

NORTHWEST ATLANTIC FISHERIES AND
THE FISHERIES JURISDICTION CASE BEFORE THE ICJ

On September 24, 1994, the Northwest Atlantic Fisheries Organization (NAFO), on the advice of its Scientific Council, decided for the first time to regulate catches of Greenland halibut in the NAFO Regulatory Area. A Total Allowable Catch (TAC) of 27,000 tonnes was set for that stock for 1995. On February 1, 1995, at a Special Meeting of the NAFO Fisheries Commission, that TAC was allocated in the following way: 60% (16,300 tonnes) to Canada; 12.6% (3,400 tonnes) to the European Union (EU); 11.9% (3,200 tonnes) to Russia; 10% (2,600 tonnes) to Japan; and 5.5% (1,500 tonnes) to other Contracting Parties.

In reaction to the quotas described above, the EU invoked the objection procedure contained in the Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries (NAFO Convention) and on February 22, 1995, set for itself a quota of 18,630 tonnes (more than five times the amount allocated to it by NAFO). As an internal EU matter, only Spain and Portugal would share the revised quota.

Faced with the imminent prospect of Spanish and Portuguese vessels irreparably depleting the Greenland halibut stock, on March 3, 1995, Canada added these two states to the Coastal Fisheries Protection Regulations in a separate list of flag states whose vessels could be arrested in the NAFO Regulatory Area pursuant to the Coastal Fisheries Protection Act and Regulations. Special conservation and management measures were also added to the Regulations to apply only to the vessels of states appearing on the new list. Canada accompanied these amendments with a call to the EU for a 60 day moratorium on Greenland halibut catches in the interests of conservation. On March 6, 1995, the European Council of Ministers formally rejected the proposed moratorium.

On March 9, 1995, pursuant to the Coastal Fisheries Protection Act and Regulations, Canadian officials boarded and arrested the Spanish fishing vessel "Estai" in the NAFO Regulatory Area for fishing contrary to Canadian law. The Estai and its crew were taken to St. John's, Newfoundland, where formal charges were laid against the ship and its master. The master was promptly released on bail and the vessel was later released on bond.

Soon after the arrest of the Estai, talks commenced between high level Canadian and EU delegations. These talks ultimately resulted in the signing, on April 20, 1995, of an Agreed Minute, aimed at strengthening enforcement of international conservation measures in the NAFO Regulatory Area