

REGULATION, ILLEGALITY AND SOCIAL CONFLICT IN THE NOVA SCOTIA LOBSTER FISHERY¹

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Introduction

"Riot Police Block Entrance to D.F.O. Office as Fishermen Protest" (*The Sou'wester*, 1983)

"Nine charged with piracy of Government vessel" (*Courier*, 1983)

"Nova Scotia's Lobster Wars" (*MacLeans*, 1984)

"Minister concedes black market exists in fishery" (*Chronicle-Herald*, 1986)

In Nova Scotia today, an intense and growing conflict between those fishing the seas and state agencies has culminated in a significant law and order problem in the lobster fishery. Tensions between fishers and the state reached unparalleled heights when fishery department offices were stormed and occupied, boats were burned and officers were assaulted. Conflicts over rules, regulations, procedures and enforcement are now volatile. Violations are increasing, as are prosecutions and convictions of fishers for illegal fishing. Central to these conflicts has been a

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gradual process of legal-regulatory change whereby informal, community-based property rights, management strategies and folk forms of resource knowledge and use have been contested, redefined and outlawed by new state property right claims and social regulations about resource development and management.

The first part of this paper outlines the history of government legislation and regulation as it relates to the Nova Scotia lobster fishery. This section provides a brief historical sense of the state regulatory regime, the customs and the conflicts of the fishery. Next, a study of past and present trends in piscatorial illegality is presented. This discussion involves an examination of government prosecutorial records from 1975 - 1986, and an analysis of the character of contemporary social conflict in the fishery. Finally, we examine the politics of fisheries law - enforcement. This entails a study of the enforcement branch of the Federal Department of Fisheries and Oceans (D.F.O.) and the problems and social conflicts entailed in enforcing divergent customary and legal norms. Our conclusions suggest why and how the 'case' of the Nova Scotia lobster fishery represent a situation in which the limits of state law enforcement can be clearly observed.

Regulating the lobster fishery up to 1960

The birth of the Canadian commercial lobster fishery was in the mid-nineteenth century. By 1873 there were forty three canneries in Nova Scotia, most of them operating in the southwestern part of the province (Found, 1912; Innis, 1954; Pringle et al. 1983; and Scott and Tugwell, 1981). At first lobsters were captured by hand or by gaff, hook or spear. Then followed the hoop trap, a number of which hooked together formed a trawl, and finally the lobster trap (Knight, 1967:57).

The period between 1850 and 1873 was characterized by a laissez-faire approach to state management (Barret, 1983). Lobstering was managed as a communal property resource. There were few regulations controlling the commons and community customs structured the rights of access, management, and stock protection. Informal norms among fishers set the fishing boundaries, defined the 'shares' of the commons, and limited the effort. Fishers established formal and informal property rights to territoriality, to community exclusivity, and to information about and management of what were considered to be rights to particular local concentrations of fish (Acheson, 1972, 1975, 1988, Anderson and Styles, 1973; Foreman, 1979; Martin, 1979). Relatively stable moral economies on a harbour by harbour basis emerged. Communities claimed to hold rights of piscary even though they did not own ocean waters or frontage (Davis, 1984:133-164; McCay 1984). Occupational fishing cultures were strong and

marked by definite insider/outsider rules, by mutual welfare, by folk wisdom about the sea and its resources, and by a code of fishing conduct (Acheson, 1988; Martin, 1979; Mathews and Phyne, 1988; McCay, 1978; Miller and Van Mannen, 1979). Boat and gear were not usually restricted but territory was closely guarded. Interlopers were not tolerated. Sanctions were quick and harsh. Transgressors were forced out or put out of business. Community boundaries were sacrosanct. Property rights and territoriality overlapped; these were the linchpin "of fish management, more so than fishing effort or fish population regulation" (Anderson and Styles, 1973). At bottom, common use rights were not open to all but they were exclusive to communally defined groups and they seem to have been co-operatively shared and managed (Ciriacy-Wantrup and Bishop, 1975; Davis, 1984).

By the mid 1880s, lobstering began to undergo a major transformation. Markets expanded and the resource was commercialized. Canneries increased from 43 in 1873 to a high of 277 in 1900 - an increase of 644% in 27 years (Pringle et al 1983). Landings, landed values, and fish prices escalated. In 1886 alone 100 million pounds of lobster was landed (Wilder, 1965:21). Not surprisingly, with cannery expansion and avarice came resource depletion and state intrusion. Stocks were heavily fished inshore and as well in the near shore. Technological innovations in the form of gas engine boats and closed-end hoop nets allowed fishers more efficiency and effectiveness. Capitalization and commodification of the resource undermined the communal use-rights of fishers. Privatization resulted with "cannery operators establishing implicit property rights over particular fishing grounds" (Scott and Tugwell, 1981:26). By 1920, resource depletion was a social tragedy of the commons, spurred on by the pursuit of profits.

State intervention took the form of regulatory measures: district controls, seasonal closures, lobster size restrictions, trap size capture rules and prohibitions on capturing egg-bearing female lobsters (DeWolf, 1974; Found, 1912; Scott and Tugwell, 1981). From 1873 to 1927 federal government legislation, amendments, regulations, and commissions sought to limit fishing effort, while at the same time managing it for capital exploitation. In the process the capacity of fishers to informally enforce co-management responsibilities diminished, because their collective identity as co-managers was being eroded by the state as *the manager* (McCay and Acheson, 1987:9).

The years between 1927 and 1960 were ones of further state intervention. The MacLean Commission (1934) recommended that a carapace length size limit be enforced at three and one sixth inches and that fishers be prohibited from fishing lobsters in more than one season in any year. In 1947, lobster fishing districts were redefined by the state. Then there were further alterations in carapace size

and overall length to three and three sixteenth inches (Wilder, 1965). Regulatory measures were extended as well to gear and vessels. As Scott and Tugwell (1981:27) note, "capital, vessel and gear mobility were drastically restricted by the introduction of a regulation which stated that no one could use in lobster fishing any boats, traps or other lobster fishing equipment that had been used during that year in lobster fishing operations in any other lobster district." Finally, the post World War II period ushered in financial and social welfare plans for fishers including trap insurance arrangements, subsidized low interest loans for gear, boats and engines, subsidies for new vessel construction, aid for storage, equipment, maintenance, ice and bait, and, in 1957 unemployment insurance premiums.

Trap controls and license limitations: 1960-1986

The period from 1960-1986 continued as one of intensive state regulation for the lobster fishery. Much recent legislation refined and extended the traditional measures, and new regulations further prohibited possession of lobsters out of season, forbade using a vessel for transporting lobsters without permission, and outlawed hauling lobster traps on Sundays, and fishing by means other than lobster traps (Statute Revision Commission, 1977:5120-5122). This panoply of regulations, however, was accompanied by a more ambitious and controversial set of regulatory plans - tag trap limitations and limited entry licensing.

By the late 1960s, lobstering in south west Nova Scotia had become a lucrative corporate fishery worth about \$15 million (De Wolf, 1974). Fleet capacity, size and mobility were extensive. There were now large boats with sophisticated engines, lorans, radar, depth sounders and parlour traps. Lobstering was inshore, near shore and off-shore, covering a radius of less than one mile off the coast to one hundred miles and beyond. What fishing interests and boats would be allowed to operate, and with how much harvesting capacity, emerged as the central issues. Regulating capacity without limiting incomes and employment was the political agenda. Trap limits, limited entry licensing and buy back programs were the preferred social control strategies for the corporate lobster fishery.

Trap limits had been in use on a voluntary basis in the late 1950s and early 1960s. They had increased income by cutting costs without reducing the overall catch (Department of Environment, 1975; Department of Fisheries and Oceans, 1975). In 1966, a partial state imposed trap limit program was introduced, followed in 1968 by a comprehensive plan for all the maritime provinces. For southwest Nova Scotia the trap limits ranged from between 250 and 375 traps per boat, per fisher (McEachern, 1969).

Trap limits were followed in 1969 by the licencing of *boats* rather than fishers. Two classes of boat licences were created. Class 'B' licenses were issued to all boats from which less than 100, 75 or 50 traps were fished. Class 'A' licenses were issued to boats to fish with a number of traps greater than the upper limit for Class 'B'. If a fisher using a Class 'B' boat stopped fishing, the license normally was not renewed. If a fisher using a Class 'A' license stopped fishing, they could sell their boat as well as their license. The government reserved the right to buy back boats and retire licenses (Canada Gazette, 1970; Scott and Tugwell, 1981:29). The limitations placed upon Class 'B' boats phased out moonlighters and part-time fishers. The number of Class 'A' lobster boats, however, remained constant at about 8,800, employing some 12,500 lobster fishers (Department of Environment, 1975:61; De Wolf, 1974:26). Fishers' incomes remained relatively low. Five years after trap limits were imposed, 64% of the lobster enterprises had gross returns of less than \$5,000 (Mail Star, 1973:2). Low incomes were accompanied with stiff competition as many fishers drifted out of the troubled herring, swordfishing, and haddock fisheries and into lobstering fishery. Old rivalries were accompanied with new and intense conflicts over fishing grounds, boat size, access rights and quotas.

The declaration of a 200 mile off-shore economic zone by the Federal State in 1977 rapidly capitalized the primary and secondary fishing sectors. Fishers in the small boat sector invested in new equipment and vessels. They borrowed large amounts of money from the Fishermen's Loan Board, to finance these ventures. Loan approvals by this body increased by 259 percent in the year following the extension of the economic zone (Davis and Kasdan, 1984:113). More and more fishers became dependent upon financial institutions and government programs for the acquisition of their capital outlay and their increasingly specialized technologies. (Stiles, 1972; Ilcan, 1986). Although these programs were designed to give fishers a chance to increase their catches and incomes, they ultimately forced them into a severe debt-dependent position (McMullan, 1984; 1987). The dollar value of loans increased by over 1,544 percent from 1955 to 1980. More importantly, the balance of loans payable to lenders as a percentage of all loans increased from 0 percent to 82 percent in the same 25 year period. As Davis and Kasdan (1984:112) note, "with increasing debt, particularly indebtedness to government, has come increasing dependence on the financial resources controlled and extended by government. This relationship is a tightening noose from the fishermen's perspective."

In 1977, as well, changes were made to the 'factor input regulations.' Category 'A' and 'B' vessel classifications were revoked and the state reverted back to the licensing of *fishers*. Previous trap limitations, however, remained. Thus 'A' licensed fishers were designated full-time, while 'B' license holders were considered part-time (Scott and Tugwell, 1981:30). A new residual category 'C'

license was created for fishers who had acquired a registered lobster fishing vessel in years subsequent to 1968, but who were not eligible for 'A' or 'B' licenses.

By 1979 regulations governing the lobster fishery were legion and complex, and included limited entry licensing of fishers, boat licenses, restrictions on fishing districts, seasonal limits, size limits, gear type rules, trap limitations, prohibitions against capturing berried lobsters, possessing lobsters out of season, and transporting lobsters without permission. To many fishers these state interventions were perceived as confusing, cumbersome, and a curb on their right to harvest the resource. As Hanson and Lamson (1984:5) note, "this has resulted in a climate of uncertainty with rules applied and quotas assigned in a manner not clearly perceived by all participants as being either equitable or efficient."

Limited entry licensing and trap limitations contributed to the restructuring of property relations in the lobster fishery. The 'communal use right to piscary' was exhausted and replaced with private property and state property rights (MacPherson, 1978:4-5, 201). The commodification of the lobster resource and the gradual rise of the corporate lobster fishery led to a state regime that undercut the communal tenancy of the fisher of southwest Nova Scotia. The state became the custodian of the resource, eclipsing the role of the community. By creating a system of selective licensing, thereby establishing a *privilege* to fish; the right to fish, once common to communities, has become the private property of the fisher, albeit a restricted right to access and harvest. Moreover, private ownership was strengthened because the state sanctioned the transfer of that right to fish to another for profit. Thus you 'buy out of' and 'buy into' the lobster fishery. In legal terms this privilege conveys inclusion and exclusion and in conjunction with the regulatory regime constructs categories of offenders that were previously non-existent (Box 1983:7) but who are now subject to sanction - the 'poacher' who has no license or who fishes out of season, the 'rogue fisher' who does not abide the rules about lobster size or trap limits, and the 'trouble community' who fish as they please and are a law unto themselves.

Furthermore, because the private property right is state endorsed and state managed, the rights of the owners are limited. They cannot claim management rights normally associated with property. Fishers, as Marchak (1987:5) notes, do not make the crucial decisions with "respect to the resource, control of habitat and waterways, allocation of licenses, and limitations on capture capacities." These have been claimed as state property, usurped from communal rights, and increasingly and bureaucratically imposed on the private user. But unlike communities, "governments are institutionally constructed so as to manage not one resource but many, not one use but many; and they are required to balance,

negotiate and make decisions about conflicting interests" outside of the fishery (Marchak, 1989:10). The state relies on the effective accumulation of private capital for its own fiscal policies, and thus for any resource the issue is not conservation in perpetuity, or co-management for communities, but management for profits. With regard to the lobster fishery this has resulted in a series of legal categories which in effect are tools and instruments designed and then used to exercise social control over customary productive and local management practices (Davis and Theissen, 1988). In turn, this has produced collision and conflict between fishers and the state.

Illegality and lobstering

State management in the late 1960's and in the 1970's produced a contradictory policy. On the one hand, they encouraged a regulatory course of action restricting the right to fish as a method of eliminating overcapacity and excess labour inputs. On the other hand, they spurred on capital growth, fleet rationalization, and more fishing effort by their loans, incentives, subsidy programs and management plans. By 1980, the lobster fishery had become the 'backbone of the Canadian Atlantic Inshore Fishery' (Pringle et al., 1983:80). The state priority of promoting the accumulation process meant that much added capital had gone into increasing the yield and the value of the commodity, as well as into the process of harvesting and production. The value of lobster landed comprised 31 percent of the value of all fish landed in 1986, more than doubling the importance of the lobster fishery since 1978. Furthermore, landings more than tripled in southwest Nova Scotia which by 1986 accounted for 85 % of the lobsters landed by weight. Value also increased for lobsters in southwest Nova Scotia from \$22,083 million to \$96,434 million, which by 1986 accounted for 75 % of the value of all lobsters landed in Nova Scotia

At the same time the debt problem was aggravated. The cost of servicing loans continued to rise. High interest rates and high fuel costs added to the already growing dependence of fishers on financial institutions and the government. As Davis and Kasdan (1984:114) note, "this is because neither the price for resources landed nor productivity have increased at a rate comparable to that of their debts". Growing numbers of fishers have faced bankruptcy and repossession. The Loans Board now holds licences as collateral and sells licenses *and* boats in default cases (Chronicle-Herald, 1984; Atlantic Fishermen, 1986) .

Not surprisingly, there are strong economic incentives to fish which do not mesh easily with increased regulatory controls. Fishing outside the rules is one way to maintain flexibility in a restrictive fishery. Pearse (1982) notes that 15 percent of recorded salmon landings on the Pacific coast are caught illegally, and that 30

percent of those detected and charged are for violating area and seasonal restrictions. On the Atlantic coast, illegal fishing also has a long history (Found, 1912; Venning, 1909). In 1899, the Prince Commission reported that "capturing and poaching egg carrying and short lobsters" was common. Respect for the law was a "dead letter on most parts of the coast" (Prince 1899). De Wolf, (1974) cites the laws on area restrictions and seasonal closures as being particularly unpopular and unenforceable. The Lobster Task Force study (Department of Environment, 1975) reveals that "it is to a fisherman's advantage to obtain as large a share of the catch as possible.... in some regions, and at some ports...fishermen are in full support of the regulations... in other regions and ports, they are seldom adhered to and fisherman aid each other in avoiding detection." Kearney (1984:6) records the gravity of trap limit violations in southwestern Nova Scotia: "many fishermen greatly exceed the 375 trap limit... since the traps are seldom checked for tags by fishery officers, the fishermen could easily put untagged gear in the water... or obtain replacement tags for the actual or anticipated loss of traps. It is not uncommon for fishermen to have between 375 and 475 tagged traps in the water."

Our investigation of the prosecutorial records of the D.F.O. confirms the growth of illegal lobster fishing. Between 1975 and 1982 the recorded number of lobster violation charges exceeded all other fish species. In 1975 the proportion of lobster charges was 30 percent (61 of 181 charges). By 1982, it stood at 46 percent (90 of 195 charges). About three-fifths of the charges in any year were for illegal fishing and illegal possession of undersized lobsters.

A more detailed analysis of prosecutorial records for southwest Nova Scotia (D.F.O. areas 3, 4a and 4b) indicate similar trends. Lobster charges increased by 230 percent between 1976 and 1986. Tables 1, 2, 3 and 4 show how the 531 lobster offenses were distributed along several social dimensions. Geographically, most violations occurred in districts 4a and 4b, between Lockeport and Digby. The violation of lobster regulations is almost always perpetrated by locals. Four in five committed the offense in the same statistical sub-area as their home address. Fully 19 of 20 occurred in the same lobster district as the address of the accused. Almost all offenders were males, with the age distribution skewed towards the younger age groups, the modal value being in the thirties. Our detailed offense breakdown revealed twenty-seven regulatory violation types. For purposes of analysis, however, we recategorized them into six basic offense categories: illegal fishing, trap and gear offenses, avoidance offenses, undersize lobsters, license violations and time and place offenses.

Illegal fishing refers to section 19 of the Fisheries' Act and is directed at those who are not usually classed as commercial fishers. Table 2 shows that 78% of those whose first mentioned offense was illegal fishing were not commercial

fishers. This is an offense that almost always occurs in the closed season and typically involves two or more offenders with a strong likelihood of a car or small non-commercial boat being involved. Tables 3 and 4 indicate that almost all contact with the offenders by fishery officials was made onshore, with little involvement of sea or air patrol vessels. In almost all cases, the enforcement officers caught the offender(s) by concealing their surveillance. In 4 out of 5 cases, at least one person was not co-operative. Fifty percent of those charged tried to hide or dump evidence and in twenty percent of the cases, someone tried to flee. Lying and verbal abuse were frequent, and in five percent of the cases, threats and assaults occurred. There were usually more than one officer present at the apprehension, and in one in eight of the cases, back-up was requested.

Trap and gear offenses are quintessential offenses of commercial fishers. Eighty-five percent were classed as such, a fact that is reflected in the age distribution of offenders being quite uniform from about age 20 to 60. Most of the violations were recorded during the lobster season, especially in May, the last month of the season in southwest Nova Scotia. The majority of fishers usually were apprehended alone, and at the dockside, where fishery officers were paired for equipment checks, or where they were assigned to work in larger teams. Offenders were normally co-operative but threats and assaults occurred in 10 percent of the cases. Undersize lobsters was the largest offense category for first-recorded violations. They were evenly split between commercial fishers and unlicensed persons. Generally, officers contact with the accused occurred onshore, either at the start of the open season in December, or at the end in May. Invariably, those caught were co-operative. There were few attempts at escape or deception. Verbal or physical threats were rarely made. License violations primarily involved commercial fishers particularly young captains of fishing vessels. Charges usually resulted from a follow-up based on prior information. Contact took place onshore in a minority of cases, and a back-up was used fairly frequently. Table 4 indicates that enforcing this category of regulation is unpredictable relative to others, with no strong pattern of refusing to co-operate but with a fairly high rate of assault of fishery officers. Time and place offenses are violations of regulations concerning proper fishing areas and time regulations. Offenders were typically caught during sea patrols, and were divided equally between commercial fishers and others. Small numbers (6.9%) precluded a study of offender behaviour. Finally, the few avoidance offenses (4%) are interesting because they involved apprehensions at sea. Offenders were equally split between commercial fishers and others. When an offender's vessel is involved, avoidance offenses involve the highest proportion of non-cooperation. The offenders generally tried to conceal evidence and occasionally they were abusive. There were no incidents of assault.

In sum, about 75 percent of all violations were committed by commercial fishers. Approximately 6 out of 10 infractions were for either illegal fishing or possessing undersized lobsters. Actual violence was limited to about 2 percent of all cases, although threats of violence were pronounced as were efforts to conceal evidence, flee the scene, and obstruct fisheries officers in the course of their duties. At least 8 out of 10 fishers charged were convicted and received fines averaging about \$500. Enforcement officers seized lobsters in 293 or 58 percent of the cases and fishing equipment, boats or vehicles in 155 or 32 percent of the cases. Fewer forfeitures compared to fines were levied on convicted fishers and suspensions of licenses were rare.

Social conflict and the politics of fisheries enforcement

Rule-breaking and illegalities have been paralleled by overt social conflict between fishers and enforcement officers. While some of the conflict has been engendered by licenses and quotas for off-shore lobstering, Loan Board policies, debt load, and the 200 mile economic zone declaration, much of it has been centered on lobster limit regulations and on the politics of fisheries enforcement (Apostle, Kasdan and Hanson, 1984; Davis and Kasdan, 1984; Department of Environment, 1975; Atlantic Fishermen, 1986; Phyne, 1988).

Trap tags and limits remain a sore point. For many lobster fishers these regulations are thought to be especially unfair and unenforceable. They are unfair because they clash with the customs of the commons. Fully 60 percent of 315 southwest Nova Scotia fishers stated that trap tag limits was the measure that could be complied with least (Kearney, 1984:45). Trap enforcement clashes with a communal custom which specifies that gear should not be moved once they are set. The location of traps and the times between hauls are crucial to lobstering. Moreover, enforcing the regulation that fishers have only their own tagged traps in their boats conflicts with another community tradition of returning lost or stray traps to their rightful owners. As Kearney (1984:50) notes, "a community service has been transformed into an act subject to prosecution in a court of law." In a survey of 530 lobster fishers, 50 percent expressed "dissatisfaction to great dissatisfaction" with state measures to control lobstering. A predominant view was that enforcement was biased, unequally applied and discriminatory against some fishing communities (Kearney, 1984:35, 46). Trap limits are unenforceable because the tags are fragile and fall off, because they can be tampered with easily, making it near impossible to trace trap ownership and because the Federal Government lacks the personnel and the resources to monitor gear while it is in the water (Scott and Tugwell, 1981:42).

The 'Pubnico Affair' is exemplary. The central issue was the enforcement program of the D.F.O. as it related to trap limits. In the Spring of 1982, D.F.O. patrol boats mounted a concerted campaign to remove or cut off untagged traps in the water. Hardest hit were fishers in southwest Nova Scotia where the use of extra traps was high. By the middle of April an estimated 240 untagged traps had been seized and countless others destroyed. Fishers and especially the Bear Point Shag Harbour - Woods Harbour Fishermen's Associations (BSWFA) pressed the view that the plastic tags were too weak to withstand bad weather and that there were insufficient replacement tags. They also complained about the way in which gear was being surveyed and removed from the water. Grady and Sacouman (1983:4) noted, "on the hauling of gear, the fisheries patrol men were totally ill-equipped to handle the gear. They put it out in a ball instead of where it was supposed to be put ... in a lot of cases, the fishermen claimed they were removing tagged gear ... so this thing was beginning to build and build." Relations between fishers and officers deteriorated further when fishers occupied the D.F.O. offices in Yarmouth to protest the new lobster enforcement. An R.C.M.P. riot squad was called in to quell the 50-75 Shelburne County fishers (Kearney, 1984:9).

Not for the first time, the lobster fishery came before the attention of the nation. The Shelburne demonstrations of 1977 against off-shore lobster licensing, ended in assaults, property damage and threats to burn and sink boats. Now the media spoke of 'lobster wars', 'coastal communities on trial,' and 'black market fishers.' Fishers reported 'harassment', 'injustice' and 'unfair enforcement'. By early May, all efforts to calm the situation had failed. An effort to replace tag allocations of up to 25 tags and a four day moratorium on enforcement were too little too late. The D.F.O. resumed its vigorous trap enforcement strategy. As one fisher observed "you could see the impact it was having on the community, the social ramifications. Wives getting worried, husbands coming home and not talking, keeping things to themselves, and children not knowing it. May 11th was, I guess, the climax of the whole thing." (Grady and Sacouman, 1983:4).

One hundred fishers chased, attacked, burned and sank two D.F.O. leased patrol boats. As a result fifty-two charges were brought against thirteen fishers, including nine counts of piracy. Verbal abuse, threats and assaults did occur. In the short term, the D.F.O. responded to the crisis with increased trap hauling and armed vessels, meeting anger and frustration with state coercion. As Davis and Kasdan (1984:115-116) aptly remark, "this collision and conflict was not new." It was part of a "frequently repeated pattern", whereby property and jurisdiction claims were struggled over. On the one side were the fishers with their informal management practices, their folk knowledge about the coastal resource zone and how to fish it. On the other side were the state experts, administrators and enforcers who rely on science, rationality and formal rules,

including the right to withdraw or restrict privileges to valorize fisheries development and outlaw fishers' practices. On both sides there was a seemingly never-ending attempt to renegotiate the social relations of production, to probe the limits of legal regulation, to see what can be gotten away with and tolerated.

Despite the coercive capacity of the D.F.O. in regard to the Pubnico Affair, the repertoire of state enforcement and penalty are by no means certain or uniform. As a group of fishers in southwest Nova Scotia recently observed, "the Federal Department does not have the proper resources to enforce a 400-trap limit for each fisherman." they seem to have "no real desire to enforce the limit ... because of the fear of a political backlash..." Fully 20 percent of southwest Nova Scotia lobster fishers in district 4a now set up to 700 traps (Atlantic Fishermen, 1986).

Our survey of fishery officers (50) in southwest Nova Scotia confirms that the official prosecutorial records and the diagnostic examples of social conflict are the tip of an iceberg. There is without doubt a large 'dark figure' of undetected and unrecorded violations and a multitude of unreported hostile encounters (Phyne, 1988).

Table 5 demonstrates that verbal abuse of fishery officers by fishers was ranked as a major source of conflict. Attempting to avoid detection by secrecy, planning and nocturnal fishing was ranked second followed by threats to the person. Evasion, by dumping illegal evidence or escaping the scene of the violation were fairly frequent forms of non-cooperation. Threats to house, car, land, or truck were also mentioned by one third of the fishery officers as a particularly troublesome form of conflict between them and fishers. Actual violence was not high, although the fear of violence was perceived to be great. Ten of the fifty fishery officers believed they faced a lot of violence on the job, while twenty-six said they had had minor fracas, fist fights, shoving matches, or threats by use of knives, shotguns, or other make-shift implements, which they did not classify as 'really assaultive' behaviour. Fully, four out of every five officers believed that violence was increasing, and the same number stated that they wanted to carry firearms as a regular part of their uniform. Conflicts in the fishery spilled over into community and home life. Table 6 shows that fishery officers felt that they were the subject of much gossip, that their domestic life was disrupted by abusive and threatening telephone calls and by work related infringements on private and family time. Threats to family members, however, were ranked low and rarely occurred.

Most fishery officers admitted that detecting and apprehending violators was difficult. Many referred to their enforcement work style as symbolic - more a matter of 'showing the flag' than persistent monitoring or strict enforcement.

Basic methods were sea and shore patrols, and informants' reports. The most successful patrol work was as a result of 'tips' from fishers and other community members who directed them to the offenders, to boats and to the locations of illegal fishing. Fishery officers saw their actual surveillance capacity as rudimentary and their overall control impact as diffuse, oblique and reactive.

Almost all fishery officers reported that there were 'trouble spots' in their enforcement areas. The number and intensity of these 'trouble spots' increased along the coastline from Halifax to Yarmouth and then declined from Digby along the Fundy shore to Truro. These 'trouble areas' were almost always community based where traditions of poaching or overfishing were said to be enduring and where fishery officers received little information or cooperation, and had few informants. One senior fishery officer noted "in these harbours there are strong cultures,... and it is part of the local culture...they have much less tolerance of the law than anywhere else. Not only fisheries law, but criminal law....They think they have a right to fish even if they do not hold a license. They don't see it as a rare privilege. I think it has a lot to do with the grandfather, father and the son who always fished as they pleased." A second officer noted "poaching but illegal fishing too... in the communities we're talking about, they have been doing it for years. They don't see anything wrong with it. The fact that somebody else has made laws that say it is not right, they don't believe that. We had no hand in making this law so we are not going to follow it. That is the attitude." In some of the more hostile communities, fishery officers are decidedly unwelcome. Their arrival is announced by the blaring of car horns, visual signs, or telephone calls. Their usual reception in the words of one officer is, "cold and stormy like the sea". Officers are reluctant to enter these harbours and many feel that they are losing the 'battle against illegal fishing'. One fishery officer explained, "from an enforcement point of view, everything is out of control....as a result of the numerous charges we have had and the number being thrown out of court....there is massive overfishing everywhere and it is not only in the trouble areas it is now up and down the coast". Fully fifty-five percent of the officers believed that fishers and their communities were unable or unwilling to control lobster poaching and illegal fishing.

Problems of enforcement arising from relations with fishers and their communities are compounded further by increasing difficulties with the legal/court system. Only forty percent of the officers reported that they were successful in obtaining prosecutions. Thirty-nine percent said that they had 'limited success', and 15 percent had 'no success at all' in prosecuting lobster violators. The reason for success in 4 out of 5 cases was that the fisher entered a guilty plea. In cases that were contested in court, the rate of prosecution success was very low. Accordingly, over one-half of the officers indicated that the courts

were sympathetic to lobster violators, especially if they were commercial fishers. Officers were especially critical of crown counsels. Twenty out of fifty officers evaluated their legal abilities as 'not good' to 'poor'. Fishery officers also viewed the judiciary as non-supportive. This varied from county to county, but one - third of the officers blamed their poor prosecution rate on judges who did not understand the complexity of fishery law or who had a biased view of commercial fishers. One officer observed, "Justice ----, well he just thinks because they are making a livelihood, they can do what they want out there... every time you make a case he finds a reason to dismiss it, or you lose.... Sure he has to live in the community and anyway his father was a fisherman and that is where his sympathies are."

Penalties did not deter violations. Two-thirds said that fines were inadequate. Being too low, they did not offset the potential economic gain of fishing illegally and did not act as an effective deterrent. One officer observed "a minimum penalty under five thousand bucks is nothing. It is bullshit. You know if I go out and catch five loads of fish and make good money off it, the most you can burn me for is five thousand dollars. OK, if you catch me, and ninety percent of the time we won't, then it's just the cost of doing business." Suspension of licenses and forfeitures were thought to be adequate but underutilized sanctions. As one officer typically put it "the only way you are going to stop overfishing the trap limits is by taking their licenses away for a week or two... Now that hurts because it will cost them \$25,000 to \$30,000... A thousand dollar fine, they just shrug that off, but not being able to get your gear in the water at the start of the season, well that is something else!"

Finally, fishery officers indicated that internal organizational difficulties such as inadequate numbers of personnel, insufficient and obsolete equipment, restricted budgets and complex and confounding rules and regulations also contributed to social conflict. Forty percent of the officers believed that D.F.O. was not committed to eliminating fisheries violations. Almost a third of the officers described their working relationship with their department as 'not good' to 'poor' and three-quarters stated that bureaucratic 'red tape' was a serious problem diverting much enforcement and conservation time away from surveillance and protection work and into registration work, report writing and statistical compilation. Approximately 33 percent of their working time is now taken up with clerical activities. So severe were the economic, technological and bureaucratic restraints that 22 out of 50 officers said that it was not uncommon to go outside their mandate to do their job. This involved working on their own time, doing stakeouts alone, using personal equipment, having friends or family assist in enforcement work and modifying department rules and procedures in order to 'get results'. Furthermore, fishers were perceived as better equipped and organized than the officers which made stakeouts, and detection and

apprehension at sea virtually impossible. More than one-half of the officers noted that they did not have the vessels, equipment, and communication systems to enforce the law and regulations in the lobster sector, let alone for ground fish.

Fishers confirm the lack of enforcement. According to a 1988 survey of lobster wharf representatives "trap use ranges from an average of 50 - 200 traps" above the allowable allocation, and "the increased trap use stems from the inability of the D.F.O. to enforce the limit." As a result, illegal fishing is spreading along the coast because "the average fisherman feels forced to put more traps in the water in order to remain competitive." (Kearney, 1988:7,9).

Conclusion

Over the past fifteen years collisions, conflicts and illegality in the lobster fishery have been acute. Far from being the product of law versus lawlessness or a 'we versus them' attitude, conflict, poaching, and illegal fishing arises from the clash of two distinct approaches to fish production and organization: one based on communal property and the 'right' of access and the other based on state management and property relations and the ascribed 'privilege' to fish. In practice, the two viewpoints are divergent and conflictual. The state, occupying the position of privilege donor has redefined the right to fish and modified, restricted and withdrawn access. The lobster fishers have not easily or willingly recognized the federal constitutional right of jurisdiction over the resource as either valid or sensible. There has been much resistance.

Since the mid 1960s, the Federal State has aggressively expressed its constitutional right of jurisdiction on both Pacific and Atlantic coasts. It has consolidated its earlier legislative and regulatory initiatives and taken new incentives in areas such as development and management policy and the establishment of limits on fishing effort (Clement, 1986) Limited participation through licensing schemes and restricted entry, limited production through closures, quotas and trap limits and increased preservation and control through increased periodic enforcement measures have set up a series of collisions with the modus operandi of lobster fishers and the taken-for-granted fishing practices of local harbour communities (Barrett, 1987; Davis and Kasdan, 1984; McMullan 1984, 1987). Not only has confrontation become a persistent pattern of interaction between lobster fishers and the state, but as well, widespread illegal fishing and poaching have become what Scott (1986:18) terms a "routine form of everyday resistance", part of the ongoing process of developing, testing and renegotiating the terms of harvesting and production. While it cannot be said that overfishing or poaching are particularly 'popular' social activities among

fishers, it is the case that they have a long history and some measure of local support and tolerance. By their calculated carefulness and secrecy they preserve in part, the on-stage theatre of power which dominates social relationships within the fishery. Moreover, they contain the possibility of collective action - demonstrations, riots, open defiance, violence and arson as the incidents in Shelburne, Yarmouth and Pubnico so tellingly indicate and as the everyday accounts of enforcement officers so revealingly testify.

The 'Achilles Heel' of state power is the social context of its enforcement. Despite the elaborate artifice of fishery laws and regulations, the D.F.O. is a limited institution for social control. They have the ability to mount periodic trap hauls and to dispense special task forces to 'trouble areas' but they are rarely able to exact a persistent and uniform compliance through their enforcement regime. The translation of law into effective practice has been uncertain and aggravating. The bureaucratization of the fishery officer's role has ensured less and less direct contact and sea-level involvement (Arai, 1990; Burns, 1989; Phyne, 1988). The risk of detection, apprehension and conviction of offenders is minimal and penalty is not a counterbalance to the rewards of illegal fishing (Pearse, 1982:205; Phyne, 1988). Fishers for their part define much fisheries regulation and enforcement as so much 'bureaucratic schemozzel' whereby "officers are encumbered with the dubious task of enforcing what many fishers perceive as irrelevant and inconsistent rules" (Burns, 1989:24). So fed-up are fishers in southwest Nova Scotia, that Kearney (1988:9) concludes "that it may be too late to institute an enforcement program that has the support of fishermen".

As the 'sole manager' of a crown resource the state has created a regime of the many bureaucrats chasing too many fishers with too many rules and regulations that are unenforceable. They have fostered the view among fishers that the state is uncaring, unknowing and unable to do its work effectively. Unhappily for fishers and their communities; conflicts, collisions, law-evading, law-avoidance and law-breaking are the future as well as the past of the lobster fishery.

The consequences are telling. Ideologically, the state is perceived as a negative power: defining limiting and disciplining. Practically, it is evaluated, quite correctly, as little match for a defiant fleet of thousands. The irony of social control in the lobster fishery is that it engenders what it wishes to avoid, less legitimacy, more social conflict and increased illegality.

Table 1: Distribution of lobster offences in districts 3, 4A and 4B (1976-86)

						(N)
1) Year of report	1975	0.0%	1979	4.7%	1983	9.2%
	1976	5.6%	1980	5.3%	1984	15.4%
	1977	4.7%	1981	5.8%	1985	18.6%
	1978	5.5%	1982	10.4%	1986	14.7%
						(531)
2) Statistical district of report						
	Shelburne/Queens (county)					46.9%
	Yarmouth/Digby/Annapolis/Kings					49.3%
	Lunenburg/Halifax/Colchester/Cumberland					3.4%
	Other					0.4%
						(531)
3) Lobster district of			3	4A	4B	other
a) offender's address			2.9%	57.6%	35.4%	4.2%
b) community nearest offence			2.5%	47.5%	33.8%	16.0%
						(523)
						(479)
4) Same home/offence						
Statistical subarea	Same	79.2%	Different	20.8%		(331)
5) Same home/offence						
Lobster district	Same	94.8%	Different	5.2%		(330)
6) Sex	Male	98.7%	Female	1.3%		(530)
7) Age of offender at year of report						
	Under 20		4.8%	40-49	20.3%	
	20-29		33.1%	50-59	11.3%	
	30-39		23.8%	60-69	5.2%	
				Over 70	1.5%	(478)
8) Major first offence categories	Illegal fishing					28.2%
	Undersized lobsters					33.4%
	Licence violations					17.6%
	Time/place violation					6.9%
	Avoidance offence					4.0%
	Trap gear offence					9.9%
						(524)

THE NOVA SCOTIA LOBSTER FISHERY
John L. McMullan, David C. Perrier and Norman Okihiro

Table 2: Profiles of major offence categories in districts 3, 4A and 4B (1976-86) (percentages of N)

	Illegal fishing	Under-size	Licence viol.	Time/place	Avoid offence	Trap/gear
1. Season open (N)	11.8 (110)	43.0 (158)	44.9 (89)	46.1 (26)	44.2 (19)	34.0 (50)
2. Offender is a commercial fisher (N)	22.3 (148)	57.1 (175)	80.4 (92)	50.0 (36)	57.1 (21)	84.6 (52)
3. Age of offender						
Under 20	11.1	4.4	1.1	--	--	--
20-29	45.2	21.7	44.3	24.1	22.2	28.0
30-39	15.9	24.5	30.7	34.5	27.8	20.0
40-49	12.7	23.6	14.8	31.0	27.8	30.0
50-59	6.4	14.3	8.0	10.3	22.2	18.0
60-69	7.1	7.5	1.1	--	5.6	4.0
70 and over (N)	1.6 (126)	3.1 (161)	-- (88)	-- (29)	-- (18)	-- (50)
4. Offender's fishing boat was involved (N)	14.9 (148)	51.4 (175)	84.4 (92)	41.7 (36)	71.4 (21)	84.6 (52)
5. Offender's car/truck was involved (N)	14.9 (148)	51.4 (175)	84.4 (92)	41.7 (36)	71.4 (21)	84.6 (52)
6. Other offender's vehicle was involved (N)	18.9 (148)	6.3 (175)	5.4 (92)	13.9 (36)	-- (21)	-- (52)
7. Number of people involved						
1	11.7	43.5	65.9	47.1	6.8	68.8
2	45.1	33.3	22.0	23.5	33.3	16.7
3	29.7	14.5	12.2	29.4	20.0	10.4
4	9.0	0.7	--	--	26.7	2.1
5/more (N)	4.5 (111)	8.0 (138)	-- (82)	-- (17)	13.3 (15)	2.1 (48)

Table 3: Dept. of Fisheries and Oceans related behavior by major offence categories (percentages of N)

	Illegal fishing	Under-size	Licence viol.	Time/place	Avoid offence	Trap/gear
1. Location of DFO contact						
Onshore	96.6	79.0	59.3	33.3	7.7	62.2
Off-shore	3.4	21.0	40.7	66.7	92.3	37.8
(N)	(88)	(100)	(54)	(15)	(13)	(45)
2. Original source of information						
Routine sea patrol	19.1	26.8	19.1	40.0	75.0	10.7
Other sea patrol	9.5	41.1	45.2	30.0	--	42.9
Other DFO source	11.9	9.0	14.3	10.0	8.3	--
Fisher. citizen	4.8	8.9	9.5	20.01	--	10.7
Other	54.7	14.3	11.9	--	--	35.7
(N)	(42)	(56)	(42)	(10)	(12)	(28)
3. Offence was a follow-up						
(N)	--	1.1	5.4	--	--	3.9
(N)	(139)	(172)	(92)	(31)	(17)	(52)
4. Back-up was requested						
(N)	12.8	0.6	7.9	--	--	2.0
(N)	(141)	(178)	(89)	(32)	(19)	(51)
5. Number of fisheries officers present						
1	8.5	23.8	25.3	23.1	--	12.5
2	35.9	52.	50.6	30.8	60.0	60.4
3	22.6	14.8	19.3	15.4	--	8.3
4 or more	33.0	9.0	4.8	30.8	40.0	18.7
(N)	(106)	(122)	(83)	(13)	(15)	(48)
6. DFO patrol boat was used						
(N)	11.2	16.8	25.8	34.4	63.2	32.7
(N)	(140)	(179)	(92)	(32)	(19)	(52)
7. Plane/helicopter was used						
(N)	2.9	--	1.1	--	--	--
(N)	(140)	(179)	(92)	(32)	(19)	(52)
8. Other police vehicle was used						
(N)	2.9	5.6	3.3	--	5.3	1.9
(N)	(140)	(179)	(92)	(32)	(19)	(52)
9. Officers used concealed surveillance						
(N)	93.8	39.7	30.2	33.3	25.0	32.1
(N)	(81)	(68)	(43)	(9)	(8)	(28)

THE NOVA SCOTIA LOBSTER FISHERY
John L. McMullan, David C. Perrier and Norman Okihiro

Table 4: Offender behavior by major offence categories (percentages of N)

	Illegal fishing	Under- size	Licence viol.	Time/ place	Avoid offence	Trap/ gear
1. Everyone was fully cooperative (N)	21.5 (65)	54.6 (66)	51.6 (31)	42.9 (7)	-- (17)	48.1 (25)
2. Attempts made to flee (N)	20.3 (59)	2.0 (50)	9.6 (21)	50.0 (4)	5.9 (17)	4.6 (22)
3. Offender(s) attempted to conceal evidence (N)	52.5 (59)	40.0 (50)	27.3 (22)	60.0 (5)	58.9 (17)	4.6 (22)
4. Offender(s) refused to cooperate (N)	32.2 (59)	12.0 (50)	27.3 (22)	40.0 (5)	35.3 (17)	22.7 (22)
5. Offender(s) lied/withheld information (N)	10.2 (59)	2.0 (50)	9.1 (22)	-- (5)	17.7 (17)	4.6 (22)
6. Offender(s) used foul language (N)	15.3 (59)	2.0 (50)	13.6 (22)	60.0 (5)	11.8 (17)	14.3 (22)
7. Offender(s) threatened DFO officials (N)	5.1 (59)	-- (50)	-- (22)	40.0 (5)	-- (17)	9.1 (22)
8. Offender(s) assaulted DFO officials (N)	5.1 (59)	-- (50)	9.1 (22)	-- (5)	-- (17)	9.1 (22)

Table 5: Fishery officers' personal ranking of forms of non-cooperation in encounters with lobster violators

Forms of non-cooperation	Fishery officers' ranking	%	(N)
Verbal abuse	1	88.1	(42)
Avoidance	2	83.9	(31)
Threats to person	3	74.3	(35)
Evasion	4	63.0	(27)
Threats to property	5	51.5	(33)
Physical assault	6	13.9	(36)

Table 6: Fishery officers' personal ranking of the manner in which occupational problems affect personal life

Forms of non-cooperation	Fishery officers' ranking	%	(N)
Subject of gossip	1	45.0	(40)
Abusive/threatening telephone calls	2	41.5	(41)
Infringement on family time	3	37.8	(37)
Threats to property	4	18.9	(37)
Threats to family	5	7.9	(38)
Harassment of children	6	5.1	(39)

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