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Tuesday, October 6, 2009

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Chair

Mr. Rodney Weston

Standing Committee on Fisheries and Oceans

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• (1540)

[English]

The Chair (Mr. Rodney Weston (Saint John, CPC)): I call this meeting to order.

I believe the second report from the steering committee, the subcommittee, has been circulated for your approval this morning. I'd like to put that on the table and get approval on the subcommittee report before we begin other business.

Are there any questions, concerns?

Monsieur Blais.

[Translation]

Mr. Raynald Blais (Gaspésie—Îles-de-la-Madeleine, BQ): I just want to point out that when the steering committee met, we had a little trouble making decisions because we were missing two members, from the Liberals and the NDP. So the steering committee really did not make any decisions. We had discussions, but we agreed that we had to redo the meeting.

I intend to find a method that takes into account the timeline and the fact that the Liberals are going to put forward a motion on this issue. I am interested in hearing from the witnesses here today, but also from the minister. Could we agree to devote the first hour of Thursday's meeting to the minister and to related or other discussions? The second hour would be to make a decision on the Notice of Motion, or the motion, that may be moved by the Liberals today.

Remember that October 19 is the deadline. Since we will be on break next week, it would be a good idea to take the time to hear from people, especially the minister. We also have to leave enough time to consider the motion carefully and ensure that this is done properly. I think we should spend the first hour of Thursday's meeting hearing from the minister's witnesses and the second hour, debating the motion.

[English]

The Chair: Thank you, Monsieur Blais.

Mr. Byrne.

Hon. Gerry Byrne (Humber—St. Barbe—Baie Verte, Lib.): Thank you, Mr. Chair.

I've received the input from our colleague, and I have a motion that I've tabled with the clerk. The motion surrounds an issue that has to be put or resolved by the House by October 19, 2009. That's the date that's been established by the government to receive consulta-

tion from the House on the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, otherwise known as the revised NAFO convention.

That deadline is rapidly approaching. We've made a few attempts in the House itself, among the House leadership, to get this on the floor of the House; notwithstanding that that was not successful, we're dealing with the committee right now. The House breaks next week and then resumes the following week. In other words, this issue has to be resolved. In order for it to actually enter the House and for the House to actually use the report of the committee, as I recommend in my motion, to either concur or not concur in the report of the committee, we are facing some very serious time constraints.

I would like to ask if there is a procedural way, perhaps through another motion at this committee, whereby we can at least guarantee that my motion will be voted upon prior to the conclusion of Thursday's meeting. What Mr. Blais is suggesting is to use this meeting to hear witnesses and Thursday afternoon to hear witnesses for the first hour. Then, of course, we could indeed go to discussion of my motion, but there would be absolutely no guarantee that the actual motion will be put at the Thursday meeting, because of course we could talk this out for a long time.

So let's test the good faith.

• (1545)

Is there a procedural way—I'll ask the clerk, through you, Mr. Chair—that we can establish that the question has to be put on my motion prior to the conclusion of Thursday's meeting?

The Chair: Before we proceed with Mr. Byrne's request on the motion he intends to lay on the table, I'd like to deal with the subcommittee report.

Is there any further discussion on the report of the subcommittee?

Mr. Blais' point was very well put. Because of attendance at the subcommittee, we didn't deal with any business beyond what we discussed on Thursday of last week to deal with this week. We will have a further subcommittee meeting to discuss future business beyond this week at a time when it's more convenient for all.

On the report of the subcommittee, do I have a motion to move the report? It is moved by Mr. Stoffer and seconded by Monsieur Lévesque.

(Motion agreed to)

The Chair: Mr. Byrne, you have the floor.

Hon. Gerry Byrne: Thank you very much, Mr. Chair.

If the clerk hasn't done so already, could my motion be circulated?

Mr. Chair, I understand that procedurally this can be addressed immediately as it relates to a matter that's currently before the committee.

In the spirit of cooperation, I would be prepared to entertain a compromise to allow the minister to appear before us on Thursday afternoon. I would propose that in order to guarantee that at least this motion be dealt with in a timely matter, i.e., by the close of normal committee time on Thursday, that the matter be put in its entirety and decided upon prior to 5:30 on Thursday.

Taking into consideration any procedural matters that could delay that, i.e., amendments and so on, I would forego discussion and debate on this particular motion until the conclusion of the minister's appearance, for the final hour of committee business on Thursday, if the committee would pass a motion providing assurance that my motion would be put and decided upon by close of normal committee business on Thursday.

I believe the clerk may have some ideas as to how that could be arranged. I would be prepared to do so.

The Chair: If I understand it correctly, Mr. Byrne is asking two questions today.

The first motion being put forward is the motion before you. I won't read that at this point in time. He's putting forward a motion. A second motion would follow that all questions be put no later than 5:30 on Thursday and providing for one hour of debate just before.

Just so we're clear, I'll break it down. We would hear the witnesses and have discussion on the witnesses' testimony today. We would hear the minister and deputy on Thursday, for one hour, and then we would debate the motion. The motion we will debate first this afternoon is that all questions be put no later than 5:30 on Thursday.

Does everybody understand what has been asked?

Mr. Kamp.

•(1550)

Mr. Randy Kamp (Pitt Meadows—Maple Ridge—Mission, CPC): I'm sorry, I was daydreaming there for a moment. Are you saying that there's going to be a motion today about a motion on Thursday?

The Chair: The first motion that would be discussed would be a motion to have all questions put no later than 5:30 on Thursday, provided we hear the debate today.

Sorry, it's kind of complex. He's putting forward a motion, and then a second motion to follow this one to ask that all motions be put no later than Thursday at 5:30, providing that we have the minister appear on Thursday for the first hour. The second hour would be debate on all questions, and all questions would be put on this motion.

Mr. Randy Kamp: Are you saying that procedural motion is going to be moved and debated today?

The Chair: That's what we would have debate on right now, that procedural motion.

Mr. Randy Kamp: With all the regular rules of debate, I understand.

The Chair: Yes.

What Mr. Byrne is moving is that he puts the motion forward, and he will waive debate, if that's correct, on this motion until the second hour on Thursday, provided the first motion, the motion that I outlined, with the questions being put on Thursday, is passed today.

Does that make sense? It's clear as mud?

Mr. Randy Kamp: Mr. Chair, you've ruled that procedural motion is in order, for moving and debate today?

The Chair: That's the advice I have, that this procedure is in order.

Do I hear any discussion on the motion about the questions being put no later than Thursday at 5:30?

Mr. Stoffer.

Mr. Peter Stoffer (Sackville—Eastern Shore, NDP): Call me crazy if you like, sir, but technically the meeting finishes at 5:30.

The Chair: Our meeting is scheduled to go from 3:30 to 5:30 on Thursday afternoon.

Mr. Peter Stoffer: Right. So at 5:30, if the question then gets put—it's just a matter of timing—you could technically hit the gavel and the question wouldn't be asked. So should it not be 5:20, 5:25, in order to have the vote?

The Chair: I suppose, technically, you could go....

Mr. Peter Stoffer: It's a little conspiracy theory, that's all.

The Chair: I understand what you're saying. The way I put it forward, and I believe Mr. Byrne and I had that discussion, was that the question be put no later than 5:30.

Mr. Peter Stoffer: And decided on?

The Chair: Yes, the question would be put and voted upon, sorry.

There you go. I see what you're getting at. I'm a little slow, but I get it eventually.

Monsieur Blais.

[*Translation*]

Mr. Raynald Blais: I am not trying to make things difficult. I just want to explain what brought us to this point. This proposal is further to my suggestion.

There are two options. The first is that, in light of the procedure, we discuss the proposal immediately after hearing from the witnesses and vote today. Personally, I would prefer to hear what the minister has to say about this issue before we vote. In fact, if the motion is not agreed to, procedure dictates that we vote today instead of Thursday, or around 5:15 p.m. or 5:20 p.m., depending on how things go. That is the idea. Either we hear from the minister before we debate the motion, or we do not. The purpose of the motion is to give the minister a chance to have a say before we make a decision. That is why I asked that we put off making the decision.

•(1555)

[*English*]

The Chair: Thank you, Monsieur Blais.

Is there any further discussion?

Mr. Kamp.

Mr. Randy Kamp: I don't exactly know what feedback you're looking for, because if this procedural motion is in order, our saying something in opposition to it is not going to stop it from coming to the floor for debate and a vote. If the intent is to debate this motion, the substance of the motion, on Thursday in the second hour, and bring it to a vote, I'm not sure we're opposed to that.

Would you allow us, as Conservative members, to caucus briefly on this? Perhaps the other parties would like to do likewise.

The Chair: We will suspend for five minutes while we have a talk.

- _____ (Pause) _____
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- (1605)

The Chair: Okay. I call the meeting back to order.

Is there any further discussion on the motion? I'll read it here. The motion we are debating or discussing at this point in time is that debate on the motion moved by Gerry Byrne concerning amendments to NAFO be suspended until Thursday, October 8, 2009, at 4:30, and that all questions regarding this motion be put and a vote be taken no later than 5:30 p.m.

Does that make sense? Is that understood?

Mr. Kamp.

Mr. Randy Kamp: Thank you. First let me apologize for taking up valuable time in having to speak to our colleagues here, but I think we're prepared to support that if you want to call the question.

The Chair: Is there no further discussion on that motion?

I will put the question.

(Motion agreed to)

Hon. Gerry Byrne: Mr. Chair, a point of clarification on a procedural issue, if I may.

Once the vote is taken on Thursday night, any member of this committee can then report it to the House the following day. Do I understand that advice to be correct?

The Chair: I have to check on that. I'm not sure. One second.

My understanding and the advice I've been provided is that normally it's the chair, but it has happened in the past that other members have tabled reports.

Hon. Gerry Byrne: Given the time sensitivity to this particular issue, and given the fact that it is an option of any committee member to be able to report to the House what the findings or the report of this committee were, this report will indeed be reported to the House the following day, Friday. Is that in order?

This is not part of the motion; this is a procedural issue.

- (1610)

The Chair: I assume that the question you're asking is, can it be tabled in the House the following day? My understanding is yes, it can be tabled in the House the following day.

Hon. Gerry Byrne: Mr. Chairman, without ever trying to compromise your standing as chair, I'd like to give notice that if you're not available on that Friday, a member on this side of the table will table it on Friday.

The Chair: Yes. I guess we'd have to decide at another point who would be available if I am not. It doesn't necessarily have to be one side of the table or the other. I think the committee could decide who would table it.

Hon. Gerry Byrne: But I understand the committee itself does not have to decide that. Any member of the committee can stand on Friday and—

The Chair: The advice I have received is that normally it's the chair, and there have been past practices where other members of the committee have tabled a report. I'm not sure how that determination of who would table the report was made. I didn't receive that advice.

We'll get back to you on Thursday. We'll look into past practices, how it was determined, who determined that. Sometimes it's determined by the chair or it's designated to the vice-chair or whatever, but we'll report back on Thursday on that practice.

Hon. Gerry Byrne: Can we have confidence that the chair will delegate that authority and responsibility on Thursday if, indeed, you're not available on Friday?

The Chair: I stated that we would get back on Thursday and will deal with the issue on Thursday. You can have all the confidence you want.

Gentlemen, thank you very much for joining us this afternoon. I'm not sure who is going to lead your presentation today, whether it's you, Mr. Balfour, or Mr. Beaupré. I'll give you the option of who leads.

Generally, we have a 10-minute time limit for presentations by our guests. You'll hear a little beep; we have a little clock, and it generally signals when the time has passed. I'd ask that you try to stay as close to the timeframes as possible.

Each party has a certain time allotment as well for questions and answers; you'll hear the beeping throughout. The members of the committee are fully apprised of the constraints they need to work within. So that we can get through as many questions as possible, I'd ask that you stay close to the timeframes provided.

Do you have any questions before we proceed?

Mr. David Balfour (Acting Assistant Deputy Minister, Fisheries and Aquaculture Management, Department of Fisheries and Oceans): No, Mr. Chairman. I'll be making the presentation on behalf of the Department of Fisheries and Oceans.

I'd like to thank you for the opportunity to be here this afternoon. We will indeed be diligent in trying to ensure that we respect the time requirement you've laid out.

The Chair: I'd ask that you introduce your associate as well when you're making your presentation, and I'll ask you to proceed at this time. Thank you very much.

Mr. David Balfour: I'm here this afternoon with Mr. Guy Beaupré, acting associate assistant deputy minister of fisheries policy renewal with the department.

We welcome the opportunity to outline the amendments to the 1978 Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, also known as the NAFO Convention. I note that the Standing Committee on Fisheries and Oceans also reviewed this issue in early March of this year, at which time senior DFO officials were present.

• (1615)

[*Translation*]

The amendments to the NAFO Convention are important for Canada and for Canada's fishing industry. They will help to ensure the conservation and sustainable management of fish stocks and ecosystems in the Northwest Atlantic and thereby contribute to the economic development and prosperity of coastal communities in Atlantic Canada.

[*English*]

Canada's overriding objective has been to curb overfishing and to ensure the sustainability of the fish stocks and the long-term health of the ecosystems in which they live. Given that most of the NAFO-managed fishery stocks are straddling—that is, they occur both within Canada's exclusive economic zone on the Atlantic side and also beyond the 200-mile limit on the high seas in the NAFO regulatory area—these concerns also reflect global interests.

Of particular significance for Atlantic provinces, and particularly the province of Newfoundland and Labrador, is Canada's membership and leadership in the Northwest Atlantic Fisheries Organization, or NAFO.

After 30-some years, NAFO members agreed that it was time to modernize the convention in order to bring it in line with the provisions of the 1995 United Nations Fish Stocks Agreement. NAFO members agreed that we had to be forward-looking and to give ourselves the modern decision-making tools required to deal with the modern problems we face.

The amendments to the convention were only one of a number of reforms that NAFO members engaged in. First came the enforcement reform in 2006. Changes to NAFO conservation and enforcement measures enacted in 2007 have led to encouraging success enforcing the rules on the high seas in the NAFO regulatory area. The Department of Fisheries and Oceans, acting on behalf of NAFO, has increased enforcement and surveillance to detect and deter illegal fishing activities, and compliance has improved significantly as a result. The serious infringements in the NAFO regulatory area declined from thirteen in 2005 to seven in 2006, one in 2007, and zero in 2008.

We have also seen tangible results of increased cooperation, better management measures consistent with scientific advice, and enforcement vigilance. As a result, important stock such as yellowtail flounder, 3M cod, and 3LN redfish have recovered, and other stocks, such as American plaice, are also showing signs of recovery. At the recent NAFO annual meeting, NAFO reopened two stocks, 3M cod and 3LN redfish, after a decade of their being under moratorium.

But improved enforcement and cooperation was only part of the solution. Canada has consistently worked with NAFO to develop scientific advice and adopt conservation and management measures

to effectively manage straddling stocks important to Canada, such as Greenland halibut, yellowtail flounder, 3L shrimp, and others.

But we recognized that there was a need to reconsider the way NAFO made decisions and how we govern ourselves as an organization. That's why we as NAFO members negotiated and adopted amendments to the 1978 convention in 2007. Canada supported these amendments because they were important and beneficial for Canada.

Provincial governments and industry representatives were by our side throughout the whole multi-year process and were consulted extensively. All the stakeholders involved agreed with us that the amendments were in the interests of Canada. Senior officials of the Newfoundland and Labrador government were full members of the Canadian delegation that negotiated these amendments and supported us throughout the negotiations.

As I said earlier, NAFO faces very different issues today from those when the original convention was agreed to in 1978. Parties today are committed to applying an ecosystem-based approach to fisheries management in the northwest Atlantic, which includes protecting the marine environment, preserving marine biodiversity, and reducing the risks of long-term impacts on fishing.

The amendments to the NAFO convention are designed to provide the organization with a more modern and forward-looking governance framework that will allow it to meet its ongoing and future commitments under the United Nations Fish Stocks Agreement, the United Nations Convention on the Law of the Sea, and other international instruments.

Mr. Chairman, I will outline the key benefits of the amended convention, to try to address some of the concerns that have been raised.

Firstly, under the original 1978 NAFO convention, fish stocks were managed as a single species, and management decisions did not always adhere to the received scientific advice. Over time, this type of management proved to be ineffective for the long-term health of fish stocks. As a result, more than ten stocks have been under moratorium for many years and are only now starting to recover.

The amended convention now shifts NAFO to an ecosystem-based approach to decision-making, an approach that considers the interrelationships among marine species and between these species and their habitats. This includes considering how catches of one fish stock could affect other fish species, as well as identifying and addressing the impacts of particular fishing gear on sensitive ocean habitats.

• (1620)

Secondly, under the 1978 rules, members could object to any management decision, decide on a unilateral quota, and fish it without any constraint even if it ultimately resulted in overfishing.

The old convention also lacked a dispute settlement process, which led to longstanding disagreements. Under the amended NAFO convention, we will have a controlled system to address objections and disputes. This is a system that requires a contracting party that objects to a conservation and management measure to set out alternative measures it intends to take for conservation and management of the fishery that are consistent with the objective of the convention, and an active role for the commission in trying to resolve the issues. In this way, contracting parties will be held accountable for their actions, so that we avoid these unnecessary and counterproductive situations and reduce overfishing.

Thirdly, under the original convention rules, NAFO's decisions were made by a simple majority vote, leaving an impression that there were only winners and losers. In some cases, particularly in the late 1980s and early 1990s, this led to defiance of the rules, unilateral quotas, and overfishing. The amended convention emphasizes consensus. A two-thirds majority voting system has been introduced for those situations where consensus cannot be reached. Any NAFO member who wishes to change the way NAFO allocates fish must obtain support from eight of the twelve NAFO members, instead of the seven needed before. As a result of this change, Canada's fish quotas in NAFO will be better protected, thus addressing a key preoccupation of the Canadian industry.

I would like to comment on the criticisms of the amended convention. In summary, the concerns are as follows.

First, the government failed to protect Canada's sovereignty to make decisions for fisheries management and enforcement within Canadian waters.

Second, the change in the rules on decision-making from the requirement for the current simple majority to a two-thirds majority will weaken Canada's ability to obtain support for more restrictive, conservation-based management proposals in NAFO.

Third, the amendments with respect to the objection procedure are not robust enough to limit objections and unilateral decisions.

Fourth, the dispute settlement procedure in the amended convention is useless as it does not provide for a binding decision.

Briefly, these criticisms are unfounded. I will respond to each of these respectively.

First, with respect to sovereignty, the amended convention is quite clear. Canada maintains control over its waters, and NAFO measures will not be applied in Canadian waters unless Canada requests that they be applied and votes in favour of such measures.

The amended NAFO convention explicitly maintains Canada's sovereign right to take management decisions on fisheries within its 200-nautical-mile exclusive economic zone. It is clear that NAFO has no mandate to take management decisions within Canadian waters, nor does it give foreign fishing vessels rights to fish in Canadian waters. I would also note that this provision applies to all coastal states, including Danish-owned Greenland, French-owned Saint Pierre and Miquelon, and the U.S.A. None of these parties seem troubled by this article.

Second, with respect to the change to a two-thirds requirement, as previously noted, this will provide a much better protection for

Canadian quota shares in the NAFO stocks. This reflects the priority of Canadian industry and Canada to protect quota shares.

Third, with respect to the objection procedure, the amended convention provides for constraints on the use of the objection procedure, limiting the grounds for objections and placing the onus on the party wishing to object to demonstrate grounds for its objection and to adopt equivalent conservation measures while the objection procedure operates.

Fourth, the amended convention strengthens decision-making by including timely mechanisms to resolve disputes for the first time. Contracting parties can invoke dispute settlement procedures that ultimately provide for a binding decision.

Canada's interests are better protected with the amendments to the NAFO convention. The reforms are in Canada's best interest and the interests of the fish stocks in the North Atlantic. They provide clear benefits that are important for Canada and its fishing industry. They will help to ensure the conservation and sustainable management of fish stocks and ecosystems in the northwest Atlantic.

Mr. Chairman, before I close, I would like to briefly report on the recent NAFO annual meeting held from September 21 to 25.

• (1625)

Canada succeeded in persuading NAFO to adopt conservation-oriented outcomes important to Canada to protect fish stocks and their ecosystems in the NAFO regulatory area. The decisions include the setting of total allowable catches and quotas for 2010, which include a rollover of the TAC of 16,000 tonnes for Greenland halibut for one year. As I noted previously, we reached agreement to reopen two stocks that had been closed to fishing for 10 years. Canadian quota shares of these stocks were maintained at pre-moratorium levels. These stocks have now sufficiently recovered to allow targeted fisheries.

There was also a commitment to redouble efforts to reduce the bycatch of southern Grand Banks or 3NO cod, and there were additional measures to protect vulnerable marine ecosystems, such as corals and sponges.

Canada takes scientific advice seriously. In fact, the TAC decisions made at NAFO clearly reflected scientific advice and were within the safe scientific parameters. The NAFO decisions for the reopened stocks also incorporated additional conservation measures to ensure the continued recovery of these stocks. In addition, incorporated into a number of the decisions were commitments to undertake additional research, to improve scientific advice, and to improve the reliability of catch statistics to improve future decision-making.

The NAFO decisions took into account the views of the Canadian industry and the Province of Newfoundland and Labrador. The Canadian industry representatives on the Canadian delegation expressed to me their satisfaction with the NAFO outcomes, which will provide significant economic benefit to the economy and people of Newfoundland and Labrador. By Canadian industry estimates, the maintenance of the TAC for the Greenland halibut means over \$25 million, primarily for the Newfoundland and Labrador economy.

With respect to 3L shrimp, Canada's quota next year will remain at almost 25,000 tonnes, with a harvest value of \$29.7 million.

The total allowable catch of yellowtail flounder was maintained at 17,000 tonnes for 2010, and Canada's share of 16,575 tonnes has an estimated harvest value of over \$6 million.

The reopening of 3LN redfish stock will provide 1,500 tonnes, with an estimated harvest value of about \$1 million. These outcomes will provide benefits primarily to the economy and to the people of Newfoundland and Labrador.

I will conclude with that, Mr. Chairman.

The Chair: Thank you very much, Mr. Balfour.

We'll go to Mr. Byrne.

Hon. Gerry Byrne: We're into it already. Thanks.

Thanks very much to the witnesses. Thanks very much for that recapping of the economics. It sounds pretty 1980s DFO, though. If someone were to celebrate the fact that we can still catch more cod—we shouldn't shut down plants, we shouldn't shut down the fishery, we shouldn't do anything, because here it is 1989 and we have people who depend on it and we can make money at it—that would be a good reason not to take a responsible point of view of conservation. That seems to be what you're saying.

The NAFO Scientific Council said on Greenland halibut that they really strongly recommend 14,000 tonnes as the total allowable catch. That was the preferred recommendation. It might have been, arguably, in some minds, within the parameters or ranges of science. But 14,000, not 16,000, was the preferred catch rate, and that's true of all four species NAFO made decisions on, whether it be 3M cod, which they really suggested be at 4,100 tonnes but which came in at 5,500 tonnes.... It sounds pretty 1980s DFO to actually glorify that.

But I want to get specifically to the objection procedure. You state, Mr. Balfour, that committee members should take it that the objection procedure is now gone. It's all binding. All decisions of NAFO are binding. Don't worry. Good decisions will prevail and will be done on a timely basis.

That's not actually correct. My understanding is that if a contracting party wants to object to any particular NAFO decision—a contracting party or parties—they simply file an objection as they did before. The provision is still available in the revised convention. They file an objection, and they fish as they see fit. The convention specifically prescribes that. They fish as they see fit up to and including the time an ad hoc panel can be established. The ad hoc panel will then convene. It will meet, it will discuss, it will debate, and it will come to a recommendation. Meanwhile, the objecting party is still fishing at levels it sees fit.

Then the ad hoc panel will report its recommendation back to NAFO, and a special meeting of NAFO then has to be convened. Then if there's further objection, which there can be, it has to go to one of the measures under UNFA or UNCLOS to have the matter referred, as prescribed by UNCLOS or UNFA, to something such as the International Court of Justice. We're talking about a period of about three to four years.

Is there anything in this convention that will create a binding decision of the original NAFO decision within weeks of any objection procedure being filed—not months, not years, but weeks? Because the quota will be cut. As we know, once the European Union—Spain or Portugal, in particular—filed objections in the past, they basically had their full quotas, and then some, caught within at least six months.

So really, the issue is what in this convention ensures that a timely, binding decision is made within days or weeks of an objection being filed. I think the answer is nothing.

• (1630)

Mr. David Balfour: With respect to the decisions taken about TACs at NAFO, all the decisions that were taken were within the range of the scientific advice. You cited a few stocks that saw an increase. There were also stocks such as yellowtail flounder for which—despite the scientific advice, which suggested there would be permission for an increase in TAC—NAFO decided to decrease the TACs.

Under the new convention, compared to the old convention, as I think you well understand, currently a party can object, set a TAC, and simply fish it. That was the situation in the past, in the 1970s, 1980s, and in the early 1990s, and was part of what created the demise of a number of stocks and one of the reasons we have 10 stocks in the NAFO regulatory area closed under moratoria.

The new NAFO convention, with its intention to modernize NAFO, with an emphasis on an ecosystem-based approach, the precautionary approach of conservation, sustainable use, elimination of illegal, unreported, unregulated fishing, is all reflective of the new and more recent international fisheries policy and instruments that have come into effect subsequent to the creation of the existing NAFO convention in 1978, such as the UN Fisheries Agreement. It's reflective of the provisions within that agreement for a binding dispute resolution for fisheries issues on the high seas. This is a high seas area fishery, which is guided by those sorts of international instruments.

In the NAFO convention, what we have that's different is that the parties at NAFO will come together and arrive at approaches through consensus rather than through the conflict of a vote and an objection. That pretty much continues to be the practice of NAFO in a contemporary way.

If there is an objection filed, the party now has to provide reasons for the objection on a narrow basis, in terms of why the decision of NAFO discriminated against them and so on. The ad hoc panel process that you referred to is something that, as you appreciate, hasn't operated yet because the new convention isn't in force. But it is contemplated that these types of disputes would be engaged on following the meetings of NAFO—which occur every year in September—on a timeframe that would see a resolution by the fisheries commission within a four- to six-month period, normally, in order that decisions can be in effect before much in the way of the fishery has occurred for the following calendar year, which is what NAFO meets in September to deal with, for example in September 2009 to set out TACs and fisheries approaches for the 2010 fisheries period.

So we would expect to see this provision operate in such a manner that we would see we would be giving effect to the resolution of these disputes not too far into the fishing season where they should be given effect. We would then be looking, if necessary, to invoke a formal dispute resolution under mechanisms such as the UN Fisheries Agreement. It's hoped that if one would have to do that after having it occur on a few occasions, perhaps we would not be having to do that too frequently again in the future.

• (1635)

Hon. Gerry Byrne: I guess it would be contemplated that the European Union would abide by international trade or World Trade Organization rules and not conduct an illegal ban on seals, but our contemplation doesn't seem to be having much effect on them because of what Canada—your government and my government—feels is an illegal trade ban on seals. And I don't think we should expect any different behaviour from the European Union or any other NAFO member state, for that matter, if this prescribed rule of law, the NAFO revised convention, specifically provides them with a method of objecting, fishing unilaterally and fishing unilaterally until such a time as the ad hoc panel reports—which you say is four to six months—and then availing themselves of all the tools and options available under article XV.

Now, article XIV, paragraph 2 specifically tells me, and everybody else in this room, that the objection procedure is still very much there and that any country that objects—any NAFO member state, any contracting party that objects—does not have to play by the NAFO rules; it is written right into the revised convention.

Article XV tells me that they have a whole host of tools available to them to keep the objection going. In fact, we heard testimony this morning—you may have been present at the foreign affairs committee—that one example of exactly this procedure was the Gulf of Maine circumstance, where Canada and the U.S. agreed to send it to the UNCLOS procedure, which is the International Court of Justice, which is exactly what is being prescribed here, and the matter took three years to resolve before that binding decision came down.

The interesting thing about this is that decisions are reached in NAFO on an annual basis. How can this be binding in a timely way, given that factual reality?

Mr. David Balfour: As I said, the vast majority of decisions that are taken by NAFO are taken on the basis of a consensus. There is truly an effort to come together in a cooperative spirit to secure the sustainable use and the conservation of the resources. The types of practices that occurred in the past, that you allude to in terms of the European Union and of others, of objecting and setting quotas and overfishing those quotas, is not currently the practice that we're seeing from these parties.

There are a lot of decisions that are being taken that don't need to be put to a vote. For example, when we had discussion about the possible reopening of the 3M cod fishery on the Flemish Cap, Canada proposed that we have more stringent bycatch measures to ensure that we carefully manage the reopening of that fishery to secure its sustainability and continued rebuilding. All parties, including the European Union, agreed that we would continue with a 5% bycatch provision for 3M cod in other directed fisheries that

would occur on the Flemish Cap catch, which is the level of bycatch that was permitted during the moratorium, where open fisheries would have permitted a bycatch at 10%. So this was very much a commitment on all parties to an ethic and an objective conservation in sustainable use.

These bycatches will be included against quotas of those parties that have quotas for 3M cod. So it's an example of the way forward where we would be expecting, as opposed to the past where objections were the recurring approach, that there would be an exception to an objection. There is going to be the requirement that a party would have to give cause and explanation as to why they're objecting. There is an openness and transparency in the process of NAFO. The world has changed and we have environmental NGOs at the table, observing all of the deliberations of NAFO. We have a great interest not only in terms of the public and the countries of NAFO parties, but also in terms of their industry to ensure that collectively we manage the fishery differently to give them the certainty and predictability that the fisheries will be there in a sustainable long-term way.

I do believe the philosophy and ethics have changed radically. The marketplace has changed as well, and insists on ensuring that people can't be out there blatantly overfishing, expecting to be able to sell into a marketplace any longer.

• (1640)

The Chair: Thank you, Mr. Balfour.

Monsieur Blais.

[*Translation*]

Mr. Raynald Blais: Thank you very much, Mr. Chair.

Good afternoon, gentlemen. There is a saying that history, unfortunately, repeats itself. Given NAFO's track record, it is very hard to be supportive, even when we are told there is a so-called better formula or new agreement format between the sovereign nations in the organization.

Are NAFO's activities still almost entirely funded by the Canadian government?

[*English*]

Mr. David Balfour: A formula determines the funding of NAFO. I believe it's on the basis of three components. The first is that the coastal states, and as I had mentioned earlier there are four coastal states, pay the first 10%. Another 30% of the cost of NAFO is shared equally among all the members of the organization. The balance is then paid on the basis of the shares of fish landings by the members. Given the fact that Canada is a coastal state and has a significant amount of the share of landings of fish from the NAFO regulatory area, I think we pay on the order of about \$640,000 of a total budget of about \$1.5 million—something on that order. That is all consistent with a formula that has been a standing practice for NAFO.

[Translation]

Mr. Raynald Blais: Basically, a little more than a third of NAFO's activities are funded by the Canadian government pursuant to various formulas. I was rereading some notes, namely those of Earle McCurdy, who represents workers and the industry in Newfoundland. When he appeared before the committee in March, he pointed to a number of flashing yellow, if not red, lights when he said that the new format was not necessarily a good one and that he could not muster up much excitement about the outcome. Now, Mr. Williams, the Premier of Newfoundland and Labrador, is making a lot of noise about what is happening right now and is against ratifying the agreement that was negotiated.

Granted, when it comes to negotiating, of course you can always do better, but did we not negotiate a third-rate agreement? Did we not agree to a little less to ensure that NAFO continues to exist? To what degree did we feel the need to compromise more than the others during negotiations, for example, with respect to sovereignty? As far as I know, this was all put forward by the European Union, not us. The two-thirds formula will not necessarily improve things for us. If it was already hard to reach a consensus through the majority formula, just think what it will be like with the two-thirds system: even worse.

I have a hard time saying that we should have confidence in the agreement and move forward. Why should I accept what is on the table, and disregard NAFO's track record and the fact that there are still several unanswered questions about sovereignty and the two-thirds formula? Why should I accept the new formula or agreement if I firmly believe that we are not the better for it.

•(1645)

[English]

Mr. David Balfour: First, in terms of the financial arrangements for NAFO, those are very much consistent with the financing formulas with respect to other international fisheries organizations in the world. It's reflecting the standard practices.

On NAFO, one needs to compare the existing 1978 convention and what it offers, where it offers parties the ability to object to a decision of NAFO, to set their own quota, and to fish their own quota for as long as they want, versus a new process that requires that there be an accountability, a transparency, a demonstration of cause and reasons for an objection, a process to try to bring a resolution to those objections, and ultimately a process to bring a closure to these types of situations. That is all within what is provided for within the international legal fisheries instruments that exist for the management of fisheries on the high seas, such as the UN Fishing Agreement and the UN Convention on the Law of the Sea.

If you're looking at it in terms of a from-to, the proposed new convention is a significant improvement over the structure that we currently operate with. The new convention also is very clear that it operates within a recognition of the rights of the coastal state and the sovereignty of the coastal state to manage their fisheries resources within their exclusive economic zone. NAFO gives effect to measures on the high seas outside the 200-mile limit. There is nothing within that agreement that in any way compromises the sovereignty of Canada, and it allows a mechanism through which

Canada can ensure that we have an effective management and conservation of transboundary stocks that overlap into the high seas and international waters to secure sustainable benefits for the Canadian industry on a long-term basis.

Is this new convention an improvement on the current situation or not? I would say the answer to that is yes. And yes, it's consistent with what we can do within the international fisheries instruments.

Finally, the sovereignty of Canada is protected and affirmed by this new NAFO convention.

•(1650)

The Chair: Thank you, Mr. Balfour.

Mr. Stoffer.

Mr. Peter Stoffer: Thank you, Mr. Chairman, and thank you, folks, for coming today.

Sir, I'd like to have your answers short and succinct, if at all possible, because we don't have much time to ask them.

Sir, you said, and I quote, "Canada takes scientific advice seriously", yet recently the Government of Canada voted for an increased TAC on cod. The NAFO Scientific Council recommended a TAC of 4,125 metric tonnes. Despite this, a TAC of 5,500 tonnes was established. The United States had already voted against it, but Canada voted for it.

Secondly, redfish was increased from 8,500 tonnes to 10,000 tonnes, and the TAC for 3NLO skate was reduced from 13,500 to 12,000. The Scientific Council had recommended a TAC of 6,000 tonnes.

Sir, you said you take scientific issues seriously, but when the NAFO Scientific Council makes serious recommendations, why is Canada...? And what, may I ask, are the names of the people who voted for those TACs that allowed this to happen? Could I have the names of the people who voted for that? Why did Canada allow the increased TAC when I consistently hear from yourself and the minister that conservation is what drives us every day when we wake up?

Could I have a very quick answer on that, please?

Mr. David Balfour: First, with respect to the 3M cod, the advice that NAFO received from the Scientific Council was that a TAC could be established anywhere between 4,125 tonnes and above 8,000 tonnes and we would still see rebuilding of the stock with it being reopened. A TAC of 4,125 would have, according to the scientists, projected a rebuilding at 125%, where 5,500 would provide for a rebuilding at 115%.

Mr. Peter Stoffer: Who negotiated that on behalf of Canada?

Mr. David Balfour: I was the head of delegation at the last NAFO meeting, so I was party to the discussions where, on the basis of the scientific advice, on the basis of the additional measures that were adopted at NAFO, such as continuing a bycatch provision at 5% rather than increasing it to 10%, this stock is still within the safe range and is rebuilding to a TAC of 5,500 tonnes where it's acceptable.

Mr. Peter Stoffer: We also consistently hear on domestic sides as well...regarding the precautionary principle. Wouldn't the precautionary principle have gone for the lower amount?

Mr. David Balfour: The precautionary principle, or precautionary approach, would say that we should be precautionary when the stock is not in the safe zone. The stock was in the safe zone. It could have been reopened a year ago, but a reopening was deferred to allow for further rebuilding.

The decision that was taken at NAFO is reflective of the range of the scientific advice, and it's within the scientific advice.

Mr. Peter Stoffer: Okay, that's fine, sir. Thank you.

Mr. David Balfour: I could go on to the other stocks that you enumerated. It's the same story.

Mr. Peter Stoffer: It's all right. I think the response would be similar or the same.

My question on this one is this. The minister, and you and everyone, said they would not foresee any reason as to why we would allow NAFO management within our 200-mile limit, that we have the sovereign right to do that, and you're absolutely correct. But my question is, why is that inclusion in there? Canada never did it. I can't say we just said, look, we're going to give you this. Correct me if I'm wrong. I want you just to listen to this and see if they're right or wrong. If Canada will never have any need for this, why is it now provided for? The answer, they figure, is that the EU insisted on inclusion of these provisions because it serves their interest. With this provision they'll be able to, in future, demand NAFO management inside 200 miles as the price for agreeing to restrictive conservation measures possibly proposed by Canada. Canada will either have to agree to it or accept less restrictive measures.

As you know, Mr. Applebaum, Mr. Parsons, and others, people who had serious levels of DFO experience, have raised this concern as to why that inclusion is in the latest agreement. So an answer, if possible: if we're never going to use it, if we have no reason for doing it—we have our sovereign right—then why is that inclusion in that NAFO agreement?

• (1655)

Mr. David Balfour: First, I'd have great difficulty in speculating or endeavouring to impute what the purposes or the intent of the EU folks were in terms of coming to the negotiation of the new NAFO convention, but I would say this inclusion in this convention is similar to what exists in other international regional fisheries organization conventions, such as the one that governs fisheries on the eastern Atlantic.

I could also read that in combination with the other points that are laid out in the convention, that talk about the rights of the coastal state, that affirm the sovereignty of the coastal state, that make reference to NAFO operating within the regulatory area, and that this provision is just another explanation to others that, by the way, there is nothing in this that would have anything to do with inside the Canadian zone unless Canada asked for it and voted for it. It's just another way of reaffirming that. It's also—

Mr. Peter Stoffer: Who votes for it in Canada?

Mr. David Balfour: It would be voted—

Mr. Peter Stoffer: By whom?

Mr. David Balfour: It would be requested by the Government of Canada.

Mr. Peter Stoffer: They wouldn't bring it to Parliament to vote.

Mr. David Balfour: It would be requested by the Government of Canada, by the Minister of Fisheries and Oceans, that if one were ever to choose to invoke that, that would be the process.

Mr. Peter Stoffer: Who would be the voters?

The Chair: Thank you, gentlemen. Sorry. We'll get back to it on the second round.

Mr. Peter Stoffer: Okay. I'll wait until my second turn.

The Chair: Mr. Kamp.

Mr. Randy Kamp: Thank you, Mr. Chair, and thank you, gentlemen, for coming. I appreciate some of the light you're able to shed on this.

Let me start just by making sure I understand the procedure by which we ended up with these proposed amendments to the convention.

In testimony this morning I think I heard the words, or along this line, that the EU held the pen. The implication was that the EU basically wrote the amendments and then the other countries were forced to go along with them, that these are all EU ideas and the EU is getting what it wants.

Can you tell me how the process worked, to start with?

Mr. David Balfour: I'm going to ask Mr. Beaupré to jump in on this because I wasn't party to the negotiations. But I know that the development of this proposed amendment was established by a consensus of all 12 parties to NAFO. It wasn't as though anyone was compelling or imposing. It's about all parties coming together in a willing spirit and agreeing that the principles of the new convention are such that NAFO will be more effective in achieving its objectives into the future.

Mr. Guy Beaupré (Acting Associate Assistant Deputy Minister, Fisheries and Aquaculture Management, Department of Fisheries and Oceans): Thank you, Mr. Chair.

I will just explain in a few words how the process went. We started the process on the basis of a draft amended convention that brought together elements of text from other conventions, like the North East Atlantic Fisheries Commission and others, as well as text that parties put on the table for their own interests. So even though the European Union had the pen, as we say, the text we worked from was a combination of pieces that came from various sources. The negotiations took place on that basis, and the discussions were on whatever text the parties wanted to have.

All during those negotiations, any text that the Canadian delegation put on the table had the agreement of our delegation, composed of all the representatives of the members of the industry, as well as the Province of Newfoundland and Labrador. So it was a long process of discussions within our delegation, discussions at the table, and some negotiations on text. All of the text from the Canadian delegation was first scrutinized by our Foreign Affairs and Department of Justice experts. So this was an ongoing process throughout the negotiations.

•(1700)

Mr. Randy Kamp: Is it accurate to say that like most negotiations the Canadian delegation didn't get everything it wanted; it got some things and gave up some things? In an ideal world, would we want a different convention than what we see in the end here?

Mr. Guy Beaupré: I think the Canadian delegation was quite satisfied with the results. The main elements of importance to the Canadian delegation included a more constrained objection procedure, which we have in the current amended convention; a dispute resolution mechanism, which was also very important because none exists currently in the convention; a modernized convention that reflects an ecosystem approach and a precautionary approach; and a better voting system so the shares we have in NAFO are protected.

These were the main elements we had going in. We felt we came out in a way that was satisfactory for the whole delegation.

Mr. Randy Kamp: Is it accurate to say that those key elements and goals for the negotiations were outlined in a document put together at the 2005 St. John's conference—sort of that basis for NAFO reform—and in the amendment negotiations you were seeking to implement those things that the Government of Canada had already signed off on, a previous government but the Government of Canada nonetheless?

Let me turn to article VI, section 10, which has come up for debate a number of times. I'll read it into the record:

The Commission may adopt measures on matters set out in paragraphs 8 and 9 concerning an area under national jurisdiction of a Contracting Party, provided that the coastal State in question so requests and the measure receives its affirmative vote.

Is this a novel clause, or do we find it in other RFMOs around the globe?

Mr. David Balfour: It appears in other RFMO instruments, such as for the North East Atlantic Fisheries Commission. This is the sister organization to NAFO for the management of fisheries in the eastern Atlantic on the high seas. So in this case, countries like the EU would be subject to the same type of provision as a coastal state with respect to their exclusive economic zone.

Mr. Randy Kamp: Yes, that's my understanding as well based on testimony from Professor McDorman of the Faculty of Law at the University of Victoria. It's also in the South Pacific convention.

Is it fair to say that this kind of approach is somehow reflective of a growing sense that global fish stocks are at risk, that the status quo is not leading us where we want to go, and that we need to be taking a new approach to international management of fish stocks? Is this kind of clause part of that or is it from some other motivation?

Mr. David Balfour: Well, it reflects a concept of cooperation. It really is about the way forward in terms of looking to the future for NAFO and other similar RFMOs.

We all know that in NAFO we've seen the collapse of stocks as a result of overfishing. We've seen moratoria and the need to come together, cooperate, and manage on an ecosystem basis with the complexities of ecosystems. It means that there could be times where, for example, you need to cooperate from a scientific point of

view on the high seas and within an EEZ to ensure that you have the knowledge base to be able to manage the stocks wisely.

This is the kind of thing that this provision would potentially contemplate if there were the need to do that at some time in the future.

•(1705)

Mr. Randy Kamp: Are there examples of any of the other regional organizations where this has been invoked, where a country has allowed the RFMO into their EEZ to manage or to do science or whatever it might be? Are you aware of any?

Mr. Guy Beaupré: I think in NEAFC, the North East Atlantic Fisheries Commission, which is essentially a commission of only coastal states.... All the parties to that commission are coastal states, so they are very much in a situation where what they manage is very much inside and outside.

I cannot give you a specific example of where this was used, but certainly in terms of the science and the ecosystems considerations where no boundaries would count, basically, it would be important for parties to be able to do that if they so chose.

Mr. Randy Kamp: So is it primarily for science or primarily for enforcement that you see a potential for where this could be used in the future if this is adopted?

Mr. David Balfour: We would see it being utilized, if it was utilized in the area of cooperation, particularly in the area of science in terms of collaboration on research and understanding of ecosystems.

We've seen in NAFO the need for us to have a much better understanding of the impact of fishing on sensitive marine ecosystems. That's a very complex subject of science. You could contemplate the need for a much more cooperative approach into the future. That would be the kind of thing that in pragmatic terms would make sense to see contemplated.

But in doing that, one would still expect that anything that would be done within the Canadian zone from a science standpoint would be under the authorization and the direction of the Canadian management authority, the Department of Fisheries and Oceans.

Mr. Randy Kamp: Thank you.

The Chair: Thank you, gentlemen.

Mr. Andrews.

Mr. Scott Andrews (Avalon, Lib.): Thank you.

I have a few questions just to get a little deeper into this.

How long did it take to negotiate this convention?

Mr. Guy Beaupré: It took between a year and a half and two years.

Mr. Scott Andrews: So it took two years. Were both of you gentlemen involved with the negotiation process over that period of time?

Mr. Guy Beaupré: No. David wasn't there. I was there with Mr. Bevan.

Mr. Scott Andrews: Okay.

At what point during the negotiations did the request for the management within the 200-mile EEZ come onto the table?

Mr. David Balfour: First, there has not ever been any request for management within the Canadian zone. This is about, as Mr. Beaupré has explained, the incorporation of language from other modern regional fisheries management organization conventions that were drawn—

Mr. Scott Andrews: My question was, when did it come on the table as part of the negotiations, what timeframe, early on or later?

Mr. Guy Beaupré: If I recall—and I may be wrong—it was part of the original text that we started from. We went through the text item by item. So whenever this item came up, it was looked at. As I said before, it was based on the equivalent article in other RFMOs.

Mr. Scott Andrews: So it wasn't requested by an EU country.

Mr. Guy Beaupré: No.

Mr. Scott Andrews: Then it was the EU that wrote the document that put that in there.

There has been some debate about them being the writers of the document. So they're the ones who put it in there. Is that correct?

Mr. Guy Beaupré: Of course, after every session of discussions, somebody has to put all the comments together and bring out the new text the following day so that the discussion can continue. As I said, at first this was an amalgamation of text that came from other RFMOs or from parties that had a particular aspect that they wanted to put in.

• (1710)

Mr. Scott Andrews: So a party didn't bring that forward.

Mr. Guy Beaupré: No. As I said, this clause came from NEAFC, the North East Atlantic Fisheries Commission.

Mr. Scott Andrews: Okay.

I have a question about the North East Atlantic Fisheries Commission. Are there any EU countries on that commission?

Mr. Guy Beaupré: Well, the EU is part of that commission.

Mr. Scott Andrews: And is it currently in that particular agreement?

Mr. Guy Beaupré: Yes.

Mr. Scott Andrews: How long has that agreement been on the table?

Mr. Guy Beaupré: It was modernized just prior to NAFO, so maybe a couple of years before.

Mr. Scott Andrews: Have any of the other coastal states approved or ratified this convention as of yet?

Mr. Guy Beaupré: Currently, Norway has ratified, and the EU has tabled its text in Parliament and at the council. Other parties, such as Korea, don't have to go through a parliamentary process. They might just notify NAFO that they agree with the convention.

Mr. Scott Andrews: What about the United States?

Mr. Guy Beaupré: The United States is proceeding with its process. It has not finished yet.

Mr. Scott Andrews: Are you monitoring the comments that are being made in that jurisdiction?

Mr. Guy Beaupré: Well, it's going through the process of agreement through parliament. I don't think it has been discussed item by item.

Mr. Scott Andrews: Going back to Mr. Stoffer's question, the document states that it would be at the request of the state to come into the 200-mile EEZ and would be voted on. So who would vote on this, and what is the context of that?

Mr. David Balfour: It would be Canada that would request it.

Mr. Scott Andrews: And in regard to the second part of that, who votes on it?

Mr. David Balfour: Canada would vote on it.

Mr. Scott Andrews: Canada being Parliament? Canada being part of NAFO?

Mr. David Balfour: Canada, for NAFO, is represented through the Minister of Fisheries and Oceans, who establishes a mandate for representatives who participate in the NAFO deliberations. So it would be under a mandate as set out by the minister.

Mr. Scott Andrews: I'm just trying to get the “and votes for” part. I understand that the request of the state is done by the department and the minister, but who votes for it?

Mr. Guy Beaupré: This is just to take account of the fact that... let's say we are requesting a measure to apply in a Canadian zone; it is debated at the table with other parties and there are changes to the proposal. We may be in a situation where, in the end, we decide to vote no, even though we had requested it.

Mr. Scott Andrews: So we request it, change our minds and vote no, and then they vote yes and it passes.

Mr. Guy Beaupré: Yes, but if we request it and vote no, it won't happen.

The Chair: Thank you, gentlemen.

Monsieur Blais.

[*Translation*]

Mr. Raynald Blais: Thank you very much, Mr. Chair.

The much talked about paragraph 10 of Article VI has to do with one of the cornerstones of this debate, the concerns and so forth. Was this paragraph added at Canada's request or the European Union's? Who asked for it? How did it come about?

Mr. Guy Beaupré: From what I remember, it was introduced by the member nations of the North-East Atlantic Fisheries Commission, which includes Iceland, Norway, the European Union, the Faeroe Islands and Greenland.

Mr. Raynald Blais: If I understand correctly, they submitted a text, and they were part of the debate on the text. Is that right?

Mr. Guy Beaupré: No. As I said earlier, it was based on a text that incorporated certain elements from other conventions or wording submitted by various countries. I cannot say when exactly this provision was put forward or by whom.

Mr. Raynald Blais: The paragraph in question was not put forward at our request?

Mr. Guy Beaupré: No.

• (1715)

Mr. Raynald Blais: What was the party sitting across from us hoping to accomplish by asking that the paragraph be included or discussed? What would that party gain? How would that party benefit?

Mr. Guy Beaupré: One of the main reasons for discussing the modernization of the convention was to try to figure out what might happen in the future. The current convention has been in force for some thirty years. We have to keep that in mind when considering any amendments to the convention; it may be in force another thirty years or so, maybe more, maybe less. We have to look further ahead and anticipate what might happen. Since we no longer look at things on a stock-by-stock basis nowadays, but rather in terms of the ecosystem as a whole and the interactions between the various stocks, we need to remember that, in the long term, we may want NAFO measures to be equally applicable in the area of one coastal state as in the NAFO area.

Mr. Raynald Blais: When this paragraph, or what ultimately became paragraph 10, was being discussed, were you very receptive to it? Were you more opposed to it? Did you say that we would hold on to our sovereignty, that the proposal was encroaching on our territory and so forth?

Mr. Guy Beaupré: I think that the sovereignty issue is as important to Canada as it is to all the countries at the table. It is a very....

Mr. Raynald Blais: Were you hesitant to discuss what happened to paragraph 10?

Mr. Guy Beaupré: Of course the matter was scrutinized by the departments of justice and foreign affairs.

Mr. Raynald Blais: Were you hesitant?

Mr. Guy Beaupré: It is important to ensure that Canada retains control and is able to decide whether the NAFO measure will apply within its area, that the decision reflects Canada's will.

Mr. Raynald Blais: You realize that this proposal could open a door that was previously closed.

Mr. Guy Beaupré: But it was in other conventions.

Mr. Raynald Blais: No, I am talking about the NAFO Convention.

Mr. Guy Beaupré: Yes, that is correct.

Mr. Raynald Blais: This did not scare you?

Mr. Guy Beaupré: Pursuant to paragraph 10 of Article VI, a measure will apply only if Canada wants it and votes for it. I believe that was considered sufficient to ensure Canada's sovereignty.

Mr. Raynald Blais: I think we are opening a door that was closed before. The way I see it, as soon as you do that, even if the country in question, Canada, says that it will not entertain a discussion, it opens

the door to being pressured into doing some of the work in terms of managing its 200-mile area.

Is my thinking correct or not?

Mr. Guy Beaupré: Our current working environment is consensus-based, with countries working together to make decisions in the interest of protecting and conserving fish stocks. This environment is different from the old one; it is more conducive to openness with a provision like this.

[English]

The Chair: Thank you very much, gentlemen.

Mr. Stoffer.

Mr. Peter Stoffer: Thank you once again.

Gentlemen, again I've heard the terms "precautionary principle" and "conservation", and yet Canada, and yourself, sir, admitted that they supported the higher TACs for the various fisheries. People like Boris Worm of Nova Scotia, and others, have indicated to us quite clearly that most fish stocks are in trouble around the world. I think most of us can agree on that. I don't understand why Canada would support any kind of a higher TAC. If you're using the precautionary principle, in my view, that means it should go to the lowest TAC that is possible, not somewhere in between or even higher. That's simply a statement in that regard.

Sir, you talked about the voting procedure if Canada said we wanted to use this provision. So we make the request to allow management inside our waters—only under our request, of course—and then through those negotiations we can vote against it if we wish. I understand there are two votes. One vote would be Canada's. Who would have the other vote? It would be another NAFO country, is that correct?

Mr. David Balfour: There are 12 members of NAFO. As we described earlier, the operating approach of NAFO is to reach decisions by consensus, not by votes.

• (1720)

Mr. Peter Stoffer: Who does the voting? That's what I'm trying to find out.

Mr. David Balfour: It's the 12 parties.

Mr. Peter Stoffer: It says, if I'm not mistaken, you would require two votes on that. Am I correct?

Mr. David Balfour: It would be a request from Canada. The request is not put to a vote. Canada can request what it chooses and wishes to request.

Mr. Peter Stoffer: I'll try to reword my question.

Canada has this provision in here, that we indicated we would probably never use, but it's in there anyway, which means that Canada might use it one day. Under a particular circumstance, Canada requests NAFO management inside our 200-mile limit, for whatever reason. During those negotiations, you said that we could vote against that if we wanted to. Who would do the vote? Canada and who else, or is it only Canada?

Mr. David Balfour: Well, we're saying that Canada could vote against the measure that maybe we requested. So it would be in a meeting of the fisheries council, with all 12 parties present, where Canada would vote against the measure.

Mr. Peter Stoffer: And if two-thirds of those countries said yes, they want to come in, what would happen then?

Mr. David Balfour: It would still not happen. The provision is very clear that Canada would have to both ask for it, in the first place, and it would have to vote for it. So if it votes against it, then it doesn't happen. It allows Canada, then, to say, well, we think we want to do, say, scientific research or whatever for these purposes; these would be the conditions under which we would consider doing it, this is how we would supervise it, and so on.

Mr. Peter Stoffer: Sir, correct me if I'm wrong, but can't Canada agree to have science from other countries come in right now, without this amendment? We can do that now, can't we?

Mr. David Balfour: Yes, that's correct.

Mr. Peter Stoffer: You don't need an agreement to state that. So the only reason I can think of as to why this agreement is in here is because the EU asked for it. I wasn't at the negotiation table, but I don't think Canada would have asked for it, because Mr. Applebaum stated quite clearly in their negotiations for years and years that Canada never would have contemplated this type of idea. He reported that to the Senate committee earlier this week.

You can correct me if I'm wrong. I have to question myself as to why would this provision be in here, why the two-thirds instead of the 50% plus one. Why not exercise the most strictest of precautionary principles when it comes to quota and TAC on these precious fish stocks? I don't understand, sir, why you would have been part of, obviously, a group of people who would have consented to higher quotas, and even though it's within a range, why you wouldn't have gone for the lowest quota in that regard. If we truly believe in conservation and the precautionary principle, which we hear repeatedly from officials within the department, why would Canada have gone to the higher route in that regard? It's quite disconcerting. When I hear four people who worked in DFO at very senior levels raise some very serious issues about this particular agreement, it sets alarm bells ringing and red flags all over the place, and I say this with great respect. I simply haven't been assured by the department that it's actually doing the right thing for Canada, and especially the good people of Newfoundland and Labrador.

Those are my comments.

Mr. David Balfour: Well, first, as I think we explained earlier, this provision is present in other modern conventions for RFMOs. It was reviewed by Department of Justice experts at Foreign Affairs, and it's our view that it doesn't present an issue or a risk to us.

Certainly, with respect to the decisions that are being taken by NAFO and the views that are brought forward by the Canadian delegation, we are very much mindful of operating within scientific advice. We certainly did that at the last NAFO meeting.

For example, as I said, the 3M cod stock on the Flemish Cap is a stock that has been rebuilt and is now opening to fishing. It could have continued to rebuild at a TAC in excess of 8,000 tonnes. The figure of 4,125 tonnes was very low and very conservative within the

range. We believed we could provide fishing opportunities at 5,500 tonnes—along with the other measures that were adopted, such as the bycatch provisions I described earlier, which allow for us to ensure that this resource will be pursued in a sustainable and precautionary manner.

Every party to NAFO wants to ensure that these stocks that are reopening will be managed carefully in order that they continue to rebuild and will be there to provide sustainable fishing opportunities well into the future.

So we have been, I believe, very cautionary in terms of the TACs that have been established, and will continue to be.

• (1725)

The Chair: Thank you, Mr. Balfour.

Mr. Allen.

Mr. Mike Allen (Tobique—Mactaquac, CPC): Thank you, Mr. Chair.

Thank you to everyone for being here today.

I want to focus on a couple of areas.

First, I want to pursue a little bit more this exclusive zone issue. One of the comments that Raymond Andrews made March 10, 2009, was this:

Mr. Applebaum gave a very clear answer to that when he was here last week. Can somebody come into Canadian jurisdiction without the request of the state, which is Canada? The answer he gave was one word: No.

Just so I'm clear, if Canada makes that request, is that a votable request? Is that something that would be voted on by the members, that would have to have a two-thirds majority, including Canada, to let people within their 200-mile zone?

Mr. David Balfour: Yes, that is something that would require that kind of voting.

I would think that if any measure of that sort were ever to be contemplated sometime in the future, any request or proposal that came forward from Canada would include with it the measures to ensure that there was proper and full supervision by Canada with respect to any activity by other NAFO parties within the Canadian zone, be it for scientific research purposes, enforcement, surveillance, or whatever to ensure that Canadian sovereignty was in no way being compromised.

Mr. Mike Allen: Let's take this to the next stage, then. Let's say Canada wants to go in there. Then they get into this process and it's, "Oops, I don't think this is such a good idea." Then, if we say no, that vote is never even held.

Is that true?

Mr. David Balfour: Absolutely.

Mr. Mike Allen: Okay. So it doesn't even come to a vote.

Mr. David Balfour: It doesn't even then come to a vote.

As I said, at NAFO we endeavour to operate by consensus. Most of the measures, the conservation measures that are being adopted, are done through a consensus process. It's all about cooperation.

If Canada didn't see some useful purpose and conditions that were acceptable to Canada for any scientific research or enforcement or whatever within the Canadian zone, then it would just not happen.

Mr. Mike Allen: How would that happen under today's convention? I understand you can invite somebody in today, if you want to. Is there a process under today's convention?

Mr. David Balfour: There is no process under the current convention for any of that. It's a matter that would have to be dealt with through an undefined process, currently.

Mr. Mike Allen: I love undefined processes.

In your negotiations in the lead-up to this, which took a couple of years, as you were indicating, my assumption would be that there is nothing in that agreement that you wouldn't have had some blessing for prior to agreeing to any of that.

Which provinces were actually involved in that process? And would they have had a mandate from their governments on that process?

Mr. David Balfour: The Province of Newfoundland and Labrador was actively involved in all deliberations in the lead-up to the negotiation of this amended convention, just as they are involved in all NAFO meetings.

For example, this year they participated, along with the Newfoundland industry, in a number of preparatory meetings with the department. These were held to discuss the mandates and directions that we receive from our minister to take to the NAFO meeting. They were all present at this year's NAFO meeting, where we were continually in dialogue with them to ensure that the decisions that were ultimately made were consistent with their objectives. Representatives of the Newfoundland industry have told me that they were satisfied with the outcomes of NAFO. They are concerned about ensuring that we respect the scientific advice, and that we take a sustainable approach to the reopening of fisheries.

• (1730)

Mr. Mike Allen: I want to go back to the testimony of Mr. McCurdy, in relation to a comment that Mr. Byrne made about the

Faroe Islands during that meeting. He said, "They file an objection annually and fish more than their quota, and there is no further remedy under the current NAFO regime." He thought the new regime would result in an improvement.

Does that fall under the equivalent conservation measures, just because you can't object anymore? What are the equivalent conservation measures that someone has to take, as opposed to what's in place today?

Mr. David Balfour: Because we are operating under the 1978 convention, the Faroe Islands have objected and they've established a quota for 3L shrimp that is 10 times the quota established by NAFO. This quota was set out for everyone on the basis of historic shares and uses. This has carried on for five years, and under present circumstances it would just continue to carry on. It will likely be an issue of greater concern in the future, because we're starting to receive new scientific advice suggesting the possibility of an ecosystem shift that could result in a reduction in biomass and fishing opportunity in the Atlantic.

Under the new process, they would have to provide a reason for objecting. They would have to give an explanation of how, during the resolution of their objection, they would ensure that they would respect the conservation objectives of NAFO, that their activity would not put the resource at risk, and that they would be operating according to scientific advice.

So this would be different. We would be looking to remedies and making sure that all parties were acting in a responsible manner towards the resource and the people who share it, with the understanding that those who have worked to rebuild the resource through sacrifice of their fishing industries should have the opportunity to benefit from their efforts.

The Chair: Thank you, gentlemen, for appearing before our committee today. Our time has expired.

The meeting is adjourned.

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