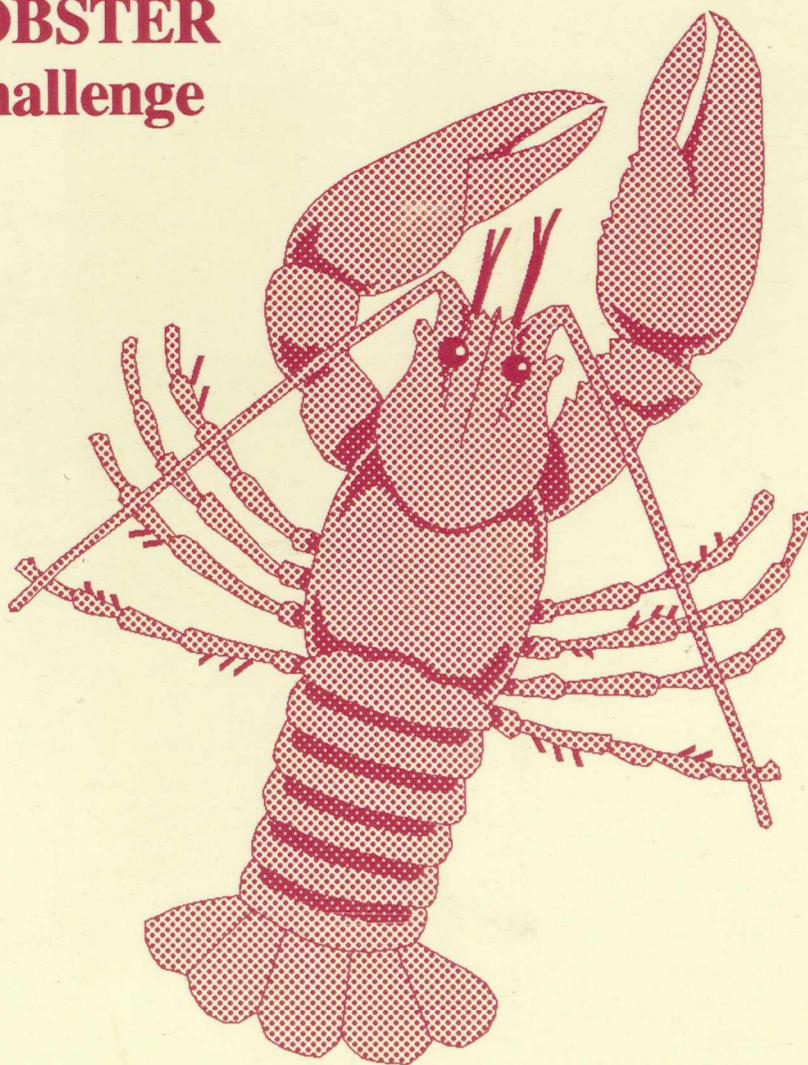




**Report of
the Standing Senate Committee on
Fisheries**

**CANADIAN LOBSTER
A Marketing Challenge**



J
103
H7
34-2
F577
A123

**Second Session
Thirty-Fourth Parliament**

March 1991

BIBLIOTHÈQUE DU PARLEMENT
LIBRARY OF PARLIAMENT

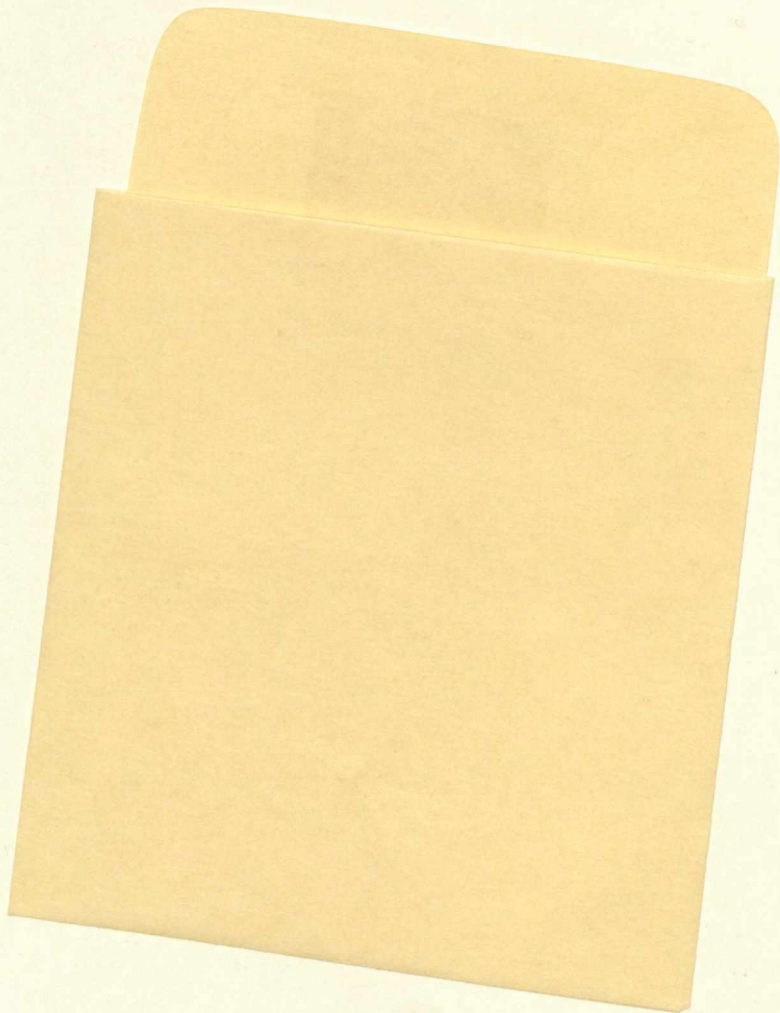


3 2354 00145 692 3

BIBLIOTHÈQUE DU PARLEMENT
LIBRARY OF PARLIAMENT



3 2354 00145 693 1



J
103
H7
34-2
F577
A123
c 2

STANDING SENATE COMMITTEE
ON FISHERIES

Report of
the Standing Senate Committee on
Fisheries

**CANADIAN LOBSTER
A Marketing Challenge**

LIBRARY OF PARLIAMENT
CANADA
1991 = 4 = 31
BIBLIOTHÈQUE DU PARLEMENT

Chairperson
The Honourable Brenda M. Robertson

Deputy Chairperson
The Honourable L. Norbert Thériault

**Second Session
Thirty-Fourth Parliament**

March 1991

ORDERS OF REFERENCE

Extract from the *Minutes of Proceedings of the Senate* of Tuesday, January 30, 1990:

With leave of the Senate,
The Honourable Senator Marshall moved, seconded by the Honourable Senator Chaput-Rolland:

That the Annual Report of the Department of Fisheries and Oceans for the fiscal year ended March 31, 1987, tabled in the Senate on 30th August, 1988 (Sessional Paper No. 332-1034), and all other matters relating to the Canadian fishing industry, be referred to the Standing Senate Committee on Fisheries.

After debate, and ---
The question being put on the motion, it was ---

Resolved in the affirmative.

Extract from the *Minutes of the Proceedings of the Senate*, of Thursday, March 15, 1990:

The Honourable Senator Marshall, Chairman of the Standing Senate Committee on Fisheries, presented the Fifth Report of the said Committee (budget), as follows:

Your Committee, which was authorized by the Senate on Tuesday, January 30, 1990, to examine the Annual Report of the Department of Fisheries and Oceans for the fiscal year ended March 31, 1987, tabled in the Senate on 30th August, 1988 (Sessional Paper No. 332-1034), and all other matters relating to the Canadian fishing industry, respectfully requests that it be empowered (i) to engage the services of such counsel and technical, clerical and other personnel as may be necessary; and (ii) to adjourn from place to place within and outside Canada for the purpose of such study.

With leave of the Senate,
The Honourable Senator Marshall moved, seconded by the Honourable Senator Thériault, that the Report be adopted now.

The question being put on the motion, it was --

Resolved in the affirmative.

Gordon Barnhart
Clerk of the Senate

MEMBERSHIP OF THE STANDING SENATE COMMITTEE ON FISHERIES

Page

PREFACE 1

RECOMMENDATIONS 1

The Honourable Brenda M. Robertson, Chairperson

PROFILE OF THE CANADIAN LOBSTER INDUSTRY 1

The Honourable L. Norbert Thériault, Deputy Chairperson

and A. The Issue 5
B. Observations and Recommendations 10

the Honourable Senators:

LOBSTER MARKETING 1

Willie Adams 1

A. M. Lorne Bonnell 13

B. Ethel Cochrane 19

Gérald J. Comeau 21

TABLE * C. William Doody 21

* Royce Frith 23

* Allan J. MacEachen, P.C. 23

Jack Marshall 24

Gildas L. Molgat, P.C. 24

* Lowell Murray, P.C. 24

William J. Petten 25

CHARS Eileen Rossiter 25

John B. Stewart 25

1. Lobster Fishery: Role of the East Coast 25

2. Department of Fisheries and Oceans Management Regions 26

EXHIBIT

1. Canadian Lobster Landings, Historical Overview 27

The Honourable Senators Martha P. Bielish, John Buchanan, Eymard Corbin, Richard J. Doyle and John Sylvain also served, at various stages, on the Committee.

1. Text from the General Agreement on Tariffs and Trade 28

2. Department of External Affairs and International Trade Proposal 29

Project, April 1990 to March 1991 29

3. Witnesses 31

TABLE OF CONTENTS

	Page
PREFACE	vii
RECOMMENDATIONS	ix
PROFILE OF THE CANADIAN LOBSTER INDUSTRY	1
THE CANADA-U.S. LOBSTER TRADE DISPUTE	
A. The Issue	5
B. Observations and Recommendations	10
LOBSTER MARKETING	
A. The Issue	13
B. Observations and Recommendations	19
TABLES	
1. Number of Licensed Canadian Lobster Fishermen, 1989	21
2. Lobster Landings by Province, 1985-1989	22
3. Selected Statistics on Canadian Lobster Exports, 1989	23
4. Canadian Lobster Export Market Trends, 1985-1989.....	24
CHARTS	
1. Lobster Fishing Areas on the East Coast	25
2. Department of Fisheries and Oceans Management Regions	26
EXHIBIT	
1. Canadian Lobster Landings, Historical Overview	27
APPENDICES	
1. Text from the General Agreement on Tariffs and Trade	28
2. Department of External Affairs and International Trade Promotional Projects, April 1990 to March 1991	29
3. Witnesses	31

PREFACE

This study began early in 1990 at a time of considerable uncertainty as to what would happen in the marketplace. Despite a record harvest, the value of Canadian lobster exports had declined for both live and processed product forms in 1989. Also that year, in December, the so-called Mitchell Amendment to the U.S. *Magnuson Act* had been passed, closing the door on Canadian shipments to the United States of live lobsters under size limits established by the New England Fisheries Management Council.

Unlike the United States federal management regime, which relies almost exclusively on a single carapace size limit to conserve its stocks, Canada's system includes a range of minimum sizes to reflect regional differences in growth rates, closed seasons, and limits on entry into the fishery and on the number of traps which may be set. Unlike U.S. stocks, the Canadian resource is considered to be in a healthy state. Canadian lobsters also mature at a smaller size and therefore enjoy a "comparative advantage" over U.S. lobsters; Canadian producers are able to put a much greater range of sizes and products on the market than can their American counterparts.

In May 1990, an FTA Panel on the 1989 Mitchell Amendment ruled that the U.S. import restriction was an internal measure--affecting the internal marketing of U.S.-origin and Canadian lobsters. At the insistence of Canadian fishermen, the Government of Canada later rejected a proposed settlement with the United States, which, among other things, would have increased the Canadian minimum size in certain areas of the East Coast.

While completing this report, there was an interesting turn of events: fishermen in Maine and Massachusetts lobbied U.S. federal authorities to reduce the current legal federal lobster size and delay an increase planned for 1992. They are said to be interested in learning more about the Canadian model for managing their fishery.

The 1989 Mitchell Amendment and ever increasing competition on world seafood markets brings the concept of marketing very much to the fore. Although many Canadian producers now recognize the need to seek out new or non-traditional markets, specialized segments and niches, much needs to be done to develop strategies based on market intelligence, quality assurance and generic advertising. The product mix for processed lobster must also be upgraded. For many years the industry has been producing the same product forms.

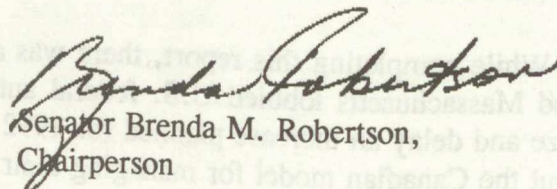
Perhaps the greatest challenge faced by Canada's lobster sector is for all of its components--fishermen and buyers alike--to cooperate to achieve common goals. While the crustacean continues to be synonymous with fine dining, little has been done to promote the species to anywhere near the extent of other competing premium seafoods in international markets. The recent initiative by some Atlantic processors/packers to form the Canadian Atlantic Lobster Promotion Association, we believe, is a positive development.

The issues facing the Canadian lobster industry are long-standing. The comments made by the Royal Commission Investigating the Fisheries of the Maritime Provinces and the Magdalen

Islands in May 1928 bear repeating; they refer to "an unfortunate lack of cooperation" within the industry "both in standardizing the quality of the product and in marketing," and comment that "greater success could be attained if cooperative methods in selling were followed," and that "up to the present there [had] been a somewhat surprising indifference to this necessity." The Commission also noted that "the demands of the consumer must continue to dictate the form in which fish are marketed." These remarks of over 60 years ago summarize surprisingly well many of the opinions expressed during this Committee's hearings.

The interest shown by those who appeared before us is very much appreciated. Questionnaires were also sent in the fall of 1990 to the more than 100 lobster packers/processors, registered with the Department of Fisheries and Oceans, in order to gather information on their activities and to survey their opinions. The Committee acknowledges the assistance received from its support staff: Blair Armitage and Denis Robert, Clerks of the Committee; Claude Emery, Research Officer, Library of Parliament; and Jane Hamilton, Research/Administrative Assistant to the Committee.

The Committee does not presume to present definitive solutions, but rather to focus attention on the more salient issues and to offer some suggestions which may be of assistance.



Senator Brenda M. Robertson,
Chairperson

RECOMMENDATIONS

The Committee recommends:

- (1) that the Government of Canada conduct a thorough and comprehensive assessment of the implications of the 25 May 1990 FTA Panel decision on the Canadian lobster industry and other sectors of the Canadian fishery;
- (2) that the Government of Canada take all available steps to protect Canadian lobsters from protectionist trade actions in the United States;
- (3) that the Department of Fisheries and Oceans devise a workable tagging or certification program for Canadian lobsters to counter the U.S. argument that, to enforce its size restrictions for reasons of conservation, small lobsters from Canada must be denied entry into the United States;
- (4) that the Department of Fisheries and Oceans continue to pursue its policy of separating fisheries management issues from issues concerning trade and market access;
- (5) that the Department of Fisheries and Oceans increase its support for research on lobster stocks. Additional studies are needed to increase the Department's knowledge of lobster interactions and interdependencies in the ecosystem. The Department should determine the precise economic and biological effects of changes in minimum carapace size lengths;
- (6) that all sectors of the lobster industry consider supporting marketing councils or organizations to develop market intelligence, improve industry communications and coordinate generic promotions. These councils or organizations could be assisted by the federal government and the governments of the five Atlantic provinces. Any federal funding could be provided, initially, on a cost-shared basis. Generic campaigns should be coordinated to avoid a duplication of effort and to maximize their effectiveness and cost-efficiency;
- (7) that federal and provincial government departments and agencies provide the assistance necessary to lobster processors who wish to become better equipped in producing new types of value-added products using new packaging technologies;
- (8) that the Department of External Affairs and International Trade and the Department of Fisheries and Oceans, in consultation with Canadian lobster exporters, determine whether cooperative structures between Canada and the United States would be of benefit to the Canadian industry in promoting lobsters in the United States;

- (9) that the Department of External Affairs and International Trade increase its contacts with lobster processors and buyers on the East Coast, and make a special effort to further promote the industry and provide it with market information and reports prepared by Canada's trade missions abroad;
- (10) that the Department of External Affairs and International Trade assess the effectiveness of its involvement in the marketing of Canadian lobster. The results of this assessment should be made available to the industry and to parliamentary and government Committees;
- (11) that governments, both federal and provincial, encourage lobster producers in the region to work cooperatively toward creating a more effective distribution system for live and processed lobsters. This may involve obtaining additional air cargo space and investing in holding capacity for live lobsters in new market areas and at some airports; and
- (12) that the Department of Fisheries and Oceans provide the industry with relevant educational materials on proper storage, shipping and handling techniques. Canada's Fish Inspection Program should be used as a marketing tool to create awareness among domestic and international consumers that Canadian seafood has undergone the most stringent quality control system in the world. Consideration should be given to the development of a seal indicating high quality for live and processed lobster, similar to that used by the aquaculture industry.

PROFILE OF THE CANADIAN LOBSTER INDUSTRY

Following the declaration of the 200-mile fishing limit in 1977, the basic objective of federal policy has been to conserve the fishery resource and at the same time maximize the economic benefits for Canadian harvesters, processors, sellers and consumers of fish. Nowadays, this is called "sustainable development." From a conservation standpoint, the Department of Fisheries and Oceans is widely recognized as having done a good job of managing the lobster fishery; catches are up and have reached levels unheard of since the last century. The Canadian industry, however, is not without problems on the "development" side of the ledger; these difficulties, in this Committee's view, underscore a basic weakness in marketing.

Two kinds of "lobster" are sold on international markets --the clawed lobster and the spiny or rock lobster. The Canadian fishery supplies the clawed variety and is the world's leading producer of all "lobster"; it harvested about 19% of the world's total catch of 208,000 tonnes in 1988. Other major producers include the United States, Cuba, Australia and Scotland. In this report, the word "lobster" will refer to the *Homarus americanus* as it is known scientifically, the species caught on the East Coast of Canada and the northeastern United States.¹ Canada harvests over 60% of the total catch of this lobster.

Lobsters are found only in Canadian and U.S. waters. Although the species is distributed over the continental shelf of the Western North Atlantic Ocean from Labrador to North Carolina, it is especially abundant off the coasts of Maine and Southwest Nova Scotia, and the Gulf of St. Lawrence coastline of the Maritimes. Water temperature has an effect on the sexual maturity of lobsters: they mature earlier (and therefore at a smaller size) in warmer waters. According to biologists, at 50% maturity, the average lobster carapace (from the back of the eye socket to the end of the body, excluding the tail) is 3 inches in the relatively warm waters of the Gulf of St. Lawrence, 3 5/8 inches in the cool oceanic waters off Nova Scotia, and 4 inches in the colder waters of the Gulf of Maine.²

Lobster fishing in Canada is essentially an inshore activity, with catches taken within a few miles from shore. Catching lobster has become a major activity for many of the 11,545 fishermen³ in the Atlantic region (Table 1); according to one estimate, most inshore fishermen in the Maritimes "earn a half or more of their annual fishing incomes in the first few weeks of lobster season."⁴

¹ United Nations, Food and Agriculture Organization. *Yearbook of Fishery Statistics, 1988*, Vol. 66, Rome 1990. The European lobster (*Homarus gamarus*) is the only other clawed crustacean called "lobster."

² FTA Panel, Final Report, *Lobsters From Canada*, 25 May 1990, p. 7.

³ In this report "fishermen" will refer to both female and male fishers.

⁴ Rick Williams and Gilles Thériault, "Crisis and Response: Underdevelopment in the Fishery and the Evolution of the Maritime Fishermen's Union," in *Restructuring and Resistance from Atlantic Canada*, Garamond Press, Toronto 1990, p. 128.

In regulating the fishery, Canada pays particular attention to resource conservation and protection. The management regime has been in existence since 1873, and has evolved over time to provide stability in landings in the face of strong competition among fishermen. The grounds are divided into 40 Lobster Fishing Areas (LFAs) governed by specific management measures developed and revised yearly by the Department of Fisheries and Oceans (DFO) in consultation with local industry representatives (Chart 1). Fishing effort is strictly controlled by limiting the number of fishing licences and the traps each fisherman may set, setting minimum legal lobster sizes, closed seasons, and the requirement that egg-bearing females be returned to the water. Unlike other fishery management systems in the region, inshore lobster catches are not controlled by a Total Allowable Catch (or TAC); there is no regulated upper limit on the total quantity of animals that may be legally landed in any given year.⁵

Canadian lobster stocks are considered generally to be in a very healthy state. In the ten-year period from 1980 to 1989 inclusive, catches increased by 114% to over 43,000 tonnes.⁶ In fact, landings at present are at their highest level this century (Exhibit 1). Although no specific scientific evidence is available, assuming environmental conditions prevail, it could be expected that volume will remain at least at present levels. The sector is a key component of the Atlantic fishery, representing about 30% of its total catch value and about 11% of its export value of the Atlantic fishery. Over the last five years, the value of landings to fishermen rose from \$193 million to over \$263 million in 1989 (Table 2). Growth in demand, however, did not keep pace with supply in 1989, and the landed value declined accordingly.

Lobsters are characterized by length of carapace as follows: "markets" (3 3/16 inches and greater) and "Canadians" (3 3/16 inches to 3 9/32 inches), which are usually sold live; and "canners" (under 3 3/16 inches), which are generally processed. Under current U.S. regulations, "American markets," are those whose carapace measurement is at least 3 9/32 inches. There are four DFO management areas on the East Coast; each differs as to the size mix of catches and fishing season (Chart 2). The pattern in each area, however, is consistent from year to year.

In the Scotia-Fundy Region, most (over 90%) of the catch is sold live, with two peak landing seasons (late spring/early summer and late fall/early winter) of about equal volume. Lobster processing in Scotia-Fundy is minimal. On the other hand, in the fishery in the Gulf Region about 73% of catches are in the canner category. The greatest volume of landings is in the spring fishery, followed by a much smaller peak in the fall. Some 5,500 people worked at 52 lobster processing plants in the Gulf Region in 1989. In the Newfoundland region inshore fishermen catch only market-size lobsters in spring or early summer. The catch in the Quebec Region consists mainly of market-size lobsters harvested during a spring season. Twenty-three processing plants employed 1,777 people there in 1989.⁷

⁵ The exception is LFA 40, which is an offshore sector, where a Total Allowable Catch is administered as an Enterprise Allocation or EA.

⁶ Department of Fisheries and Oceans, "The Canadian Lobster Industry," *Backgrounder*, 7 November 1990, p. 1.

⁷ *Ibid.*, p. 3-4. There is a canner-size lobster fishery in the area off northern Cape Breton, where landings represent approximately 8% of total regional catches.

In recent years, the expansion of lobster pounds has been a major factor in creating year-round supply of live lobsters. Pounds may be large crates tied to wharfs or to the shore in sheltered areas, large tidal ponds, or tanks with a recirculating sea water system. One company, Clearwater Fine Foods -- the major live lobster dealer on the East Coast -- has developed dry land facilities with a total capacity of 2.5 million pounds in which the crustaceans can be held individually for long periods of time.⁸ Pound operators buy lobsters when they are abundant and hold them until seasonally reduced catches raise the selling price.

Less than half of the Atlantic catch goes to the processing sector. The whole frozen product, or "popsicle pack", is lobster which has been cooked, frozen in brine and sealed in a plastic sleeve. Graded by weight, the popsicle pack tends to be made up of smaller animals. Frozen lobster meat, commonly called "cold pack," is lobster which has been cooked, shelled and canned (in 11.3 oz., 2 lbs. and 5 lbs. cans) without heat treatment and must therefore remain frozen until consumed. Various grades of meat are produced, ranging from the most expensive tail and claw pack to the least expensive broken meat pack. Specialty orders, such as claw meat or tail meat only, are also produced. Processed lobster meat, also known as the "hot pack," is a heat-processed canned product (sold in 2.5 oz., 5 oz. and 10 oz. cans) which does not require refrigeration.

Lobster marketing is unusual in that it involves live as well as processed product. Frozen or processed lobster can be handled like all other seafood, whereas the distribution chain for live lobsters is specialized and can involve several steps -- from fisherman to dealer or buyer, to wholesaler, unless the dealer is a wholesaler himself. Wholesalers and brokers in turn sell either to retail outlets or to restaurants. Fishermen also sell directly to wholesalers or consumers. Trucking is the most common method of shipping to the northeastern United States. Both Air Canada and Canadian Airlines International are experienced carriers of live lobster, with much of their business oriented to Europe and Japan.

In 1989, 70% of Canadian lobster exports were shipped to the United States, 24% to Europe and 5% to Japan (Tables 3 and 4). About 78% of Canadian live lobster exports were sent to the United States, with Boston being by far the most usual initial destination. Major European markets for live lobsters (in order of importance) are France, the Netherlands, Belgium, Germany and the United Kingdom. In France, lobster is a delicacy consumed especially during the year-end holiday season.⁹ The Canadian industry is said to face stiff competition from the U.S. in

⁸ Canada, the Senate, *Proceedings of the Standing Senate Committee on Fisheries*, Issue No. 14, p. 5-6, 11; Department of External Affairs and International Trade, Fisheries Division, "Canadian Lobsters: The Supply Side," *The First Canadian Lobster Conference: Canada House*, London, England, 12 October 1989, p. 9.

⁹ Department of External Affairs and International Trade, "Trade Promotion and Market Prospects for P.E.I. Seafood Products," Presentation at the Provincial Fisheries Conference, O'Leary, P.E.I., 8-9 March 1990; Department of External Affairs and International Trade, Fisheries Division, "France: Guidelines for Canadian Fish Exporters 1990-1991," p. 18.

these markets.¹⁰ Europe is Canada's largest market for "popsicle" packs, for which Canadian producers hold a monopoly. With the exception of whole frozen lobster, the United States is the major destination for all other processed products.

The value of Canada's exports of live lobsters to the United States steadily increased to reach a peak of \$150.4 million in 1987, but declined thereafter to about \$119.4 million in 1989 (the most recent year for which final statistics are known). The value of shipments to Europe, on the other hand, more than doubled between 1985 and 1989; exports to Japan more than tripled over the same period. For processed lobster, the value of exports to all countries steadily increased until a period of general market weakness in 1989.

¹⁰ Department of External Affairs and International Trade, Fisheries Division, "Canadian Lobsters: the Supply Side," *The First Canadian Lobster Conference: Canada House*, 12 October 1989, p. 12.

THE CANADA-U.S. LOBSTER TRADE DISPUTE

A. The Issue

The past year has been characterized by considerable controversy and dispute between Canada and the United States concerning the lobster fishery. On 12 December 1989, the U.S. president signed into law the so-called "Mitchell amendment" to the *Magnuson Fishery Conservation and Management Act*. The amendment prohibits, among other things, the possession, transportation or sale in domestic and international commerce of live lobsters (of the species *Homarus americanus*) not meeting the U.S. minimum carapace size requirement as established by the New England Fisheries Management Council. Canada alone exports this species of lobster to the United States, and therefore is the only country whose exports are affected.¹¹

In 1985, the United States first introduced a federal lobster size requirement, set at 3 3/16 inches, with the adoption of the American Lobster Fishery Regulations. Beginning on 1 January 1988, the U.S. legal size increased by 1/32 inch each year to the present 3 9/32 inches. At the time of writing, the restriction is scheduled to rise again, by 1/32 inch on 1 January 1992, to 3 5/16 inches. In contrast with the Canadian situation, the Committee was told that there was concern in the United States that current harvest levels had resulted from an intensified fishing effort rather than an improvement in stock abundance. In 1983, it was estimated that 1 - 6% of U.S. lobsters, in the most exploited areas, avoided capture before reaching sexual maturity.¹² According to statistics from the U.S. Department of Commerce, U.S. landings of *Homarus americanus* steadily increased in the last decade, from approximately 17,000 tonnes in 1980 to a record 24,000 tonnes in 1989.¹³

Canada has its own minimum sizes, ranging from 2 1/2 inches to 3 3/16 inches, to reflect regional differences in growth rates related to temperature cycles. Canada also enforces management measures in addition to carapace size restrictions, such as closed seasons, limited entry (licensing), and trap number limits. In contrast, the United States has no similar conservation measures in place on a national basis to regulate lobster fishing; the U.S. federal management regime relies almost exclusively on the carapace size requirement. Individual lobster-producing states have regulations of different kinds, including state minimum lobster size requirements applicable to lobsters caught in their coastal waters and bans on the marketing of

¹¹ The 1989 amendment is section 8 of the 1989 *National Oceanic and Atmospheric Administration Ocean Coastal Programs Authorization Act*. Canada did not challenge the U.S. prohibition on egg-bearing lobsters or on those which have had their eggs forcibly extruded.

¹² FTA Panel, Final Report, 25 May 1990, p. 11; *Proceedings of the Standing Senate Committee on Fisheries*, Issue No. 15, p. 22; Issue No. 16, p. 23; Issue No. 17, p. 21.

¹³ United States Department of Commerce, *National Oceanic and Atmospheric Administration, National Marine Fisheries Service*, Fisheries of the United States, 1989, Current Fishery Statistics No. 8900, p. 14. Maine led in landings for the eighth consecutive year with 23.3 million pounds, followed by Massachusetts with 16.2 million pounds. The two states combined to produce 74% of total U.S. landings.

certain categories of lobster (processed lobster).¹⁴

Prior to the passage of the 1989 Mitchell amendment, Canadian lobsters were exempted from the U.S. federal legal size, provided that they could be clearly identified as Canadian (i.e., with appropriate documentation such as a bill of lading, customs receipt or similar documentation giving Canada as the country of origin). At that time, the "problem" as stated by the U.S. government, was the commingling of the so-called Canadian "shorts" with U.S. catches in lobster pounds or holding areas. American fishermen could intermingle lobsters illegally taken in U.S. waters with legal Canadian lobsters of the same size, thereby avoiding U.S. law. It was the American view that prohibiting all lobsters below the U.S. federal legal limit in interstate commerce would eliminate this possibility, thus easing enforcement and enhancing conservation.

The history of the Mitchell amendment and its underlying objectives, however, is somewhat contradictory on the issue of conservation versus trade restriction. Statements in the *Congressional Record*, for example, support the notion that the objective of the amendment was, at least in part, trade-protective (i.e., to redress the perception of competitive unfairness among American lobster fishermen who were forced to comply with minimum size requirements not required of their Canadian counterparts).¹⁵

In 1990, Canadian and American officials estimated the proportion of total lobster catches in Canadian waters below U.S. federal legal size was 8% in 1990, and would be 12.1% in 1991 and 16.1% by 1992 if the scheduled increases were implemented. It was estimated that the proportion of live lobsters legally harvested in Canada which did not meet the U.S. federal minimum size requirement (so-called "Canadian" lobsters), would be 18% in 1990, 26% in 1991 and 34% the following year. An independent assessment prepared by a Canadian accounting and management firm has also shown that the value of trade affected by the 1989 Mitchell amendment would be \$28.1 million in 1990, \$42.1 million in 1991 and \$57.0 million in 1992. Over the period 1990-1992, the cumulative total would be \$127.2 million.¹⁶

On 21 December 1989, the Government of Canada formally requested a binational Panel under Chapter 18 of the Canada-U.S. Free Trade Agreement (FTA) to consider whether the application of a minimum lobster size requirement to Canadian lobster exports to the United States was prohibited under the General Agreement on Tariffs and Trade (GATT).¹⁷ An FTA

¹⁴ In the United States, federal jurisdiction applies to catches in the Exclusive Economic Zone, three to 200 miles offshore. In Canada, the management system is purely a federal matter. *Proceedings of the Standing Senate Committee on Fisheries*, Issue No. 6, p. 8-10; Issue No. 12, p. 6, 12-13.

¹⁵ *Ibid.*, Issue No. 6, p. 10-11; Issue No. 12, p. 18-19; See also FTA Panel, Final Report, 25 May 1990, p. 16.

¹⁶ FTA Panel, Final Report, p. 10, 99; *Proceedings of the Standing Senate Committee on Fisheries*, Issue No. 6, p. 9; Issue No. 8, p. 20; Issue No. 9, p. 12.

¹⁷ The two governments referred the dispute to the Canada-U.S. Trade Commission in accordance with an exchange of letters between the U.S. Trade Representative and the Canadian Minister for International Trade dated 18 and 27 January 1990. Initial briefs were filed on 1 February and 20 February 1990 by Canada and the United States respectively. The oral presentation to the Panel was held on 5 March 1990, followed by

dispute resolution Panel was selected by 31 January 1990. The Chairman, an economic consultant and former senior advisor to the U.S. Trade Representative, was chosen by lot.

The major arguments put forward by the Government of Canada before the Panel included the following: that the 1989 Mitchell amendment was a trade restriction incompatible with FTA Article 407, which incorporates GATT Article XI:1; that the burden of proof then fell on the United States to demonstrate that it met the requirements of any exceptions related to conservation of exhaustible natural resources under Article 1201 of the FTA, which incorporates Article XX(g) of the GATT; that using GATT Article III in the fashion proposed by the United States rendered Articles XI and XX of the GATT "practically meaningless"; that interpretations of Article XI should be broad enough for the Article to accomplish its basic purpose and that such interpretations make "it fundamental in the operation of the FTA between the two countries."¹⁸ (For the GATT Articles, see Appendix 1).

Canada contended that the 1989 amendment was not directed at the U.S. catch, did nothing to add to the conservation measures already in place, and was an unfair trade restriction since Canadian lobsters mature at an earlier age and therefore enjoy a comparative advantage over U. S. lobsters. Canada claimed the amendment had been adopted in the U.S. Congress in response to the perception that the American industry was at a competitive disadvantage. For these reasons, Canada asked that the Mitchell amendment be withdrawn.

The United States, on the other hand, argued that Canada bore the burden of proving that the 1989 amendment was a trade restriction in violation of FTA Article 407 and GATT Article XI. It believed that the measure fell under GATT Article III because both United States and Canadian lobsters were subjected to the same carapace length requirements and thus the law represented an "internal measure," rather than a restriction applied on importation. The Americans stated that if the Panel were to find the issue falling under Article III, the Panel's work would be finished because Canada had elected to base its challenge solely on Article XI. The United States believed that if the Panel were to find the amendment in violation of Article XI, the issue would then fall under the exceptions provided for under Article XX(g), citing the FTA Panel Report in the Pacific Herring and Salmon Case.¹⁹

On 25 May 1990, the Lobster Panel issued its final Report, ruling in favour of the United States. A majority of three concluded there was no conflict between the *Magnuson Act*, as amended, and United States obligations under Article XI of the GATT. A minority of two disagreed. The Panel, as represented by the majority, believed the matter was covered by GATT Article III, a view based on the assessment that the U.S. measure was internal--affecting the

supplementary briefs filed by both parties on 14 March 1990. An interim Report of the Panel was provided to the two governments on 18 April 1990, with an opportunity for formal objections to be filed by 30 April 1990.

¹⁸ FTA Panel, Final Report, 25 May 1990, p. 18, 22.

¹⁹ *Ibid*, p. 19, 22. The report in question is *In the Matter of Canada's Landing Requirement for Pacific Coast Salmon and Herring*, Final Report of the FTA Panel, 16 October 1989.

internal marketing of U.S.-origin and Canadian lobsters. The majority also cited the 1989 FTA Panel Report on Canada's landing requirement for Pacific salmon and herring which declared: "Internal or non-border restrictions placed on imports are regulated elsewhere [than Article XI:1] in the GATT under Article III."²⁰

The FTA Panel Report ended there. Whether the 1989 amendment was consistent with Article III of the GATT was deemed to be beyond the Panel's terms of reference. The Canadian lobster industry faced various marketing alternatives for its live lobsters under the U.S. legal size: exploiting alternative markets for small live lobsters in Europe and Japan; processing the lobster in Canada; or diverting to the United States lobsters meeting U.S. legal size which were being shipped to the Canadian domestic market or other markets. The ruling left the Government of Canada, for its part, with the following options: to do nothing, to launch a new challenge under GATT Article III or to negotiate a settlement with the Americans. Another possibility would have been to increase the Canadian minimum carapace size for live lobster to match that in the United States. On this last option, the Committee was told by officials of the Department of Fisheries and Oceans that if fishermen did not want an increase, the Minister would not impose it on them.²¹

Beginning in late summer 1989, the most vocal opposition to a matching increase came from the Maritime Fishermen's Union (MFU) in DFO's Scotia-Fundy Region. Spokesmen from the Union, which represents inshore lobster fishermen, appeared before the Committee on 8 May 1990. They expressed their optimism that alternative markets could be found for the small live lobster excluded from the U.S. market. In fact, the MFU believed that small lobsters (the so-called "chicken lobsters" weighing 1 to 1 1/8 pounds) were preferred in overseas markets such as Japan and Europe, and that these could play an important role in market penetration and development (e.g., because first-time consumers purchase by the piece, not by the pound). The Union believed that increasing the minimum carapace size in the Scotia-Fundy Region would have only a marginal effect on the level of egg production and that other factors, such as the availability of nursery areas and the predation of juveniles, were perhaps more critical in determining overall populations. On the other hand, the MFU asked for an increase (by 1/8 inch) for canners (carapace size 2 1/2 inches) in the southern Gulf of St. Lawrence, which it said would reduce the catch by about 20%. This was proposed as a means to ease the glut of processed product on the market and for reasons of conservation.²²

In direct opposition to the MFU's position in Scotia-Fundy was Clearwater Fine Foods, the largest lobster-producer and exporter in the world. Testifying before the Committee on 19 June 1990, the company's Executive Vice President argued that increasing the Canadian carapace size to match the American standard was justified on the grounds of conservation, and suggested that this would be an opportune time to do it, given the industry's "tremendous

²⁰ *Ibid.*, p. 70.

²¹ *Proceedings of the Standing Senate Committee on Fisheries*, Issue No. 8, p. 7; Issue No. 12, p. 5, 6, 8-10, 12; Issue No. 14, p. 25.

²² *Ibid.*, Issue No. 9, p. 7-8, 12-13, 24-26.

increase in production" which had a "dampening effect" on market prices. It was argued that the Japanese and European markets for smaller sized lobsters were relatively limited and that such lobsters had already displaced, to a great extent, larger animals that had been fetching much higher prices. As well, the company Vice President supported the increase because the fishery could "afford it," because it was "a matter of charity" to the United States, and because it "was a moot point" whether or not the Americans had employed the proper methods to conserve their stocks.²³

Following the FTA Panel decision in May 1990, the Canada-U.S. Trade Commission agreed to consider the Panel Report over a 90 day period, during which the two sides would seek a mutually advantageous resolution of the issues. Consultations ensued between the interested parties, including the provinces, the states and the two lobster industries.²⁴ On 28 August 1990, officials of the two governments reached a tentative agreement on the terms of a possible settlement, based on a 17 July 1990 "understanding" between industry representatives.

The U.S. [would] suspend further federal minimum size increases until January 1, 1994.

Canada [would] increase its minimum carapace size from 3 3/16 inches to 3 1/4 inches in Lobster Fishing Areas 1-14 and 28-41 [in "market" areas] on January 1, 1991.

The U.S. [would] change state laws by January 1, 1992, to ensure they did not restrict entry into the U.S. of processed Canadian lobster regardless of size and live lobster meeting the federal size requirement. Canada would tag whole cooked bulk pack lobster for easy identification as Canadian lobster.

A joint Canada/U.S. industry consultative committee [would] be established to report by March 1, 1993, on the biological and economic impact of common carapace length and of any further increases, and any other issue referred to it.

The Department of Fisheries and Oceans, the New England Fisheries Management Council and the [U.S.] National Marine Fisheries Service [would] exchange views on conservation and management issues, monitor the agreement and the tagging system.²⁵

²³ *Ibid*, Issue no. 14, p. 8, 13, 19.

²⁴ Canadian industry participants in the industry-to-industry meetings included the Fisheries Council of Canada, the Seafood Producers' Association of Nova Scotia, the New Brunswick Fish Packers' Association, Clearwater Fine Foods, the Maritime Fishermen's Union, the PEI Seafood Processors Association, the Newfoundland Fishermen's Union and the Eastern Fishermen's Federation. Department of External Affairs and International Trade, Letter to the Chairman of the Standing Senate Committee on Fisheries, 26 October 1990.

²⁵ Words in brackets added. Department of Fisheries and Oceans, "Canada/U.S. Lobster Trade Dispute," *Backgrounder*, 7 November 1990, p. 2; *Proceedings of the Standing Senate Committee on Fisheries*, Issue No. 15, p. 7-8; Issue No. 16, p. 8-10.

In Canada, the lobster fishery was very much divided in its views on the relative merits of the proposed settlement and whether it should be accepted. Fishermen, most notably those in southwest Nova Scotia who would have been most directly affected with reduced catches because of the proposed increase in minimum size, opposed the agreement. The MFU voiced its concerns that Canada had made too many concessions in the industry negotiations, that the agreement set the precedent of allowing the U.S. Congress to establish Canadian fisheries and conservation rules, and that it would prevent the industry from finding alternative lobster export markets. The Union believed that live lobsters shipped to the United States could be individually tagged, citing Canada as the country of origin, and that a major flaw in the proposed settlement was that the United States had agreed to delay further increases in the minimum carapace size for only three years, rather than indefinitely.

Processors and their associations, on the other hand, generally believed it best to live by the terms of the agreement. The Fisheries Council of Canada appeared before the Committee on 30 October 1990 and strongly endorsed the agreement on the grounds that it would lead to more stable prices for both live and processed products (since fewer small lobsters or "Canadian shorts" would have to be sold at cheaper prices in export markets), that Canada would receive an added margin of safety in terms of conservation and an overall more positive fisheries relationship with the United States, as well as time (three years) to assess the market implications of the 1/16 inch increase.²⁶ On 7 November 1990, the Government of Canada announced its decision not to enter into the agreement, stating there were no biological or conservation reasons for such an increase.

B. Observations and Recommendations

The Committee wishes to make the following general observations.

The U.S. federal government has argued that the 1989 Mitchell amendment was aimed at conserving U.S. lobster stocks and was necessary as a fisheries enforcement measure. The amendment, however, bans the import of small lobster arriving from Canada by road or air. Even if one were to assume that the amendment was, in part, conservation-oriented, it nonetheless places the burden of the United States enforcement effort on the Canadian industry. The Committee considers this to be unacceptable.

Canada enforces different minimum carapace size requirements in recognition of the fact that the biological characteristics of lobsters vary considerably throughout their geographic range. As well, the fishery in Canada is strictly controlled by an elaborate management regime. From a resource management and conservation standpoint and judging from statistics on landings, the Canadian lobster fishery by all accounts, is a success story. The U.S. federal management regime, on the other hand, relies almost exclusively on carapace length. Although processed Canadian lobsters continue to be sold in numerous areas of the United States, state

²⁶ *Proceedings of the Standing Senate Committee on Fisheries*, Issue No. 16, p. 8-14.

government restrictions on imports of processed lobster, which are applied to varying degrees in some eleven states in New England, remain in effect.²⁷

The Committee believes the United States could meet its conservation objectives with a special marking program; live Canadian lobsters shipped to the United States could be individually tagged "Product of Canada." A similar certification program is in use for Canadian scallops. As well, the proposed government-to-government agreement of August 1990 would have rescinded state restrictions on processed lobster in favour of such a scheme. It can also be pointed out that the United States argued, during the deliberations of the FTA Lobster Panel, that the 1989 Mitchell amendment "only applie[d] to whole live lobsters and exclude[d] frozen and canned lobsters, because ... these [were] clearly labelled and readily identifiable according to origin."²⁸

This Committee was told by federal government officials that unlike the recent Pacific salmon and herring dispute, the biological facts in the lobster trade case were not in dispute, and the nature of the question put to the FTA Panel established "the rules of the game," so to speak. In other words, the Panel decision is of great significance because it is interpreting the provisions of the GATT and the FTA.

One witness who appeared before us, the Assistant Deputy Minister (ADM), Free Trade Policy and Operations from the Department of External Affairs and International Trade (DEAIT), expressed his considerable disappointment that the binational dispute settlement panel had decided that Article III of the GATT applies. According to the ADM, the Lobster Panel decision was "novel GATT law" and "there [was] certainly no precedent for this interpretation in the sweeping ambit that [the Panel had] given to Article III."²⁹ Testifying on 1 May 1990, the ADM-Atlantic Fisheries Service from the Department of Fisheries and Oceans agreed with the suggestion that the Panel's Interim Report of 18 April had taken the position that "what is decided in the United States as being good for U.S. fishermen is what will apply in so far as exports from Canada are concerned."³⁰ The testimony before the Committee, however, is somewhat unclear as to whether the Panel decision establishes a legal precedent.

In theory, the benefits of an increase in the carapace size limit would include larger animals entering the fishery (generating greater returns) and greater numbers that could reproduce before being harvested (a more stable stock). Initial losses in landed weight would be compensated by future gains in resource biomass (the total weight of the stock). A number of

²⁷ *Ibid.*, Issue No. 6, p. 8-9. About 87% of the U.S. domestic catch is sold live or freshly cooked at the point of final sale. The remainder is marketed as fresh or frozen meat. About 85% of the total U.S. lobster harvest comes from waters within state jurisdiction. Fishermen holding permits to catch lobsters both in state and federal waters are required to comply with the federal minimum size. The amount of lobsters legally caught in state waters that are below the federal minimum size is believed to be minimal.

²⁸ FTA Panel, Final Report, 25 May 1990, p. 15.

²⁹ *Proceedings of the Standing Senate Committee on Fisheries*, Issue No. 12, p. 7-8.

³⁰ *Ibid.*, Issue No. 8, p. 20.

witnesses, including those with specific scientific expertise, however, believed the overall impact of increasing carapace size in the Scotia-Fundy Region would be marginal. According to one study recently conducted in the Region, "management measures may have played a part" in increasing landings in the 1980s, but "an unidentified and widespread environmental change in the mid 1970s is believed to have been the underlying cause."³¹ The MFU also expressed its concern that scientists had "not been able to establish a relationship between the level of egg production and the number of lobsters [entering] the fishery."³² Many fishermen attribute the catch increase to reduced predation of juvenile lobsters by groundfish.

With the above prominently in mind, the Committee wishes to offer the following recommendations:

- (1) that the Government of Canada conduct a thorough and comprehensive assessment of the implications of the 25 May 1990 FTA Panel decision on the Canadian lobster industry and other sectors of the Canadian fishery;
- (2) that the Government of Canada take all available steps to protect Canadian lobsters from protectionist trade actions in the United States;
- (3) that the Department of Fisheries and Oceans devise a workable tagging or certification program for Canadian lobsters to counter the U.S. argument that, to enforce its size restrictions for reasons of conservation, small lobsters from Canada must be denied entry into the United States;
- (4) that the Department of Fisheries and Oceans continue to pursue its policy of separating fisheries management issues from issues concerning trade and market access; and
- (5) that the Department of Fisheries and Oceans increase its support for research on lobster stocks. Additional studies are needed to increase the Department's knowledge of lobster interactions and interdependencies in the ecosystem. The Department should determine the precise economic and biological effects of changes in minimum carapace size lengths.

³¹ Department of Fishery and Oceans, *The Scotia-Fundy Lobster Fishery: Phase One: Issues and Considerations*, Summary Report, Supply and Services Canada, May 1989, p. 12.

³² *Proceedings of the Standing Senate Committee on Fisheries*, Issue No. 9, p. 12, 26.

LOBSTER MARKETING

A. The Issue

The immediate impact of the December 1989 Mitchell amendment is on the Atlantic side of Newfoundland and Labrador and Nova Scotia, and in southwest Nova Scotia, where "market" lobsters have traditionally been harvested and shipped to the United States. Inshore fishermen are confident that alternative markets can be sought for lobsters under the U.S. federal legal size, and believe that smaller sizes are preferred in overseas markets. Processors and exporters, on the other hand, remain unconvinced that consumer demand in these markets is sufficient to absorb the production being displaced from the American market. The consequences of the U.S. import restriction on the Gulf of St. Lawrence fishery, where the bulk of the harvest is "canner" lobster, are also serious. This is because producers no longer have the option of diverting a proportion of their catch of small market lobsters to the United States.

Many of the facts on market potential at this time are unavailable. The implication of the current situation is however clear: there is a need for cooperation and coordination within the industry to diversify markets, to develop and implement initiatives that will prevent oversupplying markets or market segments currently supplied by Canadian products, and to ensure the maximum effectiveness of marketing investments.

Early in its study, the Committee was informed that a downturn in the marketplace in 1989 had resulted in a surplus inventory for frozen lobster products, consisting mostly of 32-ounce institutional packs and whole frozen lobster (popsicle packs). A number of factors were believed to have contributed to the buildup: consumer resistance to high prices, a drop in consumption in Japan due to the death of Emperor Hirohito, the appreciation of the Canadian dollar in relation to other currencies, larger Canadian landings, and product forms which had not kept pace with changing consumer demand. Witnesses mentioned price competition with analog products made from surimi and other close substitutes such as farmed fish and shellfish, notably cultured shrimp and prawns. Some believed that the worldwide "cultured shrimp phenomenon" had in fact set a price ceiling for the Canadian shellfish industry.³³

The value of inventories left over from the 1989 production season in Prince Edward Island and New Brunswick may have been as high as \$20 million in December 1989. Many processors in the region experienced financial difficulties and some, the Committee learned in early 1990, were on the verge of bankruptcy. A shortage of working capital and credit subsequently resulted in a high volume of sales over a short period of time which, in turn, had the effect of depressing prices. Inventories were reduced to about \$8.5 million by the end of April 1990. The 1990 spring season in the Gulf of St. Lawrence initially saw wharf prices paid to fishermen as low as \$1.25 per pound for canner lobsters and \$1.75 per pound for "markets."

³³ *Ibid.*, Issue No. 5, p. 7, 10; Issue No. 8, p. 8; Issue No. 9, p. 7, 15; Issue No. 12, p. 16, 18. During the period of mourning following Emperor Hirohito's death in 1989, there were fewer public festivities in Japan and less gift-giving. This meant that the Japanese ate less luxury imported seafood.

This decline was apparently not followed by a similar reduction at the retail or food service levels.

The historic solution to working capital (cash flow) problems in the fishery has been *ad hoc* assistance programs or cash injections from the Fisheries Prices Support Board (FPSB).³⁴ Although the lobster processing sector in some provinces had requested the Board to intervene in September 1989, the Committee later learned that the FPSB had turned down the request. At that time, the MFU also asked that a price stabilization program for frozen lobster meat be established, similar to that devised for herring products in 1984.³⁵ The Union warned that the federal government's unwillingness to intervene would, in the longer term, erode its membership's support of Canada's lobster management regime. Others warned that government intervention and price subsidies were vulnerable to countervailing measures by the United States.

Some witnesses believed that the processed lobster sector of the industry produced "tired" product forms and that newer products, partially or fully processed, were required in the increasingly competitive marketplace. Greater emphasis would have to be placed on specialty products (custom packs such as graded claws and tails) convenience foods such as "kitchen-friendly" prepared entrées (e.g., lobster pies, newburgs) for the retail market. Improved packaging would also represent a challenge to the sector, especially for lobster in brine. In Europe, the product was said to suffer from an image problem. The trend for seafood in international markets is towards premium product forms; another prerequisite would therefore be to ensure that products are of the highest quality to reflect their upscale image and to ensure that maximum returns to both fishermen and processors are gained from the harvest.

It is noteworthy that all Canadian seafood, including lobster, faces rigorous federal inspection standards which are second to none in the world, including those in the United States.³⁶ Representatives of Clearwater Fine Foods pointed out to the Committee that more than 10% of all lobsters caught in Canada go to the garbage can before they reach the consumer. A

³⁴ *The Fishery Prices Support Act*, which came into force in 1947, gave the FPSB the statutory powers of a government corporation. The Board is responsible for investigating and, when appropriate, recommending support for the prices of fishery products where there have been declines. The basic principle of the Act is to protect fishermen against sharp losses of income due to causes beyond the control of the fishermen or the industry. The Board, subject to approval of Cabinet, is empowered to purchase fishery products at prescribed prices, to sell or otherwise dispose of such products, or to make deficiency payments to the producers.

³⁵ *Proceedings of the Standing Senate Committee on Fisheries*, Issue No. 9, p. 8, 28. During fiscal year 1984-85, the FPSB offered to purchase 10,000 tonnes of herring products, to be held by the Board and resold to the industry when market conditions improved or six months from the date of sale to the board. It purchased over 2,800 tonnes of herring products valued at \$2.6 million.

³⁶ DFO's Inspection Services ensure that Canadian fish and fish products meet appropriate grade, handling, identity, process, quality and safety standards, and that imported seafood meet minimum standards of identity, quality and safety. Authority for these responsibilities is derived from the *Fish Inspection Act* and Regulations, the Sanitary Control of Shellfish Fisheries Regulations and sections of the Food and Drug Regulations and Consumer Packaging and Labelling Regulations. At the time of writing, the United States does not have a mandatory fisheries inspection system. The U.S. Department of Commerce operates a voluntary, fee-for-service program which uses a government inspection mark.

most important suggestion was that all sectors in the industry should increase awareness of the appropriate practices for handling lobsters, from the time they are caught to when they reach the final consumer. It was explained that mishandling live lobster can result in losses during subsequent transport, storage and export; the cost of this is later reflected in the consumer purchase price.

Prior to 1986, the marketing activities undertaken by DFO consisted of three broad sub-activities: promotions, policy and extension services, and market planning and intelligence. Under a privatization initiative that year, the Department disbanded its Marketing Directorate and the federal government ceased to be directly involved in generic advertising. Some of the Department's marketing/promotion efforts were transferred to DEAIT. Although "basic market analysis is available from the Market Analysis Group within the Economic and Commercial Analysis Directorate of DFO,"³⁷ the Group consists of five people and is "relatively small in the overall scheme of things."³⁸

In its 1989 study on fish marketing, the Committee concluded that East Coast seafood was an "under-marketed" protein food, and that as suppliers of commodity-type products, the Canadian fishing industry had in the past paid more attention to production -- fishing whatever can be caught and then trying to sell that product -- than marketing.³⁹ Marketing, as opposed to selling, requires long term planning and takes into account the needs of specific market segments as well as availability of resource. Clearly, for Canadian lobster, a more "market-driven" and strategic approach is required, one which focuses on the special needs of the marketplace, rather than on the industry's capabilities or preferences. The Committee acknowledges that for processed lobster, some companies have demonstrated a commitment to marketing, and have taken great strides in developing new products for the retail and food service markets; the smaller concerns, however, may not have the in-house expertise or the financial resources needed to undertake such activities.

On the issues facing the Canadian lobster industry, DFO commissioned four studies by outside consultants: a U.S. consumer preference study, a study on the distribution system in the United States, a study on the Canadian lobster market, and a shrimp market study. A three-year \$2.4 million federal-provincial lobster promotion program to bolster initiatives aimed at alleviating problems in lobster marketing was also announced on 11 May 1990. The program is administered by the governments of New Brunswick and Prince Edward Island under existing federal-provincial cooperation agreements to support domestic sales promotion of lobster. Some witnesses believed that such promotions should have been carried out during the good years, not

³⁷ Department of Fisheries and Oceans, "Response to the Marketing of Fish in Canada: the Standing Senate Committee on Fisheries, Report on the East Coast Fisheries -- Interim Report III," November 1990.

³⁸ Prior to 1986, the Market Analysis Group was allocated about 35 PYs. See Canada, House of Commons, *Minutes of Proceedings and Evidence of the Sub-Committee on Fisheries of the Standing Committee on Forestry and Fisheries*, Issue No. 10, 7 June 1990, p. 1-34.

³⁹ Standing Senate Committee on Fisheries, *The Marketing of Fish in Canada: Report III on the East Coast Fisheries*. December 1989, p. 3, 83, 118.

after the fact, and that such advertising should be continuous and self-sustaining.

The federal government through the DEAIT has an active program to support Canadian seafood exporters, including lobster. The main objectives are to help exporters take advantage of opportunities generated in part by the trade negotiation process and to improve the industry's competitive performance. The Department's efforts towards market diversification are made through its Trade Commissioner Service. The Committee was informed that lobster had been selected as a priority theme for fiscal year 1989-90 (Other priority areas include salmon, value added products, and underutilized species). In 1988-89, 14 Canadian posts abroad identified export opportunities for lobster; in 1989-90, 20 posts did so. These prospects are, in turn, described and disseminated to all Canadian fish exporters, either directly or through publications, especially the *Annotated Guide to Canadian Fish Export Opportunities*. With regards to promotions, DEAIT has identified more than 45 events -- conferences, seminars, buyer missions, seafood shows and trade fairs -- that provide Canadian exporters with opportunities to promote lobster in fiscal year 1990-91 (Appendix 2). Under these various programs, producers themselves are responsible for marketing their products.⁴⁰

Presentations were made to us on the necessity for a lobster trade association, agency or organization. The MFU called for a lobster marketing agency (not to be confused with a marketing board) jointly controlled by fishermen and processors to build market opportunities for lobster. Far from suggesting the government should enter into the business of selling lobster, the Union outlined the need for coordinated market intelligence and research within the industry, as well as a cooperative effort in the area of generic promotions, and even suggested "that fishermen themselves would agree to a percentage deduction [to fund such an enterprise] if there were assurances that they would share in the benefits of the new markets" developed.⁴¹

The Committee is very much encouraged that some industry participants have recently banded together to form the Canadian Atlantic Lobster Promotion Association (CALPA). The Association's primary mission is the generic promotion of Canadian lobster and Canadian lobster products in world markets. Testifying on 20 November 1990, CALPA's Executive Director explained that the four goals identified in its business plan for the fiscal year 1990-91 would be: to develop market intelligence, improve industry communications, develop promotional campaigns for the benefit of member suppliers for both live and processed lobster, and promote within the industry the benefits of quality products and professional business standards. Small to medium-sized companies, it seems, would especially benefit from membership in this type of organization.

CALPA is managed by a volunteer board of directors made up of 12 representatives from lobster companies throughout the five Atlantic provinces. As at 20 November 1990, its

⁴⁰ *Proceedings of the Standing Senate Committee on Fisheries*, Issue No. 6, p. 5-8; Issue No. 12, p. 17. The DEAIT also works on a number of individual reports and studies in conjunction with the Canadian Association of Fish Exporters (CAFE), which is a national trade association representing Canadian seafood exporters.

⁴¹ *Ibid.*, Issue No. 9, p. 9-10, 16-18, 21, 28.

membership stood at 30, representing a large percentage of the industry's total volume of business, but a smaller percentage of the total number of companies in the region.⁴² The Association was initially financed by the five provincial governments, each contributing \$5,000 for start-up costs. Its major source of funding was expected to be membership fees based on the amount of live lobster handled by individual companies. The Executive Director indicated that CALPA would be seeking additional financial support from other sources, including the Atlantic Canada Opportunities Agency and the Program for Export Market Development only once it had increased its membership (and funding) base.⁴³

Although CALPA may be the only lobster promotion group of its kind in North America, the Committee wishes to point out that there are other types of organizations which have developed structures which allow them to manage generic advertising or collect levies from those who would benefit from such promotions. Seafood, blueberry and egg producers, cattle ranchers, producers of dairy commodities etc..., have formed similar associations and are reportedly examples of successful cooperative effort in this sphere.⁴⁴

B. Observations and Recommendations

Immediate and cooperative efforts must be undertaken in lobster marketing. Industry marketing organizations are, in our view, long overdue; they provide the opportunity for developing private sector capability in the field and places the direction of the industry firmly in its hands. The Committee can only hope that with common information about markets, much of the animosity and mistrust which characterizes the lobster sector will be reduced.

In the United States, the farmed-catfish industry's astounding success is due, in large measure, to what has been described as very methodical, deliberate, creative and sustained marketing and promotional efforts. In this endeavour, the industry is assisted by The Catfish Institute (TCI), an organization founded by Mississippi catfish farmers and processors in 1986 and funded by feed producers at U.S. \$1.5 to 2 million annually. Although farm-raised catfish is an aquaculture product and therefore differs from those of traditional (capture) fisheries, it may be said that:

⁴² *Ibid.*, p. 5, 8, 10.

⁴³ *Ibid.*, p. 9, 12, 16, 24, 25.

⁴⁴ A Marketing Council for Norwegian farmed salmon reportedly budgeted \$9 million for marketing and promotions in 1989; Scotland's budget is estimated at \$6 million. B.C. Salmon Farmers Association, *Current Developments in World Salmon Markets: Implications for the Canadian Salmon Farming Industry*, DFO Economic and Commercial Analysis Report No. 46, January 1990, p. vi. See also T.J. Doherty, "B.C. Makes its Mark in Marketing," *Pacific Fishing*, January 1991, p. 24; Task Force on Atlantic Fisheries, *Navigating Troubled Waters: A New Policy for the Atlantic Fisheries*, Supply and Services Canada, December 1982, p. 159-160; Standing Senate Committee on Fisheries, Report III, December 1989, p. 106.

The catfish industry stands out as an example of what is possible -- when people agree to work together even though they are intense competitors, when they put on a united front in their markets for the good of the industry overall, when they believe in promotions and marketing on a generic as well as individual basis, when they are willing to accept change even though its consequences are uncertain, and when they are willing to fund initiatives even though there is always the chance they might not work out.⁴⁵

In its Third Report, of December 1989, the Committee strongly endorsed the concept of marketing councils as outlined in the Report of the Task Force on Atlantic Fisheries. These bodies would identify opportunities, establish marketing strategies for their products, and plan and undertake generic promotion with government support.⁴⁶ The Committee also recommended that the federal government enlist the wider support of the East Coast industry in funding generic promotion of its products domestically and internationally, that a means of self-assessment be introduced to finance future generic advertising, and that federal funding be provided on a cost-shared basis.⁴⁷

There is little doubt that Canadian seafood in general needs more generic advertising in domestic and international markets. As previously mentioned, DFO terminated its promotional activities in 1986 as it was the federal government's intention to privatize all such marketing efforts. To assist industry, transitional financial support of \$1.5 million was provided from 1985 to 1989 to encourage market promotion. As part of the Atlantic Fisheries Adjustment Program, the federal government plans to contribute up to \$1.75 million over the next five years to the Canadian Seafood Advisory Council (a group of Canadian companies) to promote seafood in the domestic market. A three year \$2.4 million federal-provincial lobster promotion program was also announced last year.

In contrast, the American Fish and Seafood Promotion Act was passed in 1986, creating the U.S. National Fish and Seafood Promotion Council and product-specific councils. The legislation initially provided the Council with appropriations of U.S. \$8.75 million over three years, ending in September 1990. An amendment to the *Magnuson Act* in late 1990 reportedly reauthorizes to the Council U.S. \$2 million for a period of 15 months (through to 31 December 1991), during which time a referendum will be held to determine the American industry's

⁴⁵ Jane Barnett (Canadian Association of Fish Exporters), *A Review of the U.S. Farm-Raised Catfish Industry and Its Implications for Canadian Groundfish Exporters*, DFO Economic and Commercial Analysis Report No. 52, July 1990, p. 32. In 1970, 5.7 million pounds of catfish (round weight) were processed in the United States; in 1990, 342 million pounds were processed.

⁴⁶ Task Force on Atlantic Fisheries, December 1982, p. 303-304. The review and consultation process which followed the Task Force Report concluded that no government intervention by way of Marketing Councils (for groundfish) was warranted for the following reasons: economic development would be achieved through private initiative, deregulation and private investment; the restructuring of the Atlantic fishing industry would improve its ability to respond to market requirements and develop export markets; and the buoyancy of seafood markets had made fish processors financially more independent.

⁴⁷ Standing Senate Committee on Fisheries, Report III, December 1989, p. 93-94, 107.

willingness to fund future generic promotions by means of a legislated check-off system on seafood, both landed and imported.⁴⁸

Lobster should be an easy product to promote. World demand for seafood is growing and Canada has a strong supply capability for lobster -- a seafood that most of the world has never been exposed to. Canadian lobster offer a much greater range of sizes and products than is produced in the United States, and would therefore fill a greater number of specialized niches. There may, however, be certain potential benefits for Canada in jointly promoting lobster with the American industry in the U.S. market. According to the President of the FCC, "Canada, currently through the CALPA and federal provincial agreements, is promoting lobster which gives [the American] industry a free ride."⁴⁹ Much can also be done to capitalize on the unique qualities of Canadian lobsters, which are said to be harder shelled with firmer and sweeter meat.⁵⁰

The Committee recommends:

- (6) that all sectors of the lobster industry consider supporting marketing councils or organizations to develop market intelligence, improve industry communications and coordinate generic promotions. These councils or organizations could be assisted by the federal government and the governments of the five Atlantic provinces. Any federal funding could be provided, initially, on a cost-shared basis. Generic campaigns should be coordinated to avoid a duplication of effort and to maximize their effectiveness and cost-efficiency;
- (7) that federal and provincial government departments and agencies provide the assistance necessary to lobster processors who wish to become better equipped in producing new types of value-added products using new packaging technologies;
- (8) that the Department of External Affairs and International Trade and the Department of Fisheries and Oceans, in consultation with Canadian lobster exporters, determine whether cooperative structures between Canada and the United States would be of benefit to the Canadian industry in promoting lobsters in the United States;
- (9) that the Department of External Affairs and International Trade increase its contacts with lobster processors and buyers on the East Coast, and make a special effort to further promote the industry and provide it with market information and reports prepared by Canada's trade missions abroad;

⁴⁸ In 1987, Canada was for the tenth consecutive year the world's leading exporter of seafood, in terms of value. The United States, however, displaced Canada from its number one position in 1988.

⁴⁹ *Proceedings of the Standing Senate Committee on Fisheries*, Issue No. 16, p. 11.

⁵⁰ Department of External Affairs and International Trade, Fisheries Division, "Canadian Lobster: An Importer's View," *The First Canadian Lobster Conference: Canada House*, 12 October 1989, p. 15.

- (10) that the Department of External Affairs and International Trade assess the effectiveness of its involvement in the marketing of Canadian lobster. The results of this assessment should be made available to the industry and to parliamentary and government Committees;
- (11) that governments, both federal and provincial, encourage lobster producers in the region to work cooperatively toward creating a more effective distribution system for live and processed lobsters. This may involve obtaining additional air cargo space and investing in holding capacity for live lobsters in new market areas and at some airports; and
- (12) that the Department of Fisheries and Oceans provide the industry with relevant educational materials on proper storage, shipping and handling techniques. Canada's Fish Inspection Program should be used as a marketing tool to create awareness among domestic and international consumers that Canadian seafood has undergone the most stringent quality control system in the world. Consideration should be given to the development of a seal indicating high quality for live and processed lobster, similar to that used by the aquaculture industry.

TABLE 1

NUMBER OF LICENSED CANADIAN LOBSTER FISHERMEN, 1989

Licensed Fishermen		
<u>By DFO Region</u>	<u>Number</u>	<u>Percentage</u>
Scotia-Fundy	3,015	26
Quebec	643	6
Gulf	4,693	40
Newfoundland	3,194	28
TOTAL	11,545	100
<u>By Province</u>		
Newfoundland and Labrador	4,508	39
Quebec	643	5
Prince Edward Island	1,306	11
New Brunswick	1,676	15
Nova Scotia	3,412	30
TOTAL	11,545	100

Source: Department of Fisheries and Oceans, Economic Analysis and Statistics Division, 23 January 1991.

TABLE 2

LOBSTER LANDINGS BY PROVINCE, 1985-1989

(Quantity in Tonnes)						
Year	N.S.	N.B.	P.E.I.	Quebec	Nfld.	Total
1985	14,236	6,804	6,541	2,137	2,920	32,638
1986	17,958	6,964	8,252	2,268	2,555	37,997
1987	18,427	7,456	8,753	2,659	2,221	39,516
1988*	18,577	7,334	9,537	2,532	2,512	40,492
1989*	19,077 ¹	9,155 ²	8,946	3,203	3,100 ³	43,481 ⁴

(Value in \$'000)						
1985	101,550	32,243	30,126	11,433	17,787	193,139
1986	140,304	34,215	38,698	13,569	15,473	242,259
1987	160,350	42,226	46,881	18,349	15,239	283,045
1988*	140,953	43,618	48,868	17,179	14,263	264,881
1989*	138,813 ⁵	44,185 ⁶	44,050	18,798	17,834 ⁷	264,680 ⁸

* Preliminary figures

¹ 80.2% in Scotia-Fundy

² 91.6% in the Gulf Region

³ 53.3% in the Gulf Region

⁴ 44% in the canner category

⁵ 84.9% in Scotia-Fundy

⁶ 87.1% in the Gulf Region

⁷ 52.0% in the Gulf Region

⁸ 34% in the canner category

Source: Department of Fisheries and Oceans, Economic Analysis and Statistics Division, 23 January 1991.

TABLE 3

SELECTED STATISTICS ON CANADIAN LOBSTER EXPORTS, 1989

Destination	(Quantity in Tonnes)		(Value in \$'000)		Otherwise Processed	
	Live	Frozen	Quantity	Value	Quantity	Value
	<u>Quantity</u>	<u>Value</u>	<u>Quantity</u>	<u>Value</u>	<u>Quantity</u>	<u>Value</u>
U.S.	12,773	119,386	585	10,429	3,070	71,903
Europe	3,135	36,673	3,351	28,136	298	4,513
Japan	739	9,348	513	5,085	29	327
Other	103	1,562	40	224	9	42
TOTAL	16,750	166,969	4,489	43,874	3,406	76,785
All Product Forms						
	<u>Quantity</u>	<u>Value</u>			<u>Percentage</u>	
U.S.	16,428	201,718			70.1	
Europe	6,784	69,322			24.1	
Japan	1,281	14,760			5.1	
Other	152	1,828			0.7	
TOTAL	24,645	287,628			100	

Source: Department of Fisheries and Oceans, Economic Analysis and Statistics Division, 23 January 1991.

TABLE 4

CANADIAN LOBSTER EXPORT MARKET TRENDS, 1985-1989
(Value in \$'000)

<u>Live</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>
U.S.	116,529	141,032	150,410	145,513	119,386
Europe	14,585	22,068	28,323	35,151	36,673
Japan	2,877	5,788	8,971	6,554	9,348
Other	1,224	2,091	4,042	5,433	15,262
Total	135,215	170,979	191,746	192,651	166,969
<u>Processed</u>					
U.S.	60,068	76,582	86,039	88,568	82,332
Europe	14,851	17,902	24,009	35,451	32,649
Japan	529	2,891	10,147	16,369	5,412
Other	1,920	3,012	2,918	4,412	266
Total	77,368	100,387	123,113	144,800	120,659
Grand Total	212,583	271,366	314,859	337,451	287,628

Source: Department of Fisheries and Oceans, Economic Analysis and Statistics Division, 23 January 1991.

LOBSTER FISHING AREAS ON THE EAST COAST

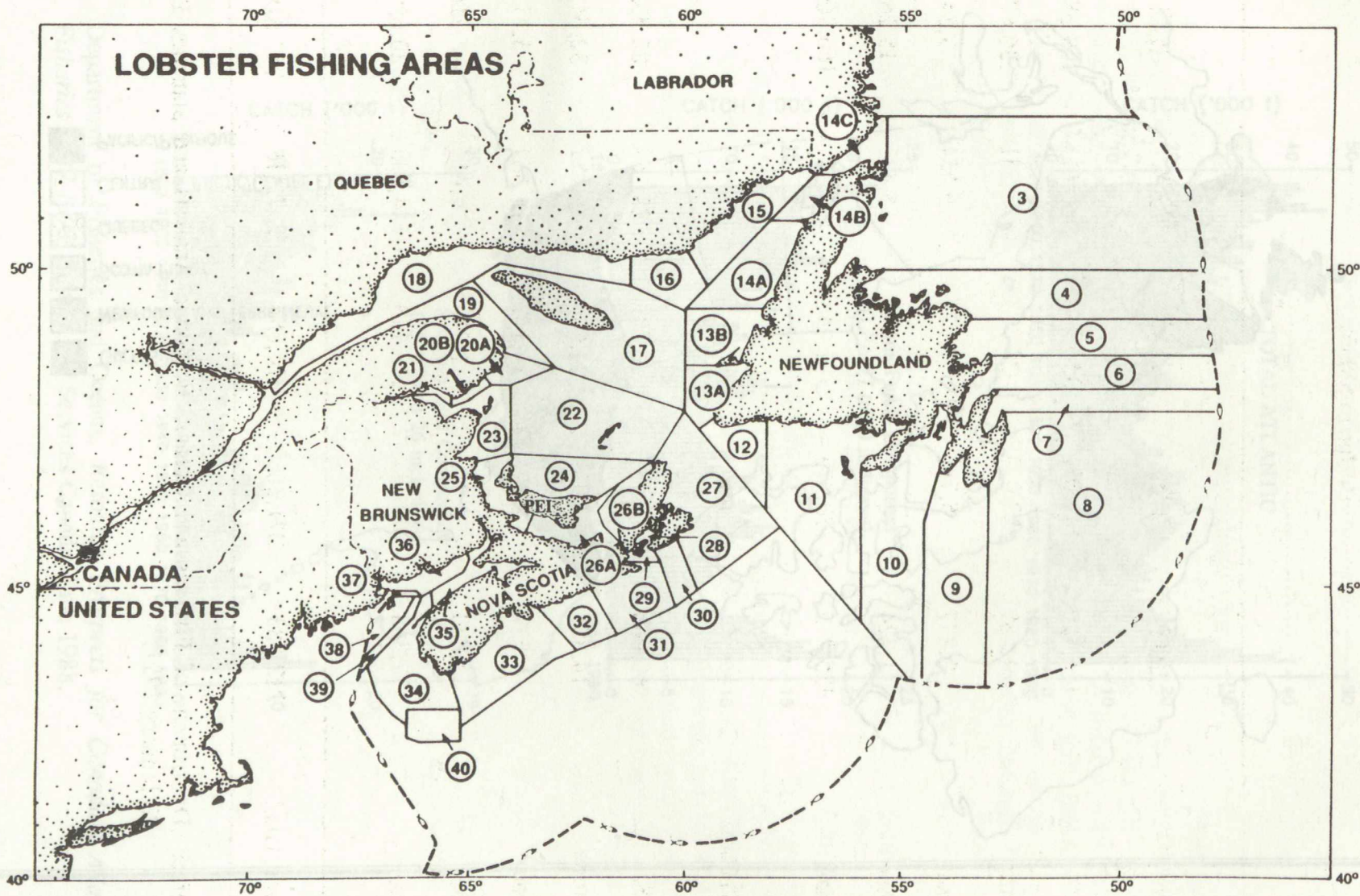
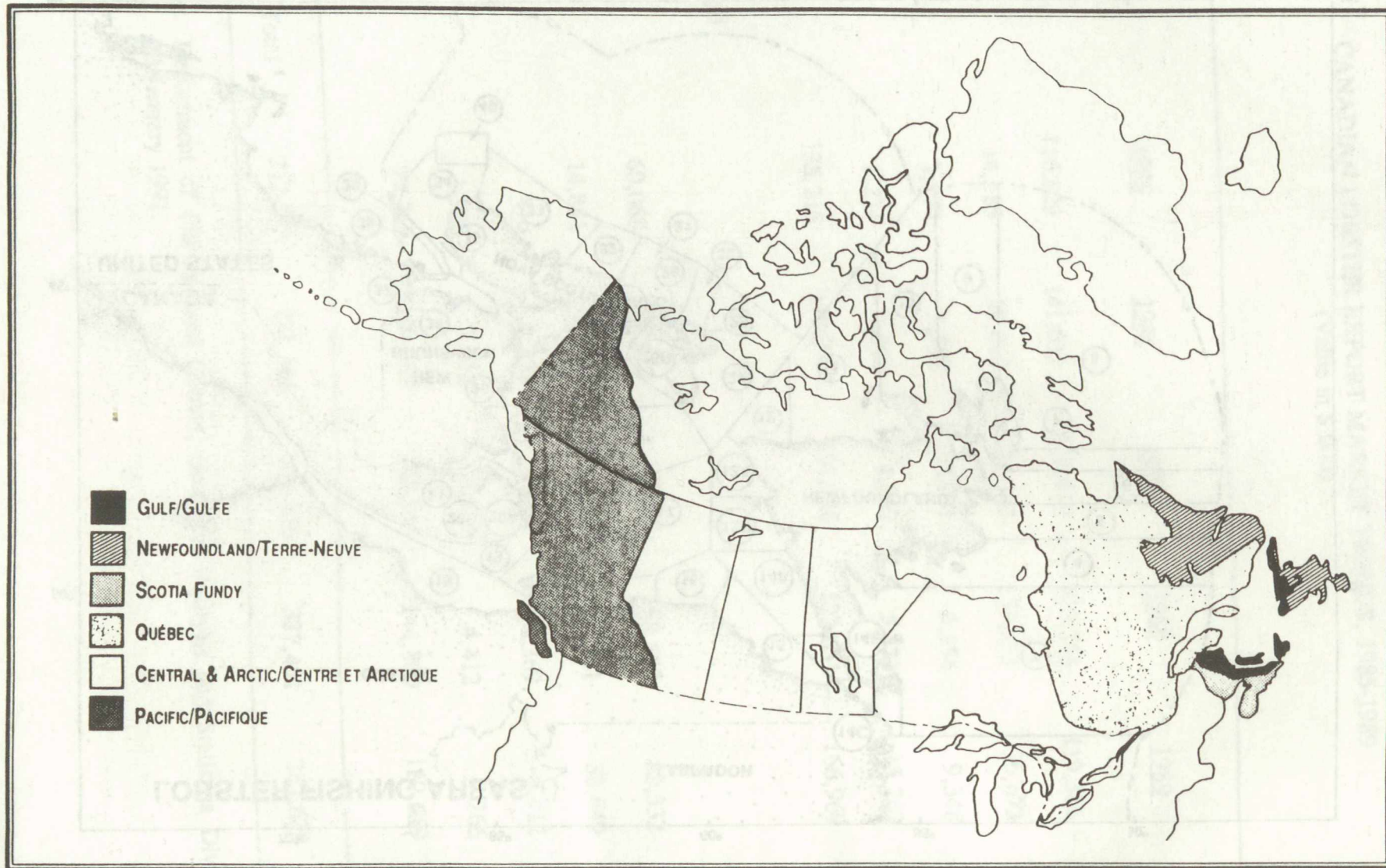


CHART 1

25

Source: Department of Fisheries and Oceans.

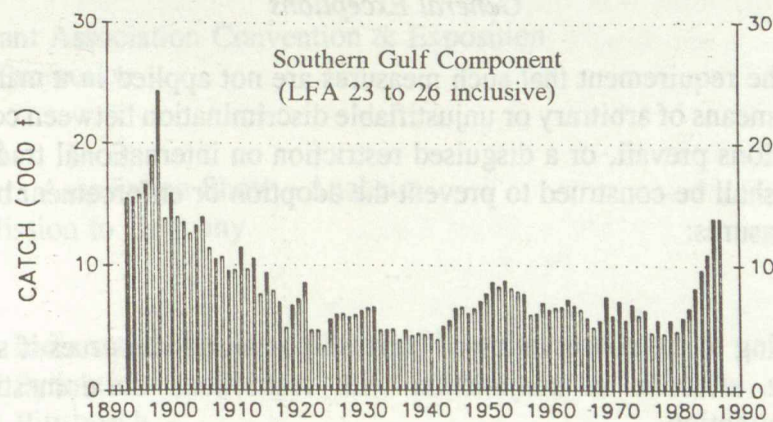
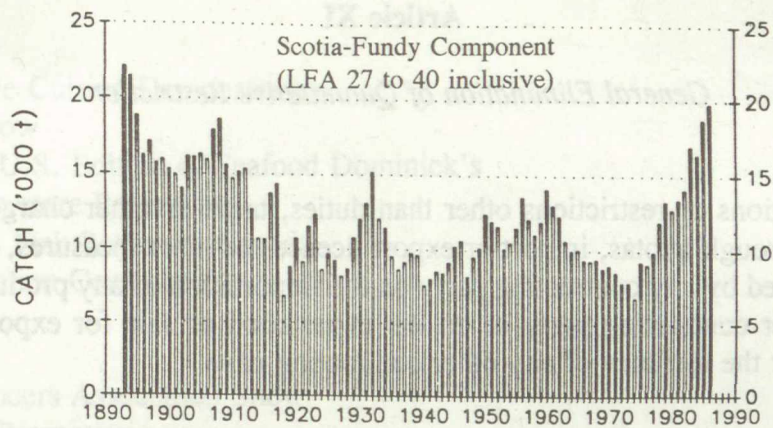
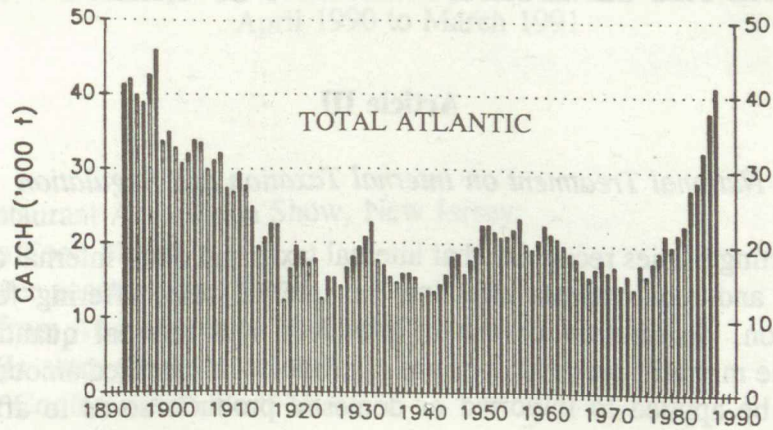
DEPARTMENT OF FISHERIES AND OCEANS MANAGEMENT REGIONS



Source: Department of Fisheries and Oceans.

EXHIBIT 1

CANADIAN LOBSTER LANDINGS, HISTORICAL OVERVIEW



Source: Department of Fisheries and Oceans, *Resource Prospects for Canada's Atlantic Fisheries 1989-1993*, Supply and Services Canada, June 1988.

APPENDIX 1**TEXT FROM THE GENERAL AGREEMENT OF TARIFFS AND TRADE****Article III***National Treatment on Internal Taxation and Regulation*

1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.

Article XI*General Elimination of Quantitative Restrictions*

1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

Article XX*General Exceptions*

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

...

- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

APPENDIX 2

Department of External Affairs and International Trade Promotional Projects,
 April 1990 to March 1991

	Post
April 1990	
Garden State Restaurant Association Show, New Jersey	New York
Minneapolis Solo Food Show	Minneapolis
Solo Frozen lobster generic promotion	Boston
Buyers Mission from Atlanta area to Maritimes	Atlanta
Happy Herman (In-store food promotion)	Atlanta
Seafood Outlook Conference in St. John's (Incoming European Buyers)	St. John's
Lobster Display in Seoul	Seoul
May 1990	
Solo Food Show	Detroit
Canadian Chef de Cuisine Demonstration	New York
Solo Seafood Show	Chicago
Launch of First U.S. Edition of Seafood Dominick's Supermarkets (In-store Promotion)	Chicago
United Kingdom Fish Buyers to Canada	London
Shellfish Association Conference	London
June 1990	
Texas Retail Grocers Association Show	Dallas
Special Lobster Promotion	Paris
Fisheries Mission to Italy	Milan
August 1990	
Western Restaurant Association Convention & Exposition	San Francisco
Special Lobster Promotion	Tokyo
September 1990	
California Grocers Association Show - Anaheim	Los Angeles
Fish Products Mission to Germany	Dusseldorf
October 1990	
Solo Food Show Indianapolis	Detroit
Solo Food Show Syracuse	Buffalo
Solo Food Show Pittsburgh	Cleveland
Ohio Retail Grocers Association Show Columbus	Cleveland
New York State Restaurant Association Show	Buffalo

Canada In-store Tengermann	
Promotion Federal Republic Germany	Dusseldorf
Canada Exhibit at Salon International de l'alimentation	Paris
New Fish Exporters Mission to Europe	Paris
Canadian Fish/Shellfish Store Promotion	Madrid

November 1990

Incoming Trade Commissioners from Major Markets	
Visit Firms in Maritimes - "Market Place"	Various
Canadian Exhibit at Seafare Southeast International	
Seafood Expo, Orlando	Atlanta
Seafood Promotion in San Juan, Puerto Rico	Atlanta
Solo Gourmet Food Show	Cleveland
Atlanta Southeast Hospitality and Food Service Show	Atlanta
Seafood/Lobster Promotion, Switzerland	Bern
Restaurant Live Lobster Promotion, Denmark	Copenhagen

February 1991

Boston Solo Food Show	Boston
Canada Exhibit at Seafare International, Long Beach	Los Angeles
Solo Food Show	Seattle
Upper Mid-West Hospitality Show	Minneapolis

March 1991

Solo Seafood Show	Detroit
Canada Exhibit at Boston International Seafood Show	Boston
Solo Food Show	Chicago
Taste of Canada (In-store Food Promotion)	Sydney
Canada Exhibit at Food-Ex	Tokyo
Seafood Promotion, Greece	Athens

Other Lobsters Promotions, 1990-1991

Sales Mission to Austria and Hotel Promotion	Vienna
Promotion of Dill cooked Lobster	Helsinki
Lobster/food Promotion	Oslo
Mission of Korean Buyers to Canada	Seoul
Food Promotions in Singapore	Singapore
Canadian Lobster Exporters Mission to Hong Kong,	
Chef Demonstration and In-store Promotion	Hong Kong
In-store Food Shows and Restaurant Promotion Taiwan	Taipei

APPENDIX 3

WITNESSES

Second Session -- Thirty-fourth Parliament

ISSUE No.	DATE	ORGANIZATIONS AND WITNESSES
5	February 13, 1990	<p>Westmorland Fisheries Ltd.: Mr. Yvon J. Gaudet Vice-President and Director of New Brunswick Fish Packers' Association</p> <p>Fisheries Council of Canada: Mr. Ron W. Bulmer President</p> <p>Department of Fisheries and Oceans: Mr. Ron Crowley Director General Economic and Commercial Analysis Directorate Policy and Program Planning</p> <p>Mr. Bryson Guptill Director Commercial and Market Analysis</p>
6	February 20, 1990	<p>Department of Fisheries and Oceans: Mr. Ron Crowley Director General Economic and Commercial Analysis Directorate Policy and Program Planning</p> <p>Mr. Bryson Guptill Director Commercial and Market Analysis</p>
	March 27, 1990	<p>External Affairs and International Trade: Dr. Richard Ablett Director Fisheries and Fish Products Division International Trade Development Branch</p> <p>Mr. D.G. Waddell Director General U.S. Trade Policy Bureau U.S. Trade Policy and Operations</p> <p>Mr. Robert Hage Deputy Director and Senior Counsellor Free Trade Accord</p>

ISSUE No.	DATE	ORGANIZATIONS AND WITNESSES
		Mr. François Laberge Trade Commissioner Fisheries Division
8	April 3, 1990	Canadian Association of Fish Exporters (CAFE): Mr. Nilo Cachero President
	May 1, 1990	Department of Fisheries and Oceans: Mr. C.W. Shinnars Assistant Deputy Minister Atlantic Fisheries Service
9	May 8, 1990	Maritime Fishermen's Union: Mr. Michael Belliveau Executive Secretary Mr. John Kearney Research and Policy Advisor
12	May 29, 1990	Department of External Affairs and International Trade: Mr. Konrad von Finkenstein Assistant Deputy Minister Free Trade Policy and Operations Mr. Serge April Director General Legal Affairs Bureau (JCD) Department of Fisheries and Oceans: Mr. Aaron Sarna Director Pacific Rim & Trade Policy Division International Directorate Mr. Jim Jones Director Program Coordination & Economics Analysis Branch, Gulf Region

ISSUE No. DATE ORGANIZATIONS AND WITNESSES

14 June 19, 1990

Clearwater Fine Foods:

Mr. Colin MacDonald
Executive Vice President

Mr. Eric Roe
Director of Public Relations

15 October 23, 1990

Department of External Affairs and International Trade:

Mr. D.G. Waddell
Director General
United States Trade Policy Bureau

Mr. R.G. Hynes
Deputy Director
Trade Law Section
Principal Counsel for Free Trade Agreement

Department of Fisheries and Oceans:

Mr. Jean-Eudes Haché
Assistant Deputy Minister
Atlantic Fisheries Service

Dr. Victor Rabinovich
Assistant Deputy Minister
International

Mr. Chris Allen
Acting Chief
Resource Utilization
Resource Allocation Branch
Atlantic Fisheries Service

Mr. Ken Roeske
Senior Trade Policy Officer
International Directorate
International

Mr. James S. Beckett
Director
Fisheries Research Branch

ISSUE No. DATE ORGANIZATIONS AND WITNESSES

16 October 30, 1990

Fisheries Council of Canada:
Mr. Ron W. Bulmer
President

17 November 20, 1990

Canadian Atlantic Lobster Promotion Association:
Mrs. Bernardine L. Wood
Executive Director

