

**FISHING FAIRNESS: THE CASE OF CLASS B LOBSTER FISHING LICENSES**

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## **Abbreviations**

Canadian Science Advisory Secretariat- CSAS

Department of Fisheries and Oceans- DFO

Fishermen and Scientists Research Society- FSRS

Individual Transferrable Quotas- ITQs

Lobster Fishing Areas- LFAs

The Minister of Fisheries and Oceans- The Minister

The Standing Committee on Fisheries and Oceans- FOPO

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Figure 1. Commercial Fall Biomass Survey in LFA 34, 1970-2020

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## Abstract

In 1976 the lobster fishery in Atlantic Canada was overfished and in decline. In response, Canada's federal government implemented a "moonlighter policy" which designated fishers who had employment outside the fishery as a Class B license holder, differentiating them from full-time commercial fishers operating Class A licenses. Under this new designation, their trap numbers were reduced to one-third of the number allowed under a Class A license and, unlike the Class A licenses, the transfer of the license was prohibited, requiring them to be retired with the license holder. As these Class B fishers are aging into retirement, many have requested this policy be amended. They claim the policy is no longer necessary given the present state of the fishery and that the policy deprives them from entering the lucrative lobster license market.

This research reviews the history of the moonlighter policy and examines its implications on individual fishers who were reclassified as Class B through a series of semi-structured interviews with six Class B license holders and their families. Through the experiences and perceptions of these fishers, this study explores the concept of fairness in relation to the policy, its impact on the fishery, and discusses why it has created a humiliating institution.

The Department of Fisheries and Oceans Canada (DFO) continues to uphold this policy despite robust evidence of stock recovery and sustainability, commercial prosperity of the fishery, and public outcry. It is the recommendation of this paper that the DFO immediately review its policy and rescind its prohibition on the transfer of Class B licenses.

## Chapter 1: Introduction

A staple of Atlantic Canadian cuisine is the American Lobster. It fills postcards, ports, and pictures of travels across the Maritimes. However, the privilege to fish lobster is attached to a past that many visitors to the region are rarely exposed to or fully understand. Lobster was not always the profitable industry we know today. In fact, there was a point in time when lobster was on the verge of collapse from overfishing, with few measures in place to prevent it. This was the situation in the 1970s when a set of policies were created to safeguard lobsters from excessive fishing pressures with the aim of restoring lobster stocks to sustainable levels (Lawton *et al.*, 2001). In 2021, all lobster stocks in the Atlantic Canadian Lobster Fishing Areas (LFAs) were found to be healthy and not overfished (Fisheries and Oceans Canada, 2021a, b, c).

The implementation of policies which enabled this recovery of lobster stocks did not come without a cost. To achieve these ambitious conservation targets, the government imposed a tight control on who can operate within the fishery, primarily through the introduction of Class A and Class B licenses. Under this policy, fishers who had employment outside of the fishery during the fishing season were termed “moonlighters” and assigned Class B licenses, meaning their license cannot be transferred and expired upon their death. Now, almost fifty years after the policy was created, Class B license holders are asking Fisheries and Oceans Canada (DFO) to reconsider the policy to enable them to transfer or sell their licenses.

The goal of this research is to review the Class B lobster fishing licensing policy, examine some of the legal cases on Class B licenses and the historical context around the

1976 “moonlighter” policy. The research will also explore the concepts of fairness, justice, equity, sustainability, and property that are at the heart of the ongoing disputes around the policy. It will discuss how different interpretations of these concepts can lead to varying conclusions in certain situations and cause strife between groups with different understandings. Finally, through a series of semi-structured interviews, this research will document the stories told by Class B license holders, their family members, and those fishing Class B licenses, regarding their interpretations of the history of the lobster fishery in Atlantic Canada and their perspective on the future of it. The goal of the interviews is to highlight the stories of people who are affected most directly by this policy decision and to better understand where they see the fishery going in the coming years. While their stories may not be representative of the experiences of Class B fishers broadly, it is important to recognize what they have endured.



## Chapter 2: Management of Lobster Fisheries in Canada and Class B Licenses

### *History*

In the mid to late 1970s, lobster fisheries in Atlantic Canada were struggling. There was competition between lobster canneries, little enforcement of fishing seasons and closures, and landings included a high proportion of immature and, thus, less valuable lobsters. The demand from canneries pushed fisheries to operate at a level beyond what local lobster populations could sustain (DeWolf, 1974). This led to molted, underdeveloped, and soft-shell lobster to be sent to canneries, resulting in adverse impacts on the fishery and the overall sustainability of the stock. Because soft shelled, underdeveloped lobsters were being canned, there were fewer juvenile lobsters to fish in subsequent seasons. In addition, fishing underdeveloped lobster harmed reproductive rates because “berried” (fertilized) females were being canned at the expense of future generations (DeWolf, 1974). American lobster takes five to seven years to reach full maturity and by taking juvenile lobster out of the fishery, reproductive rates of lobster fell dramatically (DeWolf, 1974).

The reason canneries did not act in response to dwindling lobster populations was primarily economic, there was no minimum size of lobster that could be caught, which typically resulted in anything that was caught to be sent to canneries, regardless of size or age. There was a race between canneries to catch a maximum amount of lobster, regardless of quality nor the long-term impacts on the stock. Today, there are regulations restricting catch sizes of lobsters and traps have been adapted to enable smaller lobsters to escape capture; however, many fishing communities in Atlantic Canada at the time relied (and continue to rely) on the fishery and canneries for income, and the economic

incentives to harvest undersized lobsters outweighed the impacts to the lobster stocks. Without management measures to regulate the fishery collectively, there was little incentive for individual fishers to stop fishing the way they were.

Prior to the 1970s, attempts were made to manage the fisheries via seasonal closures; however, these closures achieved little success (Wilder, 1954, p.13). In the early 1970s, the federal government began to regulate the fishery as the economic benefits of an open access fishery could no longer be justified. In response to the dire conditions of the lobster stocks, the Minister of Fisheries, and the Environment (now the Minister of Fisheries and Oceans), introduced sweeping measures to save the fishery from ultimate failure.

Under the *Fisheries Act (1868)* licensing is subject to the discretion of the Minister of Fisheries and Oceans (The Minister) (Fisheries and Oceans Canada, 2010). The power of The Minister to decide who gets a license and for where provides her with the ability to close or restrict entry to a fishery for the well-being of stocks (or for any other reason). In the early 1970s, it was recommended The Minister step in to regulate the industry to ensure lobster stocks were maintained for future generations.

The federal government proposed converting the lobster fishery to a limited entry fishery in which the number of fishers and the amount of gear deployed by each fisher was tightly regulated. In an effort to reduce the number of active fishers, the government also introduced two classes (Class A and Class B) of lobster fishing licenses in Atlantic Canada. Under this new management measure,

Class "A" licenses were issued to all boats and replacements from which more traps than the upper limit for Class "B" were fished in 1968... If a fisherman with

a class "B" boat stops lobster fishing, then the license that goes with his boat is not renewed. If, however, a fisherman with a class "A" boat ceases to fish, he may sell his boat license... These regulations are designed to put an upper limit on the number of boats. As fishers with class "B" boats leave the fishery, the number of boats will decrease. (DeWolf, 1974, p.43)

In summary, Class A licenses can be sold or transferred to another party; whereas, a Class B license must be fished by its original license holder, or it is forfeited. In addition, Class B licenses are only permitted one-third of the traps of a Class A license. The sole determining factor in differentiating Class A and Class B license holders was employment status. If fishers had employment outside of the lobster fishery, they were considered a Class B license holder (*Evidence - FOPO (37-1) - No. 45 - House of Commons of Canada*, 2002). Researchers in the 1970s found that fishers were actively searching for more financially lucrative employment (*e.g.*, construction, fish processing) and that fishing effort decreased as fishers moved to alternative opportunity employment (DeWolf, 1974).

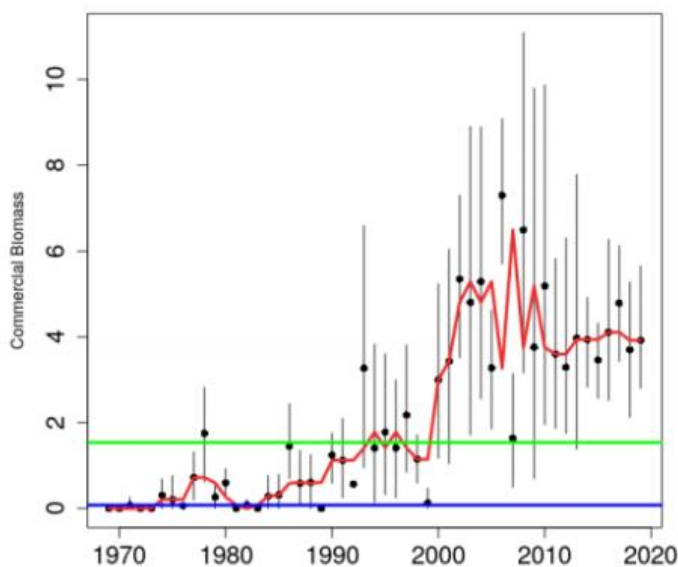
When considering the economic situation many lobster fishers were operating in during the 1970s, it is not surprising that many had alternative employment to supplement their incomes from the lobster fishery. In the 1970s,

fishers who did not cover their costs from one year to the next would leave the fishery. If, however, fishers had low opportunity incomes they may for long periods of time accepted low financial returns from lobster fishing. (DeWolf, 1974, p.31)

Lobster fishers were not necessarily wealthy community members in the 1970s. Lobster fishers were trying to make ends meet in a fishery that was largely unregulated and slowly failing. If fishers operated at a loss, even for one season, it could lead them to not renew their license. The average gross income of 48% of lobster fishers was less than

\$2000 annually in 1971 (DeWolf, 1974, p.46), or equivalent of \$13,500 today, well below Canada's poverty line (Bank of Canada, n.d.). The result of low returns found fishers forced into opportunity incomes that disqualified them from fishing a Class A license. The lobster fishery was a method of employment; however, it was not sufficient, predictable, or accessible to all those who wanted a stake. Seeking supplementary employment was a matter of survival for many.

In terms of stock status, the government's effort to rebuild lobster stocks and sustainably manage the fishery has succeeded. Most recent stock assessments in LFA 34, 27-32 and 35-38 by the Canadian Science Advisory Secretariat (CSAS) found that biomasses of lobster have steadily increased since the moonlighter policy was implemented. Figure 1 illustrates the recovery of the lobster stock since the 1970s, and similar trends can be found in all LFAs across Atlantic Canada.



*Figure 2. Commercial Fall Biomass Survey in LFA 34, 1970-2020 (Fisheries and Oceans Canada, 2021a)*

Meanwhile, the landings from the lobster fishery have undergone substantial growth. As seen in Figure 2, landings have more than doubled in the 1990s and continue to yield at this high level (Lawton *et al.* 2001). Although the results of the stock recovery were not observed until the mid to late 1990s, the policy of limited entry was effective in restoring the fishery.

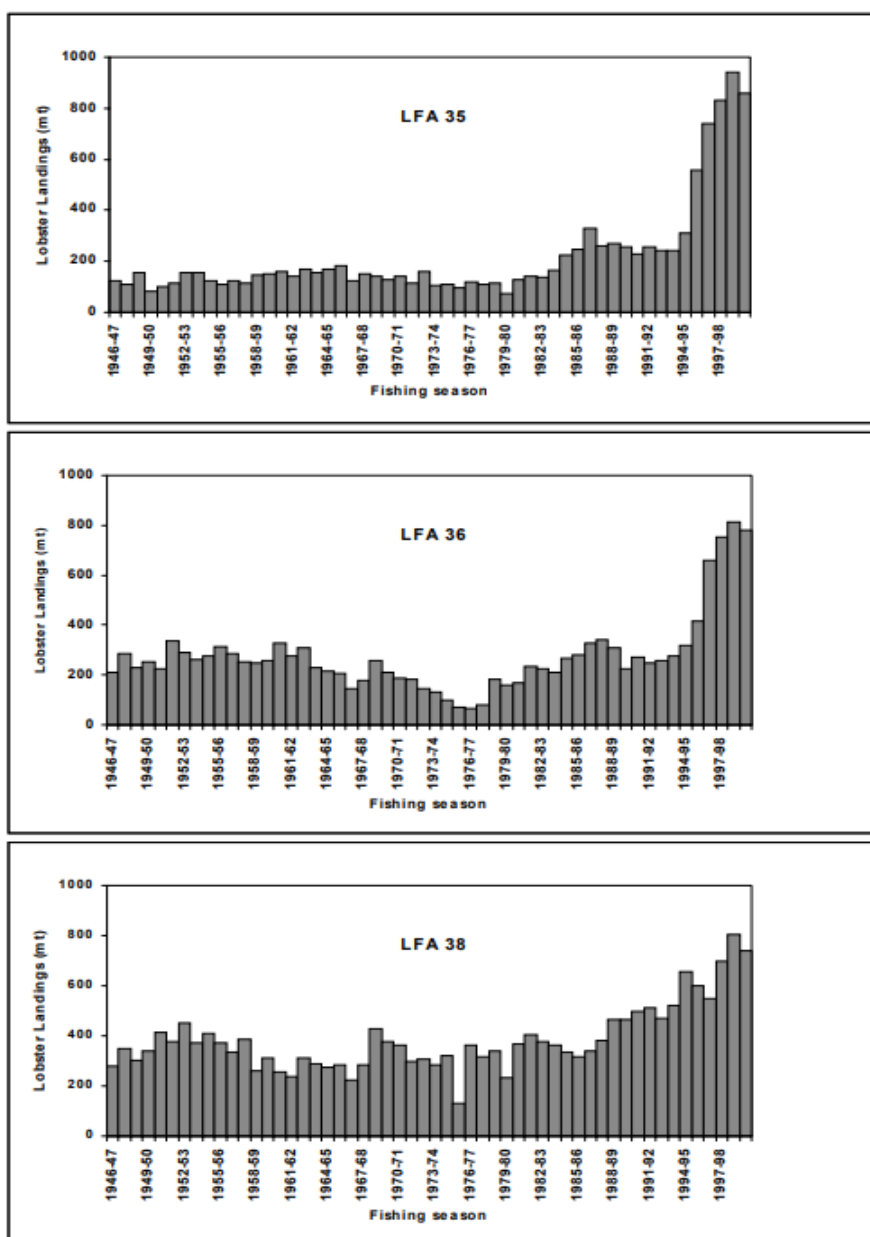


Figure 3 Seasonal Landings from the Bay of Fundy (LFA's 35, 36 and 38) from the late 1940s to the 1999/2000 fishing season (Lawton *et al.*, 2001).

By limiting entry, DFO was able to support the stock in reproducing and in turn increase commercial catch rates beyond what had ever been seen before. The 1976 moonlighter policy enabled lobster stocks to recover. However, although the stock was able to improve, not all Class B license holders were eliminated from the fishery. Those who held onto their licenses were also able to feel the effects the stock rebound. Eliminating some fishers from the industry may have been necessary for stocks to improve; however, once the stock was healthy and reproducing at a sustainable rate, limiting entry beyond what had already occurred started to become an area of contention for many remaining Class B license holders.

The socio-economic costs that the 1976 licensing policy placed on small fishing communities was substantial; however, it has been exasperated by the rise of the lobster industry in recent years. The 1976 policy, which created two classes of fishers, pitted community members against one another, forced many out of the industry they had historical ties to, or greatly diminished their connection to the fishery. Even the government's justification for creating Class B licenses promoted this animosity, claiming that the policy was necessary to "honour the demands of these legitimate fishermen [Class A] by excluding a minority [Class B] with no real stake in the lobster industry" (Publicover v. Canada, 2021).

The conflict before us today is Class B license holders who were able to keep their license and renew it annually want the opportunity to sell or transfer their licenses (Fishing for Fairness, n.d.). Many of these fishers are well into their eighties and fishing for lobster has become difficult. No one could have predicted how profitable the lobster fishing industry would become in fifty years (in 2018, lobster landings were worth 2.2

billion dollars (McDonald, 2019)); however, the problems Class B license holders face are modern. The fishers are calling on DFO and The Minister to review the terms of the licenses which restrict Class B license holders from selling or transferring them. The Minister's argument for not renewing the licenses is that "measures for the conservation of fishery resources and measures for the sustainability of the fishery are for the benefit of all Canadians and future generations" (Publicover v. Canada, 2021). This is the same justification and wording used when the policy came into effect in 1976. However, major discrepancies have been found in this justification. Not only from a legal point of view (which will be discussed later) but also about how DFO discusses conservation and sustainability.

The restrictions and policies which were produced in the 1970s to conserve and protect lobster achieved their goals. The fishery in the 1970s was struggling and the threat of overfishing was ever present. What is important to remember is that the problems facing the fishery in the 1970s are not the same as today. As noted above, CSAS has concluded that there is no evidence of overfishing in any Atlantic Canadian LFA (Fisheries and Oceans Canada, 2021a, b, c). This is a major success of DFO and all those who worked on the 1970 policies to manage lobster in Atlantic Canadian LFAs. But, even with the success of the initial policies and the abundant lobster fishery we currently have, Class B lobster fishing licenses continue to be phased out.

It is the opinion of the federal government that Class B license holders knew their fate all along, and perhaps they did (*Evidence - FOPO (37-1) - No. 45 - House of Commons of Canada*, 2002). The goal of this paper is not to determine what people knew to be true, but to understand Class B license holders' experience and perspectives on the

sustainability of the fishery. Currently, Class B license holders are being phased out of the industry they have been a part of for over fifty years, they are being told it is to conserve the stock; however, DFO scientists say the data has never shown a stronger lobster population (Fisheries and Oceans Canada, 2021a, b, c). For example, primary indicators such as commercial catch rates indicate a steady incline in lobster stocks over the past five years (Fisheries and Oceans Canada, 2021a, b, c). The Fishermen and Scientists Research Society (FSRS), which is a collaborative stock assessment group of scientists and fishers analyzing lobster stocks in LFAs 33-35 also indicated an increase of 2.75 lobsters per trap from 2017-2019 (FSRS, 2017, 2018, 2019). Eliminating Class B licenses in a strong fishery could create a monopoly of licenses which are awarded to a handful of fishers.

In the 1970s, a lobster license cost anywhere from twenty-five cents to two dollars (depending on the LFA), whereas today, lobster licenses can range anywhere from one-hundred thousand to one million dollars (Beswick, 2022). Class A licenses originated from those who were “full-time fishers” in 1976. However, since the privilege to sell or transfer Class A licenses was afforded to them, in recent years, as the price of lobster has risen, so too has the cost Class A license holders have been selling licenses for. The high prices have resulted in those with access to substantial credit or large corporations to buy Class A licenses. Which in turn, has taken Class A licenses out of the hands of smaller fishing operations and into the pockets of large investors. Less licenses in a fishery with fewer fishers will create a monopoly on the resource which many view as a staple in small fishing communities.



One Class B license holder stated in legal proceedings that he made roughly \$10,000 per year fishing his lobster license (Publicover v. Canada, 2021). Class B licenses pose little threat to the Class A industry. The overall landings (reflected via total income) suggest the Class B license impact on the stock is negligible.

### *Ongoing Legal Challenges*

Donald Publicover is a Class B license holder with an ongoing legal battle between himself and DFO. Publicover v. Canada is a case many Class B license holders are watching closely because it could set a precedent for all Class B licenses moving forward. Publicover is challenging DFO's decision forbidding him from selling or transferring his Class B license because of the 1976 policy. He is challenging DFO on compassionate grounds and has explained to DFO's appeal committee that he has two adult children with cerebral palsy who he needs to support with the sale of his license (Beswick, 2022).

Mr. Publicover's case has a few nuances that have led him to this position today. Mr. Publicover had "successfully applied to have someone else fish his Class B license according to the Medical Substitute Operator Policy" (Publicover v. Canada, 2021) which enabled him to keep his license in his name yet have someone else fish it as he was medically unable to do so. The Medical Substitute Operator Policy is open to all fishers with any type of license. In addition to his medical substitute, Mr. Publicover has an extenuating circumstance pertaining to his children's medical condition. In response to his inability to provide for his family without the sale of his Class B license, Mr. Publicover sent a letter to The Minister asking for an exemption to the 1976 policy. The Minister rejected his request stating,

although I appreciate the difficult situation Mr. Publicover is currently facing, in light of all the relevant circumstances, I will not be making an exception to the policy in this case. (Publicover v. Canada, 2021)

This prompted Mr. Publicover to challenge the Minister's decision in court by requesting a judicial review. The judicial review reached the federal court in December 2021.

If a fisher has a grievance with a decision made by an official (such as a fisheries officer or manager), the fisher can go to an appeal board made up of their peers to decide if a decision should be overruled.<sup>1</sup> According to DFO's appeal process if there are "extenuating circumstances" a policy can be reviewed for exceptions; however, in Publicover v. Canada, 2021, the senior advisor to The Minister stated that the "extenuating circumstances" clause in the *Commercial Fisheries Licensing Policy for Eastern Canada (1996 Chapter 7)* was not applicable to a fisher who had put their license on hold based on health reasons (in other words, not applicable to Mr. Publicover) (Fisheries and Oceans Canada, 2010; Publicover v. Canada, 2021). This prompted Mr. Publicover to file his judicial review.

When the case was taken to federal court, the federal judge overturned DFO's decision and stated that DFO needs to re-examine its policy on compassionate grounds. The judge went on to say that she was not compelled by DFO's justification or argument regarding its decision to not allow Mr. Publicover to sell or transfer his license (Publicover v. Canada, 2021). The judge said,

in my opinion, the Decision is not responsive to the Applicant's request to transfer his licence. In particular, the Decision does not explain how allowing the Applicant to transfer his licence to an eligible fisher undermines the goals

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<sup>1</sup> It should be noted that the appeal board is typically made entirely of Class A license holders.

[sustainability and conservation of the fishery] of the policy. (Publicover v. Canada, 2021)

The federal judge went on to say, “In my opinion, the Minister’s Decision was unreasonable as the reasons do not meet the standard in *Vavilov, supra*, that they be ‘transparent, intelligible, and justified’” (Publicover v. Canada, 2021). This ruling was significant to Class B lobster license holders for a variety of reasons, most notably, that The Minister failed to acknowledge some of the primary issues raised by Mr. Publicover and the judge did not see how transferring a license would negatively affect the fishery. Although Mr. Publicover’s case is not a class action, the result of it could shape policy regarding Class B licenses in the future. What is important to note about this case is,

the Applicant (Publicover) is not challenging the policies that underlie the operations of DFO nor the manner in which the Minister discharges her responsibilities under the [Fisheries] Act. Rather, he is challenging the Minister’s exercise of the discretion given pursuant to section 7 of the [Fisheries] Act. (Publicover v. Canada, 2021)

Mr. Publicover is challenging the decision of The Minister, under her discretion to determine who gets a license as dictated by the *Fisheries Act (1868)*. Mr. Publicover is challenging how The Minister responded to his request for amendment. In contrast, DFO is viewing any amendment to the policy as a change/precedent for all Class B license holders.

In December 2021, after multiple affidavits and sworn testimony, the federal judge sent DFO back for re-determination (reviewing the case and deciding a way forward). However, the court has yet to hear what re-determination would look like for Mr. Publicover and Class B lobster license holders more generally.

As Class B license holders await a decision from DFO, the risk of appeal has begun to loom. Although DFO has the right to appeal the judge's decision, the risk of doing so, given the age of Class B license holders, is that many Class B licenses could expire in the time awaiting an appeal. This places the federal government and DFO in a very peculiar situation. It is politically risky to sit on a policy review and/or a legal challenge because it will show the government does not care about the issue at hand. However, it appears DFO, and the legal system are at a crossroads when it comes to making a decision about Class B licenses, which in and of itself is a risky situation to be in. Not only do politicians not want the justice system dictating their decisions, as this could push political agendas, but escalating this issue to higher courts could challenge foundational fishery policies in Canada.

On February 11, 2022, DFO released a statement saying that it will not be appealing the federal judge's decision to have DFO re-evaluate the policy; however, DFO did not indicate when it will release a decision on Mr. Publicover's case (Beswick, 2022). The timing of this decision is key to the future of Class B fishing licenses; however, rushing a decision would also pose challenges to the longevity and success of future policies.

### *Ongoing Advocacy*

In response to calls for DFO to amend the 1976 moonlighter policy, Class B lobster fishers have begun an advocacy campaign to raise awareness and garner support for their cause. The campaign is titled "*Fishing for Fairness*" and its communications highlight individual stories of Class B fishers and also provides the opportunity for supporters to write messages to their local Members of Parliament (Fishing for Fairness,

n.d.). The campaign has enabled Class B license holders to have a platform to share their stories, receive national recognition and is a method of pressuring DFO.

In recent years, media coverage of Class B licenses has taken off, not only with the start of the *Publicover v. Canada* case, but also with the advocacy campaign. The traction that is building surrounding Class B license holders has enabled their voices to be elevated beyond what would typically be expected. The pressure placed on the Minister to make a decision on Class B licenses and Mr. Publicover's case is mounting. Since the Judge's ruling in December 2021, the Minister has been silent on her decision regarding a path forward.

#### *A Need for Policy Review*

Sabatier (1987) says "the principal use of policy analysis is the 'enlightenment function' in which research findings gradually alter the concepts and views of policy makers over time" (p.650). He says when new information is found, we often find policy must be reviewed or amended to justify its continued existence. He goes on to say that the most important actors in policy change are not necessarily the government "but rather a policy subsystem, that is, those actors from a variety of public and private organizations who are actively concerned with a policy problem or issue..." (Sabatier, 1987, p.651). We see the public and private actors in policy advocacy when we look at the work of the *Fishing for Fairness* campaign. Their direct responsibility is to advocate on Class B fishers' behalf. This group's primary goal is to illustrate why the policy requires amending and share the stories of Class B license holders.

Howlett *et al.* (2009) explain that policy evaluation is about policy learning. He says the best way to learn about and strengthen policy is to evaluate it. Howlett *et al.* (2009) explain policy learning should occur when there has been a change in the environment and that the policy change or amending process should be about social learning, *i.e.*, learning from those affected by the policy. An example of a positive policy learning experience at DFO would be the Atlantic Fisheries Policy Review which started in 2003 and was the largest policy review ever undertaken by DFO (Atlantic Fisheries Policy Review, 2003). It involved many town halls, engagement sessions and resulted in the amendment of the Fisheries Act and the development of the Independent Core of Atlantic Canadian fishers (Fisheries and Oceans Canada, 2010). The Independent Core is available to all fishers who do not have an agreement with someone else or a corporation where the third party could make decisions regarding the transfer of a license. For example, if a license is fished by a friend of a license holder, the friend is not considered an Independent Core because he cannot make decisions about the selling or transferring of the license to another party. The license holder (the person whose name is on the license) must decide if a license is to be transferred or sold. The development of the Independent Core prevents corporations who control multiple licenses from making decisions about licenses not in their name without the knowledge of the license holder. Essentially, those whose names are on the license have the final say on how their license is sold, transferred, or renewed. This was a key issue during the Atlantic Fisheries Policy Review and displays how communicating with those affected by policy decisions is crucial to having successful policy.

Sabatier and Howlett *et al.* both encourage policy makers to review past policies to assess if amendments need to be made. Howlett *et al.* (2009, p.191) suggest policies should be reviewed and products of such reviews could result in any of the following outcomes:

- 1) the policy is judged successful and continues without amendments;
- 2) the policy could be successful if it follows recommendations for reforms; or
- 3) the policy is judged to be a failure.

By following this review process, policy can react to societal shifts, changes in the environment and better serve those affected by it. A common theme throughout the process continues to be engagement and collaboration with the public. Successful policy is made by working with the community to determine their needs, rather than the government making policy decisions that only suit departmental mandates.

### Chapter 3: What is fair?

When we think about fairness, we often equate the word to some of our earliest teachings of equality. On the playground as children, we associate sharing with fairness (Castelli *et al.*, 2014). Everyone receives their piece of the pie and therefore it is fair. However, as we grow and become more aware of the world around us, our worldview can alter to associate fairness with equity or justice. It is easier to head over to a dictionary to define all these terms; however, philosophically, and practically applying principles of fairness, equity or justice is extremely difficult. These notions are shaped by our worldview, lived experiences, economic situations and much more. Aristotle, one of the founding fathers of philosophy and political science, even struggled to define justice. What is right or fair in the world is personal and there is no framework or path that we can follow which will achieve a just outcome every time.

Aristotle suggested that justice refers to everyone having access to goods and security without interference from others (Wright, 2000, p.19). Although Aristotle's grasp of the concept of justice is contradictory at times, his basic idea of human need continues to be seen throughout modern democracies today. All of Aristotle's teachings (although extensive) boil down to the idea that if everyone has security and their needs met (with no threat that others will steal or harm their goods) then there is collective security and collective good. Philosophers would not describe Aristotle as a utilitarian; however, he does lay out some basic principles of the common good which base several ideas brought about by John Stewart Mill.



Utilitarianism focuses less on the individual and more on the benefits to the collective. If one was to obtain security for themselves, it should only be to the benefit of the whole, rather than in self-interest. Wright (2000) says,

It is not permissible to prefer one's own interests or projects, or those of one's family members or friends, over those of any other person, except to the extent that doing so would produce a greater total happiness for the citizenry in the aggregate. (p.9)

Today, we see utilitarianism playing out in the way we pay taxes. Although we may not use many social services, we take tax off our income to support the whole, and those who need social services more.

In addition, the Tragedy of the Commons emphasizes what Wright is saying above (Hardin, 1968). If we take more of a resource than we need (*i.e.*, we act in self-interest) then we disrupt the well-being of the whole. Hardin (1968) explains that although the Tragedy of the Commons exists in all spaces, it is a part of human nature. All people will act in self-interest regardless of their position in the world, it is human nature (p.1244). However, Hardin (1968) also explains that to find mutually agreed upon outcomes we must have a majority agree that benefitting the whole benefits all. He uses the example of taxes as a method of displaying that although it is not enjoyed by anyone, “we institute and (grumblingly) support taxes and other coercive devices to escape the horror of the commons” (Hardin, 1968 p.1247). In fishing, if we take more than a fish stock can withstand, the stock will decline to the point of commercial extinction. Instead, we must align what is optimal for both the individual and the collective. To collectively come to a decision, we must create a decision-making body which can manage the

resource on behalf of the public, who in turn, benefit from the optimal management of the resource.

John Rawls supports some notions of utilitarianism and is often discussed in conversations surrounding fairness and justice. Rawls discussed a “just society” and thought everyone needed equal distribution for equal opportunity (Freeman, 2019). He argued everyone should have an equal opportunity to succeed and if we do not all start from the same place, it is the role of the state to ensure everyone can get there. He was leading us towards the idea of affirmative action, so those who are disadvantaged receive a leg up to meet those who are not.

Rawls’ ideas influenced Margalit to discuss humiliating institutions. Julian Burnside discusses Margalit’s ideas (Burnside, 2015). He provides the example of a starving village where an aid truck is coming to provide the village with rice. The aid workers have two options to distribute the rice. They can either 1) hand the rice to each member of the community one by one or 2) dump the rice out the back of the truck, make the villagers fight over its distribution, and continue their way (Burnside, 2015). Both options provide the village with the rice it desperately needs; however, the second option is humiliating. Margalit says “the possibility of dignity is fundamental to a meaningful existence” (Burnside, 2015). For people to feel cared for and respected, we must discourage humiliating institutions. Margalit says humiliating institutions drive people into despair. One of our biggest misconceptions is that we are operating just societies and yet we continue to tolerate humiliating institutions. In the case of the Nova Scotia lobster fishery, DFO enabled all fishers in the 1960s and 1970s to obtain commercial lobster fishing licenses for minimal costs. However, in 1976, if a fisher had employment outside

of the fishery, they were demoted from Class A to Class B. Margalit's example of humiliating institutions could also be argued in the Class B licensing case as Class B licenses have been disrespected and the policy has restricted fishers' rights to a meaningful existence for participating in an action—seeking external employment—that would normally be viewed respectfully. Although they are still surviving, much like the villagers in Margalit's example, the need for them to continue to advocate for equal treatment places them in a humiliating institution.

Discussing the philosophical teachings of fairness, justice and equity is important to understanding why these concepts continue to be challenging to define in modern times. De Jonge (2011) highlights how even the UN struggles to comprehend “fair and equitable benefit sharing” when discussing the UN Convention on Biological Diversity. He goes on to say, “the United Nations Environmental Program admits that “whether the sharing of benefits is ‘fair and equitable’ is a question that (...) depends on the value system upon which the judgment is based” (De Jonge, 2011). This relates back to some of our earlier discussion on Aristotle where we discussed how our worldview and understanding of values contributes to what we see as fair. In addition, if we choose option 2 presented by Margalit, we may be ‘fair and equitable’, yet we could still be encouraging humiliating institutions. De Jonge (2011) understands these contradictions and presents us with an interesting summary. He says,

Most important here is to realize that stakeholders may have radically different conceptualizations of the world (cosmos) and completely different understandings (if any at all) of such central notions as genetic resources, property, and sharing (De Jonge, 2011, p.140)

To start a dialogue on what is right, just, or fair we need to recognize the answer is not linear, clear, or even existent. However, embracing different perceptions of the world starts a conversation and this is what De Jonge (2011) suggests as a best way forward. We must make the system work, and the only way it can be done fairly is through enhanced discussion.

A perfect solution will never be found. Loi *et al.* (2019) recognize that no action can be perfectly just or fair. Some decisions that will enhance security, may infringe on personal well-being, but this is okay. Loi *et al.* (2019) suggests that we need to maximize just outcomes to have decisions that are just. Even if concessions must be made, we want to avoid the “wrong mistakes” (Loi *et al.*, 2019, p.2). No one system is perfect, and some must sacrifice for the common good, *e.g.* taxes. The notions of utility, the Tragedy of the Commons and how we understand the concept of fairness are important to discuss prior to bringing decision makers to the table for a discussion on fairness.

Gray (1998, p.228) suggests that although fairness as a concept is difficult to define, there are methods of judging different benchmarks which can create fair institutions. He uses fishing communities to explain these criteria. He begins by explaining market criterion and says the production of a fishery must be efficient and supply the market effectively. Second, Gray says that fairness is related to a labour criterion that sees a maximization of employment within the fishery. This not only includes fishers but also spin-off employment that comes from the fishery (pounds, tourism *etc.*). Thirdly, Gray highlights how the social criterion is important for overall well-being as it focuses on the protection of fishing communities and livelihoods. Gray also highlights the conservation criterion in his analysis of fairness and says that we must

maintain fish stocks to keep fairness in fishing. If stocks collapse from overfishing, as prescribed by the tragedy of the commons, the outcome is not fair for any party. Finally, Gray discusses how an ethical criterion is needed in some situations when assessing fairness in fishing. He argues that establishing a morally fair regime can create a fair fishery. He states that we need to have procedural fairness (fair legal processes where everyone is involved) but we must also have substantive fairness, in that policies and people embody the principals of fairness within them. The principals of fairness he is referring to are equality, need, entitlement and dessert, *i.e.*, getting what you deserve (Gray, 1998, p.229).

When considering what is “fair”, it may be helpful to look at Gray’s analysis and connect it to the Class B lobster licensing case. The market criterion—the idea that there is a desire for lobster in the market—is real and is what drives a large part of Atlantic Canada’s fishing economy. Neither side of the argument is disputing this. In addition, neither side is disputing that the conservation criterion is important. Everyone respects the choices that are made to maintain healthy stocks, as long as the policy decisions reflect the reality on the ground. Where we start to see discrepancies in Gray’s interpretation of fairness is when DFO and fishers have different understandings about what conservation measures are needed. We also see strife when the labour criterion is considered because Class B lobster fishers are not having employment maximized by decisions made by DFO. Furthermore, the social criterion, the idea of protecting fishing communities, is not seen as fulfilled by Class B license holders. Many of these fishers are generational lobster fishermen and removing them from the fishery eliminates this connection they have with their families and communities. Finally, the ethical criterion

Gray (1998) discusses is a primary driver of the Class B license holder argument. Not only are fishers saying this policy is unfair, but those who have taken DFO to court are arguing it is not moral and provides no compassion for how fishers are being treated, despite generational ties, large investments, and general commitments to conservation.

### *Concept of Fairness in the Class B Licensing case*

Class B lobster fishers are challenging the federal government because they feel that the 1976 moonlighter policy that established the differentiated licenses is unfair. However, neither side has clearly articulated what they see as “fairness”. This poses challenges to policy makers, legal discussions and policy amendments going forward. It is not possible to achieve a “fair” result for every concerned party in the Class B licensing case. However, Rawls argues one of the foundational principles of social and economic equality is to ensure that the “greatest benefits are provided to the least advantaged” (Wenar, 2021). Compared to Class A license holders, Class B licenses would be the least advantaged lobster license holders in Atlantic Canada, as they have smaller capital gains and fewer traps than Class A licenses. Varying worldviews, lived experience, and precedent all result in different interpretations about what is fair. To make things even more complicated, both sides of the argument are trying to determine a fair value for the licenses. The government has determined that, Class B licenses should have no value beyond the life of its original holder. At the same time, the same government is allowing the value of Class A licenses to be determined by the market. This perceived inconsistency, continues to cause confusion and frustration amongst license holders.

When Class A and Class B licenses were initially purchased, this was done in the same way, often from a corner store or directly from a fisheries officer. The cost of the

license prior to 1976 was similar for all fishers. However, if a fisher was found to make more than approximately \$7000<sup>2</sup> per year outside of the fishery, they were deemed a Class B license holder. Recall, this income still places Class B fishers well below the poverty line. Class B fishers are arguing this initial rationale was not fair and although at the time the financial hit was less than it is today, the policy remains unfair, especially, as we will soon verify, the fishery remains in DFO's "healthy zone" (Fisheries and Oceans Canada, 2021a, b, c).

Furthermore, these license holders are also grappling with different understandings of what is procedural fairness (fair legal processes) and substantive fairness (those involved in the fishery embodying fairness in their actions). In terms of procedural fairness, Class A and Class B lobster fishing licenses originated as undifferentiated licenses in the 1960s until 1976. However, under a single policy, based solely on employment status, they were differentiated into Class A and Class B. Yet, this requirement that those holding external employment be deemed Class B no longer holds, as Class A license holders can now have external employment without any repercussions on their license (*Evidence - FOPO (37-1) - No. 45 - House of Commons of Canada*, 2002). When discussing substantive fairness, ever since 1976, Class B license holders have been viewed as "illegitimate fishermen with no real stake in the fishery" (Publicover v. Canada, McCleave affidavit exhibit B, pg.1). This has perpetuated a stigma and isolated Class B license holders in fishing communities across Atlantic Canada.

What we see with the Class B lobster license case is procedural fairness, in that Class B license holders have had an opportunity to have their case heard and received a

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<sup>2</sup> The determining income for a Class B license varied slightly by LFA.

response from the Minister regarding their licenses, even if no change has come from it (*Baker v. Canada (Minister of Citizenship and Immigration)*, 1999). However, substantive fairness, the idea of a policy trying to achieve fair outcomes for all, has alienated Class B fishers from their communities. Gray's explanation of fairness highlights why DFO and Class B license holders have different perspectives on what they see as 'fair'. However, what is important to remember is that Gray (1998) considers a fair society, policy, or practice one that encompasses all criterion, not just bits and pieces.

A positive step for the two sides (DFO and Class B lobster fishers) would be to follow De Jonge's advice and come together to establish a dialogue on how to move forward. All the scholars we have discussed above have differing interpretations about what is fair; however, they all agree that it is not easy. Finding fairness in a public with different understandings of the word is nearly impossible. Finding common ground, listening, and understanding each other's side is the only way all parties may find a "fair" solution to this issue.

When we discuss the Class B lobster license case, we should consider how De Jonge's suggestion of coming together to achieve fair solutions can be achieved through co-management. Pinkerton *et al.* (2018) highlighted how co-management takes time to develop and can be tedious; however, the long-term benefits of such practices benefit all those involved in the fishery. Class B lobster license holders have long been discarded from a conversation with DFO about their licenses. They have been told they can appeal their licenses to panels of their peers (almost solely Class A license holders) and if they are not satisfied with the decision, they can appeal it to DFO officials. However, as we saw with the *Publicover v. Canada* case, DFO refuses to listen or acknowledge the



hardship that has been placed upon Class B license holders. Instead, DFO has held true to its initial assessment of the licenses in that they cannot be sold or transferred to other parties because of sustainability and conservation concerns. Bringing all interested parties together would benefit DFO to understand the situation Class B fishers find themselves in while also enabling DFO to state its case and departmental mandate. Where policy often runs into trouble is when it hides behind a veil (Uusikylä, 2013, p.36). If policy makers want to make good policy, they require the knowledge of the people whose lives are affected by such policy. Arbitrarily creating or maintaining policy without sufficient review or understanding can lead policy makers to step away from being an honest broker. Policy should be created by the government to maintain a better fishery, not eliminate people with generational ties from a fishery that is thriving, thereby creating a monopoly of licenses, driving up prices and alienating some fishing communities' most vulnerable populations.

### *Property Rights*

To dive into the issue further, this next section will discuss how property rights impact fisheries. Many interpretations of property rights involve someone having sole jurisdiction over a piece of property which they can use how they please (within the limits of the law and regulations). However, the concept of property rights is easier to grasp when we have tangible items such as a house or car. These are things that we see and can understand they are owned by someone, and someone is responsible for them. Where property rights become difficult to define and understand is when things become less tangible, *e.g.*, licenses. In economics, having control over the sale or use of property assists in understanding one's rights with it. When the government is providing

something that can be sold, or transferred and the price is determined by the market, what is the role of property rights? Having control over the use of something appears to signify a right to that property—at least common knowledge of economics understands it to be this way—yet this is not how lobster licenses work in Canada’s Maritimes. What becomes challenging is when the government still controls the property you view as “owning”.

As puzzling as this dilemma may seem, the drafters of the Canadian Constitution also struggled with these ideas (Johansen, 1991). Although property rights were incorporated in the Canadian Bill of Rights in 1961, this issue continued to be a point of contention among politicians up to the introduction of the Canadian Charter of Rights and Freedoms in 1982 (Johansen, 1991). Johansen (1991) states that Pierre Elliot Trudeau made a plea to incorporate property rights in section 7 of the Constitution; however, opposition parties would not agree to it. At the time, Trudeau was leading a minority government and was relying on the opposition for the votes to pass the repatriated constitution, to do so he had to concede on including property rights in it.

Although political games were played in the 1980s, the impacts of such choices have led many Canadians to be in the dark on their property rights (outside of land/home ownership). On property rights, Canada’s Constitution has been described as something of an outlier among the liberal constitutions of the world.

While property rights clauses appear in virtually every written constitution amongst the world’s liberal democracies, Canada’s written Constitution contains no property rights provision. (Newman & Binnon, 2015)

Politicians were warned that if property rights were left out of the Constitution it would lead to “potential legal confusion and interpretive difficulties that could arise as well as by warning of the risks of how courts might intervene in governmental policy” (Newman & Binnon, 2015, p.545). This is exactly the situation Class B lobster fishermen find themselves in today. Barnett *et al.* (2017, p.63) describes that the fishery is viewed in very different ways depending on who is involved. For example, some fishermen see themselves as holding private property, whereas financial institutions see license holders as merely having a privilege to fish that is granted by the government. These ambiguities in understanding have resulted in different interpretations of rights attached to lobster licenses and the fishery. What is interesting is the ability for Class A licenses to be socially considered “private property” even though these resources are distributed by DFO, meanwhile Class B licenses – again, they were originally obtained in the same manner as a Class A – are treated as though they are the property of the federal government. Although on paper, both types of licenses are privileges granted by DFO (much like a drivers’ license which is a privilege that can be taken away should it be deemed necessary), they are treated differently. Why is this? It can be speculated that the attribution of Class A licenses with private property has to do with the wealth that is associated with them, along with how the market dictates the price of the license based on the average price per unit of lobster and LFA. Additionally, because Class A licenses can be sold through third parties, which advertise and provide platforms for licenses to be bought and sold, this creates the perception that Class A licenses are private property (TriNav Marine Brokerage, 2022). Although DFO needs to do the physical transfer of the licenses, this process is strictly administrative. For example, the selling fisher advises

DFO of the transfer of the license to whomever the buyer is and then the process is approved by DFO which formally changes the license holder in their database. DFO's involvement in the buying and selling of licenses is minimal, meanwhile marine brokerages and negotiations for sale between buyers and sellers creates the idea that Class A licenses are private property.

### *Fisheries Management*

Fisheries often encounter issues relating to ownership because fishers feel their perceived right to fish is being infringed upon or dictated via government intervention. Not only in Canada, but internationally, fisheries regulations have resulted in conflict because fish are viewed as a public resource. For example, the European Union has created a regulation to prevent illegal, unreported, and unregulated fishing across its member states; however, it has led to tensions in some major commercial fisheries because fishers feel as though the UN is imposing unnecessary pressure and sanctions on them to change the way they fish (Frangoudes *et al.*, 2020; Song *et al.*, 2020). These tensions and ideas of government control in commercial fisheries is shared with lobster fishers across Atlantic Canada as Class A and Class B license holders often feel excluded from conversations with DFO about their livelihoods (*Evidence - FOPO (37-1) - No. 45 - House of Commons of Canada, 2002*).

Newell & Ommer (1999, p.350) say to effectively manage fisheries, we must involve multiple parties. They argue that fisheries are not the property of fishers or their local communities, yet because these groups rely on the sector for income and livelihood, the parties must be involved in the management of fisheries. Ellefsen & Bromley (2021) explain the conflict eloquently by comparing fisheries to forestry, they say:

The individual forest owner can indeed manage (control) a stand of trees, but a public agency must concern itself with contentious mediation among a number of aspiring claimants who wish to derive income from a complex fishery resource they do not own. (p.2)

This passage is important because it highlights how often management principles from terrestrial practices are placed on marine spaces, yet these spaces have vastly different dynamics to consider. In addition, it connects back to how intertwined fisheries are to the communities they are located in. For example, the lobster fishery supplies jobs well beyond that of fishers themselves.

Bennett *et al.* (2021) suggest that to have robust conservation and equitable management practices, there must be inclusion of local stakeholders in management decisions. This goes beyond the typical practice of involving affected communities in a consultation process, but instead challenges the typical way we see fisheries management and encourages all to analyze the fishery in a way which will benefit everyone. This analysis should occur with and among the people who are most affected by changes to the fishery. If DFO was to take this advice, Class B lobster license holders would be at the heart of all discussions and decisions going forward. This in turn could create an equitable and just method of solving this issue in that those most affected by the decisions are a part of the group making them.

#### *Stock Assessment in Canada*

Currently, DFO is required to manage fisheries based on stock abundance and productivity information obtained through its stock assessment. This process is undertaken by the Canadian Science Advisory Secretariat every five years (Fisheries and Oceans Canada 2021a, b, c). CSAS is a branch of DFO which conducts scientific studies,

facilitates an internal peer-review process, and shares the results of studies with managers and decision makers to assist in making evidence-based policy decisions. In the case of lobster fishing in Eastern Canada, the latest regional assessments occurred in 2020 and 2021 and used primary, secondary, and contextual indicators, and concluded that lobster in Western Nova Scotia (LFAs 27-33 and 34) was being fished at sustainable rates and healthy population sizes were being maintained (Fisheries and Oceans Canada, 2021a, b, c).

Lobster population status in Eastern Canada is assessed using fishery dependent data, meaning these estimates are derived from harvest data reported by fishers. Fishers are obligated to report their catch and effort, as well as the location of the harvest to DFO through daily logs (Cook *et al.*, 2020). The stock status of the target population is then estimated through statistical models which use this data as the primary indicators. Additional indicators that link effort, landings, and trap recruitment are used to supplement the initial assessment (Cook *et al.*, 2020). Finally, contextual indicators display a multivariate picture of lobster stocks as they examine factors such as water temperature, fishing effort and lobster size.

The purpose of stock assessment is to monitor and maintain lobster stocks in Eastern Canada. A healthy lobster population is considered to have a robust biomass, sustainable landings, and are not subjected to extensive fishing effort. Other contextual factors that influence the long-term sustainability of the lobster fishery are considered when assessing lobster populations, such as licenses available, weather, and molting stages of lobster. In May 2020, DFO released a study which indicated there are “positive signals” of healthy stocks in LFAs 27-32 (Fisheries and Oceans Canada, 2020, p.29). In

general, all fisheries assessed an increase in catch rates, exploitation below the growth rate of lobster populations and were being fished within DFO's *Healthy Zone* (Fisheries and Oceans Canada, 2020, p.2). The report by DFO's Center for Science Advice (Fisheries and Oceans Canada, 2020, p.47) credits conservation measures implemented in the 1990s to the success of the lobster fishery today including programs such as v-notching female lobsters' tail to indicate a female to fishers, returning large females capable of berrying and not catching undersized lobsters.

Stock assessment is a crucial process in determining how stocks are responding to fishing and management measures, including regulations on the number of licenses and traps in the fishery. As noted above, the current indication is that there is no overfishing in any Nova Scotian LFAs. This conclusion is significant because DFO's position on Class B licenses is based on the need for stock conservation and the sustainability of the fishery. Yet, DFO scientists are reporting there is no evidence of overfishing. Independent analyses by Class B license holders have identified the same findings (more on their effort will be explored in the Discussion). Class B fishers and the ports they fish out of are seeing landings and catch rates at levels never seen before. This has left many Class B license holders perplexed and has caused great debate between them and DFO. If DFO's stock assessment data is accurate, continuing to phase out Class B license on the grounds of stock conservation appears irrational. Although this theme will be explored further in the Discussion, there is little evidence to indicate stock assessments are finding the need to reduce fishing effort.

### *Sustainability*

Although DFO does make efforts to include fishers in management decisions, communities are not primary decision makers. While we have explored how the concept of property in the case of fisheries is complex and management decisions should be done with all those impacted, the stance DFO continues to take with respect to the Class B lobster license issue is that the policy cannot be abolished because of the potential implications on the sustainability of the fishery. Sustainability is yet another concept which is often interpreted widely by policy makers; however, sustainability can be generally understood as ensuring that a resource is maintained for future generations while also guaranteeing the natural environment is able to remain ecologically diverse (Brundtland, 1987). This is a basic scientific definition which all parties can appreciate. If a fishery is considered healthy, it is difficult to understand why the government would see the need to continue limiting entry.

What is often not considered is that sustainability can also have a second definition. Toman *et al.* (1995) describe this as the ability for the economy to support itself in other sectors if natural resources were to be depleted. For example, when the cod fishery collapsed, what other industries did laid-off fishers go into to support local economies? The answer is most fishers who were laid off with the collapse of the cod fishery went to work out of province in the oil fields or in mines. This did little to support local economies even though these folks were not entirely left unemployed. What Toman *et al.* (1995) are trying to emphasize is that an over reliance on one species can lead to an unsustainable economy. If for example, the sustainability of lobster stocks came into question which resulted in a reduction in traps and/or a shorter season, this could greatly impact the ability for small fishing communities to survive. Therefore, socioeconomic



sustainability should also be considered when making management decisions about a fishery. Diversification is important to maintaining stable economies.

A common theme throughout this section is that the government failed or struggled to define terms which dictate the way in which the lobster fishery operates. The concepts of fairness, property rights and sustainability are all vague and open to interpretation. In the Class B lobster licensing case, we see all these terms being used by DFO and the lobster fishers in different ways. Pinkerton (1989) suggests that to achieve co-management or problem solving when approaching fisheries issues, all concerned parties must come together to achieve mutual decisions.

#### *Co- Management*

Recent scholarship in fisheries management has led many to the conclusion that to have just outcomes, management must be done collaboratively and all those interested in a fishery must have a say in how it is managed. Management is defined as a set of controls which achieve specific objectives. The definition of co-management is very similar; however, it involves working together to define what controls are needed for such objectives. Pinkerton (1989, p.5) explains co-management as a way of sharing decision making authority and powers among decision makers and fishers. She goes on to explain that when stocks need conservation measures (such as in the 1970s), co-management works to include fishers in decision making processes and through shared decision making, co-management relationships are formed which improve the functions of the fishery (Pinkerton, 1989, p.8).

Many co-management regimes that exist across Canada and the United States have seen great success. There is co-management between the government and fishers in Alaskan aquaculture regimes, among BC salmon fishers and in many fisheries projects in Canada's Arctic. Although the development of co-management boards and infrastructure takes time, the long-lasting benefits of it are well known to scholars, communities, and those who rely on fisheries. Pinkerton concludes her chapter by explaining co-management is,

a mechanism for restoring a sense of economic and cultural self-determination through greater control over one's working life. It can reduce the alienation of people from government and create the kind of working relationships which make fishers feel a greater sense of control and participation in society at large. (Pinkerton, 1989, p.26)

Co-management's goal is to empower fishers and communities to work with regulating bodies to maintain sustainable livelihoods and fisheries. When fishers in Atlantic Canada discuss their relationship with DFO, it is often in a negative light (*Evidence - FOPO (37-1) - No. 45 - House of Commons of Canada, 2002*), meanwhile fishers who have co-management regimes established with governments, often express greater happiness and content as their wishes and perspectives are considered when governing bodies make decisions (Pinkerton, 1989).

When fishers are involved in co-management situations, they can find themselves in positions of power over their licenses and the fisheries they rely on. While the government has the overarching goal of regulation and sustainability of the fishery, fishers often desire more control over the resource they fish. Pinkerton *et al.* (2018) considers how fishers who are a part of co-management practices in Atlantic Canada have displayed positive steps forward for conservation and equitable fisheries. For

example, fisher's organizations in Atlantic Canada solved a management problem by providing alternate solutions to DFO which reduced government costs, were equitable for fishers and the government, and provided greater returns for fishers while at the same time enabling customers to have a more stable supply chain (Pinkerton *et al.*, 2018). This re-emphasizes Pinkerton's point that through co-management and the relationship building that occurs within its regimes, positive outcomes can occur which not only benefit stocks, but can also benefit economic and social interests.

The goal of co-management is to avoid the dilemma of humiliating institutions, the Tragedy of the Commons or isolating those with historical or current attachment to a fishery. De Jonge (2011) suggested interested parties needed to be involved in the co-management of resources for people to feel valued and as though a just outcome is reached. Recall, a just outcome does not need to provide everyone with the best solution, instead it must reach the right decision for fishers, communities, and the industry.

## Chapter 4: Methodology

To understand the experiences and perspectives of Class B license holders, semi-structured interviews were conducted. The interviews were structured to emphasize the experiences and thoughts of the interviewees as individuals, not to interpret the decisions of the fishery broadly. The questions were designed to be open-ended, with follow-up questions to have interviewees elaborate on salient points. Interviews took place over the phone and in-person across Atlantic Canada in July and August 2022. Each interview took between 30 minutes to an hour.

To obtain participants in the research project, the Fishing for Fairness campaign assisted in connecting the researcher to Class B license holders.<sup>3</sup> Once the researcher began contacting fishers to enquire about their participation in the project, many fishers had asked if family members could be a part of the interview process. In addition, fishers who fished Class B licenses on behalf of a Class B license holder also requested to be a part of the project. The project scope was then widened to include family members and those fishing under a Class B license after an ethics amendment was approved. An attempt at a snowball effect for participant recruitment was executed by asking initial participants if they would advise the researcher of any other potential participants for this research. The result of the snowballing found the researcher being connected with two participants who were not involved in the advocacy campaign. This is significant to the results as what was heard from all interviewees is consistent, regardless of if they were involved in the advocacy campaign or not.

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<sup>3</sup> The Fishing for Fairness Campaign in no way influenced the questions asked of participants nor did their involvement in the project extend beyond making connections between the researcher and potential participants.

In total, six interviews were conducted. Given that there currently are about 75 Class B license holders remaining, these interviews represent approximately 12.5% of the population. The interview questions below illustrate what was asked.

1. On their personal experience and identity as a lobster fisher:

- a. *How did you become involved in the lobster fishery? (ex. family lineage, entered in 1970s, immigrant etc.)*

This question assisted in establishing rapport with the interviewee while also providing a basis for the remainder of the interviewee's responses. Based on this response, answers from other participants were able to be compared and themed based on how each fisher came to be involved in the fishery. It was also helpful in understanding their personal context for wanting to amend the 1976 moonlighter policy. For example, the question wanted to know if generational fishers had similar thoughts about the policy as first-generation fishers or those fishing the license on behalf of a Class B license holder.

- b. *Has the lobster fishing community changed since you first joined the fishery? If so, how is it different? (ex. more new fishers, technology, competition etc.)*

This question explored changes that fishers observed in the past half decade within the lobster fishery in Atlantic Canada. Beyond commonly referenced economic gains and stock recovery since the 1970s, the question aimed to understand the cultural and technological evolution of the fishery and the impacts of those changes on the fishery as a whole. It also enabled examination into whether the changes felt within the entire fishery were universal or if the Class B fishers' experiences differed. This question was

open-ended and was amended and answered differently by participants depending on their background or role with the Class B license (*ex. license holder, fisher, family etc.*).

2. On their views of fairness and sustainability in a fishery:

*a. What does a sustainable lobster fishery look like to you?*

Given the primary justification DFO has used for not amending the 1976 policy is to maintain a sustainable fishery, this question allowed interviewees to illustrate their perspectives on sustainability and explain how or if it differed from the government's interpretations.

*b. Do you feel as though you had a part in growing the fishery?*

The question was designed to allow more than an economic answer, but also a qualitative answer that provided insights into emotions and feelings about the fishery and how it has evolved over time. Feeling a part of the fishery could have been a motivator for many Class B fishers' to remain in the fishery; however, it could also have a negative effect if Class B fishers feel neglected by their communities and/or DFO if they are not viewed as full-time fishers.

3. On their views of the 1976 Moonlighter policy

*a. How did you come to know you were being given a Class B license? Have you always had grievances with DFO for this decision or has your position changed over time?*

Given that some fishers expressed concern over how they were notified about changes to their license, this question explored how the policy was implemented, or how the process of implementation was experienced. In addition, the question provides a timeline in which grievances began and illuminated if the grievances against the policy

were recent or longstanding. Finally, the question allowed better understanding as to why Class B fishers are challenging the policy now, rather than earlier. The questions sought to illuminate if the reasons for challenging the 1976 policy were purely economic, or if there are other motivators. Without the 1976 policy, Class B licenses would not exist. Understanding fishers' experiences in obtaining their license and their grievances pertaining to it are essential in understanding the impacts the policy has had.

## Chapter 5: Results

### *Fisher 1*

Fisher 1 described his father's license as a "family enterprise" which has been a part of the family his entire life. He said his whole family is involved in lobster fishing and that his father fished his Class B license until 2002 when he needed to leave the fishery due to health reasons. At that time, the cod fishery had recently collapsed, and Fisher 1 started to fish his father's license after the productivity of their groundfish license decreased significantly.

When Fisher 1 began fishing the Class B license, he started to question why his father's license was allocated less traps than other fishers in the port. When he questioned DFO about it, they explained that his father was allocated a Class B lobster license in 1976 and the time in which an appeal could have been made had passed. This confused Fisher 1 as he understood that his family's licenses were considered a part of the independent core in 1996 and therefore DFO should consider any reasonable request by a member of the independent core. However, it was Fisher 1's interpretation that this was not how he was being treated.

He explained that his father was gainfully employed outside of the fishery but in 1976, fishers were verbally told that if they were to end their employment outside of the fishery that their license would be upgraded to a Class A. In 1981, this regulation changed but Fisher 1's family was never made aware of it. He said his father was illiterate and challenging a policy such as this would have been nearly impossible as the jargon or procedures needed to challenge would have been far from reach.



Fisher 1 described how the “backbone of his family enterprise is the Class B license” and that being able to transfer the license within the family would enhance his culture and heritage. He went on to say that he sees the Class B licensing policy as unfair.

In terms of sustainability, Fisher 1 explained how the industry has changed since his father started fishing. He said fishers are smarter than they used to be because of the technology they have on hand. In comparison, 25 years ago they fished by sight.

He said when his father began fishing for lobster, he had one wooden crate which would hold the days catch and there was no limitation on how many traps one could fish. Today, there are trap limits; however, he also explained that the fishery is strong, and landings are up. He said in 2010, 2400 pounds of lobster were landed in his port and in recent years over 10,000 pounds have been landing. He went on to explain how the number of boats in his port has also increased. He said that if the port can sustain such an increase in landings, more traps, and fishers, than the fishery is sustainable. Fisher 1 says fishers have taken great care to ensure the fishery remains sustainable by increasing the gage size, allowing female lobsters to molt two times before they are big enough to go to market, and increasing escape vent size to ensure smaller lobsters are not handled every day.

Fisher 1 said he is curious to see what the outcome of the *Publicover v. Canada* case will be as the verdict could set a precedent for others with Class B licenses. He went on to say that Class B fishers have been held back because of the wrongs of the past. The government has resolved past crimes, and the need for them to do it again is no different. Fisher 1 said, “this is a crime to our family to lose our privilege to fish for our heritage and our culture”.

Fisher 1 explained that he can demonstrate his family is dependent on the Class B license. He even said that this season is a \$100,000 season. He questioned why people continue to enter the fishery through A licenses and yet, Class Bs are being phased out based on conservation. New licenses are coming into his port with more traps, yet licenses with 1/3 of the traps of a Class A license are being phased out. He says this policy is no longer justified.

### *Fisher 2*

Fisher 2 is from generations of fishers. He obtained his first license when he was eight years old at his local corner store. As a child he fished his lobster license from a dory and at the age of 10 he started to catch lobsters on a line off the local breakwater. When Fisher 2 started fishing lobster, they sold for roughly \$0.75-1 per pound.

Fisher 2 first heard about his demotion to a Class B license over the radio. At the time, he called his local fisheries officer to ask about what was happening and asked him to explain the policy. Once explained, Fisher 2 did not agree with the policy and has disputed his license ever since. Fisher 2 has gone on to live a life of advocacy for Class B licenses and has questioned many Ministers about why the policy continues to remain. He says the response remains the same in that Ministers did not want to “open a can of worms”.

Although Fisher 2 is not currently fishing his license due to health reasons, he says that the person who does fish it is making approximately \$110,000 per year. He has no one to pass his license on to and says that there are many people who are willing to buy his license from him. He sees keeping people, especially young fishers employed

through his license as important for helping others find a livelihood, good work and it helps to keep people off employment insurance, which in turn saves taxpayer dollars.

Fisher 2 says to maintain the sustainability of the fishery, DFO needs to “get more information from fishers at the wharf” before making decisions. He views the fishery as too regulated and more involvement of fishers in decision making is needed to ensure the sustainability and conservation of the fishery is maintained.

### *Fisher 3*

Fisher 3 began fishing in the 1950s. He explains that fishing was the primary source of income for his family and although at the time, the price per unit was low, the quality remained the same as today. Although his teachers had hopes of him going to college, his father told him he had to fish lobsters and he never completed high school. In 1954, Fisher 3 began fishing full-time. He says at the time the minimum size was 79mm for the canneries and 81mm for shippers which did not enable females the proper opportunity to grow or berry.

When the “moonlighter” policy was introduced in 1976, Fisher 3 describes how there were two class of fishermen which caused Class B fishermen to “feel like 3<sup>rd</sup> class Canadians”. He says when the list of who would receive a Class B license came out in 1976, his name was never on it, and yet, he received a Class B license. He explained that when the Minister came to town to explain the policy, he said that if Class B fishers went back to fishing full-time, they would receive a Class A license; however, this policy changed without the knowledge of Fisher 3.

He went on to say that there are a lot of political dynamics within and among DFO. For fishers like him who do not have internet, communicating or learning about new programs is difficult. He exclaimed “fisheries policy is like Greek to us” when describing how difficult it is for the average fisher to understand complex policy documents. He went on to explain that DFO has changed and walked back many policies over the years, but never this one. He said he went to the Supreme Court twice to challenge his license but had to reclude his claims because he could not afford the legal fees if he were to lose.

Fisher 3 feels as though the licenses should go to the families of fishers or have the option for the government to buy the fishers out. He says that Class B license holders have suffered “four decades of injustice” and it is time an amendment comes forward for them.

#### *Fisher 4*

Fisher 4 is also a generational fisherman. His father and grandfather fished and today, he is challenging his Father’s Class B license as his father is elderly and now lives in an assisted living facility.

He explained how over time, the equipment, traps, and boats have all changed in the lobster fishery and everything today has more technology than it did before. He also said the volume of lobster is much greater than it was and the conservation methods that were implemented to protect the stock have been successful. He also explained how fishing was not a prosperous venture in the 1970s; however, today it is more lucrative than it ever was.

Fisher 4 says the fishery is currently very sustainable, especially given all the conservation methods that have been implemented. He says in his region, the stock is very strong, and it will likely remain profitable into the future. He also states that given the strength of the stock, reducing the number of licenses currently in the fishery is not needed for conservation. Although he agrees that the reduction of Class B licenses was important in 1976, Fisher 4 does not see a need to reduce licenses further.

Fisher 4 had no doubts that his family contributed to the growth of the lobster fishery. He explained how his family did all the things requested of them to conserve the stock including trap reduction and following lobster size increase regulations. He says his family understood the need to change their license in the 1970s because the fishery was not strong, and it needed help. Fisher 4 explained many promises were made to his father when the policy was first instated which explained that if he stopped working full-time, he could re-enter the fishery as a Class A fisher, yet over time, he explains that these promises disappeared. He is challenging the policy now because his father is elderly, and he wants to maintain his generational tie to the fishery his father and grandfather were a part of. If his father passes prior to a decision about his license being made, he will lose the ability to fish a Class B license.

#### *Fisher 5*

Fisher 5 began fishing lobster at 13 years old when he bought his license for 25 cents. He began fishing with a dory and would go out to fish before and after his shifts at the local fish plant. When he started fishing, lobster was selling for about 39 cents a pound. Over the years, Fisher 5 has worked in various fisheries across Canada. When the 1976 policy came about, he could not afford to quit his job and fish full-time. The

threshold for income which would make a fisher a Class B was \$7000. It is the opinion of Fisher 5 that the 1976 policy should never have been about money, but instead about the number of days fished or amount of catch from the year before. Fisher 5 continued to fish and renew his license yearly while maintaining employment outside of the fishery. In 2002, Fisher 5 took an early retirement and began fishing his Class B license full time.

Fisher 5 explained how conservation measures had been placed on the fishery in the 1970s and 1980s including trap limits; however, the only policy which has stuck since its inception is the Class B licensing policy. He questions why, if DFO can amend other sustainability and conservation measures, has this policy remained untouched?

Fisher 5 explained how the traps, hauling and technology involved in the fishery has changed since he started fishing. He went on to explain that there is a lot of greed in the industry which has resulted in adverse effects on the conservation of the fishery. Fishers now go out farther, for longer, have larger boats, there is more pressure on stocks and yet, Class B licenses continue to be enforced, even after the fishery has expanded.

Fisher 5 feels that the conservation of the fishery has been placed on Class B license holders, meanwhile, they have a negligible impact on the fishery as they only represent a small portion of traps. He said “the conservation has hit Class B’s” more than other fishers. He went on to explain that “Class B fishermen are not going to take the fishery down”. In that since they are such a small portion of the fishery, conservation measures need to be placed elsewhere, such as putting berried females back in the water in LFA 33 and 34. He says that the initial objectives of the policy have been met, but the nature of the initial policy is being lost. He says the policy came about as a method of conservation but to also keep owner-operators in the fishery. However, with the rise of

industries and the large costs of A licenses, the owner-operator idea is moving farther away from its initial objectives. Since the 1976 policy has never been reviewed, these nuances could be overlooked. Without reviews of the Class B policy, more harm to the livelihoods of Class B fishers will continue.

Finally, Fisher 5 says that if given the opportunity, he would transfer his license to his son. However, he also highlighted that if he was to lose his license, there would be impacts beyond himself including a loss of income to his local pound. He exclaimed many Class A license holders in his LFA support him and hope he can transfer his license. What frustrates Fisher 5 is that despite participating in conservation measures and helping develop many policies which have help the stocks grow, Class B license holders “continue to be treated like 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> class citizens”.

#### *Fisher 6*

Fisher 6 is the son of a Class B license holder and has recently begun to fish his father’s license as his father is unable to do so. He says his father began fishing as a method of survival, much like many of the other children in his community. His father started fishing with a rowboat and he rowed to his traps. He bought his license for 25 cents in the 1960s. Fisher 6 emphasized that even though the cost is not significant today, the expense was considerable for his father in the 1960s. Fisher 6 says “As my father’s son, my identity was shaped by growing up and watching the Class B fisherman work extremely hard to build a life for our seventh-generation fishing family”.

Fisher 6’s father was told he would receive a Class B license from fisheries officers during a verbal conversation. His father challenged the legitimacy of this

decision given that his father's port was frozen until the spring, which prevented him from fishing full-time and caused him to seek employment outside of the fishery.

Fisher 6 recalled how his father and uncle fished their license until 2012. He says the fishery has changed with the introduction of trap haulers, larger boats, and newer traps. However, Fisher 6 also recalled his family building lobster traps by hand. He says his family's fishing operation changed dramatically in 1994 with the purchase of a customized and well-equipped lobster boat with an automated hauler.

Fisher 6, much like the other participants, was confused as to why when landings are five times what they were before, the fishery continues to be reduced. A sustainable fishery is one that is not overfished, and today, he does not see overfishing occurring which has caused him to question why his father will lose his license. Fisher 6 agreed with Fisher 5 in that greed plays a major role in the sustainability of the fishery. He says DFO's administration and control of factors which impact the market plays a major role in the sustainability of the fishery. He says his father has always challenged why he had a Class B license, and as his father has aged, he has taken on the role of advocate for his father's license. It is his opinion that DFO is favouring entities with access to large amounts of credit, which is pushing out those who do not have the same fortunes. He says, "My family will always have a grievance towards the DFO until Class B licenses are made an institution and made transferable".



## Chapter 6: Discussion

The 1976 moonlighter policy took a myopic view of what the lobster fishery meant to lobster fishers, regardless of the type of license they held. However, the burden of stock conservation was disproportionately placed on Class B license holders. Although DFO's method of conservation ultimately succeeded at increasing the biomasses of lobster in Atlantic Canada, it did so by exhibiting behaviours of a humiliating institution. These findings were also consistent throughout the interview process, in that interviewees saw their connection to the fishery as more than an economic transaction and they felt disrespected by DFO, as they have been treated as though their licenses are worthless. This chapter will explore more of these findings and explain why a thorough policy review is needed for the 1976 policy.

### *Beyond Economics*

When the 1976 moonlighter policy was initially introduced, the only stipulation differentiating Class A and Class B licenses was income source. However, the policy failed to recognize the difficulties many fishers faced when their license was re-classified as a Class B. At the time of implementation, there was a clause in the policy which stated if fishers were to return to fishing full-time, they would receive their full Class A license (DeWolf, 1974). However, fishers involved in this research's interview process have said that by 1982 the policy was amended, making the option to re-classify as a Class A was no longer possible. They were never informed of this change and by the time they were aware, the appeal period had ended.

Many fishers highlighted a lack of communication from DFO when the policy was initially introduced. Some fishers explained how they received written documentation about changes to their license, while others recall finding out about changes to their license through the media or word of mouth. Some fishers also highlighted how even if written documentation was provided, it was not clear or easily understood by most fishers. One fisher was quoted in saying, “DFO documents are like Greek to us”.

It must be stressed that the lobster fishery in 1976 was not a profitable enterprise like it is today and many fishers were in financially precarious positions. Although many Class B fishers were pursuing employment outside of the fishery for financial reasons, their generational ties to the fishery remained. All interviewees indicated their attachment to the fishery stems well beyond economics. Although fishing lobster is a key income source for them, all interviewees highlighted how their livelihoods and culture are embedded within the fishery. Many interviewees expressed concern about the impact losing their license would have on their families. Many worried about if their families could continue to live in their coastal communities if they lost the privilege to participate in the fishery.

All interviewees explained their connection to the fishery was through parents or grandparents and that they had passed on the tradition to their children and families. They also explained that even though their license is reduced, they hope to pass their license on to family or close community members. Fishers 1, 4, 5 and 6 wished to transfer their license whereas Fisher 2 and 3 hoped to sell their license to support their family, as they were unable to pass it on. Many participants felt that if they were to lose their Class B

license, they would lose the connection to the fishery their families have had for generations.

No interviewee found the 1976 policy to be fair; however, some did recognize the need for conservation and protective measures in the 1970s, which supports the idea that the policy achieved its objective of sustainability. Though, interviewees did mention the strength of the stock today, many of them expressed concern for the future of the fishery if generational fishers like themselves continue to be pushed out of it. One fisher's concern was for the longevity of the independent core if Class B license holders were to be phased out, as eliminating Class Bs could lead to a concentration of Class A license holdings, which could lead to a monopoly. In sum, all fishers were confused as to why, when the stocks are plentiful and after following all the rules and taking on the burden of conservation, Class B licenses continue to be phased out "to their demise".

All fishers recognized they had a hand in developing and growing the fishery. Multiple fishers highlighted how their families had supported and went along with conservation measures implemented by DFO such as a reduction in trap size, v-notching females and increasing the minimum size of lobster caught. In addition, many interviewees indicated they were a part of different groups which advocated for conservation measures, unions, their local ports, and Class B license holders.

The interviewees had somewhat similar experiences when notified about receiving their Class B license. However, few of them heard about the changes to their license directly from DFO. Fisher 1 only discovered his father had a Class B license in the early 2000s, whereas Fisher 2 heard about the changes via the media, Fisher 3 was notified of changes to his license from DFO, but only after an initially released document

did not indicate he was to be a Class B license holder. Fisher 4's father agreed to his Class B license by notification from DFO. Fisher 5 was advised of his Class B license when his license was cancelled by DFO. And finally, Fisher 6's father heard about the changes to his license in a verbal conversation with a fisheries officer.

All fishers indicated they have always disputed their classification as a Class B lobster fisher; however, only recently, upon their upcoming retirement or the increasing age of their parent did they escalate their challenge to the policy. What continues to baffle many interviewees is that if the fishery is healthy and well managed, why is DFO continuing to eliminate fishers from the industry? Many interviewees were angry they took the brunt of the conservation burden and sacrificed on behalf of the fishery and yet, they have not been rewarded for their efforts, even after the policy achieved its initial goals. Many fishers expressed their frustration of seeing the Atlantic Canadian lobster fishery expand—through increased boat size and geographical range of operations—while Class B fishers continue to be phased out. Many fishers questioned the impact Class B licenses had on the overall fishery, as their traps only represent a fraction of Class A license traps in their respective LFAs.

The examples above highlight how although initial justification for the 1976 policy was based purely on fisher income, the connections and generational impact of the 1976 policy on Class B fishers reaches far beyond economics. Today, Class B fishers are asking DFO to respect and recognize the way the 1976 policy continues to impact them well beyond economics. Class B fishers' livelihoods and culture are attached to the very fishery DFO neglects to recognize them as a significant stakeholder in. Examining this conflict beyond economics has allowed these truths to surface.

### *Disproportional Burden*

The burden of conservation according to Hanich *et al.* (2015) is when the costs of conservation are unevenly distributed onto a specific group, rather than spread among the whole. In terms of the lobster fishery, the burden of conservation was placed upon Class B license holders as they bore the cost of reduced trap numbers and therefore lost income. However, the burden of conservation is not limited to economics. The social burden that was placed on Class B license holders because of the 1976 policy resulted in alienation from communities, not being invited into local fisher unions and not being seen as “legitimate” fishermen by DFO (Publicover v. Canada, 2021). The assumption that Class B license holders had no stake in the lobster industry is biased and assumes familial ties and connections to fishing communities is irrelevant to Class B license holders. In addition, in its initial justification of the 1976 policy, DFO assumes Class B license holders are illegitimate. However, prior to the 1976 policy, Class B license holders obtained and maintained a license the same way a Class A license holder would. The only difference was Class B license holders sought additional employment outside of a fishery that failed to provide them with an income above the poverty line. The social impacts of the burden of lobster conservation stretch far beyond the economics of the situation.

Chambers *et al.* (2017) explain the concept of “Little Kings” in Icelandic fisheries, which came about after Individual Transferable Quota’s (ITQs) were implemented. The “Little Kings” came from a participant in the research who highlighted that once ITQs were implemented in their region, it left local fishers with little opportunity to remain involved in the fishery because the quota needed to sustain a livelihood was too expensive to buy from the firms which held most of the quota (Chambers *et al.*, 2017). What Chambers *et al.* (2017) are trying to have us consider are

the social impacts of implementing policies such as ITQs (or Class B licenses) onto small-scale fishers. In these cases, the policies effectively pushed small-scale fishers out of the fishery they had generational connections with. This resulted in “Little Kings” in each community who held onto a lot of quota (*i.e.* Class A licenses) and effectively had a monopoly over the resource. In Iceland, as in Atlantic Canada, the burden of conservation was placed on small-scale fishers to allow stocks to rebound, rather than on those who had a larger piece of the pie.

What is important to consider in this comparison is that once Class B fishers are pushed out of the fishery, much like the small-scale fishers were in Iceland, the establishment of “Little Kings” could occur among Class A license holders. Those who hold Class A licenses will be sole operators which will present minimal competition. In addition, fewer generational fishers will remain in the fishery. Instead, those with access to substantial credit or larger corporations will begin to control the use of Class A licenses in Atlantic Canadian coastal communities.

When reflecting on this example, and the experiences of Class B lobster license holders in Atlantic Canada, it becomes apparent that policy problems stem back to political power. The 1976 policy and the Icelandic ITQ policy created politically powerful people in coastal communities. Today, DFO and the federal government do little to anger Class A license holders because of the power they hold in small coastal communities and the same can be found in Iceland (Chambers *et al.*, 2017, p. 23). Those with power have a say and a strong influence on policy makers. What would prompt a decision maker to listen to a small-scale fisher when large stakeholders have a greater influence on long-term policies?

### *Humiliating Institution*

The way in which DFO treats Class B license holders supports the idea that the department is acting like a humiliating institution. In its purest simplicity, Margalit (1998) argues that humiliation stems from the disrespect of other humans. He makes some assumptions in his analysis in that he assumes everyone can act freely and can change their lives if they please (Margalit, 1998 p.73). By making such an assumption, he can argue that to have a just society, we must respect others. Margalit says not treating people like humans can result in:

- a) treating them as objects;
  - b) treating them as machines;
  - c) treating them as animals; or
  - d) treating them as subhuman (which includes treating adults as children).
- (Margalit, 199,8 p.89)

Ultimately, Margalit's interpretation of what a decent society is relies on respect (Margalit, 1998). Respect for each other, occupations, livelihoods, and culture are all necessary for a decent society. When respect is tarnished or you begin to treat people as less than, you run into issues which can lead to humiliating institutions. At the conclusion of the interview and literature review process, it has come to light that DFO could be operating a humiliating institution with Class B license holders. Some examples of disrespect from DFO in this case include: the Minister refusing to hear what Class B license holders have to say about their concerns, DFO officials not advising interviewees about changes to their licenses, and DFO continually fighting judicial reviews requested by Class B fishers in Canadian courts (Publicover v. Canada, 2021).

In the case of Class B license holders, respect from DFO and the Minister lacks as the 1976 policy has never been reviewed and many fishers feel unheard by the Minister,

despite calls for action and multiple fishers having extenuating circumstances. Margalit argues,

humiliation involves an existential threat. It is based on the fact that the perpetrator—especially the institutional humiliator—has the power over the victim he assails. (Margalit, 1998, p.122)

Margalit also argues that rejection from others can create a humiliating institution. He explains that if governing bodies reject that certain groups exist to avoid confronting various issues, then they are creating humiliating institutions through rejection (Margalit, 1998, p.131). It is not necessarily a policy directive; however, ignoring the concerns of certain groups does not equate to the overall diminishment of their concerns or challenges. To relate back to the Class B licensing issue, DFO and the Minister, have power over the livelihoods of Class B license holders. Their inaction on this issue has made them the perpetrators of a humiliating institution via rejection. This is not to say DFO does not know or refuses to acknowledge Class B license holders exist, instead, the humiliating institution is that DFO and those involved in the institution have upheld the policy since 1976 and rejected and/or ignored the concerns brought up by Class B license holders. Although staff and ministers have changed over time, the institutional power and position of the department has chosen not to adapt or act on the Class B licensing issue. This has perpetuated a systematic humiliating institution since 1976 (Margalit, 1998, p.129).

The threat this poses to the license holders should cause concern. Institutions which uphold humiliating tactics typically work against the needs and wants of the most vulnerable populations, and instead give-in to more powerful forces. Ultimately,



governmental departments are mandated to work for the public; however, if those very departments uphold humiliating institutional practices, those who are supposed to be the clients of the department end up fearing the institutions assigned to work for them.

Margalit argues,

A decent society is one that fights conditions which constitute a justification for its dependents to consider themselves humiliated. A society is decent if its institutions do not act in ways that give the people under their authority sound reasons to consider themselves humiliated. (Margalit, 1998, p.11)

As DFO and the Minister remain upholding humiliating institutional practices, they continue to create a humiliating institution for Class B license holders. Margalit warns decent societies would not provide platforms for institutions to create humiliating institutions in the first place. In the end, the values of departments will continue to create humiliating institutions, unless society demands change.

#### *In Review*

This discussion has resulted in a few conclusions: 1) the Class B licensing policy was poorly designed and has been upheld for almost fifty years with little regard for its impact on the lives of Atlantic Canadian fishers; 2) the policy was poorly implemented. Fishers were unaware of all the implications facing their licenses, they were not made aware of appeal periods, long-term impacts, or made abreast about how challenges to the policy could occur.

To rectify some of the losses suffered from this policy, I propose the following measures. Although not extensive, changes such as those proposed below could start a conversation and ensure unfair policies are not sustained or implemented in the future.

DFO should review the 1976 policy in its entirety to determine if the policy achieved its initial goals (Howlett *et al.*, 2009, p.191). If it has, an amendment of the policy should be made to reflect its achievements. If it has not, a plan should be developed alongside fishers to determine the best way forward. A co-management model is encouraged as it would foster collaboration and enable affected parties to be included in decisions regarding their livelihoods (Pinkerton *et al.*, 1989; 2018). Although this recommendation will not solve the errors of the past, it is a first step in mending relationships between Class B fishers and DFO. This research has highlighted how Class B fishers across the Maritimes have similar grievances and views of the future of the fishery. If DFO continues to operate on a model which excludes fishers from decision making about their lives and/or licenses, this divide will only grow larger. Given the age and dwindling population of Class B license holders, the time to make such changes to this policy is fading. Time is not unlimited for Class B fishers.

Although Class B license holders and the participants of this research continue to live in its reality, the goal of this section is to highlight their stories and encourage DFO to not make the same mistakes with future policies. DFO's desire to maintain the status quo, even after evidence of hardship stemming from this policy is concerning. Although one can appreciate the difficult situation the department is in, continuing to stand by policies which have achieved their goals, but continue to alienate fishers against one another and reduce incomes in some of Canada's smallest communities is bewildering. The science has been clear in stating that lobster stocks are strong and have healthy biomasses, there is no evidence of overfishing, and the effort being exerted in the fishery is not considered abnormal (Fisheries and Oceans Canada, 2021a, b, c). It is the

recommendation of this researcher, DFO follow the advice of the Prime Minister and “trust the science” when making decisions to amend licenses (*Justin Trudeau’s Address to Parliament on the Situation in Ottawa, 2022*).

Moving forward, it must be considered how a review and interviews such as this should influence fisheries management and conservation goals in the future. When developing policies which surround conservation, there must be an end point which a policy is trying to achieve. Once this goal is reached, there must be a plan in place for a re-assessment of the policy to determine if it continues to have merit. When it comes to the Class B lobster fishing case, after multiple CSAS reports emerged which indicated a rebound in stocks across Atlantic Canada, there should have been a review of the policy to determine if the conservation goals were the culprit for the rebound (Lawton *et al.*, 2001). If the answer was determined to be yes, then the policy should have been reviewed. The outcomes of this review may have been that Class B licenses continued at their reduced trap number or that entry into the fishery remained limited. However, reviewing the policy would have enabled policy makers to consider the burden of conservation in an alternative context.

## Chapter 7: Conclusion

A thorough policy review of the 1976 policy is needed to ensure the fishery remains fair for all those with a stake in it. The purpose of policy review is to examine if the policy achieved its objectives. In this case, the policy's objective was to sustain the stock for future generations. This paper has argued that because of initiatives like the 1976 moonlighter policy, the stock was able to rebound to healthier levels; however, it did not come without a cost. The impact the 1976 policy had and continues to have on Class B license holders is unfair and has enabled DFO to disrespect them, thereby creating a humiliating institution. The best way to rectify the Class B licensing issue is for DFO to review the policy openly and transparently alongside Class B fishers. This endeavor would enable policy makers and those affected by the policy to come together and work towards amicable solutions. Ignoring the issue and refusing to acknowledge Class B fishers' stake in the fishery only creates more problems and a bigger divide between fishers and DFO. Both sides need to come together for the benefit of the stock, generational fishers, and to ensure DFO discontinues creating a humiliating institution.

Future policies must consider the long-term effects of decisions and have plans in place to review and evaluate them as time passes. The evaluators must consider the initial objectives and decide if the goals were met and how to proceed should the project be deemed successful. This case has illuminated what can happen when policies are implemented and never reviewed. Those affected by policy decisions should not be neglected in these reviews, rather they should have a leading role in determining the success of a policy.

After over eight months of work on the Class B licensing issue and the 1976 moonlighter policy, there remains much to say and do for Class B lobster fishers across Atlantic Canada. These fishers and their families signed onto something for the benefit of the stock, and they are being punished for making choices to put food on the table. In a resource rich country such as Canada, it is difficult to comprehend why eliminating fishers from a healthy fishery continues to cause so much bureaucratic strife. Class B fishers have done nothing but abide by the rules, work to conserve the stock, and pass on traditions to their families. Why are we punishing them for wanting to maintain their culture?

The issue of Class B lobster fishing licenses is complex and finding a perfect solution is nearly impossible. However, working towards what is right, fair, and sustainable benefits all. What is frightening is the ability for a federal department and Minister to stand behind a policy which is almost fifty years old and has never been reviewed. Upholding humiliating institutional practices is wrong and un-Canadian. The foundation of policy studies in any academic institution in Canada is the policy cycle and a critical stage of it is review (Howlett *et al.*, 2009). Without policy reviews, policies cannot keep up with ever-changing social and environmental needs. A policy review of the 1976 policy is a necessary first step towards a fair and sustainable fishery.

Class B license holders have been fishing for well over fifty years, and they are entitled to retirement and respect in the same way as a Class A fisher. Yet, “Class B fishers continue to be treated like 2<sup>nd</sup>, 3<sup>rd</sup> or 4<sup>th</sup> class citizens” according to Fisher 5. I have become intertwined in the lives and stories of Class B fishers across Atlantic Canada. My hope is this research illuminates how sometimes, traditions and livelihoods

trump governmental mandates and arbitrary conservation goals. People and their lives should not be pieces of a chess game waiting to be played and put on display for international audiences. Class B fishers are not asking for much. They are not asking for trap numbers to be increased, they are not asking for different fishing seasons, nor do they want special treatment by others. Instead, they wish to continue to see generations of their families and communities thrive in the industry they have had the privilege to be a part of. But time is of the essence for Class B license holders, as their increasing age threatens the ability for them to transfer their license.

What is evident at the conclusion of this research is that sitting back and waiting for Class B fishers to die is not a viable policy option. Allowing policies to run their course without opposition is naïve. DFO and the Minister should be prepared to sit and listen to Class B license holders in a public forum and decide a positive way forward for all involved. Hiding conversations behind closed doors and hoping the challenges will go away has never served any policy maker. If action is not taken, Class B license holders will become an irreparable legacy of DFO. Class B license holders deserve more, and it is the responsibility of DFO and the Minister to find solutions, not produce the problem.

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