

## **COMMUNITY FISHERY RIGHTS: ISSUES, APPROACHES AND ATLANTIC CANADIAN CASE STUDIES**

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### **ABSTRACT**

Community fishery rights are use rights (the right to take part in fishing) and/or management rights (the right to be involved in managing the fishery) implemented at a local, community level. While by no means a new invention, community rights are receiving renewed attention as a mechanism to improve the effectiveness of management in achieving sustainable fisheries. The rationale for this lies in the potential for better use of local ecological knowledge, for greater acceptance of fishery management rules, for better resolution of conflicts – by balancing ecological, economic, and community goals – and as a result of the above, for positive effects on conservation and sustainability. Community fishery rights relate closely to the increasingly-popular approach of community-based co-management, in which local fishery participants and communities, along with government, have significant responsibility for the management and stewardship of fishery resources. In Canada's Atlantic region, the fishery policy environment historically has not been attentive to, or supportive of, community rights or management initiatives. However, the negative impacts of a growing concentration of control in the fishery, produced by past policy measures, plus the new reality of aboriginal fisheries in the region, have led to grass-roots interest in community-based systems of fishery rights and fishery management, together with a certain degree of increased official acceptance. Indeed, though less publicized than the region's fisheries based on individual rights (such as ITQs), there are significant examples in Atlantic Canada of community fishery rights. This paper describes two major categories of these systems: community management boards in the groundfish fishery, and newly-developed commercial fisheries in aboriginal (Mi'kmaq) communities.

**Keywords:** use rights, management rights, property rights, fishing communities, community-based management, co-management, community quotas, aboriginal fisheries

### **INTRODUCTION**

The focus of fisheries management has shifted in recent years as a result of two converging forces. First, there is a global trend toward increasing devolution and decentralization of governance systems to a more local level ('subsidiarity'), a trend present not only in fisheries but across many sectors of society. This has led to a focus in fisheries management on the merits of co-management, and notably community-based co-management, in which fishery participants and local fishing communities take responsibility, along with government, for joint management of local fisheries (Doulman 1993; Jentoft et al. 1998; Berkes et al. 2001; Charles 2001; Graham et al. 2006). Second, increasing emphasis in natural resource sectors is being placed on the recognition and/or establishment of rights over the use and management of those resources, to improve the support for and feasibility of effective management (Charles 2002, 2004; Townsend and Charles 1997). Indeed, these two trends are closely related, in that devolution of fisheries management implies that the rights to participate in management are held at a more local level, which in turn enables an arrangement by which rights over participation in the fishing activity itself are both held and managed by local communities or organizations.

## COMMUNITY FISHERY RIGHTS

At the intersection of these two areas of emphasis – community-based co-management and fishery rights – is the concept of *community fishery rights*. The fundamental idea behind such rights is that they are allocated, or are traditionally present, at a collective level, i.e. held by a community of people rather than by individuals, corporations or other entities. Arrangements of this sort have a long history in fisheries, with many examples demonstrating that under the right circumstances, systems of rights can be effectively implemented at a community (collective) level. However, this topic has been largely neglected in the fisheries economics literature, which has instead focused on individual fishing rights.

As alluded to above, in practice fishery rights arise in two major forms, namely use rights and management rights (Charles, 2001, 2002), which can be described as follows:

- On the one hand, communities may collectively hold *use rights*, reflecting their right to ‘use’ the fishery, i.e., to go fishing. These rights may take the form of access rights (e.g., TURFs, limited entry licenses), input rights (effort limits, e.g., number of lobster traps per fisher) or output rights (e.g., community quotas). Having communities holding use rights represents an alternative to having those rights held by individuals, sectoral groups, corporations or other entities. How the fishery is pursued within a context of community use rights depends on the situation – the community may choose to own the capital (vessels) as well as the rights, hire fishers to do the fishing and earn profits from the fishery, or it may simply set the rules under which the fishers agree to fish, covering management costs but leaving the profits to the individual fishers.
- On the other hand, *management rights* reflect who has the right to take part in management. A focus on such rights fits with the growing emphasis on sharing responsibility for management between government, stakeholders and communities, through co-management. Indeed, community-based co-management can be seen as a system in which fishing communities hold management rights, along with government and the fishing sector. This system – long-utilized in the context of coastal fisheries, in both developing and developed countries – contrasts with ‘sector-based co-management’ in which a given sector of the fishery (e.g., fishers using a certain gear type, or having a certain vessel size, or exploiting a certain species) jointly manages with government, but without community involvement. There is in fact a spectrum of possibilities in co-management, depending on the level of involvement of each of the major players – government, the fishing industry, and fishing communities. The governmental role can range from minimal, in the case of self-regulation, to total control, in the case of top-down management. At the same time, in community-based co-management systems, the degree of community involvement may vary with the ‘level’ of the management: for example, ‘big’ policy issues (e.g., what do we want the fishery to look like in the future?) may have more broad-based community involvement than would the specifics of deciding on hook or mesh size in a fishery.

## **RATIONALE FOR COMMUNITY FISHERY RIGHTS**

While fishery rights and co-management arrangements can involve a variety of different entities (fishery organization, co-operative, community development corporation, individual fisher), the option of community fishery rights is receiving increasing attention. But why discuss community fishery rights? What do such rights offer relative to individual rights (e.g., individual transferable quotas as a form of use rights) which are far more often addressed in the fisheries economics literature? The answer lies in part in an emerging body of experience indicating the potential for locally devolved rights – use and management rights, assigned locally – to assist in:

- improving the use of local ecological knowledge, which becomes a natural component of the process in situations where fishing, fishery management and knowledge accumulation are all occurring side by side;
- improving the acceptance of management rules, since co-management involves those rules being developed with the involvement of the fishing sector and the local community, with penalties for infractions often imposed locally, and community peer pressure adding to the incentives for compliance;
- helping resolve conflicts, through processes in which there is a locally-determined balance achieved among the multiple ecological, economic, and community well-being goals, and in which neighbours have an incentive to get along with one another;
- thereby producing positive effects on fishery conservation and sustainability, through a better knowledge base, better compliance and more harmonious functioning of the fishery.

In addition, depending on the objectives being pursued in the fishery, the impacts of community fishery rights can be superior to those of other approaches to allocating rights (individual, sectoral, corporate, etc.), as a result of the differing structure of the rights arrangements, as well as their philosophical nature and underlying value systems. In particular there may be relatively more positive impacts both on those involved in fishing and on fishery ecosystems (Copes and Charles, 2004) – for example:

- community fishery rights can provide mechanisms to ensure equity (and as importantly, the perception of equity) in the impacts of fishery management and policy measures on individuals (boat owners, fishers, crew, etc.) – particularly since fishery rights systems define who can and cannot take part in a fishery, or its management, creating potential for divisive conflict between ‘winners’ and ‘losers’ or ‘insiders’ and ‘outsiders’;
- community rights systems tend to involve efforts to minimize the impacts of management decisions on coastal communities, since those communities are involved in the decision making – likely leading to greater long-term stability, e.g., through less geographical concentration of the fishery to larger ports (a hazard with some management schemes);
- community fishery rights can produce locally-acceptable distribution of benefits and costs among fishery participants, taking into account both the distribution of initial benefits, and inter-temporal benefits;
- community fishery rights can have better ‘indirect’ economic impacts on sustainability; this may be through local adoption of a conservation ethic, greater flexibility of fishery management (through local adaptive management), avoidance of wasteful practices at sea (perhaps through peer pressure) and greater efficiency of enforcement (through improved compliance as noted above).

## COMMUNITY FISHERY RIGHTS IN CANADA'S ATLANTIC FISHERIES

While fishing in Canada's Atlantic region has been historically, and in most cases still remains, structured around fishing communities, the policy environment, at least in recent decades, has not been particularly supportive of community fishery rights. However, there is expanding grass-roots interest in community-based systems of fishery rights and management, and this in turn has been accompanied by a limited degree of increased official acceptance. This trend in local-level community desire to take on fishery rights can be traced to a number of factors, including (1) the negative impacts of growing concentration of control in Atlantic fisheries, (2) a lack of governmental enforcement of policies meant to ensure the fishery is pursued by independent owner-operators, and (3) a new reality of expanded aboriginal commercial fisheries (Wiber and Kennedy 2001; Charles et al. 2007).

The growing presence of community fishery rights suggests the need to re-balance the attention paid to the various forms of fishery rights. Certainly, the region's individual rights arrangements have received much more publicity and support, on the part of researchers as well as government officials. Examples include the Gulf of Maine scallop fishery, the corporate-held quotas known as 'enterprise allocations' in the offshore groundfish fishery, and the ITQ otter trawl fleet in the Scotia-Fundy inshore groundfish fishery (see, e.g., Apostle et al. (2002)).

On the other hand, despite many existing examples in Atlantic Canada of community fishery rights, these have received considerably less attention in general, and particularly in the fisheries literature. An exception to this has been documentation of the existence of informal community rights, notably in the form of local self-regulation within lobster fisheries (cf. Acheson 1975; Brownstein and Tremblay 1994). In recent years, more formal community rights systems have emerged. The following summarizes two major groups of such systems: (a) 'community management boards' in the groundfish fishery and (b) newly-developed fishery management in aboriginal communities. (See Charles et al. (2007), and sources therein, for further details.)

### Community Management Boards

In Atlantic Canada, fisheries management is divided into administrative regions, one of which is the Scotia-Fundy management region, covering the Scotian Shelf and Bay of Fundy areas of Nova Scotia and New Brunswick. The most numerous component of the groundfish fishery within the Scotia-Fundy region is the inshore fixed-gear (hook-and-line and gillnet) sector. In the mid-1990s, fishers in that sector saw the need for fundamental changes in their interaction with the Canadian Department of Fisheries and Oceans. This led to a series of protests and strategy meetings, which in turn produced several new innovations in the fishery management system.

Crucial among the changes was a shift in how the fixed-gear component of groundfish TACs is handled within the fishery's quota management system. Traditionally, subdivisions of each TAC were made by gear and vessel size, whereas the new 'community' arrangement is based on subdividing the groundfish TACs geographically, into *community quotas* to be utilized jointly by fishers within the specific area. Those fishers form a Community Management Board, one for each geographical area, which further divides the quota among gear sectors, and sets operational management plans for each sector, including the conditions by which their members must agree

to operate by within the fishing season. Each of the Boards also maintains its own Infractions Committee for local enforcement of the agreed-upon regulations. This community management system means essentially that significant management rights are assigned to the local level, through the Management Boards, which create and enforce management plans, and which are primarily made up of those holding use rights to the local fixed-gear fishery (and who choose to belong to a participating fisher association).

An example of such a groundfish Community Management Board is the Fundy Fixed Gear Council (FFGC), which has served the fixed gear fishermen on the Nova Scotia (eastern) side of the Bay of Fundy since the mid-1990s. The FFGC has been successful in sharing available quotas amongst its members, resolving allocation conflicts, maintaining livelihoods through an equitable allocation of fishing opportunities, and handling compliance through its own self-managed Infractions Committee. While the FFGC, like other community management boards, is predominantly comprised of fishers, its community-minded membership has instituted positions for community (non-fishery) members on the FFGC governing body.

### **Aboriginal (Mi'kmaq) Community Fisheries**

The longstanding tradition of fishing among the several thousand Mi'kmaq people in Canada's Atlantic region suffered a setback several decades ago when the federal government introduced limited entry licensing, a system that excluded most aboriginals. However, the decline in native participation in commercial fisheries changed in 1999 with the Supreme Court of Canada's so-called "Marshall Decision", which recognized the historic right of the Mi'kmaq to catch and sell fish commercially.

Importantly, the Marshall Decision recognized not the right of each aboriginal individual to fish, but rather a *communal* right held by each of the Mi'kmaq communities (which are known as First Nations). This is in keeping with the reality that community-based management is the traditional mechanism for resource-based decision making in aboriginal communities, reflecting broader communal decision making, as well as the aboriginal values that link humans and nature.

The Marshall Decision focused on recognition of use rights, and has led to a rapid expansion of fishing activity within many of the First Nations. Since the fisheries of the region were already fully-exploited, expansion of Mi'kmaq fishing was made possible through an expensive process in which the federal government bought licenses from non-natives, transferring them to the First Nations. While devolution of management rights to First Nations has been less apparent, there is certainly an interest in these communities in taking on management responsibilities, and as noted below, this has already occurred to some extent in terms of operational fishery management.

An example of the growth in aboriginal commercial fishing is that of the two Mi'kmaq First Nations – Lennox Island and Abegweit – located in the province of Prince Edward Island, in the Gulf of St. Lawrence. Notable in this community fishery development has been establishment of decision-making systems on which fisheries to enter (by acquiring new fish quota) and on the operational aspects of management (e.g., who in the community will be fishing as well as when, how, and with what sharing arrangements). The decision processes involve the full community (not only the fishers), both through the Band Council (the local government) as well as through

community-wide meetings. Enforcement of the locally-set rules is done through traditional aboriginal community methods. Also notable is the effort to diversify economically, both in terms of acquiring fishing rights to a multiplicity of fisheries, and in terms of the communities using fishery income to enter other coastal economic activities, such as aquaculture and tourism.

## **CONCLUSION**

The concept of community fishery rights is not new, but it is receiving new-found interest, as the evidence of its benefits, and the shortcomings of alternatives such as top-down management and individual rights schemes, become apparent. Community fishery rights, by allocating use rights or management rights collectively, at a local, community level, have the potential to achieve a variety of fishery objectives, including improved compliance, better knowledge utilization and more efficient management. The examples discussed in this paper show that positive results can be obtained whether the focus is on community use rights (as with the Mi'kmaq community fisheries) or community management rights (as with the groundfish community management boards).

Of course, as with any rights system, there are challenges to be addressed in community rights arrangements, notably over how rights should be allocated initially, what should be the duration of the rights, and whether rights should be transferable. Indeed, problems may well arise over irreversibility (once allocated, it can be difficult to make changes in the assigned rights) and concentration (if transferable, rights tend to become concentrated). However, by ensuring that communities are making the major long-term decisions over their involvement in the fishery, there is more opportunity for careful planning so that decisions work toward a common good, as has been the case for the Atlantic Canadian community fishery examples discussed in this paper.

Finally, the growing interest in practical implementation of community fishery rights is creating an accompanying need to better understand those community systems that are already present, what makes such systems work, and under what conditions – since no rights arrangement will work under all circumstances. Much of the research that is needed on these topics might be best pursued in a participatory manner (Wiber et al. 2004), and, given the close connection of community rights with community-based co-management, the research will be able to build usefully on the existing co-management literature. There is much to explore on these topics already, and this is likely to evolve into an even richer field of study in the years ahead.

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