant extracts from the text of the statement made by the leader of the Canadian negotiating team in Washington on July 23, 1976 are attached.

With respect to applicable principles of international law, since both states are parties to the 1958 Geneva Convention on the Continental Shelf, it is assumed that it is common ground that Article 6 of the Convention is the applicable law:

- "1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest point of the baselines from which the breadth of the territorial sea of each State is measured.
2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured."

The Canadian Government regards as at variance with the plain meaning of Article 6 the position of the USA Government as stated in the Note of February 18 that:

"...under the 1958 Convention on the Continental Shelf, and applicable principles of international law, maritime boundaries are to be determined by agreement and in accordance with equitable principles. The Government of the USA is also of the view that equidistance is an appropriate method for determining a maritime boundary when there are no special circumstances in the area and when equidistance results in a boundary in accordance with equitable principles."

The Canadian Government is not aware of any legal authority for such an interpretation of the Convention which, in its view, is not consistent with Article 31 (1) of the 1969 Vienna Convention on the Law of Treaties which states,

"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

The Government of Canada assumes that it is common ground that both countries are bound by the 1958 Geneva Convention on the Continental

Shelf and that it constitutes the essential basis for determining the rights and obligations of the two countries under international law with respect to the delimitation of the continental shelf between them. In order to avoid any misunderstanding as to the basis on which negotiations are to be carried forward, it is important that both sides have a clear understanding, prior to the resumption of those negotiations, of the views of the other regarding the legal rights and obligations of the two sides.

The Government of Canada notes that the position of the USA Government in the Beaufort Sea is that "...there are no special circumstances in the area and equidistance produces a maritime boundary in accordance with equitable principles." It will be recalled that in the United States Embassy Note No. 103 of May 20, 1976, the Government of the United States stated that "the views regarding presumptions in favour of equidistance expressed by the Canadian delegation... are not consistent with the Canadian action in the Beaufort Sea area." In the presentation of the Canadian delegation at the bilateral discussions on maritime boundaries held in Washington on July 23, 1976, and in the Canadian Embassy's Note No. 626 of December 22, 1976, it was pointed out that the 141° meridian was established as the international boundary in that area by the Treaty of 1825 between Great Britain and Russia. As the Treaty is binding upon Canada and the United States as successor states, it is the view of the Canadian Government that the presumptions in favour of equidistance referred to in the United States Embassy Note No. 103 of May 20, and presumably reflected in the United States coordinates set out in Public Notice No. 506 of November 4, 1976, are not applicable.

In this context, the Canadian Government further recalls the reference in the United States Embassy Note of May 20, 1976, to the Truman Proclamation of 1945. It would appreciate clarification of United States views as to the precise nature, extent and scope of the Declaration in light of subsequent state practice of other states based on it, involving, in certain cases, interference with freedom of navigation and other freedoms. It will be recalled that, although the Government of Canada was invited to associate itself with the United States action at that time, it did not do so. With regard to the reference in the Note of May 20 to the sector theory, the Canadian Government is not aware of those circumstances referred to in which the sector theory has been associated with attempts to interfere unlawfully with navigational and other freedoms, and would be grateful to receive clarification on this point.

The Canadian Government notes that "the Government of the USA continues to maintain that the sovereignty to Machias Seal Island rests with the USA for the reason set out in the Aide-Mémoire of September 15, 1976..." The Aide-Mémoire stated that "... sovereign title to the Island ... rests with the United States under Article II of the definitive Treaty of Peace of 1783 between the United States and Great Britain." The Government of Canada does not accept that Article II of the aforementioned Treaty conferred sovereign title to Machias Seal Island to the United States. There exists conclusive documentary evidence of long standing exercises of sovereignty by British, New Bruns-

wick and Canadian authorities over the island, including continuous and unchallenged occupation since 1832. The Canadian Government wishes to reiterate once again the position most recently conveyed in the Embassy of Canada Note No. 626 of December 22, 1976, that there is no evidence either to bring into question the longstanding Canadian sovereignty over Machias Seal Island or to support any United States claim to the island. In the Canadian view, the United States assertion concerning Article II of the aforementioned Treaty does not in itself constitute such evidence. In the absence of *prima facie* evidence to support an alternative claim to sovereignty over Machias Seal Island, the Government of Canada does not accept that sovereignty over the island is in dispute and, consequently, does not consider it an appropriate matter for negotiation.

The Government of Canada favours an early resumption of negotiations with the United States with a view to concluding a mutually acceptable maritime boundaries settlement in the spirit of longstanding friendship and co-operation which has characterized Canada/USA relations.

The Embassy of Canada avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, D.C.
May 26, 1977

EXTRACTS FROM THE TEXT OF A STATEMENT MADE BY MR. M. D. COPITHORNE,
LEADER OF THE CANADIAN TEAM, AT THE MARITIME BOUNDARY TALKS HELD IN
WASHINGTON ON 23 JULY 1976, ATTACHED TO THE CANADIAN DIPLOMATIC NOTE
No. 221 OF 26 MAY 1977

"It is the Canadian position that the principles applicable to the boundary delimitation in the Gulf of Maine are also relevant to the situation in the three other maritime boundary areas, that is to say "in the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary should be determined by application of the principle of equidistance . . ." In our view, the situation off Juan de Fuca is similar to that in the Gulf of Maine and, therefore, the same general principles should apply in both instances. Canada could assert a claim to a more southerly boundary on the basis of seabed configuration, in particular the Juan de Fuca Canyon, and traditional Canadian fishing south of the equidistance line, but we do not intend to pursue this line of argument, at least at this stage, because, in our view, the strong presumption in favour of the equidistance principle should prevail here as well as in the Gulf of Maine."

"It is, of course, the Canadian position that there is a strong presumption in favour of the equidistance principle and that the concept of "special circumstances" should be given a restrictive interpretation. Therefore, Canada is prepared to consider a boundary based on equidistance outside Dixon Entrance, as it is off Juan de Fuca Strait and in the Gulf of Maine. If, however, the contentions that there is *not* a presumption in favour of the equidistance principle and/or that special circumstances should be given a *broad* interpretation were to prevail, it is our view that "special circumstances" prevail here, i.e. the delimitation should follow a continuation of the final azimuth of the land boundary, i.e. the AB line, or the 54°40' parallel of latitude."

Annex 55

UNITED STATES DIPLOMATIC NOTE OF 27 JUNE 1977

[See II, Annex 67]

Annex 56

UNITED STATES AIDE-MÉMOIRE OF 7 JULY 1977

[See II, Annex 67]

Annex 57

CANADIAN DIPLOMATIC NOTE NO. 329 OF 27 JULY 1977

Note. No. 329

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to the Department of State's Note of June 27, 1977, its Aide-Mémoire of July 7, and subsequent discussions concerning the unsettled maritime boundaries between the two countries.

The Government of Canada notes the Department of State's view that further legal debate will not contribute to a solution of this problem and that such debate should be set aside for the time being. The Government of Canada also notes, however, that the delimitations published by the two Governments have been based on different legal principles and different diplomatic approaches. It therefore considers that, if the two parties are to be put on an equal footing in the forthcoming negotiations so that they can proceed towards a settlement on a fair basis, both parties must take into account reservations that have been formally expressed.

The Government of Canada has noted the refusal by the Government of the United States to accept Canada's reserved positions based on the same principles of international law as those asserted by the United States. The Government of Canada nevertheless continues to reserve its right to assert claims based on these or other positions and declares that it will assert such claims as and when appropriate.

The Government of Canada understands that the two sides are in agreement that positions asserted, and proposals made during the course of the forthcoming negotiations will be without prejudice to positions that have been, or may be, adopted by either party respecting the limits of their maritime jurisdiction.

The Government of Canada recognizes that the task of the Special Negotiators is a complex and difficult one. It believes that the foregoing statement of positions and understandings will assist in achieving a negotiated settlement of the outstanding maritime boundaries and related resource issues between the two countries.

Washington, D.C.
July 27, 1977.

Annex 58**UNITED STATES DIPLOMATIC NOTE OF 4 AUGUST 1977**

The Department of State acknowledges the Embassy of Canada's note No. 329 of July 27, 1977.

The Government of the United States of America also understands that the two sides are in agreement that the positions asserted, and proposals made during the course of the forthcoming negotiations will be without prejudice to positions that have been, or may be, adopted by either party respecting the limits of their maritime jurisdiction.

With respect to the other points made in the Embassy note, the Government of the United States maintains its position as previously expressed to the Government of Canada.

Department of State
Washington, August 4, 1977.

Annex 59

CANADIAN DIPLOMATIC NOTE NO. GNT-067 OF 3 NOVEMBER 1977
(WITH ATTACHMENT)

No. GNT-067

The Department of External Affairs presents its compliments to the Embassy of the United States and has the honour to refer to the current Canada/USA maritime boundaries negotiations.

As the United States' authorities are aware, the Government of Canada is fully committed to these negotiations which have as their object a comprehensive settlement of all outstanding maritime boundaries and related resource issues between the two countries. The Government of Canada is pleased to note that the negotiations are progressing in a satisfactory manner and is hopeful that they will achieve a mutually satisfactory accommodation of the respective maritime interests of the two countries consistent with applicable rules and principles of international law.

The Government of Canada is of the view that a successful outcome to the present negotiations could be facilitated if each Government is fully aware of the views of the other concerning their rights and obligations with respect to maritime boundaries delimitation under international law. Governments' views as to their rights and obligations are, of course, a function of evolving international law and the Government of Canada, consequently, is committed to reviewing periodically its actions and positions to ensure that they are in conformity with applicable rules and principles of international law as developed and clarified through conventions, state practice, judicial decisions, etc.

The Government of Canada has indicated on many occasions, and most recently in the formal statement delivered by Ambassador Cadieux at the Department of State on September 8, 1977, that the limits of the fishery zones published in Order-in-Council P.C. 1977-1 of January 1, 1977 are without prejudice to any negotiations or to any positions which may have been or may be adopted respecting the limits of maritime jurisdiction. Moreover, the Government has consistently reserved its rights to claim continental shelf and fisheries jurisdiction to areas beyond the line published in the aforementioned Order-in-Council.

The USA authorities were informed in discussions in Ottawa on October 14, 1977 that the Government of Canada is of the view that recent developments in international law and, in particular, the *Anglo-French Continental Shelf Delimitation Arbitration Award*, have clarified the scope and application of the principle of "special circumstances" and its relation to the principle of equidistance under Article 6 of the 1958 *Geneva Convention on the Continental Shelf*, as well as the scope and application of "equitable principles" and their relation to the principle of

equidistance in customary international law on continental shelf delimitation. The Award has also clarified the scope and nature of the principle of "natural prolongation" as it relates to the problem of delimitation between opposite and adjacent states and, in particular, to "special circumstances" and "equitable principles."

The Government of Canada is of the view that the application of the principles of law enunciated and elucidated in the *Anglo-French Award* to the factual situation in the Gulf of Maine/Georges Bank area lead to the conclusion that the further projection seaward of the exceptionally long promontory of Cape Cod and of the islands of Nantucket and Martha's Vineyard, when superadded to the marked protrusion of the USA coastline southeast of Boston, constitute an element of inequity or distortion material enough to justify the delimitation of a boundary other than the strict equidistance line. In other words, these coastal projections constitute "special circumstances" under Article 6 of the 1958 *Geneva Convention on the Continental Shelf*, the disproportionate and inequitable effects of which should be abated by an appropriate adjustment or modification of the strict equidistance line. It is the view of the Government of Canada that a line drawn without reference to these coastal projections constitutes an equitable equidistance line and, therefore, the lateral limits of Canada's continental shelf and fisheries jurisdiction in the Atlantic area seaward of the Gulf of Maine. The geographical coordinates defining, on this basis, the revised limits of Canada's maritime jurisdiction in the Gulf of Maine/Georges Bank area are listed in the Annex to this Note.

Nevertheless, in order not to prejudice in any way the conduct of the current negotiations referred to above, the Government of Canada has decided to forego the public assertion of the claim defined by the annexed coordinates and the exercise of its jurisdiction in areas beyond the published equidistance line, pending the outcome of these negotiations.

It will be noted that the contents of the present Note refer only to the Gulf of Maine/Georges Bank area in respect of which representatives of the Canadian and U.S. Governments have recently held discussions on the implications of the *Anglo-French Continental Shelf Delimitation Arbitration Award*. The Government of Canada looks forward to further exchanges of views between Canadian and USA officials on the implications of recent developments and, in particular, of the aforementioned Arbitration Award, for the respective legal positions of the two countries in the other maritime boundary areas.

The Government of Canada wishes to emphasize once again its commitment to making every effort to achieve a comprehensive settlement in the context of the current negotiations.

The Department of External Affairs avails itself of this opportunity to renew to the Embassy of the United States the assurances of its highest consideration.

Ottawa, November 3, 1977

AREA 2. GULF OF MAINE REGION

	Column I Latitude	Column II Longitude	Column III CHS Chart
1.	44° 46' 35" .346" N.	66° 54' 11" .253" W.	4003
2.	44° 45' 44" N.	66° 55' 05" W.	4003
3.	44° 45' 30" N.	66° 55' 23" W.	4003
4.	44° 45' 11" N.	66° 55' 51" W.	4003
5.	44° 45' 04" N.	66° 56' 02" W.	4003
6.	44° 44' 35" N.	66° 56' 32" W.	4003
7.	44° 44' 31" N.	66° 56' 36" W.	4003
8.	44° 44' 03" N.	66° 56' 58" W.	4003
9.	44° 43' 49" N.	66° 57' 07" W.	4003
10.	44° 42' 58" N.	66° 57' 48" W.	4003
11.	44° 42' 41" N.	66° 58' 00" W.	4003
12.	44° 42' 20" N.	66° 58' 23" W.	4003
13.	44° 42' 18" N.	66° 58' 25" W.	4003
14.	44° 41' 44" N.	66° 59' 17" W.	4003
15.	44° 40' 58" N.	66° 59' 54" W.	4003
16.	44° 40' 33" N.	67° 00' 17" W.	4003
17.	44° 40' 14" N.	67° 00' 26" W.	4003
18.	44° 39' 43" N.	67° 00' 42" W.	4003
19.	44° 39' 11" N.	67° 01' 09" W.	4003
20.	44° 39' 05" N.	67° 01' 13" W.	4003
21.	44° 38' 30" N.	67° 01' 41" W.	4003
22.	44° 37' 46" N.	67° 02' 13" W.	4003
23.	44° 37' 29" N.	67° 02' 20" W.	4003
24.	44° 37' 28" N.	67° 02' 20" W.	4003
25.	44° 36' 24" N.	67° 06' 26" W.	4003
26.	44° 35' 50" N.	67° 07' 36" W.	4003
27.	44° 34' 57" N.	67° 09' 27" W.	4003
28.	44° 33' 09" N.	67° 11' 22" W.	4003
29.	44° 32' 57" N.	67° 11' 31" W.	4003
30.	44° 32' 35" N.	67° 11' 46" W.	4003
31.	44° 30' 09" N.	67° 14' 45" W.	4003
32.	44° 29' 49" N.	67° 15' 09" W.	4003
33.	44° 29' 47" N.	67° 15' 11" W.	4003
34.	44° 28' 10" N.	67° 16' 01" W.	4003
35.	44° 27' 29" N.	67° 16' 21" W.	4003
36.	44° 26' 22" N.	67° 16' 54" W.	4003
37.	44° 23' 37" N.	67° 18' 17" W.	4003
38.	44° 22' 37" N.	67° 18' 16" W.	4003
39.	44° 12' 05" N.	67° 16' 55" W.	4003
40.	43° 59' 04" N.	67° 14' 29" W.	4003
41.	43° 49' 55" N.	67° 12' 25" W.	4003
42.	43° 49' 29" N.	67° 12' 42" W.	4003
43.	43° 37' 36" N.	67° 12' 24" W.	4003
44.	43° 03' 09" N.	67° 24' 19" W.	4003
45.	42° 20' 32" N.	67° 45' 34" W.	4003
46.	41° 56' 39" N.	67° 51' 23" W.	4003
47.	41° 37' 13" N.	67° 38' 45" W.	4003
48.	40° 05' 49" N.	66° 41' 49" W.	4003

Annex 60

UNITED STATES DIPLOMATIC NOTE OF 2 DECEMBER 1977

[See II, Annex 69]

Annex 61

CANADIAN DIPLOMATIC NOTE NO. FLP-110 OF 25 JANUARY 1978

No. FLP-110

The Department of External Affairs presents its compliments to the Embassy of the United States of America and has the honour to refer to North Atlantic Outer Continental Shelf Oil and Gas Lease Sale No. 42 of January 31, 1978 as announced in the U.S. Federal Register on December 30, 1977.

In its Note GNT-067 of November 3, 1977, the Department informed the Embassy that the equitable equidistance line therein described constitutes in law the lateral limits of Canada's continental shelf and fisheries jurisdiction in the area seaward of the Gulf of Maine. The Government of Canada notes with concern that some of the tracts to be offered for lease sale on January 31, 1978 fall on the Canadian side of the equitable equidistance line and are, therefore, in an area in which Canada claims jurisdiction. The Government of Canada formally requests that the tracts falling on the Canadian side of the equitable equidistance line be withdrawn from [the] lease sale of January 31 and that, pending a final determination of the maritime boundary in that area, no action be taken by either country which could prejudice a settlement.

The Government of Canada has previously reserved its rights and those of its nationals in the area in question. Until the exact location of the Canada/USA maritime boundary in the Gulf of Maine/Georges Bank area is settled, Canada can neither accept nor recognize as valid any United States Government authorization of exploration or exploitation of the natural resources of the continental shelf in the area in question.

The Government of Canada is of the view that the sale at this time of oil and gas leases in an area in contention in the current Canada/USA maritime boundaries negotiations is not in accordance with the object or spirit of these negotiations. In its Note GNT-067 of November 3, 1977, the Department stated that, in order not to prejudice in any way the conduct of the current negotiations, the Government of Canada had decided to forego the public assertion of the claim defined by the coordinates annexed thereto and the exercise of Canadian jurisdiction in areas beyond the published equidistance line, pending the outcome of these negotiations. However, the Government of Canada can only maintain the confidentiality of its claim and forbearance in the exercise of its jurisdiction if the Government of the United States exercises similar restraint in the area in question. If the United States authorities intend to proceed with the sale of oil and gas leases on tracts in the area formally claimed by Canada on November 3, 1977, the Government of Canada will be obliged to publish a Notice in the Canada Gazette, prior to the date of

the proposed sale, announcing Canada's equitable equidistance line claim in respect of continental shelf and fisheries jurisdiction in the Gulf of Maine/Georges Bank area and reserving Canada's position with regard to any oil and gas leases which may be issued by the United States authorities in the area in question. The Government of Canada believes that it must make its position a matter of public record prior to any such sale so that corporations and individuals concerned with exploration and exploitation will be on notice of the Canadian position before submitting any bids for leases on tracts in the area in question.

The Government of Canada wishes to emphasize once again its commitment to making every effort to achieve a settlement of the outstanding maritime boundaries and related resource issues in the context of the current negotiations and hopes that neither country will take any action which might prejudice the conduct or outcome of these negotiations or any other procedures for settlement which may be agreed to by the two Governments.

The Department of External Affairs avails itself of this opportunity to renew to the Embassy of the United States the assurances of its highest consideration.

Ottawa, January 25, 1978

Annex 62

UNITED STATES DIPLOMATIC NOTE OF 3 FEBRUARY 1978

[See II, Annex 70]

Annex 63

CANADIAN DIPLOMATIC NOTE NO. 193 OF 26 APRIL 1978

Canadian Embassy**Ambassade du Canada**

No. 193

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to the Exchange of Notes completed April 11, 1978 constituting an Interim Reciprocal Fisheries Agreement between Canada and the United States. The Canadian authorities have been keeping under review the provisional implementation of the Agreement. While the regional consultative committees have not yet been established, continuing consultations have taken place between officials of the two governments regarding this matter. As a result of these consultations, the Canadian authorities view with concern certain developments which could adversely affect the fair and balanced implementation of the Agreement.

In particular, the Canadian authorities note with concern certain recommendations which are reported to have been recently adopted by the New England Regional Council respecting increased allowable catches of cod and haddock in the Gulf of Maine/Georges Bank area, the absence of any control of United States fishermen in the scallop and pollock fisheries in the same area, and uncertainties regarding access by Canadian fishermen to the United States zone to take agreed allocations of mackerel.

With regard to the Pacific coast, the Canadian authorities continue to view the situation which obtains in the Swiftsure Bank area of British Columbia Statistical Area 21 as not giving rise to a conservation problem within the meaning of Paragraph 1(c) of the Annex to the Canadian Note under reference.

In view of the difficulties noted in connection with implementing the Interim Reciprocal Fisheries Agreement, the Canadian authorities propose an immediate meeting of officials of the two governments to review the situation in order to attempt to resolve outstanding differences. The Canadian authorities would be pleased to arrange for such a meeting in Ottawa Friday, April 28, 1978.

The Embassy of Canada avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, D.C.
April 26, 1978

Annex 64

CANADIAN DIPLOMATIC NOTE NO. FLM-0058 OF 3 MAY 1978

FLM-0058

The Department of External Affairs presents its compliments to the Embassy of the United States, and has the honour to refer to the Exchange of Notes completed April 11 constituting an Interim Reciprocal Fisheries Agreement between Canada and the U.S.A., to the Embassy of Canada's Note to the Department of State of April 26, 1978 and to discussions between officials of the two Governments on April 28 in Washington.

The Government of Canada views with deep disappointment the action of the Government of the U.S.A. in invoking paragraph 1(c) of the Annex to the Interim Reciprocal Fisheries Agreement with respect to the limited Canadian troll fishery on Swiftsure Bank, April 15-28. As expressed in the Embassy of Canada's Note and at the April 28 meeting, the Canadian authorities were prepared to announce the closure of the Swiftsure Bank fishery on April 27, even though they did not consider that a conservation problem exists, as the immature salmon ("shakers") problem in the fishery up to that time had resulted in spawning escape-ment losses of only a few hundred fish. In view of the U.S. action in invoking paragraph 1(c), the Canadian authorities have decided not to close the fishery on Swiftsure Bank. The Government of Canada continues to view the situation on Swiftsure Bank as not giving rise to a conservation problem, and in the absence of any communications from the U.S. authorities supplying evidence to the contrary, formally requests the Government of the United States to restore the provisions of the agreement suspended by the United States authorities on May 1.

As stated in the Embassy of Canada's Note of April 26, the Government of Canada has been keeping under review the implementation of the Agreement, and in addition to the Swiftsure Bank problems, has noted several other difficulties.

In particular, the Government of Canada is seriously concerned about actions taken by the United States with respect to the regulation of fisheries for certain stocks in the Georges Bank/Gulf of Maine area. In regard to haddock in Subarea 5 and cod in Subdivision 5ZE, the Canadian authorities wish to reiterate concerns expressed to U.S. officials during 1977 that fisheries management plans developed by U.S. authorities for both 1977 and 1978 permit fishing by United States fishermen which results in total catches by fishermen of both countries exceeding levels which are judged by Canadian scientists to be consistent with sound conservation. The Government of Canada is of the view that both United States and Canadian authorities should regulate their respective fisheries in the Georges Bank area so that their aggregate cat-

ches, including the recreational catch, in 1978 are minimized for haddock in Subarea 5 and do not exceed 30,000 metric tons for cod in Subdivision 5ZE, in accordance with the conclusions reported by Canadian and United States scientists at a meeting in Halifax on November 1-4, 1977. In this connection, the Government of Canada has exerted its best efforts to control the catch of these two species to that agreed *ad referendum* within ICNAF for 1977, and has already taken action in 1978 to close the directed haddock fishery to meet conservation requirements.

The Government of Canada is especially concerned with the increase in United States fishing effort and catches of scallops in the Georges Bank area at a time when Canada is limiting both the number of fishing vessels permitted to operate in the fishery and the catches each vessel may make. In consultations between regional officials of the two Governments in Halifax on April 21, the Canadian authorities were provided with information indicating that the U.S. scallop fishing effort more than doubled from 1976 to 1977 and that there is a further increase in 1978. Moreover, an increasing part of that effort is being deployed in the north-eastern portion of the Bank. Canada views this deviation from existing patterns as inconsistent with the terms, as well as with the object and purpose, of the interim agreement. Thus it is becoming increasingly difficult for Canada to restrain its fishermen when United States fishermen operate without restriction. Attention of the United States authorities is drawn to the report of the scientists of the two countries on their November 1-4 meeting indicating that the scallop stocks were in danger of being overfished and suggesting levels of effort be reduced to protect the stock. The Canadian Government is concerned that, if it is found necessary to remove limits on its Canadian fishery, the increased Canadian and U.S. fisheries will inevitably lead to a serious depletion of the stock. The Canadian Government therefore requests the Government of the United States to consider immediately adopting measures in its scallop fishery to parallel those adopted by Canada, consistent with pre-existing fishing patterns and the urgent conservation needs of the stock.

The Government of Canada is also concerned about the lack of regulations respecting the U.S. fishermen's catch of pollock in Subarea 5 in 1978. The Canadian authorities note that U.S. catches in 1977 resulted in the aggregate catches by both countries exceeding the 30,000 metric ton limit agreed upon by scientists of the two countries as being the maximum sustainable yield. The Canadian authorities take note that at their meeting of November 1-4, 1977, Canadian and U.S. scientists concluded that the status of the pollock stock has deteriorated and that in the interests of conservation the catch in 1978 should be lower than 30,000 metric tons. The Canadian Government is therefore of the view that the United States should urgently adopt measures to ensure that its pollock catch is not in excess of 9,000 metric tons. For its part, the Government of Canada would be prepared to limit the Canadian catch to 20,975 metric tons, in order to provide an aggregate catch of not more than 30,000 metric tons. Canada would also be prepared to consider taking even more stringent measures if the United States were prepared to do likewise.

The Canadian authorities note that U.S. fisheries for groundfish, particularly rockfish, in that part of PMFC statistical area 3C off the coast of Washington State, are also operating without restrictions, and are concerned about the conservation implications of such activities.

Given the urgency of the situation, as outlined in this Note, the Government of Canada proposes that, in view of their role in implementing the Interim Agreement, the Special Negotiators convene a meeting during the week of May 8 to review difficulties affecting the agreement and, in particular, to consider mutually acceptable domestic regulations.

The Department of External Affairs avails itself of this opportunity to renew to the Embassy of the United States the assurances of its highest consideration.

Ottawa, May 3, 1978

Annex 65

CANADIAN DIPLOMATIC NOTE NO. FLM-0092 OF 2 JUNE 1978

N°. FLM-0092

The Department of External Affairs presents its compliments to the Embassy of the United States and has the honour to refer to the Exchange of Notes completed April 11 constituting an Interim Reciprocal Fisheries Agreement for 1978, and to recent discussions between the Special Negotiators for Maritime Boundaries and Related Resource Issues with regard to the implementation of the Agreement.

Due to difficulties which have arisen with regard to the implementation of the 1978 Interim Reciprocal Fisheries Agreement, and which have not been resolved in the course of the discussions between the Special Negotiators, the Government of Canada is not at this time prepared to continue implementation on a provisional basis of the Agreement. Therefore, United States fishing vessels will not be permitted to continue fishing operations in Canadian fisheries waters after noon, local time, June 4, 1978 except those vessels fishing pursuant to the Convention for the Preservation of the Halibut Fishery in the Northern Pacific Ocean and Bering Sea of March 2, 1953.

The Government of Canada is prepared to undertake, on a reciprocal basis, efforts to avoid confrontation in the boundary regions by adopting flag-state enforcement procedures along the lines of the 1977 Reciprocal Fisheries Agreement. The Government of Canada is also prepared to convene a meeting of officials to discuss such arrangements at the earliest possible date.

The Government of Canada reaffirms its commitment to pursue negotiations on maritime boundaries and related resource arrangements, as well as a long term salmon interception agreement, in an effort to conclude mutually acceptable agreements as soon as possible. In addition, the Government of Canada is willing to discuss further the question of interim fisheries arrangements for the balance of 1978.

Ottawa, June 2, 1978

Annex 66

UNITED STATES DIPLOMATIC NOTE NO. 125 OF 2 JUNE 1978

*[See II, Annex 72, "Note from the Embassy of the United States to the
Department of External Affairs, dated 2 June 1978"]*

Annex 67

LETTER OF 2 JUNE 1978 FROM THE CANADIAN SPECIAL NEGOTIATOR
TO THE UNITED STATES SPECIAL NEGOTIATOR

Ottawa, Ontario
K1A 0G2
June 2, 1978

My dear colleague,

The Department of External Affairs has just informed the United States Embassy that the Canadian Government will no longer continue to give provisional effect to the 1978 Interim Reciprocal Fisheries Agreement. The purpose of this letter is not to rehearse the history of our differences over the Interim Agreement, but rather to reaffirm my commitment to pursue the negotiations towards a long term agreement which will provide a framework for resolving such differences as may occur in the future.

I continue to believe and I know you share this view that an agreement which encompasses, in an inter-related framework, the full range of trans-boundary maritime issues of common concern to our two countries is the most promising means of assuring that the important maritime resources along our common borders can be effectively managed in our mutual interests.

We both agree that negotiations towards a long term maritime boundary/resources agreement should be pursued vigorously and that the problems we have encountered with respect to the Interim Reciprocal Fisheries Agreement need not and should not be allowed to impede this process. In order to promote an atmosphere which will facilitate our negotiations, I propose that the two governments should enter into an undertaking that the actions of the two countries relating to jurisdictional matters in the boundary areas for the duration of our negotiations should be considered as not prejudicing the position of either country in the negotiations or in any third party procedures to which these jurisdictional disputes may be submitted.

In the course of the past eight months, I have found that we have worked effectively together and I believe your future availability augurs well for the success of our endeavours.

I look forward to resuming our negotiations on a long term agreement in the very near future and to submitting a final joint report to our governments shortly thereafter.

Yours sincerely,

(Signed) M. CADIEUX
M. Cadieux
Negotiator for Maritime
Boundaries (Canada/USA)

Special Negotiator Lloyd N. Cutler,
U.S.A. Department of State,
Washington, D.C.

Annex 68

LETTER OF 2 JUNE 1978 FROM THE UNITED STATES SPECIAL NEGOTIATOR
TO THE CANADIAN SPECIAL NEGOTIATOR

DEPARTMENT OF STATE, WASHINGTON, D.C. 20520

June 2, 1978

My dear Marcel:

I deeply regret that the Government of Canada has found it necessary not to give provisional effect to the 1978 Reciprocal Interim Fisheries Agreement any longer. Throughout the negotiation of the 1978 Interim Agreement, and throughout our consultations regarding its implementation, I have continued to hope that our differences might be resolved in a manner which would permit reciprocal fishing to continue pending completion of the negotiation of a long-term agreement. Those differences, unfortunately, still remain unresolved.

As is evident, interim agreements based upon generalized references to the *status quo* are clearly insufficient to meet the maritime concerns of importance to us both. I fully agree that we must now urgently and forcefully pursue the negotiation of a comprehensive agreement on maritime boundary and resource issues. I share your view that the problems we have encountered in the effort to establish a regime for continued reciprocal fishing in 1978 themselves demonstrate the pressing need for an agreement that encompasses the full range of maritime issues in an interrelated framework and that includes mechanisms for the settlement of differences.

I also fully agree that the actions of the two countries relating to jurisdictional matters in the boundary regions for the duration of our negotiations should be considered as not prejudicing the position of either country in the negotiation of a long-term agreement or in any third party procedures to which jurisdictional disputes might be submitted. I hope that mutual restraint by both sides will prevent the exacerbation of our differences in those regions.

I believe, as you, that our common effort over the past months provides a firm basis for future progress. The dedication and statesmanship you have brought to these negotiations give me confidence that we can resolve the issues before us in a comprehensive agreement that serves the important maritime interests of both countries.

With warm regards,

(Signed) Lloyd N. CUTLER
U.S. Representative
U.S.-Canadian Maritime Negotiations

The Honorable Marcel Cadieux,
Canadian Representative,
Mission of Canada to the
European Communities,
Brussels, Belgium.

Annex 69

CANADIAN DIPLOMATIC NOTE NO. 24 OF 26 JUNE 1978

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to the negotiations on maritime boundaries and related resource issues, Canada's reservation of its rights in areas beyond the limits published in Order-in-Council P.C. 1977-1 of January 1, 1977, and Canada's claim to fisheries and continental shelf jurisdiction up to the equitable equidistance line set out in the Department of External Affairs Note GNT-067 of November 3, 1977 and the coordinates annexed thereto.

As the Department of State is aware, the decision of the Government of Canada to forbear in the public assertion of its claim to the equitable equidistance line and in the exercise of Canadian jurisdiction in areas beyond the published equidistance line in the area seaward of the Gulf of Maine, pending the outcome of the current negotiations on maritime boundaries and related resource issues, was taken in order not to prejudice in any way the conduct of these negotiations. The commitment of the Governments of Canada and the U.S. to pursue these negotiations has recently been reaffirmed in the Department of External Affairs Note FLM-0092 of June 1 (*sic*) and the Embassy of the United States Note 125 of June 2, 1978.

In view of the position of the Government of the United States that the public assertion by Canada of its claim to the equitable equidistance line in the area seaward of the Gulf of Maine, or of claims to any jurisdictional limits beyond the limits published in Order-in-Council P.C. 1977-1 of January 1, 1977, would seriously prejudice the current negotiations, the Government of Canada is prepared to continue to forbear, pending further developments in the negotiations, in the public assertion and exercise of its jurisdiction on the basis of a non-prejudicial understanding between our two Governments.

The Government of Canada therefore proposes that no acts or activities or forbearance from acts or activities, including the publication of claims, subsequent to November 3, 1977, shall constitute a basis for asserting, supporting or denying, nor be construed as affecting or prejudicing, any position or claim which has been or may subsequently be adopted by either Government in the course of consultations, negotiations or third party settlement procedures respecting the maritime jurisdiction, including the limits thereof, of Canada or of the United States of America. This understanding is subject to termination by either Government on 15 days written notice to the other, and in that case shall apply only in respect of acts or activities or forbearance from acts or activities occurring prior to the effective date of such termination.

The Government of Canada would be grateful if the Government of the United States would confirm its acceptance of the non-prejudicial understanding set forth in this Note.

The Embassy of Canada avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Annex 70

UNITED STATES DIPLOMATIC NOTE OF 25 JULY 1978

CONFIDENTIAL

The Department of State refers to the note of the Embassy of Canada No. 24 of June 26, 1978, to the Department of External Affairs' note GNT-067 of November 3, 1977, and to the note of the Department of State of December 2, 1977.

The United States Government confirms its view that assertion by either Canada or the United States of a claim of jurisdiction in areas beyond published lines could prejudice the possibility of amicable resolution of the maritime boundary and related resource issues currently under negotiation between the two Governments. As the Embassy is aware, the United States Government is deeply committed to pursuing such a resolution and is hopeful that the progress made to date will lead to the successful conclusion of a long-term agreement in the near future.

The United States Government understands the position of the Government of Canada set forth in note No. 24 of the Embassy of Canada and agrees that acts of forbearance by either party, subsequent to November 3, 1977, are without prejudice to any position which has been or may subsequently be adopted by either government with respect to the limits of maritime jurisdiction.

Department of State,
Washington, July 25, 1978.

CONFIDENTIAL

Annex 71

CANADIAN AIDE-MÉMOIRE OF 15 JANUARY 1979

Canadian Embassy

Ambassade du Canada

The Canadian authorities view with regret and concern geological surveys conducted in recent years for the United States Geological Survey and Woods Hole Oceanographic Institution on the Continental Shelf of Canada on Georges Bank and the Laurentian Fan. These surveys were conducted without advance notification to, or consent by, the Canadian authorities. The areas affected are subject to the sovereign authority of Canada pursuant to the 1958 Continental Shelf Convention to which both countries are parties. The specific surveys in question are the following:

- (1) It has come to the attention of the Canadian authorities that the United States Geological Survey has contracted for a comprehensive grid of multichannel seismic surveys in the Atlantic shelf region during the years 1974 to 1978. Some of these surveys encompassed areas of the continental shelf on Georges Bank subject to Canadian sovereign rights. There is no record of permission having been requested to carry out these surveys, nor was data resulting from these surveys provided to any Canadian regulatory or scientific agency.
- (2) The Canadian authorities have further learned that the United States Geological Survey without prior notification to Canada has considered a joint seismic survey with another country on the Atlantic continental margin, including several lines on portions of the Georges Bank, in the Northeast Channel, on neighbouring Browns Bank, and the adjacent continental slope, all subject to Canadian sovereign rights.
- (3) A United States Scientist James Austin of Woods Hole Oceanographic Institution, presented a paper at an international seminar in Halifax in August, 1978, entitled "The Geological History of The Passive Margins Off New England and The Canadian Maritime Provinces" in which it was revealed that Woods Hole has acquired more than 10,000 line kilometres of single and multichannel seismic profiles on Georges Bank and the Laurentian Fan. The location of these seismic profiles were illustrated in maps circulated to seminar participants. Much of this data relates to areas of the continental margin subject to Canadian sovereignty. It would appear that these surveys were carried out in 1975 over Georges Bank and in 1977 on the Laurentian Fan, using the research vessel "Atlantis II". There is no record of any permission being requested (*sic*) of Canada to carry out these seismic surveys, nor were Canadian scientists invited to participate or provided with the resultant basic data.

Pursuant to the 1958 Continental Shelf Convention, "the consent of the coastal state shall be obtained in respect of any research con-

cerning the continental shelf and undertaken there". As indicated, there is no record of advance permission having been requested from the Canadian authorities pursuant to the Convention to carry out the above mentioned surveys on areas of the continental shelf on Georges Bank and the Laurentian Fan which are subject to Canadian sovereignty.

The Canadian authorities, by drawing this matter to the attention of the United States authorities, assume that in future the United States will seek prior permission to conduct surveys on the Canadian continental shelf. The Canadian authorities would be grateful, in due course, to receive a detailed description of the results of the above surveys.

Washington, D.C.
January 15, 1979

Annex 72

LETTER OF 24 JANUARY 1979 FROM THE CANADIAN SECRETARY OF STATE FOR
EXTERNAL AFFAIRS DON JAMIESON TO THE UNITED STATES SECRETARY OF STATE
CYRUS VANCE

OTTAWA
K1A 0G2
January 24, 1979.

Dear Cy,

I have just received Ambassador Cadieux's report on the successful conclusion of the negotiations on an Atlantic coast fisheries agreement at the meeting in Washington yesterday. This happy ending to a long and complicated process is particularly welcome as our respective East Coast fishermen look forward to the 1979 fishing season.

Ambassador Cadieux also conveyed to me the message you sent through Deputy Secretary Christopher concerning the Administration's support for the agreement and the commitment to secure speedy Senate ratification of both the fisheries agreement and the agreement on third party reference of the Gulf of Maine/Georges Bank maritime boundary. I have noted your view that if we can complete the drafting of the two agreements by the beginning of March, there will be a much better prospect of having the treaties considered by the appropriate Senate Committees, and ratified by the full Senate, reasonably quickly. This rather compressed timetable is much tighter than we had anticipated; however, I wish to assure you that we will do everything possible on our side to try to accommodate your wishes in this regard.

Now that the Special Negotiators have reached agreement on the East Coast fisheries issues, the Canadian Government is taking the necessary action to promulgate the Order-in-Council formally extending Canadian jurisdiction in the Gulf of Maine. As you are aware from our discussions here in Ottawa last November, this is an action which must be taken in order to protect Canada's legal position in anticipation of the third party reference. Nevertheless, as I indicated to you, we are very conscious of the need to try to avoid difficulties in the Georges Bank area and so, taking into account the formally expressed U.S. position that enforcement action will be taken against Canadian vessels fishing in the area of our revised claim, my colleague, Mr. LeBlanc, the Minister of Fisheries, has agreed to have Canadian vessels forbear from fishing in the relevant area. This, I believe, should assist in preventing confrontation while, at the same time, preserving Canadian legal rights. We would hope that in the event a Canadian vessel did stray into the expanded area, U.S. enforcement authorities would also exercise corresponding restraint. You may also wish to note that, although the Order-in-Council will be dated January 25, it will not be published in The Canada Gazette before

the next regular edition, which is scheduled for February 14. Also, we do not intend to issue any press release or make any public announcement concerning the Order.

You will be interested to note that I will be asking my Cabinet colleagues tomorrow, January 25, to approve formally Canadian concurrence in the third party reference so that negotiations can begin immediately on the terms of the *compromis* or "special agreement" to adjudicate or arbitrate the boundary. I would therefore hope that you would be able to agree to each of us making a simultaneous announcement approving the recommendations of our Special Negotiators, either at the end of this week or the beginning of next week. I believe this would be useful since a number of reports are already appearing in the media and any delay in an announcement by the two Governments will risk loss of favourable impact which might otherwise be achieved. My officials are getting in touch with the State Department immediately concerning the preparation of an agreed text for such an announcement.

Yours sincerely,

(Signed) Don JAMIESON

The Honourable Cyrus R. Vance,
Secretary of State,
WASHINGTON, D.C. 20520
U.S.A.

Annex 73

LETTER OF 26 JANUARY 1979 FROM THE UNITED STATES SECRETARY OF STATE
CYRUS VANCE TO THE CANADIAN SECRETARY OF STATE FOR EXTERNAL AFFAIRS
DON JAMIESON (AS TRANSMITTED BY THE UNITED STATES EMBASSY IN OTTAWA)

EMBASSY OF THE UNITED STATES OF AMERICA

OTTAWA

CONFIDENTIAL

January 26, 1979

Copy of Secretary Vance's letter to Minister Don Jamieson on the Fisheries and Maritime Boundaries:

"Dear Don:

"I share the pleasure expressed in your letter of January 24, 1979, that our special negotiators have agreed on joint recommendations on terms of an Atlantic Coast Fisheries Agreement. I also welcome your expectation of obtaining the concurrence of your Cabinet in the closely related agreement to submit to binding third party settlement the issue of the boundary delimitation in the Gulf of Maine area. I am delighted by your willingness to attempt to conclude both of these agreements by the beginning of March so that the two documents can be submitted simultaneously for prompt ratification with a view to their entry into force as soon as possible this year.

"With respect to the timing of our joint announcement, we will require a few days to review the recommendations within our Government. With respect to the substance of the joint announcement, we need to have a clear understanding at least on the basic principles of the agreement to arbitrate the boundary before we can fairly announce that we have reached full agreement. I would hope we could complete that phase of our work in short order so that we would soon be able to make a joint announcement. We will promptly submit to you our proposed revisions of your draft joint announcement and our understanding of the basic principles which would govern the settlement of the boundary delimitation issue.

"I was disappointed that your Government found it necessary to promulgate the Order-in-Council extending Canada's claim of jurisdiction in the Gulf of Maine, given my understanding of our conversation in Ottawa on this point and given the interrelationship of the fisheries and boundary delimitation settlement agreements. We will be providing our legal position on the claim through our Embassy in Ottawa. I hope you will agree that the best way to avoid any complications arising from your Government's promulgation is to resolve the basic principles of the boundary delimitation settlement in order to enable us to issue a joint announcement as soon as possible.

"With warm regards,

Sincerely,

/s/
Cy"

Annex 74

UNITED STATES AIDE-MÉMOIRE OF 15 FEBRUARY 1979

The Aide-Mémoire of the Embassy of Canada of January 15 (*sic*), 1979, expressed Canada's regret and concern regarding certain geological surveys conducted by the United States Geological Survey and the Woods Hole Oceanographic Institution.

The geological surveys referred to are all seismic surveys not involving physical contact with the continental shelf. It is the position of the Government of the United States that such seismic surveys do not constitute research concerning the continental shelf and undertaken there requiring the consent of the coastal state under the Continental Shelf Convention. Accordingly, the consent of Canada was not sought by the Government of the United States in any instance where these seismic surveys may have been conducted in waters above the continental shelf of Canada. In this connection, in light of the inference contained in the Aide-Mémoire that portions of the continental shelf of Georges Bank appertain to Canada, the Government of the United States must restate its position that no portion of the continental shelf of Georges Bank appertains to Canada.

Department of State,
Washington, February 15, 1979.

Annex 75

UNITED STATES DIPLOMATIC NOTE OF 15 FEBRUARY 1979

[See II, Annex 74]

Annex 76

CANADIAN DIPLOMATIC NOTE NO. 160 OF 29 MARCH 1979

Note No. 160

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to the Department of State's Note of February 15, 1979 concerning the Canadian claim in the Gulf of Maine area.

The Government of Canada reaffirms the position set out in the Department of External Affairs Note No. GNT-067 of November 3, 1977 that an equidistance line drawn without reference to Cape Cod, Nantucket, and Martha's Vineyard constitutes an equitable delimitation and, therefore, the lateral limits of Canada's continental shelf and fisheries jurisdiction in the Atlantic area seaward of the Gulf of Maine. The Government of Canada further reaffirms the position set out in the Embassy of Canada's Note No. 626 of December 22, 1976 to the Department of State that it does not accept nor recognize the validity, under applicable principles and rules of international law, of the USA claim to continental shelf and fisheries jurisdiction in the Gulf of Maine area.

The Government of Canada is pleased that agreement has now been reached between the two Governments to submit the issue of maritime delimitation in the Gulf of Maine area to binding dispute settlement procedures on the basis of applicable international law. In these circumstances the Government of Canada is of the view that further exchanges of diplomatic correspondence concerning the legal merits of the respective claims will not be necessary.

While the Government of Canada will, of course, exercise fisheries jurisdiction in the maritime area within the limits set out in Order-in-Council P.C. 1979-184 of January 25, 1979 in accordance with applicable Canadian and international law, the Government proposes to continue to exercise, on a reciprocal basis, flag state enforcement procedures, in order to avoid confrontation in all boundary areas.

Washington, D.C.
March 29, 1979.

Annex 77

UNITED STATES DIPLOMATIC NOTE OF 2 APRIL 1979

[See II, Annex 75]

ADDENDUM**Annex 32a**

CANADIAN DIPLOMATIC NOTE NO. 226 OF 28 MAY 1976

Canadian Embassy**Ambassade du Canada**

No. 226

The Canadian Embassy presents its compliments to the Department of State and has the honour to refer to a proposal by the United States National Science Foundation concerning an inter-disciplinary study of the cultural impact of the changing environment in the Gulf of Maine area.

The Canadian authorities understand that the study will involve the taking of samples of the continental shelf in the Gulf of Maine area. In this connection, they wish to bring to the attention of the Department of State that if sampling is to occur on the Canadian side of the line of equidistance in the Gulf of Maine area, prior consent of the Canadian authorities should be sought for such research activities as provided in Article 5 of the 1958 Convention on the Continental Shelf.

The Canadian Embassy avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, D.C.
May 28, 1976.

CERTIFICATION

I, the undersigned, L. H. Legault, Q.C., Agent for Canada, hereby certify that the copy of each document attached as a Documentary Annex in Volume III of the Annexes to the Memorial Submitted by Canada is an accurate copy, whether prepared by photographic means or by transcription. Where copies have been prepared by transcription owing to the condition of the document copied, telegraphic abbreviations have been replaced by full words or expressions.

(Signed) L. H. LEGAULT, Q.C.

Volume IV
SUPPLEMENTARY ECONOMIC DATA AND STATISTICAL DOCUMENTS

Section I
Supplementary Economic Data

1. This Section provides supplementary background information to Part I, Chapter III, Section I of the Memorial, "The Human Dimension".

A. ECONOMIC INDICATORS: ATLANTIC CANADA, NOVA SCOTIA AND SOUTHWEST NOVA SCOTIA

2. Two of the conventional indicators of relative economic performance are per capita output (based on gross domestic product or GDP — the value of all goods and services produced in the economy), and labour force activity. In 1970, GDP per capita was about 50 percent greater in Canada as a whole than in the Atlantic Provinces. This gap widened by 5 percentage points by 1980. The relative positions of Canada, the Atlantic Provinces and Nova Scotia are shown in Table A-1.

TABLE A-1
Gross Domestic Product: Canada, the Atlantic Provinces
and Nova Scotia, 1970 and 1980 (\$ 1971)

	1970		1980	
	GDP (millions)	GDP/Capita (thousands)	GDP (millions)	GDP/Capita (thousands)
Canada	78,542	3,688	116,459	4,870
Atlantic Provinces	4,952	2,432	7,058	3,119
Nova Scotia	2,073	2,651	2,959	3,473

Source: See this Volume, Section III, Annex 18.

3. The main aspects of labour force activity — employment growth, unemployment and the participation rate — are shown in Table A-2 for Canada, the Atlantic Provinces and Nova Scotia. The Atlantic Provinces economy exhibits a slower rate of employment growth, a significantly higher unemployment rate, and a much lower rate of participation of persons of working age in the labour force. The lower participation rate is attributed to two main factors: the predominantly rural structure of the economy of the region and the high level of unemployment.

4. The rural and one-dimensional nature of the southwest Nova Scotia economy has been described in the Memorial. Owing to the region's extreme reliance on the fishery, employment tends to be seasonal and is subject to cyclical fluctuations. There has been little diversification in the region's economic base apart from the Michelin Tire plant established at Bridgewater in Lunenburg county in 1971.

5. As indicated in the Memorial, GDP data are not available at the regional level, but labour force statistics are. The rate of unemployment in southwest Nova Scotia is slightly lower than in the province as a whole. Table A-3 shows unemployment and labour force participation rates in the province and in the five counties of southwest Nova Scotia in 1971 and 1976, based on census data.

6. The rate of labour force participation in southwest Nova Scotia is very low — lower than the provincial average by some 5 percentage points. This results from the rural structure of the economy and the general absence of job opportunities for women in activities other than fish processing.

TABLE A-2

Labour Force Activity: Canada, the Atlantic Provinces and Nova Scotia, 1970 and 1980

	Labour Force	Employed	Unem- ployed	Unem- ployment rate	Partici- pation Rate
	('000)	('000)	('000)	(%)	(%)
Canada					
1970	8,395	7,919	476	5.7	57.8
1980	11,522	10,655	867	7.5	64.0
AAGR*(%)	3.2	3.0	6.2	—	1.0
Atlantic Prov.					
1970	652	612	40	6.2	49.3
1980	919	817	102	11.2	56.2
AAGR*(%)	3.5	2.9	9.8	—	1.3
Nova Scotia					
1970	271	256	14	5.3	52.3
1980	363	328	36	9.8	57.9
AAGR*(%)	3.0	2.5	9.9	—	1.0

*Average Annual Growth Rate.

Source: See this Volume, Section III, Annex 19.

TABLE A-3

Labour Force Activity: Nova Scotia and Southwest Nova Scotia, 1971 and 1976

	Labour Force	Employed	Unem- ployed	Unem- ployment rate	Partici- pation Rate
	('000)	('000)	('000)	(%)	(%)
Nova Scotia					
1971	292.1	268.3	23.8	8.1	53.5
1976	326.9	296.7	31.0	9.2	54.0
Southwest Nova Scotia					
1971	39.9	37.2	2.7	6.8	46.1
1976	43.9	40.2	3.6	8.3	45.7

Source: See this Volume, Section III, Annex 20.

7. The economic structure of the regional economy strongly influences both the form in which income is earned and relative income levels. In 1976, (the latest year for which data are available), 13 percent of total money income in southwest Nova Scotia came from self-employed earnings. The comparable figure for Canada was 0.5 percent. This great difference is explained by the predominance of the fishery in the region, an activity in which self-employment is frequent. In 1976, per capita money income in southwest Nova Scotia was \$4,140, less than 70 percent of the Canadian average and about 88 percent of the average for Nova Scotia (*Income estimates for subprovincial areas, 1976*, Statistics Canada. See this Volume, Section III, Annex 21).

B. CATEGORIES OF FISHING EMPLOYMENT AND VESSELS

8. In Atlantic Canada, fishermen are classified as "full-time", "part-time" and "occasional" depending on the proportion of total income derived from fishing. In Nova Scotia, full-time fishermen are those who earn over 75 percent of income from fishing; part-time, those who earn between 25 and 75 percent; and occasional, those earning less than 25 percent from the fishery.

9. For purposes of reporting landings under Canadian regulations, vessels of more than 25.5 gross tons or (since August, 1981) 14 metres in length are required to maintain a fishing log book; vessels of less than 25.5 gross tons or 14 metres in length are exempt from this requirement. These two categories in Canadian practice correspond respectively to "offshore" and "inshore" vessels. Nova Scotia, as noted in the Memorial, has large fleets of offshore scallop and groundfish vessels that provide year-round full-time employment.

10. The inshore/offshore distinction is a traditional one in the fishing industry. Virtually all fishermen who are active in inshore operations are classified as either part-time or occasional in the official employment statistics. The main distinguishing features of the offshore fishery are its year-round operations, the dominance of large vessels and mobile gear (e.g., trawls and dredges), and its relative capital intensity. In contrast with the inshore sector, offshore vessels are more specialized in design. Most fishermen active in offshore operations on large vessels in Nova Scotia are classified as full-time in the official statistics.

11. The traditional distinction between inshore and offshore fisheries is not as sharp as it once was. With technological advances in design and construction, small vessels are capable of operating in offshore waters. Today, the inshore/offshore distinction is maintained primarily for purposes of fisheries management. From a management perspective, the major distinction between the inshore and offshore sectors, apart from the reporting system described above, is that offshore vessels over 20 metres in length are prohibited from fishing in inshore waters, i.e., within 12 miles of the coastline.

C. THE MEASUREMENT OF PRIMARY SECTOR EMPLOYMENT

12. Employment levels by sector or industry are generally reported in terms of numbers of persons. Annual figures represent the average number of persons employed during the year.

13. Direct comparisons of employment levels among primary sector activities are difficult to make using this unit of account. This is so for two reasons. First, persons occupied in agriculture and fishing are not generally considered employees in the strict legal sense of the term. They are either independent contractors or sole proprietors. Secondly, fishing and farming differ from most other economic activities in that operating hours are highly irregular and the number of persons active varies considerably from season to season.

14. For these reasons a common denominator other than number of persons is required for sector comparisons of employment. A measure common to all sectors is the amount of time spent at the occupation in question. The conventional unit of account is the "man-year", i.e., the equivalent of one person working a full year. In all sectors but agriculture and fishing the number of man-years of employment generally corresponds to the annual average number of persons reported as employed in the official statistics.

15. Estimates of man-years of employment in fisheries are based on occupation and income data collected by the Department of Fisheries and Oceans and Statistics Canada. The number of man-years spent in fishing is derived from estimates of the number of full-time, part-time and occasional fishermen. The time spent in fishing by each full-time fisherman is considered equal to one man-year; each part-time fisherman is equal to one-half man-year; and the time spent by each occasional fisherman is considered equal to one-eighth of a man-year. The estimate of total man-years effort in fishing in Nova Scotia for 1978 is as follows:

TABLE A-4
Estimate of Man-Years Fishing Effort in
Primary Fishing in Nova Scotia, 1978

Classification	Number of Fishermen	Conversion Factor	Man-years in Fishing
Full-time	5,021	1.000	5,021
Part-time	1,854	0.500	927
Occasional	3,436	0.125	429
Total	10,311		6,377

Source: See this Volume, Section III, Annex 22.

16. The number of man-years spent in agriculture is derived by dividing total wages paid to labour by the annual equivalent of the Nova Scotia minimum wage. To this figure is added the number of operators of incorporated farms (estimated on the basis of information from Agriculture Canada at about 730), each of whom is estimated to spend one man-

year in agriculture. The estimate of total man-years effort in agriculture in Nova Scotia in 1978 is as follows:

$$\begin{array}{rclclcl} \text{Wages} & \div & (\text{Minimum} & \times & \text{Total} & + & \text{Farm} & = & \text{Man-Years} \\ \text{Paid} & & \text{Wage} & & \text{Hours}) & & \text{Operators} & & \\ 17,987,000 & \div & (2.90 & \times & 2,200) & + & 730 & = & 3,550 \text{ (approx.)} \end{array}$$

Source: See this Volume, Section III, Annex 8.

D. THE REGIONAL DISTRIBUTION OF FISHING ACTIVITY IN NOVA SCOTIA

17. The concentration of fishing activity in southwest Nova Scotia can be illustrated by two sets of data: the share of fishing employment and the relative number of offshore fishing vessels. In 1978, the region accounted for 62 percent of total man-years employment in primary fishing in Nova Scotia.

TABLE A-5
Employment in Fishing:
Nova Scotia and Southwest Nova Scotia

	Total Nova Scotia No.	Southwest Nova Scotia	
		No.	% of total
Fishermen	10,311	5,419	53
full-time	5,021	3,455	69
part-time	1,854	679	37
occasional	3,436	1,285	37
Fishing employment (man-years)	6,377	3,955	62

Source: See this Volume, Section III, Annex 22.

18. The 62 percent share of total man-years in primary fishing is accounted for largely by the substantial number of full-time fishermen (69 percent of the provincial total). This reflects the strong offshore orientation of the fishery in southwest Nova Scotia. The fleet of large offshore groundfish trawlers over 30 metres in length and of offshore scallop and lobster vessels in Nova Scotia numbers 148. Close to 80 percent of this fleet (116 vessels), and the whole fleet of offshore scallop and lobster vessels, operate from ports in the southwestern part of the province.

E. THE RELATIVE IMPORTANCE OF SCALLOPS TO THE NOVA SCOTIA FISHERY

19. The following Table gives 1978 data on the relative importance of the various species landed by Nova Scotia fishermen (for the province as a whole). The scallop was by far the most important species

landed by Nova Scotia fishermen in terms of value, although it ranked eighth overall in terms of meat weight (i.e., with the shells removed). If scallop landings are measured in round weight (i.e., as caught, as all other species of fish are measured) the scallop volume by weight is over eight times higher at 106,400 metric tons. On this basis, it is the leading Nova Scotia species in terms of *both* value and weight.

TABLE A-6
Rank Order of Fish Landings by Value and Volume
in Nova Scotia, 1978

Species	Value (\$'000)	Species	Volume m. tons
1. Scallop	61,856	1. Herring	86,445
2. Lobster	30,532	2. Cod	80,520
3. Cod	25,829	3. Haddock	40,499
4. Haddock	17,866	4. Pollock	27,031
5. Herring	15,810	5. Redfish	21,640
6. Squid	7,359	6. Squid	17,722
7. Pollock	5,065	7. Flatfishes	16,332
8. Flatfishes	4,453	8. Scallop	12,773
9. Redfish	4,235	9. Mackerel	8,704
10. Halibut	2,550	10. Hake	6,275
11. Mackerel	1,641	11. Lobster	6,161
12. Other Pelagics	7,874	12. Other Groundfish	12,839
13. Other Shellfish	4,342	13. Other Pelagics	8,325
14. Other Groundfish	3,846	14. Other Shellfish	5,976

Source: See this Volume, Section III, Annex 23.

At least 80 percent, and in many years over 90 percent, of Nova Scotia scallop landings are caught on Georges Bank.

F. PROCESSING EMPLOYMENT BY SPECIES

20. The first stage of the processing of offshore scallops occurs at sea where the scallop is "shucked" and the shells discarded. The meat itself is then taken ashore for processing. This involves washing and either quick-freezing for immediate marketing or additional preparation (e.g., cooking in batter) for marketing in a more highly processed form. On average, it is estimated that roughly one man-year is required to process 75 metric tons of scallops. It is similarly estimated that lobster processing requires in the order of one man-year per 60 metric tons.

21. The processing of groundfish is a more labour-intensive operation. This includes filleting (most of which is done manually) and preparation of such products as fish sticks and fish portions which are pre-cooked and frozen for marketing and, in the smaller plants especially, the salt-curing of cod. The vertically-integrated companies most active (in

terms of volume of landings) on Georges Bank generally produce the most highly processed fish products. In these operations, it is estimated that roughly one man-year is required to process approximately 40 metric tons (landed weight) of fish.

22. The estimates given in paragraphs 20 and 21 above are approximations based on information received from processing company officials.

G. FISH PROCESSING IN THE CONTEXT OF TOTAL MANUFACTURING ACTIVITY IN SOUTHWEST NOVA SCOTIA

23. A sector or industry's share of national or regional GDP is one indicator of relative economic importance. Estimates of GDP, however, are not available at the county level in Canada. In order to assess the relative importance of fish processing in southwest Nova Scotia, two alternative indicators may be used: wages and salaries and value of shipments data. In 1976, the latest year for which detailed information is available, the fish processing industry in the region accounted for over 30 percent of wages and salaries paid in the manufacturing sector and over 40 percent of total value of shipments:

TABLE A-7
Wages and Value of Shipments in Fish Processing

	Wages (\$'000)	%	Value of Shipments (\$'000)	%
Fish Processing	21,132	31	129,740	43
Other Manufacturing	<u>47,781</u>	<u>69</u>	<u>169,609</u>	<u>57</u>
Total	68,913	100	299,349	100

Source: See this Volume, Section III, Annex 24.

H. FISHING INDUSTRY SHARE OF TOTAL EMPLOYMENT AT THE COUNTY LEVEL

24. The pervasiveness of the fishing industry and its relative economic importance to the region are co-extensive. In the absence of GDP information, employment data provide the only comprehensive basis for assessing the relative importance of the industry as a whole (i.e., the primary fishing and fish processing sectors). The comparison below is based on 1976 data, the latest year for which total employment information (based on census data) is available at the county level.

25. It should be noted that the 15 percent figure in Table A-8 represents a conservative estimate. First, the conversion factors set out in Table A-4 have been used to convert part-time and occasional fishing to man-years. However, the basis of the "full-time", "part-time" and "occa-

sional" classification in 1976 was the length of time spent in fishing during the year rather than the current Nova Scotia system based on the percentage of income earned in fishing as explained in paragraph 8. Under the time-based system of classification, fishermen engaged in fishing for over 10 months of the year were classified as full-time; those fishing from 5 to 10 months were classified as part-time; and those fishing for less than 5 months were classified as occasional. The conversion factors in Table A-4 may be excessive for this system of classification, mainly because a significant proportion of fishermen engaged in the fishery from 5 to 10 months (converted to man-years at a 50 percent reduction) are in fact dependent on fishing for all or virtually all of their earned income. A second reason why the 15 percent figure may be considered a conservative estimate is that the "total county employment" data (drawn from census results) has not been converted to man-years, whereas fishing employment has been so converted.

TABLE A-8
Fisheries Employment in the Context of Total
County Employment, 1976

	Employment		Total County Employment	Fish as % of total
	Primary Fishing (man-years)	Fish Processing		
Lunenburg	1,033	1,080	15,530	14
Shelburne	795	578	5,530	25
Queens	242	269	4,265	12
Digby	831	347	6,590	18
Yarmouth	734	288	8,330	12
Five county total	3,635	2,562	40,245	15

Source: See this Volume, Section III, Annex 24.

26. The employment figures for the fishing industry represent direct employment only, i.e., persons on vessels and in processing plants. As might be expected in an area where the fishery is the dominant goods-producing activity, there are also a large number of specialized manufacturing, service and supply companies whose viability depends either exclusively or substantially on the fishing industry. It is through these enterprises that the fishing industry generates a considerable amount of indirect employment. In the manufacturing sector alone, there are some 100 companies in the region whose production is related to and dependent on the fishing industry. These manufacturing companies employ about 2,000 persons. With total regional employment of about 40,000 in the late 1970s, this represents 5 percent of the total. (See this Volume, Section III, Annex 25.) No quantitative estimate is available of the indirect employment accounted for by the service and supply businesses that serve the regional fishing industry.

*Section II***Principal Unpublished Statistical Data Sources Referred to in the
Memorial Submitted by Canada****Annex 1****INTRODUCTORY NOTE TO SECTION II***[Not reproduced]*

Annex 2**COMPUTER REPRESENTATIONS OF BIOMASS DISTRIBUTION ACROSS GEORGES BANK,
1969-1978***[Not reproduced]*

Annex 3**CANADIAN AND UNITED STATES CATCH STATISTICS, 1969-1978**

The following Tables give Canadian and United States recorded catches in metric tons for the six statistical unit areas covering Georges Bank and the Nantucket Shoals-Great South Channel area to the west of Georges Bank for the years 1969 through 1978. These six statistical unit areas comprise all significant fishing grounds within the Northwest Atlantic Fisheries Organization (NAFO) subdivision 5Ze. See Memorial, *Figure 23* and paragraphs 125 and 126.

(12)

As noted in paragraph 126 of the Memorial, statistical unit areas 5Zej, 5Zem, 5Zen and 5Zeh combined correspond, in fisheries terms, to Georges Bank. Similarly, statistical unit areas 5Zeg and 5Zeo correspond to Nantucket Shoals and the Great South Channel; statistical unit areas 5Zej and 5Zem correspond to the disputed portion of Georges Bank. The totals for all six statistical unit areas are given in the last column of each Table. These statistics have been pro-rated to the statistics maintained by the Northwest Atlantic Fisheries Organization (NAFO).

AMERICAN PLAICE (CANADA)

<i>Year</i>	<i>SZeg</i>	<i>SZej</i>	<i>SZen</i>	<i>SZem</i>	<i>SZeo</i>	<i>SZeh</i>	<i>Total</i>
1969	2	43	1	14	0	6	67
1970	0	78	0	9	0	0	87
1971	0	29	0	7	0	0	36
1972	0	20	0	2	0	0	22
1973	0	38	0	0	0	0	38
1974	0	27	0	0	0	0	27
1975	0	24	0	1	0	0	25
1976	0	23	0	1	0	0	24
1977	0	34	0	1	0	0	35
1978	0	73	0	4	0	0	77

ATLANTIC HALIBUT (CANADA)

<i>Year</i>	<i>SZeg</i>	<i>SZej</i>	<i>SZen</i>	<i>SZem</i>	<i>SZeo</i>	<i>SZeh</i>	<i>Total</i>
1969	0	85	0	10	0	1	96
1970	0	55	0	12	0	0	67
1971	0	36	0	1	0	0	37
1972	0	37	0	0	0	0	37
1973	0	34	0	4	0	0	38
1974	0	28	0	1	0	0	29
1975	0	24	0	7	0	0	31
1976	0	31	0	2	0	0	33
1977	0	28	0	3	0	0	31
1978	0	46	0	4	0	0	50

COD (CANADA)

<i>Year</i>	<i>SZeg</i>	<i>SZej</i>	<i>SZen</i>	<i>SZem</i>	<i>SZeo</i>	<i>SZeh</i>	<i>Total</i>
1969	21	4 283	8	1 599	0	86	5 997
1970	4	2 303	0	276	0	0	2 583
1971	33	2 747	0	199	0	0	2 979
1972	0	2 501	0	27	0	12	2 540
1973	0	3 140	0	80	0	0	3 220
1974	0	1 294	0	78	0	4	1 374
1975	0	1 772	0	63	0	12	1 847
1976	0	2 197	0	116	0	7	2 320
1977	3	5 832	7	323	0	7	6 173
1978	0	7 886	0	1 018	0	0	8 904

CUSK (CANADA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	0	712	0	12	0	1	725
1970	0	793	0	19	0	0	812
1971	0	1 006	0	26	0	0	1 032
1972	0	754	0	3	0	4	761
1973	0	444	0	136	0	0	580
1974	0	474	0	39	0	0	513
1975	0	420	0	20	0	0	440
1976	0	232	0	16	0	4	252
1977	0	193	0	13	0	0	206
1978	0	378	0	38	0	0	416

HADDOCK (CANADA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	11	2 977	6	964	0	32	3 990
1970	8	1 606	0	364	0	0	1 978
1971	24	1 502	0	104	0	0	1 630
1972	0	595	0	14	0	0	609
1973	0	1 507	0	56	0	0	1 563
1974	0	454	0	8	0	0	462
1975	0	1 339	0	19	0	0	1 358
1976	0	1 317	0	35	1	1	1 354
1977	0	2 767	40	102	0	0	2 909
1978	0	9 375	0	804	0	0	10 179

HERRING (CANADA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	0	945	0	0	0	0	945
1970	0	7	0	0	0	0	7
1971	0	12 863	0	0	0	0	12 863
1972	0	0	0	0	0	53	53
1973	0	5 083	0	0	0	0	5 083
1974	104	7	0	0	72	34	217
1975	0	0	0	0	0	0	0
1976	0	0	0	0	0	0	0
1977	0	0	0	0	2	0	2
1978	0	0	0	0	0	0	0

LOBSTER (CANADA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	0	0	0	0	0	0	0
1970	0	0	0	0	0	0	0
1971	0	0	101	0	0	0	101
1972	0	0	0	204	0	0	204
1973	0	9	0	219	0	0	228
1974	0	32	0	146	0	0	178
1975	0	96	0	124	0	0	220
1976	0	13	0	120	0	0	133
1977	0	6	8	228	0	0	242
1978	0	11	58	216	0	0	285

MACKEREL (CANADA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	0	0	0	0	0	0	0
1970	0	0	0	0	0	0	0
1971	0	0	0	0	0	0	0
1972	0	1	0	0	0	0	1
1973	0	53	0	0	0	0	53
1974	0	0	0	0	0	0	0
1975	0	4	0	0	0	0	4
1976	0	0	0	0	0	0	0
1977	0	130	0	0	217	0	347
1978	0	0	0	0	0	0	0

POLLOCK (CANADA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	1	1 978	1	418	0	5	2 403
1970	1	763	0	61	0	0	825
1971	3	1 311	0	243	0	0	1 556
1972	0	1 198	0	1	0	0	1 199
1973	0	1 465	0	1	0	0	1 466
1974	0	2 859	0	0	0	0	2 859
1975	0	4 313	0	16	0	0	4 329
1976	0	2 047	0	9	0	0	2 056
1977	0	3 110	4	45	0	16	3 176
1978	0	4 215	0	198	0	0	4 413

REDFISH (CANADA)

<i>Year</i>	<i>SZeg</i>	<i>SZej</i>	<i>SZen</i>	<i>SZem</i>	<i>SZeo</i>	<i>SZeh</i>	<i>Total</i>
1969	0	183	0	50	0	2	235
1970	0	247	0	4	0	0	251
1971	0	145	0	4	0	0	149
1972	0	110	0	0	0	0	110
1973	0	26	0	0	0	0	26
1974	5	15	0	0	0	0	20
1975	0	49	0	0	0	0	49
1976	0	83	0	100	0	1	184
1977	0	185	0	18	1	0	204
1978	0	74	0	8	0	0	82

SCALLOPS (CANADA)

<i>Year</i>	<i>SZeg</i>	<i>SZej</i>	<i>SZen</i>	<i>SZem</i>	<i>SZeo</i>	<i>SZeh</i>	<i>Total</i>
1969	0	3 556	0	762	0	0	4 318
1970	0	4 097	0	0	0	0	4 097
1971	0	3 908	0	0	0	0	3 908
1972	104	3 712	0	0	0	345	4 161
1973	283	3 062	0	0	679	200	4 223
1974	0	6 137	0	0	0	0	6 137
1975	0	7 414	0	0	0	0	7 414
1976	997	5 669	0	2 401	694	0	9 761
1977	0	11 199	0	1 775	115	0	13 089
1978	0	9 457	0	2 732	0	0	12 189

SKATE (CANADA)

<i>Year</i>	<i>SZeg</i>	<i>SZej</i>	<i>SZen</i>	<i>SZem</i>	<i>SZeo</i>	<i>SZeh</i>	<i>Total</i>
1969	0	7	0	0	0	0	7
1970	0	0	0	1	0	0	1
1971	0	2	0	0	0	0	2
1972	0	3	0	0	0	0	3
1973	0	0	0	0	0	0	0
1974	0	0	0	0	0	0	0
1975	0	0	0	0	0	0	0
1976	0	44	0	0	0	0	44
1977	0	16	0	0	0	0	16
1978	0	6	0	0	0	0	6

SWORDFISH (CANADA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	0	1 368	0	70	0	0	1 438
1970	0	1 080	0	0	0	0	1 080
1971	0	0	0	0	0	0	0
1972	0	0	0	0	0	0	0
1973	0	3	0	11	0	0	14
1974	0	0	0	0	0	0	0
1975	0	0	0	7	0	0	7
1976	0	11	0	0	0	0	11
1977	0	0	0	16	0	0	16
1978	0	0	0	0	0	0	0

SQUID (COMBINED) (CANADA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	0	1	0	0	0	0	1
1970	0	0	0	0	0	0	0
1971	0	1	0	0	0	0	1
1972	0	0	0	0	0	0	0
1973	0	0	0	0	0	0	0
1974	0	0	0	0	2	0	2
1975	0	0	0	0	0	0	0
1976	0	54	0	0	0	0	54
1977	0	9	0	0	5	0	14
1978	0	0	0	0	0	0	0

WHITE HAKE (CANADA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	1	25	0	1	0	3	30
1970	0	28	0	6	0	0	34
1971	0	70	0	12	0	0	82
1972	0	32	0	0	0	0	32
1973	0	94	0	6	0	0	100
1974	0	73	0	123	0	0	196
1975	0	126	0	3	0	0	129
1976	0	194	0	1	0	0	195
1977	0	160	0	9	0	0	169
1978	0	120	0	15	0	0	135

WINTER FLOUNDER (CANADA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	2	63	1	44	0	0	110
1970	1	41	0	19	0	0	61
1971	4	50	0	9	0	0	62
1972	0	8	0	0	0	0	8
1973	0	14	0	0	0	0	14
1974	0	11	0	0	0	1	12
1975	0	12	0	1	0	0	13
1976	0	11	0	0	0	0	11
1977	0	15	0	0	0	0	15
1978	0	57	0	8	0	0	65

WITCH (CANADA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	2	23	0	3	0	4	32
1970	0	9	0	0	0	0	9
1971	0	15	0	0	0	0	15
1972	0	12	0	0	0	0	12
1973	0	9	0	0	0	0	9
1974	0	6	0	0	0	0	6
1975	0	8	0	0	0	0	8
1976	0	4	0	0	0	0	4
1977	2	9	0	0	0	0	11
1978	0	13	0	1	0	0	14

YELLOWTAIL (CANADA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	0	198	0	130	0	1	329
1970	0	57	0	14	0	0	71
1971	4	76	0	25	0	0	105
1972	0	8	0	0	0	0	8
1973	0	12	0	0	0	0	12
1974	0	4	0	0	0	0	4
1975	0	8	0	0	0	0	8
1976	0	5	0	0	0	0	5
1977	0	37	0	1	0	0	38
1978	0	48	0	9	0	0	57

AMERICAN PLAICE (USA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	399	64	75	235	48	917	1 738
1970	205	44	104	240	88	923	1 603
1971	149	50	179	254	88	790	1 511
1972	256	49	73	159	24	659	1 220
1973	141	29	108	148	22	461	910
1974	161	37	86	163	15	577	1 039
1975	240	29	80	138	13	414	913
1976	326	46	52	105	15	405	948
1977	403	57	34	140	14	760	1 408
1978	564	151	57	230	16	1 174	2 193

ANGLER (USA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	9	0	0	0	0	0	9
1970	19	0	0	0	0	0	19
1971	27	0	0	0	0	0	27
1972	27	0	0	0	0	0	27
1973	17	0	0	0	2	0	19
1974	54	0	0	1	2	4	60
1975	108	2	8	4	14	19	155
1976	135	2	43	26	19	48	274
1977	218	14	45	72	60	125	534
1978	323	23	39	60	68	135	648

COD (USA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	7 414	1 104	418	2 572	879	2 566	14 954
1970	5 667	1 354	694	1 857	1 202	2 578	13 353
1971	6 409	1 074	744	3 315	1 024	2 434	14 999
1972	5 628	1 159	845	1 549	923	2 372	12 478
1973	7 655	1 512	651	1 550	1 281	2 188	14 838
1974	7 697	1 772	848	2 019	1 773	2 534	16 642
1975	8 150	1 632	864	1 477	838	1 635	14 595
1976	8 439	965	504	1 073	979	1 981	13 941
1977	9 829	2 177	789	2 079	1 443	3 259	19 576
1978	11 953	2 738	1 311	2 765	1 790	3 230	23 787

Cusk (USA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	129	42	1	18	0	50	240
1970	104	33	0	5	0	46	189
1971	134	22	3	8	1	82	251
1972	125	24	2	14	1	65	230
1973	180	11	2	3	3	51	249
1974	186	7	0	5	1	40	239
1975	233	7	1	4	1	50	297
1976	185	6	1	5	3	52	252
1977	122	23	4	6	0	99	254
1978	157	61	1	16	0	156	392

HADDOCK (USA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	5 009	2 542	840	4 076	408	3 568	16 443
1970	1 967	1 298	767	1 855	179	2 334	8 400
1971	1 349	1 076	609	2 457	157	1 653	7 301
1972	873	610	282	933	122	1 036	3 855
1973	666	791	193	600	122	404	2 776
1974	727	335	184	616	67	466	2 396
1975	1 309	724	249	981	61	645	3 969
1976	1 206	457	120	518	108	487	2 895
1977	2 672	891	484	1 538	329	1 990	7 904
1978	3 186	2 268	709	2 458	219	3 263	12 102

HALIBUT (USA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	28	4	0	2	0	7	42
1970	23	2	0	1	0	6	32
1971	30	3	1	3	0	3	41
1972	21	2	0	1	0	3	29
1973	15	1	0	1	0	1	18
1974	15	1	0	0	0	1	18
1975	29	0	0	1	0	1	31
1976	16	1	0	0	0	2	20
1977	12	1	0	0	0	3	16
1978	23	3	0	1	0	7	35

HERRING (USA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	832	0	0	0	0	0	832
1970	272	0	0	0	0	0	272
1971	1 194	0	0	0	0	0	1 194
1972	11	0	0	0	0	0	11
1973	161	0	0	0	0	0	161
1974	2	0	0	0	170	0	172
1975	2	0	0	0	0	1	3
1976	507	0	0	0	0	0	507
1977	1	0	0	0	0	0	1
1978	2	0	0	0	0	0	2

LOBSTER (USA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	2	0	332	137	602	3	1 076
1970	3	14	182	137	919	12	1 267
1971	8	25	338	152	479	60	1 062
1972	3	22	344	97	565	15	1 046
1973	0	33	98	64	459	17	672
1974	1	35	242	428	435	24	1 166
1975	3	60	319	342	676	32	1 432
1976	17	30	416	293	600	31	1 388
1977	22	23	461	148	517	52	1 224
1978	78	60	776	171	485	121	1 691

MACKEREL (USA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	4	0	0	0	2	0	6
1970	254	0	0	0	83	14	351
1971	1	0	0	0	1	0	2
1972	0	0	0	0	5	0	5
1973	0	0	0	0	0	0	0
1974	0	0	0	0	11	0	11
1975	0	0	0	0	0	0	0
1976	1	0	0	0	0	0	2
1977	4	0	0	0	2	0	6
1978	1	0	0	0	1	0	2

POLLOCK (USA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	1 146	471	10	93	9	490	2 219
1970	1 334	271	10	37	5	565	2 221
1971	1 555	593	86	126	11	667	3 037
1972	864	597	27	92	16	470	2 067
1973	1 354	521	13	27	25	221	2 161
1974	1 478	568	58	78	40	399	2 620
1975	1 734	477	69	111	20	565	2 976
1976	2 301	481	66	121	113	770	3 842
1977	2 694	315	114	212	139	1 155	4 628
1978	2 557	436	100	308	94	2 035	5 530

REDFISH (USA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	2 030	34	0	6	9	322	2 401
1970	1 402	79	1	10	4	488	1 983
1971	2 291	47	4	30	1	1 353	3 726
1972	3 588	32	14	28	26	2 317	6 007
1973	3 708	21	30	19	22	1 150	4 950
1974	2 203	57	8	18	11	923	3 220
1975	2 006	28	13	49	7	1 011	3 114
1976	1 036	22	17	43	15	1 008	2 142
1977	1 501	72	32	35	0	1 518	3 158
1978	1 068	220	2	68	13	1 262	2 632

RED HAKE (USA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	31	0	0	0	20	0	51
1970	87	0	0	1	2	10	100
1971	108	0	1	1	0	1	111
1972	156	2	0	0	0	2	160
1973	70	0	0	0	0	3	74
1974	72	1	0	0	1	3	77
1975	64	1	0	0	0	0	55
1976	34	1	0	1	0	1	37
1977	75	0	4	2	2	13	95
1978	109	2	0	1	0	39	151

SCALLOPS (USA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	112	39	227	485	197	269	1 329
1970	355	15	160	173	395	323	1 420
1971	367	0	215	24	423	305	1 334
1972	249	3	64	131	194	182	824
1973	277	4	174	13	469	148	1 084
1974	197	1	122	20	419	170	929
1975	214	27	176	90	312	41	860
1976	1 069	0	142	46	393	126	1 777
1977	2 944	196	282	219	767	415	4 823
1978	1 933	758	367	531	1 584	416	5 589

SILVER HAKE (USA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	1 408	1	23	1	209	12	1 654
1970	217	306	7	0	374	3 333	4 238
1971	613	583	4	147	17	1 705	3 069
1972	475	48	3	2	4	346	879
1973	2 891	0	0	0	47	2 669	5 698
1974	457	44	1	0	12	1 771	2 283
1975	1 198	25	1	5	58	3 302	4 588
1976	2 475	2	1	1	68	1 246	3 793
1977	519	3	0	0	32	3 195	3 749
1978	588	267	0	4	1	5 532	6 393

SKATE (USA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	7	3	0	1	1	9	21
1970	8	0	0	2	0	11	22
1971	11	0	0	0	1	1	13
1972	6	1	0	0	0	1	8
1973	3	0	0	0	0	1	4
1974	0	0	0	0	0	0	0
1975	13	1	0	0	0	0	14
1976	12	0	0	0	0	1	13
1977	15	0	0	0	0	2	17
1978	53	0	0	0	18	5	77

SQUID (USA)

<i>Year</i>	<i>SZeg</i>	<i>SZej</i>	<i>SZen</i>	<i>SZem</i>	<i>SZeo</i>	<i>SZeh</i>	<i>Total</i>
1969	1	0	0	0	4	0	5
1970	1	0	1	0	3	0	4
1971	7	0	0	0	5	1	13
1972	1	0	1	0	5	0	7
1973	7	0	0	0	9	1	17
1974	5	0	0	0	22	0	27
1975	2	0	0	0	8	17	28
1976	41	0	2	0	7	34	83
1977	45	0	0	0	13	81	139
1978	18	1	0	0	3	122	144

SUMMER FLOUNDER (USA)

<i>Year</i>	<i>SZeg</i>	<i>SZej</i>	<i>SZen</i>	<i>SZem</i>	<i>SZeo</i>	<i>SZeh</i>	<i>Total</i>
1969	1	0	0	1	22	0	24
1970	1	0	1	0	10	0	12
1971	0	0	1	8	12	6	28
1972	1	0	1	1	5	1	9
1973	1	0	1	1	35	2	40
1974	15	1	19	10	235	6	285
1975	14	0	28	10	210	17	279
1976	24	2	35	15	558	15	648
1977	12	0	14	12	769	8	816
1978	24	1	167	9	494	16	710

SWORDFISH (USA)

<i>Year</i>	<i>SZeg</i>	<i>SZej</i>	<i>SZen</i>	<i>SZem</i>	<i>SZeo</i>	<i>SZeh</i>	<i>Total</i>
1969	0	0	0	0	24	0	24
1970	2	0	0	0	53	0	55
1971	0	0	0	0	0	0	0
1972	0	61	0	6	0	0	67
1973	0	44	26	29	7	0	105
1974	4	120	66	262	0	11	464
1975	0	256	224	617	21	13	1 131
1976	0	226	136	390	8	55	815
1977	0	89	4	145	5	0	243
1978	66	931	654	273	37	0	1 961

WHITE HAKE (USA)

<i>Year</i>	<i>SZeg</i>	<i>SZej</i>	<i>SZen</i>	<i>SZem</i>	<i>SZeo</i>	<i>SZeh</i>	<i>Total</i>
1969	278	43	5	9	22	107	464
1970	273	46	7	6	32	179	542
1971	487	45	9	12	23	277	853
1972	382	49	21	43	17	217	728
1973	439	20	5	11	23	160	658
1974	514	18	3	20	13	175	743
1975	276	16	3	13	4	92	405
1976	302	7	4	11	4	72	399
1977	260	26	8	15	4	226	539
1978	272	52	3	10	3	268	608

WINTER FLOUNDER (USA)

<i>Year</i>	<i>SZeg</i>	<i>SZej</i>	<i>SZen</i>	<i>SZem</i>	<i>SZeo</i>	<i>SZeh</i>	<i>Total</i>
1969	1 592	152	151	1 452	2 622	410	6 380
1970	1 438	215	483	979	2 962	944	7 020
1971	1 970	186	427	1 368	1 942	1 108	7 000
1972	1 051	210	443	1 121	1 284	1 024	5 133
1973	1 027	300	229	1 020	1 101	709	4 387
1974	1 448	170	256	1 042	942	651	4 508
1975	1 689	385	320	972	733	734	4 833
1976	1 475	314	185	678	381	698	3 732
1977	1 436	467	420	1 507	949	1 176	5 954
1978	2 139	706	321	1 245	1 050	917	6 378

WITCH (USA)

<i>Year</i>	<i>SZeg</i>	<i>SZej</i>	<i>SZen</i>	<i>SZem</i>	<i>SZeo</i>	<i>SZeh</i>	<i>Total</i>
1969	426	26	81	74	153	504	1 263
1970	431	49	147	50	267	653	1 598
1971	540	56	329	81	314	634	1 955
1972	383	50	442	130	189	564	1 758
1973	264	20	190	73	268	408	1 223
1974	332	17	145	104	191	291	1 079
1975	371	10	282	159	105	239	1 167
1976	278	24	144	82	50	209	787
1977	256	19	70	62	30	250	688
1978	365	85	38	86	45	307	926

WOLFFISH (USA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	37	11	2	12	0	23	85
1970	45	11	0	9	1	19	84
1971	42	15	1	11	2	27	99
1972	71	19	5	8	9	39	150
1973	73	28	3	4	3	19	129
1974	124	8	4	5	7	43	192
1975	105	12	2	4	2	30	154
1976	130	17	4	3	10	56	219
1977	162	9	2	2	3	25	203
1978	206	12	2	5	3	54	283

YELLOWTAIL FLOUNDER (USA)

<i>Year</i>	<i>5Zeg</i>	<i>5Zej</i>	<i>5Zen</i>	<i>5Zem</i>	<i>5Zeo</i>	<i>5Zeh</i>	<i>Total</i>
1969	558	551	2 888	11 977	5 976	542	22 492
1970	497	754	4 120	9 445	8 043	1 199	24 058
1971	761	480	3 291	6 013	5 348	2 089	17 981
1972	501	296	5 682	5 767	4 177	2 405	18 827
1973	634	919	6 191	6 952	4 849	1 829	21 373
1974	877	651	4 096	7 300	3 962	2 569	19 454
1975	653	448	4 507	6 846	2 166	1 644	16 264
1976	1 575	377	4 047	5 391	1 173	1 596	14 158
1977	1 279	398	2 034	5 522	1 358	1 499	12 089
1978	1 845	263	820	2 837	1 282	610	7 658

Annex 4**PRICE TABLES FOR CANADA AND THE UNITED STATES, 1969-1978,
AND TABLE OF EXCHANGE RATES**

All prices in the following Tables (expressed in dollars per metric ton) were calculated by dividing the total value of the relevant landings by the volume landed (in round weight except for scallops) on a species by species basis.

The Canadian fish prices in the following Tables are derived mainly from landings data (from offshore vessels) for district 26 in Nova Scotia — the Lunenburg and Riverport area. District 26 data have been used because of the importance of Lunenburg as a Nova Scotia fishing port, and because a large quantity of fish caught on Georges Bank is landed in ports in this district. It should be noted that landed values of groundfish in district 26 are strongly influenced by negotiated prices contained in collective agreements with unionized fishermen. This leads to a conservative estimate of the market value of landings because negotiated prices tend to be lower than prevailing market prices.

In certain instances, offshore landings data for district 26 were not suitable because no landings or negligible landings were reported. In some of these cases (identified by single asterisks in the Tables), prices were derived from offshore vessel landings for districts 28 to 34 (all in southwest Nova Scotia). In other cases (identified by double asterisks in the Tables) prices were derived from landings from offshore vessels for Nova Scotia as a whole. In other cases (identified by three asterisks in the Tables) prices were derived from total Nova Scotia landings, from both inshore and offshore vessels. For the following species (unless asterisked as above) the following data were used:

- (a) Herring: landings from offshore vessels in district 34 (in Yarmouth county);
- (b) Mackerel: landings from inshore vessels in district 26;
- (c) White Hake: landings from offshore vessels of common hake in district 26.

The United States fish prices in the following Tables were derived from landings data for the state of Massachusetts, reproduced in Section III, Annex 26 of this Volume. All prices (expressed in dollars per metric ton) were calculated by dividing the total value of landings by the volume landed (in round weight except for scallops). Pounds were converted to metric tons by dividing by 2204.6.

Also included in this Annex is a Table setting out the average value of the United States dollar in terms of the Canadian dollar for the years 1969 through 1978. These exchange rates have been used to convert Canadian prices to United States dollars for the purposes of the comparison in *Figure 26* of the Memorial (where the average value of the catches

by Canada and the United States is compared in terms of Canadian and United States prices respectively). They have also been used to convert United States prices to Canadian dollars for the purposes of the comparison set out in *Figure 25* of the Memorial, in those few cases where no Canadian price is available for the species in question. (*Figure 25* compares the average value of catches by Canada and the United States in terms of Canadian prices.)

**Canadian/US Landed Values per Metric Ton
1969-1978**

SPECIES: COD

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	102	191
1970	95	247
1971	102	271
1972	116	390
1973	139	408
1974	185	432
1975	189	534
1976	194	582
1977	227	498
1978	278	560

SPECIES: HADDOCK

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	152	375
1970	186	500
1971	190	577
1972	214	810
1973	288	841
1974	340	814
1975	344	723
1976	355	948
1977	367	703
1978	405	703

SPECIES: POLLOCK

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	53	130
1970	57	178
1971	70	171
1972	81	203
1973	91	237
1974	123	242
1975	127	287
1976	125	319
1977	130	328
1978	153	389

SPECIES: REDFISH

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	64	93
1970	71	116
1971	79	116
1972	91	140
1973	111	195
1974	112	207
1975	119	277
1976	124	348
1977	148	343
1978	199	394

SPECIES: CUSK

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	39	137
1970	46	167
1971	53	201
1972	68	217
1973	93	261
1974	104	301
1975	112	315
1976	108	388
1977	102	376
1978	120	422

SPECIES: AMERICAN PLAICE

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	98	264
1970	114	315
1971	115	328
1972	116	447
1973	144	452
1974	170	429
1975	169	542
1976	185	670
1977	208	701
1978	241	891

SPECIES: YELLOWTAIL

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	95	297
1970	106	332
1971	104	362
1972	98	444
1973	106	502
1974	123	580
1975	120	794
1976	135	927
1977	157	1 047
1978	201	1 364

SPECIES: WITCH

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	118	306
1970	132	355
1971	132	373
1972	134	555
1973	164	667
1974	191	800
1975	192	975
1976	199	1 143
1977	228	1 081
1978	258	1 200

SPECIES: WINTER FLOUNDER

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	95	323
1970	110	354
1971	116	392
1972	119	538
1973	145	545
1974	129	585
1975	153	785
1976	173	834
1977	172	842
1978	229	1 045

SPECIES: SUMMER FLOUNDER

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	-	989
1970	-	807
1971	-	941
1972	-	1 090
1973	-	876
1974	-	574
1975	-	1 055
1976	-	1 053
1977	-	1 250
1978	-	1 664

SPECIES: HALIBUT

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	528	1 214
1970	651	1 424
1971	612	1 597
1972	665	1 993
1973	1 088	2 255
1974	695	2 504
1975	859	2 819
1976	1 018	2 774
1977	998	2 787
1978	1 123	3 120

SPECIES: SKATE

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	148	116
1970	202	116
1971	116	145
1972	104	152
1973	24***	173
1974	47**	194
1975	40**	200
1976	37	227
1977	56	272
1978	33	264

SPECIES: RED HAKE

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	-	89
1970	-	96
1971	-	112
1972	-	130
1973	-	151
1974	-	115
1975	-	153
1976	-	206
1977	-	196
1978	-	249

SPECIES: WHITE HAKE

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	43	130
1970	46	147
1971	50	141
1972	76	209
1973	109	304
1974	103	239
1975	156	284
1976	165	383
1977	101	333
1978	124	424

SPECIES: SILVER HAKE

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	-	136
1970	-	191
1971	-	130
1972	-	208
1973	-	146
1974	11	179
1975	9***	185
1976	-	178
1977	-	187
1978	-	305

SPECIES: WOLFFISH

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	-	104
1970	-	126
1971	-	151
1972	-	144
1973	-	141
1974	-	159
1975	-	180
1976	-	204
1977	-	195
1978	-	245

SPECIES: ANGLER

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	-	129
1970	-	117
1971	-	123
1972	-	128
1973	-	249
1974	-	299
1975	-	438
1976	-	725
1977	-	802
1978	-	771

SPECIES: HERRING

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	22	33
1970	25	37
1971	32	37
1972	37	44
1973	44	68
1974	71	73
1975	39*	65
1976	63*	71
1977	110	80
1978	189*	146

SPECIES: MACKEREL

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	112*	104
1970	134*	109
1971	141*	104
1972	133	179
1973	181	358
1974	178*	471
1975	134	200
1976	191*	271
1977	135	469
1978	233*	635

SPECIES: SWORDFISH

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	1 271**	1 145
1970	1 012**	1 382
1971	—	2 144
1972	—	3 193
1973	194**	3 121
1974	—	2 040
1975	414**	2 712
1976	1 611**	2 931
1977	1 846**	2 794
1978	1 969*	2 829

SPECIES: SCALLOPS (meat weight)

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	1 957	2 438
1970	2 404	2 989
1971	2 580	3 260
1972	3 530	4 418
1973	3 281	3 926
1974	2 930	3 414
1975	3 175	4 165
1976	3 465	4 068
1977	3 150	3 637
1978	4 798	5 590

SPECIES: LOBSTER

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	1 728***	2 105
1970	1 997***	2 270
1971	1 761**	2 473
1972	2 383**	2 821
1973	2 582**	3 343
1974	2 603**	3 630
1975	2 844**	3 962
1976	3 199**	3 890
1977	3 185**	4 366
1978	3 358**	4 632

SPECIES: SQUID

<i>Year</i>	<i>Canadian landed value/mt (\$ Can.)</i>	<i>US landed value/mt (\$ US)</i>
1969	—	242
1970	184*	214
1971	203*	171
1972	—	272
1973	—	341
1974	—	371
1975	—	323
1976	191***	308
1977	213***	322
1978	333*	422

Table of Exchange Rates

AVERAGE VALUE OF ONE UNITED STATES DOLLAR
IN CANADIAN FUNDS FOR THE YEARS 1969 THROUGH 1978

<i>Year</i>	<i>Canadian funds</i>
1969	1.0768
1970	1.0440
1971	1.0098
1972	0.9905
1973	1.0001
1974	0.9780
1975	1.0173
1976	0.9861
1977	1.0635
1978	1.1402

Source: Bank of Canada mid-market rates.

Annex 5**STATISTICS RESPECTING THE OFFSHORE FISHERY OF THE SMALL VESSEL FLEET OF
SOUTHWEST NOVA SCOTIA**

[Not reproduced]

Annex 6**SIZE (GEORGES BANK) LANDED VALUE AS A PERCENTAGE OF TOTAL LANDED VALUE
AT THE FIVE LEADING GEORGES BANK FISHING PORTS IN NOVA SCOTIA, 1974-1978**

Section III**Extracts from Published Statistical Data Sources Referred to in the
Memorial Submitted by Canada and in Section I of This Volume****Annex 7****INTRODUCTORY NOTE TO SECTION III**

[Not reproduced]

Annex 8**STATISTICS USED TO DETERMINE EMPLOYMENT LEVELS IN NOVA SCOTIA
(PRIMARY SECTOR AND TOTAL EMPLOYMENT), 1978**

(Sources: (A) *Agricultural Statistics, 1980*, Vol. 16, Province of Nova Scotia, Department of Agriculture and Marketing, R.P.-81-900, Agdex No. 850 03, p. 12. (B) *Estimates of Employees by Province and Industry, December 1980*, Statistics Canada, Catalogue 72-008, Mar. 1981, p. 16.)

[Not reproduced]

Annex 9

NOVA SCOTIA GROSS DOMESTIC PRODUCT DATA FOR PRIMARY SECTOR ACTIVITIES
(Source: *Provincial Gross Domestic Product by Industry, 1979*, Statistics Canada, System of National Accounts, Catalogue 61-202, Apr. 1982, p. 23.)

[Not reproduced]

Annex 10

STATISTICS RESPECTING PRIMARY SECTOR OCCUPATIONS
IN SOUTHWEST NOVA SCOTIA

(Source: *Occupations: Occupation Groups by Sex, for Canada, Provinces and Census Divisions, 1971*, Census of Canada, Statistics Canada, Catalogue 94-718, Vol. III, Part 2 (Bulletin 3.2-4), Feb. 1975, pp. 3B-25 and 3B-26.)

[Not reproduced]

Annex 11

PROVINCIAL FISH CATCHES AND VALUES

(Source: *Canadian Fisheries: Annual Statistical Review, 1979*, Vol. 12, Department of Fisheries and Oceans, Communications Branch, PUB-81/020E and Minister of Supply and Services Canada, 1981, Catalogue Number Fs 1-9/1980, ISBN 0-662-51508-0, p. 41.)

[Not reproduced]

Annex 12**STATISTICAL DATA RESPECTING RUBBER PRODUCTS EMPLOYMENT
IN NOVA SCOTIA**

(Source: *Nova Scotia Directory of Manufacturers, 1977-1978*, Halifax, Nova Scotia Department of Development, Statistical Services Branch, introductory pages and Statistical Industrial Commodity Classification Section, p. 10.)

[Not reproduced]

Annex 13**STATISTICS ON NOVA SCOTIA EXPORTS**

(Source: *Tabular Review of Nova Scotia's Export Trade, 1976-1980*, Halifax, Nova Scotia Department of Development, Statistical Services Branch, June 1981.)

[Not reproduced]

Annex 14**STATISTICS USED TO DETERMINE FISHING AND FISH PROCESSING INDUSTRY SHARE
OF GROSS DOMESTIC PRODUCT IN THE GOODS-PRODUCING SECTOR FOR NOVA
SCOTIA**

(Sources: (A) *Provincial Gross Domestic Product by Industry, 1979*, Statistics Canada, System of National Accounts, Catalogue 61-202, Apr. 1982, pp. 24 and 29. (B) *Manufacturing Industries of Canada: National and Provincial Areas, 1978*, Statistics Canada, Catalogue 31-203, Dec. 1980, pp. 52-59.)

[Not reproduced]

Annex 15

STATISTICS ON THE ICELANDIC ECONOMY

(Source: *The Icelandic Economy, Developments 1981-1982*, Reykjavik, National Economic Institute, Apr. 1982, pp. 170, 174 and 175.)

[Not reproduced]

Annex 16

STATISTICS ON THE NORWEGIAN ECONOMY

(Sources: (A) *Statistical Yearbook of Norway 1981*, 100th issue, Oslo, Central Bureau of Statistics of Norway, 1981, pp. 7 and 51. (B) *Fishery Statistics 1979*, Oslo, Central Bureau of Statistics of Norway, 1981, pp. 19, 108 and 109. (C) *Facts About the Norwegian Fishing Industry*, 5th ed., Oslo, Norwegian Fishermen's Association (Norges Fiskarlag), 1980, p. 20.)

[Not reproduced]

Annex 17

NEW ENGLAND FISHERY EMPLOYMENT STATISTICS, 1976

(Sources: (A) *Statistical Abstract of the United States 1980*, 101st ed., Washington, US Department of Commerce, Bureau of the Census, Dec. 1980, p. 397. (B) *Fishery Statistics of the United States, 1976*, Statistical Digest No. 70, Washington, US Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Oct. 1980, pp. 92 and 97.)

[Not reproduced]

Annex 18**CANADIAN POPULATION STATISTICS BY PROVINCE**

(Source: *Economic Review: April 1981*, Department of Finance, Catalogue No. F1-21/1981E, ISBN 0-660-10885-2, p. 107.)

[Not reproduced]

Annex 19**LABOUR FORCE STATISTICS FOR CANADA AND THE ATLANTIC PROVINCES,
1966-1980**

(Source: *Historical Labour Force Statistics — Actual Data, Seasonal Factors, Seasonally Adjusted Data, 1980*, Statistics Canada, Catalogue 71-201, Jan. 1981, pp. 24, 39, 40, 48, 63, 66, 69, 72, 100, 115, 116, 124, 139, 140, 148, 163 and 164.)

[Not reproduced]

Annex 20**STATISTICS RESPECTING POPULATION, LABOUR FORCE ACTIVITY AND
UNEMPLOYMENT FOR CANADA AND THE ATLANTIC PROVINCES, 1971 AND 1976**

(Sources: (A) *Labour Force Activity: Labour Force Activity by Sex*, Vol. 5, 1976 Census of Canada, Statistics Canada, Catalogue 94-801 (Bulletin 5.2), Sep. 1978, pp. v and vi and Table 2, pp. 2-1 and 2-2. (B) *Labour Force and Individual Income: Labour Force Activity by Sex*, Vol. III, Part I, 1971 Census of Canada, Statistics Canada, Catalogue 94-703 (Bulletin 3.1-3), Jan. 1975, Table 5, pp. 5-1 and 5-2.)

[Not reproduced]

Annex 21

STATISTICS SHOWING INCOME ESTIMATES FOR CANADA AND THE PROVINCES, 1976
(Source: *Income Estimates for Subprovincial Areas, 1976*, Statistics Canada,
Catalogue 13-576, July 1981, pp. 43 and 53.)

[Not reproduced]

Annex 22

STATISTICS USED TO DETERMINE EMPLOYMENT IN FISHING IN NOVA SCOTIA, 1978
(Source: *Canadian Fisheries: Annual Statistical Review, 1979*, Vol. 12, Department of Fisheries and Oceans, Communications Branch, PUB-81/020E and Minister of Supply and Services Canada, 1981, Catalogue Number Fs 1-9/1980, ISBN 0-662-51508-0, p. 120.)

[Not reproduced]

Annex 23

NOVA SCOTIA LANDINGS BY SPECIES

(Source: *Canadian Fisheries Annual Statistical Review*, 1979, Vol. 12, Department of Fisheries and Oceans, Communications Branch, PUB-81/020E and Minister of Supply and Services Canada, 1981, Catalogue Number Fs 1-9/1980, ISBN 0-662-51508-0, p. 42.)

The following excerpt giving Nova Scotia fish landings by species (volume and value) for 1978 and 1979 was used as the statistical source for the figures in Table A-6 in Section I-E of this Volume ("The Relative Importance of Scallops to the Nova Scotia Fishery").

TABLE 23 — SEA FISHERIES — CATCHES AND LANDED VALUES BY SPECIES, NOVA SCOTIA, 1978-1979

TABLEAU 23 — PÊCHES MARITIMES — CAPTURES ET VALEURS AU DÉBARQUEMENT PAR ESPÈCES, NOUVELLE-ÉCOSSE, 1978-1979

Nominal catches (Q) in tonnes, live weight — Values (V) in thousand dollars
Captures nominales (Q) en tonnes, poids vif — Valeurs (V) en milliers de dollars

Species — Espèces	1978		1979	
	Q	V	Q	V
Groundfish — Poissons de fond				
Cod — Morue	80 520	25 829	106 411	38 266
Haddock — Aiglefin	40 499	17 866	33 114	15 480
Redfish — Sébaste	21 640	4 235	26 304	5 770
Halibut — Flétan	1 235	2 550	1 406	3 707
Small flatfishes — Petits poissons plats	16 332	4 453	17 406	5 861
Turbot — Turbot	1 175	214	1 686	330
Pollock — Gouberge	27 031	5 065	29 280	6 593
Hake — Merlu	6 275	1 436	5 932	1 498
Cusk — Brosme	5 304	1 424	4 910	1 743
Catfish — Poisson-chat	1 430	258	1 925	425
Tomcod — Poulamon	—	—	3	1
Other — Autres	3 695	514	2 544	571
TOTAL	205 136	63 844	230 921	80 245
Pelagic and estuarial fish — Poissons pélagiques et d'estuaire				
Herring — Hareng	86 445	15 810	49 002	10 724
Mackerel — Maquereau	8 704	1 641	9 111	2 052
Tuna — Thon	231	365	81	276
Alewife — Gaspereau	4 286	688	4 147	571
Eel — Anguille	64	65	32	51
Salmon — Saumon	73	383	25	136
Shad — Alose	60	44	48	33
Skate — Raie	238	9	315	16
Smelt — Eperlan	63	30	103	48
Capelin — Capelan	—	—	—	—
Other — Autres	3 310	6 290	3 077	8 438
TOTAL	103 474	25 325	65 941	22 345

<i>Species — Espèces</i>	1978		1979	
	<i>Q</i>	<i>V</i>	<i>Q</i>	<i>V</i>
Molluscs and crustaceans — Mollusques et crustacés				
Clam — Coque	1 634	787	1 286	708
Oyster — Huître	107	76	71	40
Scallop — Pétoncle	106 400	61 856	85 973	71 607
Squid — Encornet	17 722	7 359	25 397	10 549
Lobster — Homard	6 161	30 532	7 366	33 737
Crab — Crabe	426	122	14	6
Queen Crab — Crabe des neiges	3 096	1 916	2 768	1 836
Shrimp — Crevette	673	1 426	1 411	2 462
Other — Autres	40	15	6	3
TOTAL	136 259	104 089	124 292	120 948
Other items — Autres items				
Livers — Foies	—	—	0	0
Marine plants — Plantes marines	19 897	1 856	14 117	1 417
Other products — Autres items	—	274	—	572
TOTAL	—	2 130	—	1 989
GRAND TOTAL	444 869	195 388	421 154	225 527

Annex 24**STATISTICS ON SOUTHWEST NOVA SCOTIA EMPLOYMENT IN FISHING AND FISH PROCESSING, AND WAGES AND VALUE OF SHIPMENTS IN FISH PROCESSING, 1976**

(Sources: (A) *Manufacturing Industries of Canada: Subprovincial Areas, 1976*, Statistics Canada, Catalogue 31-209, ISSN 0382-4012, Jan. 1980, pp. 28-35. (B) *Manufacturing Industries of Canada: Subprovincial Areas, 1977*, Statistics Canada, Catalogue 31-209, ISSN 0382-4012, Aug. 1980, pp. 32 and 33. (C) *Nova Scotia Directory of Manufacturers, 1975*, Halifax, Department of Development, 1975, pp. 89 and 90.)

[Not reproduced]

Annex 25**EMPLOYMENT IN SOUTHWEST NOVA SCOTIA MANUFACTURING INDUSTRIES
DEPENDENT ON THE FISHERY**

(Source: *Nova Scotia Directory of Manufacturers, 1977-1978*, Halifax, Nova Scotia Department of Development, Statistical Services Branch, introductory pages and pp. 10-12, 25-28, 30, 31 and 32-36.)

[Not reproduced]

Annex 26

PUBLISHED SOURCES FOR UNITED STATES FISH PRICES

(Sources: (A) *Fishery Statistics of the United States, 1969*, Statistical Digest No. 63, Washington, US Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 1972, pp. 95 and 96. (B) *Fishery Statistics of the United States, 1970*, Statistical Digest No. 64, 1973, pp. 100 and 101. (C) *Fishery Statistics of the United States, 1971*, Statistical Digest No. 65, pp. 94 and 95. (D) *Fishery Statistics of the United States, 1972*, Statistical Digest No. 66, pp. 95 and 96. (E) *Fishery Statistics of the United States, 1973*, Statistical Digest No. 67, pp. 93 and 94. (F) *Fishery Statistics of the United States, 1974*, Statistical Digest No. 68, pp. 92 and 93. (G) *Fishery Statistics of the United States, 1975*, Statistical Digest No. 69, Dec. 1978, pp. 91 and 92. (H) *Fishery Statistics of the United States, 1976*, Statistical Digest No. 70, Oct. 1980, pp. 93 and 94. (I) *Massachusetts Landings, Annual Summary, 1978*, Current Fisheries Statistics No. 7810, Washington, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 25 June 1980, p. 3.)

[Not reproduced]

Annex 27

CENSUS DATA RESPECTING POPULATION BY AGE, 1961 AND 1976; AND, FARM AND NON-FARM RURAL POPULATION, 1951 AND 1971, FOR SOUTHWEST NOVA SCOTIA

(Sources: (A) *Population: Geographical Distributions*, Vol. I (Part I), 1961 Census of Canada, Dominion Bureau of Statistics, 1962, p. 13-1. (B) *Population: General Characteristics*, Vol. I (Part 2), 1961 Census of Canada, Dominion Bureau of Statistics, 1962, pp. 22-1 and 22-3. (C) *Population: Urban and Rural Distributions*, Vol. I (Part I), 1971 Census of Canada, Statistics Canada, Catalogue 92-709 (Bulletin 1.1-9), Feb. 1973, pp. 11-2 and 11-3. (D) *Population: Demographic Characteristics, Five-year Age Groups*, 1976 Census of Canada, Statistics Canada, Catalogue 92-823 (Bulletin 2.4), Mar. 1978, p. 13-3. (E) *Population: Geographic Distributions, Urban and Rural Distribution*, 1976 Census of Canada, Statistics Canada, Catalogue 92-807 (Bulletin 1.8), Feb. 1978, pp. 9-1 and 9-2.)

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