



FISHERIES POLICY AND MANAGEMENT IN CANADA AND LESSONS FOR CARICOM'S COMMON FISHERIES POLICY AND REGIME

**REPORT OF STUDY MISSION TO CANADA
CONDUCTED JULY 9-22, 2006**

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PREPARATION OF THIS DOCUMENT

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FISHERIES POLICY AND MANAGEMENT IN CANADA AND LESSONS FOR CARICOM'S COMMON FISHERIES POLICY AND REGIME

1.0. ROLE OF FISHERIES IN THE CANADIAN NATIONAL ECONOMY

Canada is recognized as a maritime nation whose economy, environment and social fabric are inextricably linked to the oceans and their resources. Three of the world's oceans border Canada's coastline. Canada's ocean space is almost 6 million square kilometers or approximately 60% of the land mass. Although fisheries account for only about 0.3% of GDP, ocean resources nonetheless provide income, food, employment, and recreation for over 7 million Canadians, 20% of the population, who live in coastal communities¹.

There are approximately 60,300 fishers and crew and 22,853 vessels. Landings of fish and marine products were about 1.3 million tonnes in 2004² valued at nearly 2.26 billion Canadian dollars³. Most of the landing came from the Atlantic coast (about 71%), with the remainder coming from the Pacific coast (25%), and inland fisheries (4%). Nationally, fisheries account for about 0.3% of GDP. However, regionally and in some coastal communities, commercial fisheries are a critical source of employment and income. Prior to the collapse of the cod, fishery was the main-stay of economic life in the Atlantic coast, in particular supporting about 1,000 coastal communities, primarily in economically impoverished regions with few alternative employment opportunities. The Arctic Ocean supports primarily subsistence fisheries for Canada's native peoples. On the Pacific coast, the degree of regional dependence on the fisheries is less than on the Atlantic. Nonetheless, the fisheries are an important component of the British Columbia economy. In the recreational fishery sector, which is mainly concentrated in the inland area, it was estimated that about \$4.8 billion is spent by anglers each year, supporting over 150,000 full time jobs⁴.

The early 1990s was a very difficult period for fisheries in Canada arising from the dramatic collapse of Atlantic cod stocks and decline of other commercially important stocks on both the Atlantic and Pacific Coasts. This gave rise to far-reaching reviews and studies of the fisheries management system in Canada, a process which was followed by robust reforms of the policy, legal and institutional framework to ensure sustainable use and protection of the resources, and safeguard the livelihoods of coastal communities that dependent upon fisheries.

¹ See Canada's Oceans Action Plan, 2004, Fisheries and Oceans Canada, Ottawa, Ontario, for further details.

² Information on fisheries management in Canada. FAO Online Fisheries database available at <http://www.fao.org/figis/>

³ K. Stringer, the policy, legal and regulatory framework for sustainable use and conservation of fisheries and aquaculture resources in Canada. PowerPoint Presentation made to CARICOM Mission on July 11, 2006, Ottawa, Canada.

⁴ K. Stringer (Supra)

2.0. FISHERIES MANAGEMENT

2.1. Overall strategy

The stated fishery objectives in Canadian are to achieve safe, healthy, productive waters and aquatic ecosystems, for the benefit of present and future generations, by maintaining the highest possible standards of service to Canadians in marine safety and environmental protection, in scientific excellence and in conservation and sustainable resource use⁵. The management framework is comprehensive, providing for the biological, economic and social aspects and also the management of the entire aquatic ecosystems. Resource conservation has, in recent years emerged as the principal objective of management taking precedence over economic and social considerations when there is a threat to the future of the resource. For example, section 31(1) of the Canadian Constitution and the decision of the Canadian Supreme Court in *R v Sparrow [1990] 1 S.C.R. 1075* gives traditional Aboriginal use of fish first legal priority after conservation goals have been met. It is clear that today, higher priority is being given to conservation and protection of habitat, and rehabilitation of degraded habitat and species at risk.

Another major objective of Canadian fisheries policy is to ensure that allocation of fishery resources will be on the basis of equity, taking into account adjacency to the resource, the relative dependence of coastal communities, and the various fleet sectors upon a given resource, and economic efficiency and fleet mobility.

The federal Department of Fisheries and Oceans (DFO)⁶, Government of Canada is responsible for management of Canada's fishery resources. DFO uses a variety of management measures to achieve the stated objectives. The choice of which measures to apply in any given situation depends upon species characteristics, specific fleet structure and location of the fishery. There has been a gradual deliberate shift away from reliance on input control measures towards a more comprehensive regulatory framework consisting of catch limits and transferable rights based catch quotas. The suite of measures employed include regulating the type and size of gear used, vessel length, fishing times and areas, catch limits, limiting the number of licenses available to fish, and quotas, including individual transferable quotas.

Fisheries are managed through the use of fisheries management plans, which were replaced in the 1990s by "Integrated Fisheries Management Plans (IFMP)." These plans are prepared by DFO in collaboration with stakeholders, through a lengthy, formal consultation processes including species Advisory Committees and Regional Advisory Process (RAP). The purpose of the consultation process is to ensure that all relevant information is taken into consideration and all legitimate stakeholders have an opportunity to provide input in the decision-making process. The objective, strategies and measure proposed by the different sectors of DFO are, therefore, subject to scrutiny and refinement by stakeholders and integrated before they are accepted by the Minister. In

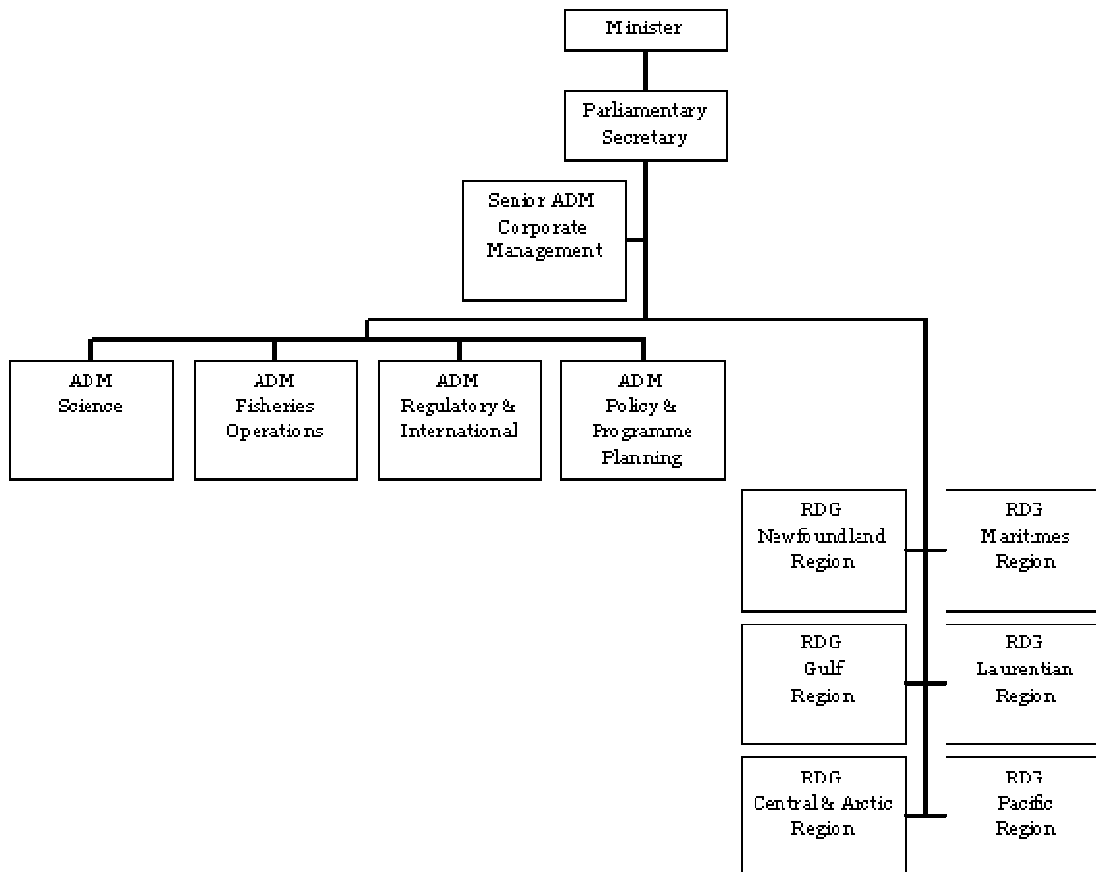
⁵ Department of Fisheries and Ocean Canada website – Our Mandate, available at http://www.nrc.dfo.ca/dfo_mpo/mandat_e.htm

⁶ The Department was established by the Department of Fisheries and Oceans Act, 1978-79

2000 there was a significant evolution in the fisheries management planning process with the introduction of Objective Based Fisheries Management (OBFM)⁷. These plans seek to manage not just the target fisheries and species interactions, but instead embrace the entire ecosystem. Thus, conservation, ecosystems and socio-economic objectives for the entire resource system are set. Decision rules and performance measures are also identified and agreed upon. The end product is that comprehensive plans are prepared with objectives, strategies, and implementation measures agreed upon. The species, licensing policy, management measures are documented.

3.0. ORGANIZATIONAL STRUCTURE OF DFO

The DFO is headed by a Minister who is supported by a Deputy Minister (Parliamentary Secretary). Below the Deputy Minister there is a Senior Assistant Deputy Minister (ADM) and four staff ADMs to cover science, fisheries operations, regulation, policy and international issues. Regional operations, headed by Regional Directors General (RDG) are consolidated into six geographic regions, i.e., Newfoundland, Maritime Provinces, Gulf, Laurentian, Central and Arctic, and Pacific. An organization chart for the senior levels of the Department of Fisheries and Oceans is presented below.



⁷ PowerPoint presentation entitled “Resource Management Overview” by Neil Bellefontaine and Faith Scattolon, July 12, 2006, Bedford Institute of Oceanography, Dartmouth, NS.

The main responsibilities of the federal government are fisheries conservation, protection and management, scientific research, habitat protection, food safety standards, international trade and commerce, navigation, shipping and operation of public harbours. As noted above, the provincial governments share jurisdiction over the management of fisheries and aquaculture. The main responsibilities of the provincial governments are local commerce (buying and selling of fish and seafood), fish inspection, food inspection (ensuring standards are maintained at restaurants, stores etc), management of non-migratory sport fisheries, aquaculture (through memoranda of understanding with federal government), marketing, processing plant management, training and development activities.

A brief overview of the Fisheries and Aquaculture Department of Nova Scotia will be provided to illustrate the role and function of a provincial fisheries department. The Department, which is headed by a Ministers responsible for Fisheries, is mandated, “to service, develop and manage the harvesting processing, recreational and aquaculture segments of the Nova Scotia fishing industry for the betterment of our coastal communities and the province overall.”⁸

The Nova Scotia Fisheries Department groups together the following divisions and functions:

Marine Fisheries

Marine Services

- fisheries advisory services, federal and provincial stakeholder interaction, ocean and coastal zone management

Licensing Services

- processors/buyers licensing

Innovations & Field Services

- cost-shared funding for harvesting technology, seafood processing, aquaculture development, and coastal community infrastructure, frontline service delivery

Aquaculture

- site development, leasing and licensing
- fish health
- extension services

Inland Fisheries

- inland sportfish management
- sportfishing development/promotions
- inland conservation
- lake and river stocking

⁸ <http://gov.ns.ca/nsaf/department/divisions/fishaqua.shtml>

Fisheries and Aquaculture Loan Board

- loans
- financial advisory services

Additional information regarding the responsibilities of the federal government and provincial government is provided below.

4.0. LEGAL BASIS FOR MANAGEMENT

4.1. Federal Fisheries Legislation

Jurisdiction over fisheries is shared between the Federal and Provincial Governments. This division of powers is established in the *Constitution Act, 1867*⁹. The Act gives the federal government jurisdiction over sea coast and inland fisheries in Canada (s.91(12)), whereas the provincial government has jurisdiction over property and civil rights in the province (s. 92(13)). This means that the federal government has exclusive jurisdiction over the management, conservation and protection of fish and fisheries in tidal, inland and marine waters, including for example, determining catch quotas, gear types, legal size of fish and opening and closing of the fishing season.

The provincial governments have jurisdiction over those aspects of the fisheries that are property based, including some aspects of processing and marketing of seafoods, and management of the sub-surface (bottom) of inland ponds and lakes. For fisheries in inland waters, given the shared jurisdiction and to avoid conflicts, the federal government has in most provinces delegated authority to the provincial governments, through administrative arrangements, to manage freshwater fisheries¹⁰. For example, if the federal government decided that there will be a fishery and determined the allowable catch, the provincial governments decide who may fish and how much each person or company may harvest.

The primary federal fisheries legislation are: the *Fisheries Act, 1868*, which governs domestic fisheries; the *Coastal Fisheries Protection Act*, which applies to foreign vessels, and the *Oceans Act, 1997*, which implements the relevant provisions of UNCLOS in Canada.

A key feature of the *Fisheries Act* is the absolute discretion which it gives to the Minister of Fisheries and Oceans to issue fishing licences (s.7(1)). Although the Minister's

⁹ Department of Justice Canada, *Constitution Act, 1867*. Available at http://laws.justice.gc.ca/en/const/c1867_e.html#distribution

¹⁰ Philippe Madgin, *Legal Framework for Fisheries in Canada*, Presentation to the CARICOM Mission, 10 July 2006, Ottawa, Canada

discretion is expressed in absolute terms, it is nonetheless subject to, among others things, the principles of administrative law, in accordance with common law tradition.

A second key feature of the *Fisheries Act* is that it empowers the Cabinet with broad authority to make regulations for carrying out the purposes and provisions of the Act (s. 43). The primary regulations that have been made to manage the commercial fisheries are the *Atlantic Fisheries Regulations, 1985*, the *Pacific Fishery Regulations, 1993*, and the *Fisheries (General) Regulations*. These regulations cover fishing for various species and provide for the application of technical measures such as restrictions on mesh size, gear types, size limits on fish, and areas closed to fishing. They also set out requirements for registration of fishermen and vessels, the licensing of fishers, and marking of fishing vessels and gears.

The *Fisheries (General) Regulations* make provisions which have general application for management of fisheries throughout Canada. Two of its key provisions are in ss. 6 and 22. Section 6 authorizes a Regional Director-General of DFO, by order, to vary a close season, fishing quota or limit on the size of fish that has been set by regulation for a particular area. Variation orders are an important tool for managing the commercial fisheries on a day-to-day basis since they allow the DFO flexibility to respond quickly to changing conditions. Section 22 gives the Minister authority to impose licence conditions for the proper management and control of the fishery.

In addition, there are also specific regulations governing recreational, commercial and sport fisheries in various provinces and territories, for aboriginal fisheries and for marine mammals.

The *Fisheries Act, 1868*, is now considered out-dated and efforts are currently underway to replace it with a more modern statute.

The *Canada Oceans Act, 1997*, re-stated the role of the federal government vis-à-vis provincial and territorial governments in respect of fisheries and oceans management. The stated aim of the Act is to "...establish guiding principles and assign the authority to negotiate partnerships for the development of an oceans management strategy..." and a set of documents was published to outline the role of both the federal and provincial/territorial governments. Many provincial governments now have a fisheries ministry that works in partnership with the federal Department of Fisheries and Oceans.

Another statute relevant statute is the *Species at Risk Act, 2002*. According to s.6, "The purposes of this Act are to prevent wildlife species from being extirpated or becoming extinct, to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity and to manage species of special concern to prevent them from becoming endangered or threatened." This is therefore another important federal statute which complements other federal and provincial fisheries laws in providing special attention to species that are judged to be a risk.

Other statutes that may be usefully mentioned include *Canada Shipping Act, Fishing and Recreational Harbours Act, Fish Inspection Act, and the Department of Fisheries and Oceans Act*.

4.2. Provincial Fisheries Legislation

In addition to the federal laws, there are also provincial statutes and regulations laying down the rules in respect of those areas of responsibility falling under the provinces jurisdiction. For example in Nova Scotia there is the Angling Act, which governs inland recreational and sports fishing and the Fisheries and Coastal Resource Act, 1996, whose stated purpose is to:

(a) consolidate and revise the law respecting the fishery; (b) encourage, promote and implement programs that will sustain and improve the fishery, including aquaculture; (c) service, develop and optimize the harvesting and processing segments of the fishing and aquaculture industries for the betterment of coastal communities and the Province as a whole; (d) assist the aquaculture industry to increase production; (e) expand recreational and sport-fishing opportunities and ecotourism; (f) foster community involvement in the management of coastal resources; (g) provide training to enhance the skills and knowledge of participants in the fishery, including aquaculture; (h) increase the productivity and competitiveness of the processing sector by encouraging value-added processing and diversification.

5.0. THE ROLE OF SCIENCE IN PLANNING AND MANAGEMENT

Canada's fisheries and oceans policies are firmly based on scientific and traditional knowledge which encompasses both natural and social dimensions.¹¹ According to the Policy Framework for Management of Fisheries on Canada's Atlantic Coast, "Fisheries and Oceans Canada will continue to pursue excellence in fisheries science and stock assessment"¹². Their scientists and fisheries and oceans research capability are impressive and recognized as among the best globally in research and education. Scientific research is conducted by both federal and provincial governments; academic institutions such as University of British Columbia, Dalhousie University, St. Mary's University, University of Ottawa, and Memorial University, to name a few; and special research institution, such as the Bedford Institute of Oceanography, Dartmouth, Nova Scotia, which has a staff of over 650 scientists, engineers, technicians, managers etc, all dedicated to conducting fisheries and oceans related research mandated by the government of Canada, and providing advice for decision making.¹³

¹¹ Canada's Oceans Strategy, Our Oceans our Future. 2002. Fisheries and Oceans Canada, Ottawa, Ontario.

¹² A Policy Framework for the Management of Fisheries on Canada's Atlantic Coast. 2004. Fisheries and Oceans Canada, Ottawa, Ontario.

¹³ For more information see, "2004 in Review, Bedford Institute of Oceanography, Fisheries and Oceans Canada and Natural Resources Canada, Bedford Institute of Oceanography, Dartmouth, Nova Scotia."

The collapse of the Atlantic Cod fisheries, decline of other fisheries, combined with other related socio-economic problems encountered in fisheries in the late 1980s and early 1990s led to wide ranging reviews and consultations with stakeholders, culminating in a paradigm shift in Canada's fisheries and oceans management strategy, and consequently its research policies. Fisheries research has moved away from merely understanding the dynamics of the target species, towards broader ecosystems research. This does not mean that traditional research on the target species has been diminished, rather other aspects of the ecosystems are now also being studied with equal intensity, including biodiversity, genetic diversity, habitat bottom communities, environmental trends in order to better understand and apply ecosystem based management. This holistic, ecosystem approach encompasses other users of the marine environment, such as oil and gas, shipping, telecommunication and marine tourism in the research and management model. The Oceans Act and Oceans Policy are meant to give effect to this integrated, holistic approach to coastal and marine resource management. The Eastern Scotia Shelf Integrated Management Project (ESSIM) Project¹⁴ is an example of the integrated approach being pursued within the framework of new Oceans Strategy. This project advances the concept of integrated management of the marine space, which is the base of key industries such as fisheries, oil and gas and maritime transport. A key objective of the project is the development of a marine resource integrated management model.

A second significant development is the greater role of resource users, including Aboriginal groups, in research through new partnerships between stakeholders and federal and provincial scientists that have emerged. One reason for this seems to have been the fact that some fishermen, notably the inshore cod fishermen, had realized that northern cod stocks had declined to dangerous levels and had been openly calling for action to protect the stocks long before the collapse and moratorium in 1992. Thirdly, there is a shift towards community-based management approached and research along the lines needed to support stronger action at the community level.

Another important innovation has to do with the procedure for providing scientific advice for decision-making. A more robust and transparent system has been established. On Canada's Atlantic coast, a Fisheries Resource Conservation Council (FRCC), was established in 1992 as an independent organization at arm's length from the government with a mandate to provide stock assessment and make public recommendations to the Minister of Fisheries and Oceans on total allowable catches and other conservation measures. The FRCC is structured as a partnership between government, scientists and industry. On Canada's Pacific coast the Pacific Fisheries Resource Conservation Council was set up as a similar independent watchdog body in 1998, but its mandate extends only to salmon fisheries. The decision to establish these independent bodies to provide scientific advice to the government arose from controversy over whether the Canadian government had manipulated scientific information about the collapse of the northern cod for political purposes in the early 1990s.

¹⁴ PowerPoint Presentation made by Bob O'Boyles, Regional Associate Director Science Branch, DFO Maritimes Region, Bedford Institute of Oceanography, Newfoundland.

6.0. POLICY FRAMEWORK FOR ACCESS TO FISHERIES

Marine fisheries resources are recognized as the common property of the people of Canada. The federal Minister of Fisheries and Oceans is responsible, by law, for their conservation and management, including making decisions on access and allocation among different and often conflicting uses¹⁵. While commercially harvested fisheries remain the predominant use of the living marine resource, commercial fishing interest must be balanced against other uses including Aboriginal access rights for food, social and ceremonial purposes, aquaculture, recreational fisheries, and marine tourism among others. Even within the commercial fisheries there are diverse interests, which must be balanced, including, industrial, inshore (coastal communities), shellfish, groundfish, and pelagic operators, to mention a few.

Access to fishing opportunities is guided by principled enshrined in law and government policy. The first and paramount principle of general application governing access is conservation, or, sustainable use that safeguards ecological processes and genetic diversity for the present and future generations¹⁶. If the principle of conservation will be compromised, access will not be granted. If however, the resource can be harvested in a sustainable manner, the federal government is responsible for making that determination and setting the harvest limit, which is usually expressed as the total allowable catch (TAC) from a particular stock by all resource users over a particular period of time.

The second major principle governing access to resource is protection provided to Aboriginal people through treaty rights as noted above, which ensures access to the resource for food, social and ceremonial purposes. Thus, Aboriginal access to fish for a moderate livelihood is legally guaranteed where such rights exists, subject only the principle of conservation.

The third major principle that comes into play is equity, or, the equitable allocation of access rights among competing interest in accordance with government policy. From a procedural perspective, equity requires that access criteria must be applied in a fair and consistent manner through a decision-making process that is open, transparent and accountable and that ensures fair treatment for all. In this regard there is a commitment to ensure participation of resource users in the decision-making process. Of equal importance is the notion that fishery is a common, public resource that should be managed in a way that does not create or exacerbate excessive interpersonal or inter-regional disparities.

Beyond the three general criteria mentioned above, the access issue will be further considered against additional criteria, which will depend on the specific characteristics of the fishery in question, and include historical dependency, adjacency (i.e. communities located closest to the resource), and socio-economic considerations, including community

¹⁵ A policy framework for management of fisheries on Canada's Atlantic Coast. Fisheries and Oceans Canada, Ottawa, Ontario

¹⁶ New Access Framework, DFO's website.

and commercial fleet stability. Maintenance of commercially harvested fisheries remains the predominant use of fisheries and ocean resources.

Access to fishing opportunities, including aquaculture and recreational fishing, is controlled through licensing arrangements administered by Fisheries and Oceans Canada. Only licence-holders are permitted to fish, and substantial ties to fisheries must be established before a licence is issued. Licences are therefore used to control the number of fishers and vessels, as well as the nature and extent of fishing. As noted above, the *Fishery (General) Regulations*, s.22, gives the Minister broad authority to impose licence conditions for the proper management and control of the fishery. Typically, the licence will specify the identity of the licence holder, what species and stocks he is allowed to harvest, where (area of operation), when (time and season), how (the type of vessel and gear to be used), and how much they are allowed to take (quota, ITQ, competitive¹⁷ etc)¹⁸. Licences may further specify the age, sex, stage of development, or size restriction of the fish; landing requirements; reporting requirements; or transshipment requirements. A fisher who breaches a licence condition may be prosecuted for contravention of the *Fisheries Act*.

Licence-holders are required to pay fees which are related to the value of the benefit they obtain from the resource and the cost of managing the resource (see below for further details).

7.0. USER FEES IN CANADIAN FISHERIES

7.1. The Conceptual Basis for User Fees

A "user fee" is the direct fee paid by a user of a resource, product or service. In the context of the commercial fishery, such fees are tied to: (i) the private benefits accruing from access to a publicly-owned resource, the fish stocks of Canada, and (ii) the costs of publicly- and privately-provided services to the commercial fishery. These services can include moorage, monitoring of catches and at-sea observers of fishery operations, as well as stock assessment and other biological services¹⁹.

¹⁷ Quota = individual quota; ITQ = individual transferable quota; competitive = fisheries in which licensed individuals compete for the available catch

¹⁸ Resource Management Overview. Presentation made to the CARICOM Mission at BIO on July 12, 2006, Nova Scotia

¹⁹ The information regarding fees paid by the commercial fisheries was taken mainly from a report done by Gardner Pinfold Consulting Economists Limited and GS Gislason & Associates Ltd., in 1999. The information may therefore be outdated but nonetheless serves to illustrate the basic policy regarding payment of fees by fishers, including the different types of fees. For more information see the report, "Cumulative Impact of Federal User Fees on the Commercial Fish Harvesting Sector," prepared for Fisheries & Oceans Canada by Gardner Pinfold Consulting Economists Limited and GS Gislason & Associates Ltd., March, 1999.

Licence-holders in the recreational and commercial fisheries in Canada are required to pay an array of user fees, the amount of which, depend on the value of the fisheries. Licence-holders are also charges for dockside or catch monitoring, at-sea observers, basic fisheries science, enforcement and other fisheries management services. These services are delivered by both public sector agencies and by private contractors.

The rationale for user fees has two dimensions, firstly to ensure that those who benefit from a public resource pay a fee reflecting the value of the fishing privilege; and secondly, to have industry pay for a share of fisheries management costs, i.e. the "user pay" principle. The resulting cost recovery charges are paid to government or the private sector, depending on who delivers the service. Fees for privately delivered services are set on a competitive basis over which government has no control.

For the purpose of clarity, the user fees paid by the commercial fishery are segmented into two categories – access fees and cost recovery fees. The payment structure for the access fees is relatively straightforward: variable rates for limited entry licences linked to the average value of competitive fisheries, flat rates (5% of gross value) for IQ/ITQ fisheries, and flat rates for participating individuals and vessels. The payment structures for cost recovery fees tend to be more complicated, varying by fleet and location and even within fleet sectors.

7.2. PAYMENT STRUCTURE

7.2.2. ACCESS FEES

The commercial fishing industry pays three main federal fees to gain access to the resource, namely licence fee, Fisher's Registration Card and Conservation Stamp fee, and vessel registration fee.

Licence Fees

Two types of licence fees exist:

- i) Flat Rate Fees: This fee structure applies in competitive fisheries - fisheries in which licensed individuals compete for the available catch. All individuals holding the same limited entry licence pay the same fee. The fee varies by fishery and may be up to several thousand dollars, depending on average landed value of the catch.
- ii) Quota Fees: Fees for licence-holders in individual quota (IQ, ITQ or EA) fisheries are set on a per tonne basis depending on value, with the total for each quota-holder varying according to the tonnes of quota held.

Fisher's Registration Card and Conservation Stamp

- i) Fisher's Registration Card: Every person 16 years of age or older who fishes as a skipper or a deckhand on a commercial fishing vessel must hold a Fisher's Registration Card (FRC). FRC fees are flat-rate and do not vary by type of commercial vessel. In 1996, the annual FRC fee was \$50.
- ii) Conservation Stamp: In 1997, the FRC fee in the Pacific fisheries was \$60 with \$10 representing a "Commercial Fisheries Conservation Stamp" as a way of protecting and restoring fish habitat. The money from the stamp went to the T. "Buck" Suzuki Foundation or the Pacific Salmon Foundation.

Vessel Registration

A vessel that is to be used in commercial fishing must first be registered and obtain a vessel registration certificate. In the Atlantic Region, the vessel registration certificate is required on an annual basis as long as the vessel holds active licences. In the Pacific Region, the vessel registration certificate is required when the vessel is first registered and when it changes ownership. The fee was \$50 on both coasts in 1996.

7.2.3. COST RECOVERY FEES

Cost recovery charges cover primarily activities that DFO has the fleet undertake or pay for, either as a requirement (e.g., a condition of licence requiring dockside monitoring), or as part of a co-management agreement (e.g., collaborative agreement to pay for portion of fisheries management activities). Cost recovery fees include harbour fees, ship safety inspection fees, and fisheries management fees. Cost recovery fees do not include charges for industry-funded activities such as advocacy and industry relations.

Harbour Fees

Since 1987 local Harbour Authorities have been responsible for maintenance and day-to-day operation of commercial fishing harbours, which provide berthage (moorage), wharfage and other services (e.g., utilities) to commercial and recreational vessels. Small Craft Harbour fees for vessel berthage depend on vessel length and duration of stay in the harbour.

Ship Safety Inspection

Under the Canada Shipping Act, non-passenger vessels must be inspected for safety to crew, seaworthiness, and other concerns. For a new vessel, an initial inspection must be conducted. A periodic inspection (every four years) for existing vessels must be conducted thereafter. Transport Canada fees for safety inspection of commercial vessels vary by gross tonnage.

Fisheries Management Fees

- i) **Dockside Monitoring Fees:** The Dockside Monitoring Program (DMP) was established by DFO in 1989-90 to provide accurate and timely third-party monitoring of fish landings. Since the mid-1990s, DMP has been operating on the basis of full cost recovery. Service is delivery by private sector companies operating on a commercial basis. DMP fees can either be paid directly by individual fishery operations or they may be included in industry association fees. In some instances they are paid to DFO as a fisheries management surcharge on the licence fee.
- ii) **At-Sea Observer Fees:** Observer fees are paid for the services rendered by registered observers onboard vessels while at sea. At-sea observer fees can either be paid directly by individual fishery operations or they may be included in industry association fees
- iii) **Other Management Fees:** Other management fees include fees paid by fleets as part of a co-management agreement, (e.g., fees paid to fund research established under a collaborative agreement for the fleet).

8.0. MONITORING, CONTROL AND SURVEILLANCE

Canada has a highly developed system for monitoring, control, surveillance and enforcement of its fisheries laws and regulations. The Conservation Policing Service within the Department of Fisheries and Oceans has prime responsibility for MCS and enforcement of Canada's fisheries Acts and regulations, in the inland and maritime waters out to the 200 miles EEZ limit. There are 646 Fishery Officers, in addition to Seasonal Contract Guardians (Newfoundland) and First Nations Guardians employed by DFO to provide inspection and enforcement services²⁰. Sections 49 -51 of the *Fisheries Act* gives Fisheries Officers inspection and enforcement powers including the power to search with or without a warrant in exigent circumstances (s.49(1), the power to make arrest (s.50) and the power to seize fish or other things related to the offence (s.51).

Federal Fisheries Officers are deployed on the coasts and inland to oversee commercial, recreational and aboriginal fishing and habitat related activities. The MSC system is comprehensive, complex, broad-based with five distinct, yet integrated components, comprising land-based surveillance (including inspection/monitoring of processing plants and fish handling facilities, dock-side inspections of vessels, fishing gears and catches), aerial surveillance, vessel surveillance at sea, at-sea observers on fishing vessels, and satellite tracking or vessel monitoring system. Vessel and aerial surveillance are conducted in collaboration with the Canadian Coast Guard.

Both the at-sea observer programme and the dock-side monitoring program are operated on a cost recovery basis with industry bearing the costs. Both the observers and the

²⁰ Much of the information regarding the MCS and enforcement system in Canada was taken from the powerpoint presentation entitled "Conservation and Protection Program - An Overview" made by Brian Donahue, DFO, Ottawa, July 11, 2006.

companies supplying observers are certified by DFO. Observers gather scientific data used for stock assessment, as well as, monitor compliance with fishing regulations. They are deployed on all foreign vessels fishing in Canadian waters and on some Canadian domestic fleet. The dockside monitoring programme is mandatory in most fisheries and provides independent verification of fish landings.

DFO works in close cooperation with a number of local and international partners through memoranda of understanding or agreements for the purposes of MCS and enforcement. For example there are three MOUs with the Royal Canadian Mounted Police dealing with matters such as sharing of equipment, facilities, conduct of joint operations, training of fisheries officers, and servicing of weapons. There are agreements with the Department of National Defence dealing with the provision of air and ship time for fisheries patrols. There are also agreements with fishers regarding the operation of VMS, observers and the provision of funding by fishers to augment DFO's enforcement operations.

In addition to the above, there are two programmes designed to involve fishers and the public in the monitoring and enforcement of fisheries legislation. Firstly there is a program called, "Observe-Record-Report" which is designed to encourage fishers and the public to report violations of fisheries or habitat legislation to the Department of Fisheries by calling a toll free line. Secondly there is a "Coastal or River Watch" Programme where specific groups undertake monitor specific geographic areas and report violations to DFO.

At the international level Canada has signed several international fisheries agreement, and is a member of several RFMOs or collaborates with them to ensure compliance with relevant fisheries regulations. In addition, Canada has bilateral agreements with the US, Norway, Estonia, Latvia and Lithuania which facilitates MCS and enforcement of fisheries legislation.

9.0. AQUACULTURE DEVELOPMENT

Canadian aquaculture is a relatively new industry but it is nevertheless growing rapidly, with production in 2004 valued at C\$668.9 million or over 25% of total landed value of fish and seafood. Aquaculture has emerged as a high priority since the early 1990s and has averaged 14-15% annual growth rate, which is higher than the annual global growth rate for aquaculture.²¹ The predominant species raised in Canada are Atlantic salmon, rainbow trout, mussels, oyster, scallops, and clams. Other species such as Arctic char, tilapia, Atlantic cod, sea urchins, halibut, haddock, and sea cucumbers are in the developmental stages, or are raised in small quantities.²²

²¹ Legislative and regulatory review of aquaculture in Canada, 2001. Office of the Commissioner for Aquaculture Development, Fisheries and Oceans Canada, Ottawa, Ontario.

²² The Federal Role in Aquaculture in Canada. Report of The Standing Committee on Fisheries and Oceans. Tom Wappel, M.P., Chair, House of Commons. April 2003

Due to its wide-ranging nature, the aquaculture industry in Canada is managed through multi- and cross-sectoral involvement. As is the case with capture fisheries, aquaculture is regulated by both the federal and provincial governments. An online document prepared by the Office of the Commissioner for Aquaculture Development (OCAD) states that the provinces and territories have the responsibility for the majority of site approvals and for overseeing the industry's day-to-day operations. On the other hand, the federal role involves such areas as research, technology transfer, training and development, access to financing and environmental sustainability relating to the industry.

Delegation of certain responsibilities related to aquaculture from the federal government to the provinces has been conducted through Memoranda of Understanding (MOUs) which have been signed with several Canadian provinces. These include British Columbia, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland, as well as the Yukon and Northwest Territories. These MOUs deal with specific federal and provincial responsibilities and set out the role of each government. The MOUs are also customized to meet the needs of the aquaculture industry in each province and territory.

While the Department of Fisheries and Oceans Canada (DFO) is the lead federal department for aquaculture, there are several other Canadian federal departments and agencies delivering programs and services to the aquaculture industry including, inter alia, Agriculture and Agri-Food Canada (AAFC), Canadian Environmental Assessment Agency (CEAA), Canadian Food Inspection Agency (CFIA), Department of Finance Canada, Natural Sciences and Engineering Research Council of Canada (NSERC) and Statistics Canada. The Office of the Commissioner for Aquaculture Development (OCAD) helps to focus the federal government's aquaculture development strategies, and works collaboratively to ensure that programs meet the industry's needs. The Commissioner for Aquaculture Development reports to the Minister of Fisheries and Oceans.

10.0. ABORIGINAL FISHERIES IN CANADA

Fishing is an important traditional activity for many aboriginal groups across Canada. However with the development of commercial fishing many of these groups were marginalized or excluded from significant involvement in fishing. The rights of aboriginal people are enshrined in Canada's constitution. After many years of conflict over Aboriginal fishing right, the Canadian Supreme Court in a landmark decision reaffirmed the right of Aboriginal people on the West Coast to fish for food, social and ceremonial purposes in the *Sparrow* case²³. The Court also held that the right takes priority over all other uses of the fishery, subject only to conservation of the resource. The Supreme Court further set out the necessity of consulting with Aboriginal groups

²³ *R. v. Sparrow*, [1990] 1 S.C.R. 1075, 1990

when their fishing rights might be affected. In 1999 the Court returned to the issue of Aboriginal fishing rights in the Marshall decision²⁴, when it, "recognized and affirmed" fishing rights of the Mi'kmaq Nation in the Maritime region for lobster, crab, cod and salmon under a treaty signed with the British Crown in 1760. Aboriginal fishing rights were further clarified by the Supreme Court's 'Delgamuukw' decision²⁵, which requires the courts to avoid "traditional English common law interpretations" and to be "sensitive to the Aboriginal perspective on the meaning of the rights at stake."

Notwithstanding the above, many Aboriginal peoples in Canada, especially those on the west coast, did not sign fishing treaties with the European settlers. In early 2000, a new and historic treaty with one First Nation, the Nisga'a from northern British Columbia, was ratified, and includes rights to fish from the Naas river³⁸. However, most Aboriginal peoples in Canada are still in the process of treaty negotiations to settle their land claims.

Indeed, the perspective of Aboriginal peoples towards fishing rights is very different from the European tradition. In Canada, commercial fishing licenses originated from the European common property resource concept and hence are under legal control of the government, but under the Canadian Charter of Rights and Freedoms Aboriginal rights cannot by law be abrogated or extinguished by regulation. Aboriginal rights are communal, while commercial licenses are owned by individuals or, increasingly, held by large corporations. And Aboriginal rights are restricted by tradition to their tribal territory (unless by formal agreement with another Nation), while, at present, commercial fishing licenses can be used in any First Nation's tribal territory in BC without their permission⁴¹

From an Aboriginal perspective, loss of management authority is equally problematic. The status of chiefs in the hereditary government (Potlatch system on the west coast) derived from the wealth they were able to give away as a result of their good stewardship of lands and waters they had been trained from childhood to manage. Replacement of management authority by central government authority and diminishing fishing opportunities sidelined the hereditary chiefs and elders. Historically, educational requirements further marginalized chiefs and elders as educators and role models. Canada's Indian Act formalized this process by replacing hereditary systems linked to land and resources with elected governments with a two-year term and virtually no administrative support system.

In response to the successful claims made by the Aboriginal people in the courts, the government of Canada through the DFO has developed policies and programmes to deal with the issues arising from the courts decisions. DFO's Aboriginal Fishery Strategy aims to provide Aboriginal people with increased commercial fisheries access, along with vessels, gear, training and other capacity building measures. For some First Nations this means initiatives such as aquaculture projects; for others it means new equipment or facilities related to the commercial fishery.

²⁴ *R. v. Marshall*, [1999] 3 S.C.R. 533

²⁵ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010

Today, many Aboriginal Nations in Canada have made significant strides in the restoration of traditional fishing rights and developing fishing and aquaculture operation. For example, in Newfoundland the Miawpukek First Nations²⁶ work to protect and enhance aboriginal fishing rights and privileges, and, in collaboration with the federal and provincial governments, manage the aquatic resources in the Conne River area of southern Newfoundland. And since 1994 the Haida Nation from Haida Gwaii (the Queen Charlotte Islands in northern British Columbia) has its own fisheries programme of catch recording and cooperative management of fisheries with DFO.

11.0 THE ONSHORE PROCESSING AND DISTRIBUTION INDUSTRY

The Provinces control all aspects of catch landings, processing and local distribution. Export to other countries is also a Provincial matter with the Federal Government exercising control over standards, customs and trading agreements. The processing industry may best be described by the situation in Newfoundland, one of the provinces visited by the CARICOM Mission.

In 2005 the Province recorded 113 primary processing plants employing 13,800 workers and supplied over 170, 000 tonnes of fish product to the market.

Entry and exit is regulated by a Fish Processing Licensing Board which is comprised of persons from outside of the fishing industry. The Board seeks to promote a competitive and viable industry. It is empowered to:

- advertise publicly for applications for new processing licenses and for transfer requests;
- it also hears appeals about reinstatement of species removed from licenses.

The processing sector is regulated by a Fish Processing Licensing Policy Framework. A key feature of the policy is the “...use it or loose it principle...” under which a license holder is required to produce a minimum amount of product in order to maintain their species license.

Licenses specify each species or species group that the licenses holder is authorized to produce.

There is an important issue of stability of supply of raw material affecting the number plants which remain viable and the variations in plant production and employment. The number of plans declined from 214, employing 21,000 workers in 1989, to 113 plants employing 13,800 workers in 2005. Factors contributing to the decline include, exchange rates vs market price for processed product, volume of catch landed and species composition, the cost of imported raw material and cost of production in the province compared to that of growing processing competitors such as China, which has also

²⁶ The CARICOM Mission visited Conne River in Newfoundland and met with the Chief and other officers responsible for management of the area.

affected the supply of raw material. The management of the processing sector is intended to provide balance with the fish harvesting sector, ensure competition through policies that limit monopolization and vertically integrated harvesting, processing and distribution business organisations, prevent growth of processing overcapacity and ensure continuity of employment and income from this aspect of the Provincial fish sector.

The province of Newfoundland operates an aggressive quality control policy, which apply quality control inspections at dockside, during transport to plant and in transit to processing operations. Establishing and enforcing standards for fish quality is a key provincial responsibility in part to ensure that the province remains competitive in the high quality export products and in compliance with Federal requirements.

Intervention by the provincial authorities into the working of the market with respect to price is also a notable commercial policy. The purpose of price intervention is to set raw material prices that are acceptable to harvesters and processors such that there is stability and predictability. A Fish Price Setting Panel is empowered by law introduced in 2006 to deal with issues of prices and conditions of sale of fish. While the panel task is to facilitate the conditions for arrival of prices between buyers and sellers using a variety of measures such as setting the parameters for negotiations, facilitating collective bargaining and acting as an arbitration panel.

12.0 CONCLUSIONS AND RECOMMENDATIONS

1. The mission yielded much more useful and relevant informative than expected. The underlying issues and challenges in the Canadian fisheries are remarkably similar to those being encountered in the Caribbean. The account provided above is only a brief summary of some of the issues considered to be of relevance to the process of developing and agreeing on the Framework Agreement for the Common Fisheries Policy and Regime. It should be made clear that there is additional, useful information to be found in the pages of many of the documents made available to the CARICOM Team by the Canadians, or documents that were access via the internet, but which neither space nor time would allow us to delve into at this time. For this reason, references to the source documents have been provided in the footnotes to permit those who may wish to pursue the matter further to do so.
2. Canada is a large and wealthy country with vast deposits of natural resources, yet its commitment to the development and use of its living aquatic resources, commercial fisheries and aquaculture in particular, is unquestionable. Whereas in Canada fisheries contribute only about 0.3 percent of GDP, in many Caribbean States the contribution is much higher, ranging between 8-10% of GDP in some states. Furthermore, whereas Canada's ocean space is approximately 60 % of its land mass, the ocean space in CARICOM is over 455% of the combined land masses of

the states. CARICOM should therefore accord higher priority and invest more in developing, using and managing its marine and ocean resources for sustainable development.

3. Although Canada has vast quantities of marine and fresh water fisheries resources, is one of the few developed countries that is self-sufficient in the supply of fish and seafood for domestic consumption, and is a net exporter, it has nevertheless, in recent years, adopted an aggressive strategy to promote development of aquaculture to supply domestic demands and the export market. CARICOM should give priority to aquaculture (including mariculture) development not only to improved food-security within the community but also as an export commodity. The natural environment, coupled with the socioeconomic conditions within the Caribbean are more favourable to the production of internationally competitive aquaculture products within the CARICOM region than in many temperate environment, provided the technology, managerial and technical skills are available.
4. Although there are differences between Canada as a federal state and its provinces including the Maritime Provinces on the one hand, and the Caribbean Community and its Member States on the other hand, in the case of fisheries policy issues and practices, there are important similarities which lend themselves to serious consideration by CARICOM in the design, construction and implementation of its proposed Common Fisheries Policy and Regime. The model of sharing responsibility for some aspects of fisheries between CARICOM (Regional level) and the Member States (national) is workable. For example, as is the case in Canada, responsibility for conservation and resource management, and associated responsibilities such as research, relating to shared species should be vested in the regional body empowered to implement the CFP&R.
5. Access by fishermen/fleets from one jurisdiction into the fisheries located in another jurisdiction is at the heart of the concept of a Common Fisheries Zone. The provinces of Canada remarkably are confronted with this issue and have worked out models of access to deal with it but not without ongoing controversy and dispute over how to achieve stability and equity. The criteria for access and decision making processes relating thereto are equally important. The principles adopted by the Federal Government working in collaboration with the provincial governments should be carefully considered as they may provide useful guidance to CARICOM in coming up with suitable arrangements on this sensitive issue.
6. Canada's approach to fisheries management is highly relevant. The commitment of the Canadians, arising from the failure of traditional fisheries management, to integrated management of marine and ocean

resources and ecosystems approach should be fully embraced by CARICOM. Canada's current research to develop suitable models for the application of integrated management and ecosystems approaches should be monitored studied to determine their suitability for application in the Caribbean, with necessary adaptations.

7. In like manner, Canada's commitment to a consultative approach to research and decision-making that came out of the post cod collapse is also relevant. The Government has found it useful to rely not only on science but also on the traditional knowledge and input of fishers and other stakeholders through partnerships in research and management decision-making. CARICOM should set up structures to facilitate closer collaboration with fishers in planning, conducting research, making decisions, and implementing management measures.
8. CARICOM should also establish mechanisms to ensure that independent and accurate scientific advice is made available to governments for planning and decision making. The new system used by the Canadians is worthy of consideration.
9. Technology, its role, cost and financing in the Canadian fisheries economy is a key issue for the development and implementation of the Common Fisheries Policy and Regime particularly regarding the factors which are critical in maximizing the benefits of a fisheries which is expected to make a significant contribute to economic development. Both the size and sustained flow of investment in marine science and technology and how it is funded are important lessons for the Caribbean Community.
10. The shifts away from the use of simple fisheries management plans towards integrated fisheries management plans and, since 2000s, objective based fisheries management plans is of interest to the Caribbean insofar as it represents attempts to give effect to the commitment to holistic, ecosystem based approaches while at the same time at the same time brings established business management theories to the assistance of fisheries management. The CFP&R proposes the mandatory use of fisheries management plans. In preparing these, consideration should be given to the substance of the approach being used by Canada to achieve comprehensive ecosystem based management.
11. Funding the implementation of the CFP&R will be a major issue that needs to be considered during the process of formulation to ensure that the policy is not only conceptually sound and coherent but is also affordable to the countries. For this reason the fee payment system in the Canadian fisheries has been described in some detail. In most if not all Caribbean jurisdictions, fishermen and users of the fishery resources pay little or no fees except the cost of providing the licences themselves. The principle

applied in the Canadian fisheries is highly relevant to the Caribbean, that is, firstly to ensure that those who benefit from a public resource pay a fee reflecting the value of the fishing privilege; and secondly, to have industry pay for a share of fisheries management costs (including research and monitoring), i.e. the "user pay" principle. Fee collected from resource users may be one way raising funds to finance the implementation of the CFP&R.

12. All aspects of commercial and recreational fisheries and aquaculture in Canada are highly regulated. The fisheries laws have been substantially developed and reformed over the past 10 years, a process, which is still ongoing. Managing complex multi-dimensional natural systems such as marine and inland living aquatic systems and the social and economic activities of disparate stakeholders in a modern democracy can only be done through a system of detailed and clear legal rules. The CARICOM Countries can learn from Canada's vast experience in reforming its fisheries laws. The rules regarding conservation, equitable access and allocation of resources, and aquaculture development are particularly relevant.
13. Integration as a partial objective of Canadian fisheries policy with particular application to the experience of Canada's First Nations is interesting. This effort is designed in part to integrate marginal communities such as the First Nations of Peoples of Canada into the formal fisheries sector of Canada. By a combination of Constitutional means, Supreme Court rulings, legal measures, policy, management tools and affirmative action programme, historical exclusion was corrected, transfer of licensed fishing rights and assets was achieved and participation of aboriginal peoples in the commercial fisheries is in progress. While not strictly analogous to the situation in the Caribbean Community principles underpinning the integration element of policy such as, equity, justice, redistribution of wealth, opportunity for all and, increased capacity through affirmative action, resonate strongly in the Caribbean Community contest of economic integration. There are CARICOM countries with indigenous communities who have depended on the natural aquatic resources I rivers, lakes and coastal waters for their livelihoods and have been affected by commercial development and increasing government regulation of these resources in recent decades. The CPR&R may wish to give special attention to the needs of these and other marginalized communities that may need special support to ensure they have and maintain access to the resources.
14. Canada's monitoring, control, surveillance and enforcement capability and strategy to eradicate illegal, unreported and unregulated fishing are impressive. Nevertheless ensuring compliance with fisheries laws and regulations is a challenge even for a resource rich country like Canada and

will pose special challenge for the Caribbean Community with its resource constraints. As a starting point, the CFP&R should lay down clear and strong principles against IUU fishing, and a commitment to closer cooperation among the states to improve MSC and enforcement of fisheries regulations. Furthermore, there should be arrangements to enhance cooperation among the different enforcement agencies within each state, such as national coast guards, police, fisheries departments and other agencies involved in monitoring and enforcement of wildlife and coastal and marine laws. The backbone of the Canadian system is the core of fisheries officers who are empowered by law to enforce the fisheries laws. The more successful CARICOM states have similar arrangements, e.g., Belize and Bahamas. This is a model which should be considered for application region-wide in the Caribbean. The “Observe-Record-Report” programme and the “Coastal or River Watch” programme which in essence, are programmes seeking to involve the wider community in enforcing fisheries laws is worthy of consideration.

15. Domestic land-based fish processing industry and market regulations in Canada, management of over-capacity, standard setting, enforcement, tax policies and business development particularly the prevention of concentration of fishing rights and vertical integration in harvesting and processing constitute relevant and instructive areas where lessons are not only evident but vital for the Caribbean Community regarding challenges; such as, how to increase processed fishery output, maintain quality, utilize excess capacity in some locations, maintain prices such that the industry remain economically attractive. The techniques used to keep harvesting and processing separate are most interesting.
16. Where the catch is landed and where it should be processed are questions with several models as possible answers. The simple answer of a state demanding processing rights in cases where fish is harvested in its waters is a tricky matter when weighed against the long term development of its processing industry since growth, employment, income and price stability may well depend on access to fish harvested in other jurisdictions. This is an involved matter in the context of an industry where matters such as where the vessels are registered, flags of convenience, processing at sea and quotas negotiated under international or regional agreements are relevant. These national and non national rules and commercial issues must still be reconciled with the economic interests of the location issue where a state's interest in investment, protecting existing processing capacity, job creation or preservation and business development in its territory are matters of considerable consequence. Canadian officials admitted that this is a serious issue for the provinces.
17. The issues of commercial policy that affect the interrelationships among the harvesting, processing, distribution and trade would suggest that part

of the institutional arrangements under the common fisheries regime should include a forum discussion of commercial policies. Such a forum would have to include representatives from the harvesting sector, processing, distribution and consumer protection. This is important for the orderly development of a competitive and efficient processing sector, with the objective of producing safe product for consumption within the CSME and export of high quality product; building progressively from its modest current size.

18. The proposed common policy and regime should specifically provide for nationals of the Community to gain access to licences based on the principles laid down in the Revised Treaty in Article 7 : National Treatment and Article 8: Most Favoured Nation Treatment as central principles governing participation of such nationals in commercial activity within the CSME.
19. The study of Canada show that there are three types of Jurisdiction ;
 - a. Exclusive Federal Jurisdiction ,
 - b. Exclusive Provincial Jurisdiction and
 - c. Joint or Shared Federal and Provincial Jurisdiction

Jurisdiction is a central issue in the structuring of fisheries policy and a rules based framework involving an international organization (The Caribbean Community) comprising sovereign states and central Organs with powers to make policy and rules ; taking into account that the Community is represented by states from a geographical region in which their sea territories are contiguous and overlapping and their commercial space for processing and distribution have been integrated by Treaty and domestic law.

The policy and regime should specifically address the question of jurisdiction and should carefully and expressly define Community and national jurisdiction, not only to avoid conflict but equally to encourage effective and efficient cooperation between the Community and the participating States.