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**The Economics of Bargaining Rights in the Fisheries
of Nova Scotia and Atlantic Canada**

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Résumé de l'article

Les pêcheurs canadiens ne jouissent que de droits de négociation limités. À l'exception de dispositions récentes, partielles et nullement éprouvées, ils sont pour la plupart exclus de la législation du travail. Les propriétaires de bateaux de pêche sont écartés en tant qu'entrepreneurs. Des décisions judiciaires répétées excluent aussi les pêcheurs « participants » (non-propriétaires) en les considérant comme des associés à responsabilité limitée plutôt que comme des salariés, parce qu'ils sont rémunérés au prorata des prises. De plus, à quelques exceptions près, propriétaires et coparticipants s'exposent à des poursuites en vertu de la Loi relative aux enquêtes sur les coalitions s'ils concluent avec les acheteurs une convention collective fixant le prix du poisson... variable hasardeuse de leurs revenus. Le louage de services échappe à ses sanctions, mais non pas la pêche. Cet article vise à démontrer que, depuis la deuxième guerre mondiale, les changements technologiques ont révolutionné les flottilles de pêche de haute mer, formé un corps de pêcheurs sans propriété qui sont, quoique en disent les tribunaux, les « salariés » des propriétaires de bateaux. Le marché primaire du poisson brut est aussi un marché du travail pour les services des pêcheurs. Étant donné que la demande passée pour le poisson salé s'est déplacée vers le poisson frais, le centre de gravité économique de l'industrie de la pêche dans l'Atlantique s'est également déplacé des pêcheurs côtiers (propriétaires indépendants de petites embarcations) vers les rivages et financées par les flottilles de pêche en haute mer, d'où il s'ensuit que les propriétaires des usines « achètent » leur propre poisson. Ainsi, l'industrie se trouve-t-elle structurée de telle façon qu'elle compte quelques grandes et beaucoup de petites entreprises de préparation et de vente. L'isolement et la relative immobilité des pêcheurs côtiers favorisent l'hégémonie des grandes usines de transformation dans la fixation des prix à commencer par leurs propres flottilles dans les grands ports de pêche jusqu'aux petits havres de partance. L'influence accrue des grandes usines de transformation provient encore du fait qu'elles financent directement les bateaux des pêcheurs indépendants, mais aussi de la coutume qui s'est implantée d'avancer à cette catégorie de pêcheurs le capital de roulement et de leur fournir des services comportant un certain risque en retour de contrats de vente compensatoires. L'oligopsonie, stabilisée par le leadership que les usines de préparation exerce sur les prix, caractérise donc l'état des marchés primaires du poisson dans les provinces de la Côte Atlantique. De cette analyse, force est de conclure que la loi est illogique et injuste en écartant les « coparticipants » du statut de « salarié ». Un sous-marché monopsonie réel plus que potentiel montre que le remède se trouverait, d'une part, dans l'existence d'un marché du travail pour les « coparticipants » et, d'autre part, de marchés du poisson brut pour les pêcheurs indépendants qui seraient alors tenus pour des « entrepreneurs dépendants ». Il faudrait enfin que ces gens-là ne tombent pas sous le coup des sanctions de la Loi relative aux enquêtes sur les coalitions. L'analyse économique permet de constater que la négociation collective pourrait remédier à la situation. Les courbes de l'offre tant pour le travail de pêcheur que pour le poisson brut s'orientent vers la hausse. L'étude des facteurs relatifs au marché indique qu'il y a place, pour des négociations avec les usines de transformation au-delà de ce qu'on pourrait appeler le « loyer ». Même la négociation des prix du poisson au-dessus des niveaux de « loyer-zéro » ne diminuerait pas nécessairement la part des pêcheurs. L'élasticité naturelle de la demande pour des espèces données de poisson peut être « forte », mais elle l'est beaucoup moins dans le marché du poisson. L'élasticité des revenus tirés de la demande présente un caractère positif et la consommation par habitant est stable. Sans inclure les statistiques pour l'année 1974, toutes les évaluations font voir une tendance constante vers la hausse. De plus, les pêcheurs canadiens de l'Atlantique bénéficient aussi d'un avantage supplémentaire pour amortir leurs coûts sur les marchés américains. Compte tenu des sommes investies par les pêcheries canadiennes en équipement, l'élasticité du facteur remplacement est nulle à court terme et basse à long

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The Economics of Bargaining Rights in the Fisheries of Nova Scotia and Atlantic Canada

Charles Steinberg

This paper contends that the legal precedents which have until so recently discouraged positive Canadian legislation, and which could still invalidate fresh legislative efforts, are based on an outdated view of the economic relations of fishermen and fish buyers. The following briefly examines the economic underpinnings of the Canadian fishermen's right to bargain, with special reference to Nova Scotia and Atlantic Canada.

Canadian fishermen suffer a kind of legal triple jeopardy when they attempt to bargain collectively. This paper¹ contends that the legal precedents which have until so recently discouraged positive Canadian legislation, and which could still invalidate fresh legislative efforts, are based on an outdated view of the economic relations of fishermen and fish buyers. The following briefly examines the economic underpinnings of the Canadian fishermen's right to bargain, with special reference to Nova Scotia and Atlantic Canada.

THE ISSUES

The crux of the legal problem is that fishermen who have no equity in a fishing vessel are held by the courts to be « coadventurers », that is, limited partners with the vessel owners in the fishing enterprise because such fishermen are customarily paid by share of the catch proceeds. Since « Sharesmen » (so-called here-

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¹ The source of this review is Charles Steinberg, *Collective Bargaining Rights In The Canadian Sea Fisheries: A Case Study of Nova Scotia*, Columbia University, Ph.D. dissertation, May 1, 1973. I want also to acknowledge gratefully a Canada Department of Labor contract which resulted in the preliminary study, *Industrial Relations In The Nova Scotia Fisheries*. The Department of Labour, of course, bears no responsibility whatever for my data, analysis, or conclusions.

after) are not considered « employees », they were denied access to collective bargaining law except in the recent and untested legislation noted below. The boatowners (Independent Fishermen, hereafter) are held to be entrepreneurs, and on these grounds are also excluded from bargaining law.

Moreover, when collective bargaining is arranged by mutual consent² between Independent Fishermen and fish buyers outside the law, the bargainers are subject to anti-combines statutes which exempt labour but define fish as an article of commerce. If a complaint is sustained by the courts, the fishermen are held in restraint of trade.

Even unions of Sharesmen are liable on the same anti-combines grounds when negotiations concern the price of fish (a critical earnings variable) rather than the share itself, or other conditions of employment. Thus, regardless of their property rights in the enterprise, all Canadian fishermen's efforts to unionize and bargain are doubly jeopardized, first by shaky bargaining rights, and then by contradictory anti-combines law. The third pitfall is described below.

THE BACKGROUND

Despite the bargaining handicaps, fishermen have persisted in seeking collective bargaining as a remedy for their economic problems, much as did other North American workers prior to the legislative relief of the mid-1930's.

For over 75 years organized Canadian fishermen have been bargaining with processors and canners in British Columbia³ on a « voluntary » basis: outside the framework of established British Columbia labour law, and in tension-filled and often unstable bargaining conditions.⁴

Canadian East coast fishermen fared even worse. At least four bitter, spontaneous strikes erupted in Nova Scotia since the 1930's. Yet no

² That is, as an outcome of bitter economic struggle.

³ Stuart JAMIESON and Percy GLADSTONE, « Unionism In The Fishing Industry of British Columbia », *Canadian Journal of Economics and Political Science*, Vol. XVI, No. 1, Feb. 1950, and their companion article, « Unionism In The Fishing Industry of British Columbia », *Canadian Journal of Economics and Political Science*, Vol. XVI, No. 2, May 1950, pp. 146-171.

⁴ John D. BOYD, *The Industrial Relations System of the Fishing Industry*, Project # 55 (s), Draft Study, Task Force on Labour Relations, Privy Council Office, Nov. 1968.

formal bargaining relationship emerged until July, 1969, and this one, too, was initially based on voluntary recognition of the fishermen's union by the fish processor.⁵

Fishermen of the other East coast provinces had equally difficult times in establishing collective bargaining rights. The provincial « Fishermen's Federation Acts » of the early 1950's were ineffective in promoting unionization and subsequent bargaining rights.⁶

It was not until March 18th, 1971, that Nova Scotia enacted legislation allowing Sharesmen to bargain under the Nova Scotia Trade Union Act.⁷ The just concluded voluntary agreements were then quickly certified under the Act as bona fide union management contracts. Newfoundland followed suit June 2, 1971.⁸ The federal government did so on March 1st, 1973, with a bill that also purported to allow certain fishermen (presumably the same Sharesmen covered by the provincial acts) collective bargaining rights under the Canada Labour Act.⁹ British Columbia, with its extensive fisheries, and old unions still has no such legislation.

This recent flurry of lawmaking, especially in the East coast provinces, has encouraged the establishment of some additional bargaining

⁵ *Collective Agreement Between National Sea Products Ltd. and Local 606c Canadian Brotherhood of Railway and General Workers*, Canadian Labour Congress, Halifax, N.S., July 24th, 1969.

⁶ *Fisherman's Federation Act*, R.S. Newf. 1951, c. 70
Fisherman's Federation Act, R.S. P.E.I. 1951, c. 61
Fisherman's Federation Act, R.S. N.B. 1952, c. 89
Fisherman's Federation Act, R.S.N.S. 1967, c. 110.

⁷ An act to amend c 311 of the revised statutes the *Nova Scotia Trade Union Act*, Bill No. 11, Spring Session, 1971 :

« 68 B (1) Subject to subsection (3), this act shall apply to persons who are employed or engaged on fishing vessels of all types, or in the operation of such vessels on the water, and such persons shall be deemed to be employees for the purposes of this act.

(21) For the purpose of this Section a person is « employed or engaged » if he is paid wages or if he accepts or agrees to accept a percentage or other part of the proceeds of the venture or of the catch in lieu of or in addition to wages ».

Thus, the amendment's definition of « employed or engaged » excludes Independent Fishermen.

⁸ The Fishing Industry (Collective Bargaining) Act, S. Nfld, 1971, No. 53, though there was at first some doubt as to its status.

⁹ An Act to amend the Canada Labour Code, S.C. 1972, c. 18.

units, but the hurdles yet faced by fishermen are neither eliminated or surmounted. The massive legal obstacles just described remain as a threat. This threat could become a bar to further unionization and continued collective bargaining whenever an aggrieved party chooses either to challenge the existing legislation in the courts on the strength of the « co-adventurers » doctrine, or attack via the Anti-Combines route. Both actions were employed successfully in the past.¹⁰

The unresolved constitutional question of whether it is the federal or the provincial governments that have jurisdiction over the labour relations of fishermen compounds the two issues described, and is the third very real jeopardy.¹¹

Sweeping changes since World War II have transformed the fisheries from the days when fishing might possibly have been thought a joint venture for Sharesmen, and Independent Fishermen could be taken as simple entrepreneurs. Let us examine these movements and trace their effects on Nova Scotia and Atlantic Canada.

ECONOMIC AND TECHNOLOGICAL CHANGE IN THE FISHERIES

A general downward pressure on fish prices (and therefore fishing incomes) appeared at the mid-1920's, and lasted through the depression of the Thirties.¹² These price movements were accompanied by a market shift from salt to fresh, and fresh processed fish that is still in progress today. The demand for fresh fish, and increasing international competition in Canada's major U.S. market outlets, required, and inevitably led to profound changes in vessel power, speed, and fish catching ability.

Great increases were also needed in complementary shoreside freezing, holding, and processing facilities, as well as extensions and modifica-

¹⁰ The Dissertation, *supra*, pp. 206-247.

¹¹ Twelve British Columbia fishing firms have asked the federal courts to forbid the Canada Labour Relations Board from certifying the United Fishermen and Allied Workers' Union as bargaining agent for British Columbia fishermen on grounds, *inter alia*, that the Act is *ultra vires* the parliament of Canada, *The Halifax Mail Star*, Friday, August 31, 1973, p. 2.

¹² See *Report of the Royal Commission Investigating The Fisheries of the Maritime Provinces and the Magdalen Islands*, King's Printer, Ottawa, 1928; and *Report on the Canadian Atlantic Sea-Fishery*, Royal Commission on Provincial Development and Rehabilitation, Stewart Bates, King's Printer, Halifax, N.S., 1944.

tions in ancillary transportation. The new market requirements stimulated in Atlantic Canada (a quarter-century later than in New England) a virtual technological revolution in the race against fish spoilage.

FISHING METHODS AND VESSELS

From about 1881 to World War II, longlining by hand from schooner delivered dories remained the major method of Offshore ground-fishing. Throughout the Twenties and Thirties, both Inshore and Offshore hook and line fishermen successfully resisted the introduction of otter trawling (dragging huge bagnets astern). Consequently, larger schooners were built, diesel engines and electronic gear were added, but *schooners* still continued to set longlines from dories until just after World War II.¹³

Wartime needs lifted the restriction on otter trawling. The modest government small loans system started in the Thirties as depression aid was escalated into a major shipbuilding subsidy program that completely transformed the Canadian East coast fleet in a decade and a half. The pole-masted diesel schooner disappeared overnight.

A whole new fleet of large processor owned steel and wooden side and stern otter trawlers was created. The new vessels ranged to over 900 gross tons with price tags to \$2.½ million. Even the world famous schooner Bluenose, built with racing ambitions, had cost only \$33,580 without her gear. Today, these otter trawlers dominate Canadian Offshore ground-fishing. More important, the industry's entire economic centre of gravity shifted from a small-boat Inshore fishery to a major Offshore fishery.

THE IMPACT OF THE SHIPBUILDING SUBSIDY PROGRAM

Gross government¹⁴ expenditures on vessel subsidies alone from 1947-48 though March, 1969, amounted to over \$83.5 million for the Atlantic Provinces, not counting direct and indirect provincial subsidy programs, nor, for example, the Nova Scotia Fishermen's Loan Board's 1344 low interest loans which totaled \$36.8 million, 1960-1970.

¹³ The point of the 1928 Royal Commission *Supra* was to investigate this problem, and it recommended a restriction of otter trawling which held until 1942.

¹⁴ The Dissertation, pp. 46-60.

The effect on Atlantic fleet conversion and expansion was very great. 240 of the 266 steel and wooden vessels constructed throughout Canada under the program were built for the Atlantic fleet. 232 of the 240 (all but 8 longliners) were otter trawlers and draggers (small wooden otter trawlers).

In sum, the three trawlers that had somehow weathered the governmental restrictions (1930 to 1942) had increased to 11 by 1946, but by 1966, the Atlantic offshore fleet had 397 otter trawlers, 166 of them (over 41%) were over 100 gross tons. 85% of the Atlantic offshore fleet had been built after 1952. 67% were less than nine years old, and 42% were less than five years old.

EFFECTS ON OUTPUT AND LANDED VALUES

Analysis of Nova Scotia landings¹⁵ and landed values from 1945-1970 makes clear the effect of fleet modernization on output. A single linear regression equation could not be fitted either to the data on landings, or landed values. The slope coefficients for the years 1960-1970 are at least *five times greater* than those for the years 1945-1959 for both landings and landed value trend lines (see figures 1 and 2).

Evidence on the shift from Inshore to Offshore landings and values is equally pronounced. Table 1 summarizes the changes in landings, landed values, and in both per fisherman, comparing Inshore with Offshore data for the three benchmark years 1919, 1949, 1969.

Of the 134% overall increase in total landings from 1919-1969, only 17% accrued between 1919 and 1949, while 99% occurred between 1949 and 1969. But the overall Inshore share of the increase was only 11%, viz..., 15% to 1949, &-3.4% between 1949 and 1969... Offshore landings conversely rose by 295% overall, and inversely to Inshore landings by period: 21% up to 1949, and 227% from 1949 to 1969.

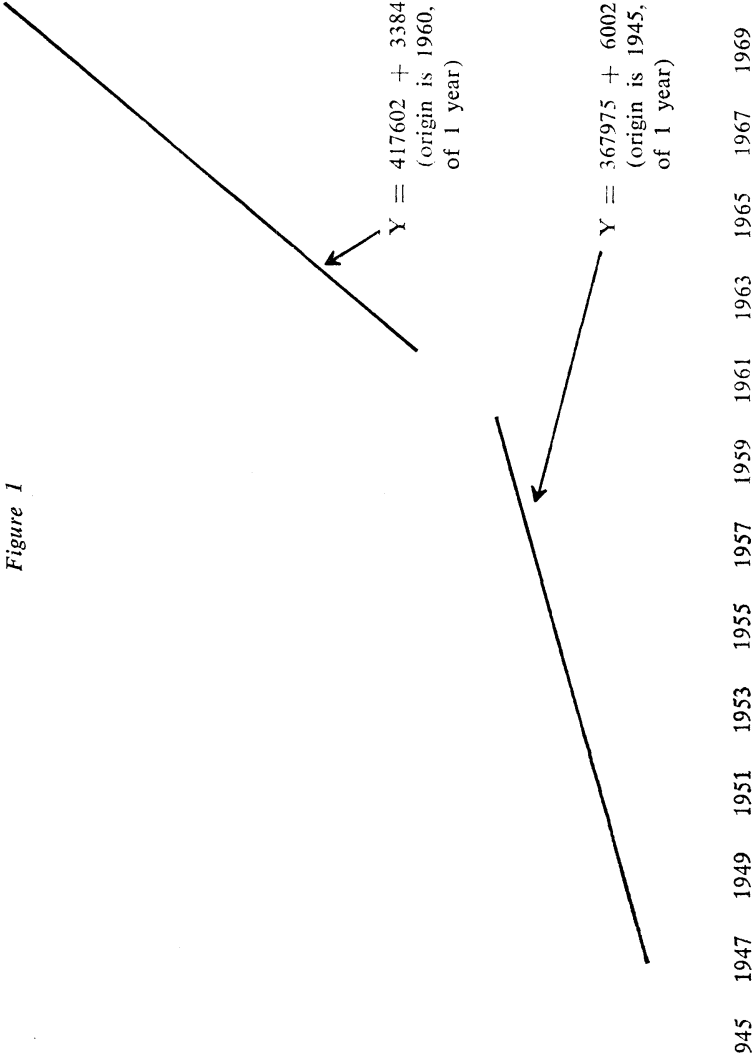
In 1919, Inshore and Offshore landings were 57% and 43% respectively of total landings. These proportions still held to within 1% (56% and 44%) until 1949. But by 1969, Inshore landed volume had fallen proportionately to 27% of the total as against 73% by the Offshore fishermen.

¹⁵ *Ibid.*, pp. 71-81.

TOTAL NOVA SCOTIA LANDINGS (LBS.) (1945-1970)
TREND LINES BY LEAST SQUARES 1.

QUANTITY 950
million
Lb.

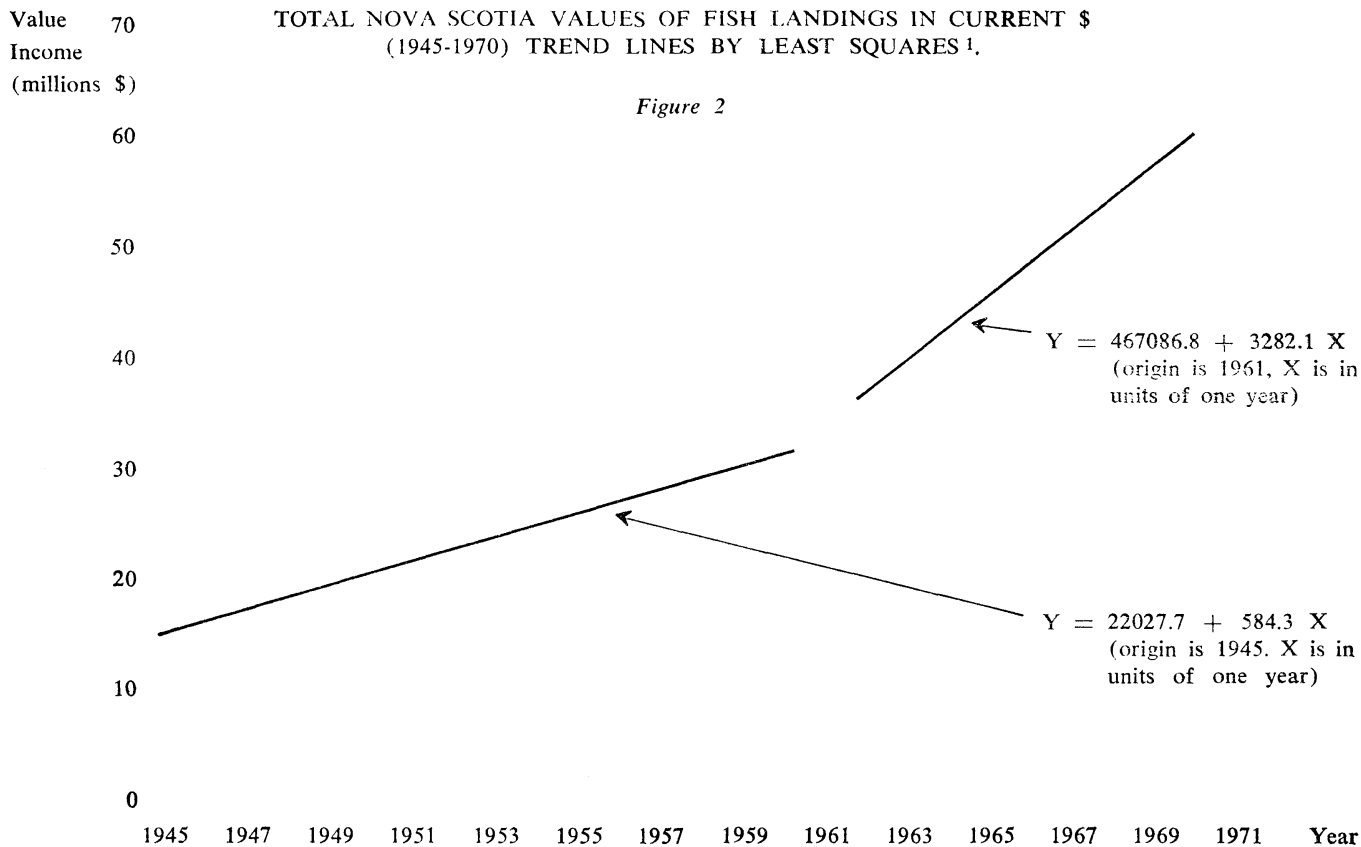
875
800
775
750
725
700
675
650
675
600
575
550
525
500
475
450
425
400
375
350
325



1 Ibid., p. 72.

TOTAL NOVA SCOTIA VALUES OF FISH LANDINGS IN CURRENT \$
(1945-1970) TREND LINES BY LEAST SQUARES¹.

Figure 2



¹ *Ibid.*, p. 73.

TABLE 1

Total, Inshore, and Offshore Comparative Statistics on Nova Scotia Landings, Fisherman, Landings per Fisherman, Landed Value, Landed Value per Fisherman for 1919, 1949 and 1969.¹ (All signs are positive except as noted).

	Percentage change			Per cent of total		
	1969/19	1949/19	1969/49	1919	1949	1969
Total Landings	134	17	99	—	—	—
Inshore Landings	11	15	-3.4	57	56	27
Offshore Landings	295	21	227	43	44	73
Total Fishermen	-47	-33	-21	—	—	—
Inshore Fishermen	-54	-39	-24	77	70	68
Offshore Fishermen	-24	-11	-16	23	30	32
Total Landings per Fisherman	340	74	154	—	—	—
Inshore Landings per Fisherman	139	89	27	—	—	—
Offshore Landings per Fisherman	423	35	288	—	—	—
Total Landed Value ²	496	39	203	—	—	—
Inshore Value	273	89	97	53	62	40
Offshore Value	537	35	373	47	38	60
Total Landed-Value per Fisherman	835	143	285	—	—	—
Inshore Landed Value per Fisherman	704	210	159	—	—	—
Offshore Landed Value per Fisherman	743	51	460	—	—	—

¹ *Ibid.*, p. 76.

² All Landed Value are in current \$.

80% of the basic groundfish cod, and 85% of the haddock are now taken Offshore. 70% of the Pelagic Pollock and 68% of the herring, traditionally an Inshore fishery, are now landed by Offshore vessels.

As a very gross measure of total productivity, landings in lbs. per fisherman also gives corresponding evidence of the great change in the two fisheries' relative output (cf. Table 1). Of the overall 139% increase

in Inshore landings per man, only 27% was gained 1949-69. Of the 423% increase in overall Offshore landings per man, 288% was achieved 1949-69.

Constant dollar proportional changes in landed values for Nova Scotia are given in Table 2.

TABLE 2¹

	1969/1919	1949/1919	1969/1949
Total Value	49	10	36
Inshore	12	27	-12
Offshore	91	-10	112
Total Value/Fisherman	181	63	73
Inshore/Man	141	108	16
Offshore/Man	153	.01	151

¹ The Data are the same as those in Table 1 to which an index of fish prices (1935-39 average prices base) was applied. The index was created by splicing the 1960-based index for recent data to the existing 1935-39 index. Not an elegant solution but the results seem reasonable.

Despite the way lobster prices bolster Inshore values, by 1969, the proportion of landings and landed values for Nova Scotia are greatly weighted toward the Offshore fisheries. The Nova Scotia summary data in Table 3, reflect the general trend for all Atlantic Canada.

TABLE 3¹

Nova Scotia Total Landings and Values, Values/Fisherman, and Average Prices/lb., by Inshore and Offshore (1969)¹

	Quantity '000 lbs.	% Total	Value \$000,	% Total	Average Price/lb.	Value per fisherman (\$s)
Inshore	198,169	27	\$22,718	40	\$.115	\$2866
Offshore	537,383	73	\$33,921	60	\$.063	\$8950
Total	735,552		\$56,639		\$.077	\$4834

¹ *Ibid.*, Appendix F.

THE EFFECT ON FISHERMEN'S STATUS

The new Offshore fleet created an industrial corps of fishermen who have no capital stake whatever (or hope of it) in the vessel, and work for the processor as hired hands, but whose method of payment remains a hangover from the days of fishing on vessel shares. Nevertheless, the idea that the vessel owners were selling the catch, « for the account of all, » and that fishermen share with the owners the « hope of profit and the risk of loss » in a joint venture persists as a legal anachronism.

In truth, integration of the modern Offshore fleet with processing makes the coadventurers doctrine untenable. Without a wholesale groundfish auction market as there is in New England (expect perhaps in the limited « blind hail » auction for halibut), or for that matter without collective bargaining, it is the vessel owner who sets landings level fish prices in the first instance, and who then « buys » his own fish from his own vessels as raw material for his processing and wholesaling operations. For the processor-vessel owner then, the landings level market for Offshore fish is in fact also a labour market for the services of his crews.

In keeping with the legal concept of a labour market, the Sharemen's terms of employment are entirely those of « master and servant », and satisfy the most rigorous application of the several common law tests for an employer-employee relationship. The vessel and its crew are entirely under control of the captain and owner in all matters including the economics of the fishing. Employment is by verbal agreement at dockside to fish for one trip under the customary share arrangements (even when these are subsumed in union contracts). The share proportions clearly cover the owners fixed as well as variable fishing costs : the Nova Scotia groundfish lay is 37% of Gross stock to the crew and 63% to the owners.

Given the share system, however, the Canadian courts chose to approach fishermen's employment status through partnership law.¹⁶ Though the basis for even the very limited sort of partnership implied by a joint or co-adventure seems entirely to be overridden by the employment character of the fishermen's relations with the owners. Yet,

¹⁶ Ibid., pp. 210-215. Where the Canadian courts to follow marine rather than partnership law the notion of the seamen's, whalers', fishermen's « share » as a form of wage payment would be clearly established by old and strong precedent.

even if the courts' support of the joint-adventure persists, the courts' view is seriously damaged by the nature of the economic relationships.

Under modern conditions, the processor-owners, influence over landings level fish prices subverts the notion of the share system as a partnership on grounds of conflict of interest between owner and fisherman, e.g., the very basis of labour law, since the fish is a raw material cost for the vessel owner's processing plant.

The courts' conception of a joint venture is certainly not a very profitable one for the fishermen. 75% or more of the Offshore fishermen are deckhands or fishhold workers whose average net earnings for Atlantic Canada are about \$4,000 for an average 5,000 hours at sea per year, worked under often hazardous, and certainly uncomfortable conditions.

MARKET STRUCTURE AND BARGAINING STATUS ¹⁷

The inevitable effect of capital concentration in large trawler fleets, and in corollary processing and wholesaling of fish is concentration of market power in the hands of the largest processors.

Oligopsony stabilized by strong price leadership describes the primary fish markets of Nova Scotia and Atlantic Canada well. Real, rather than potential submarket monopsony is evident.

Again, using Nova Scotia as an example : we have one very large processor, the only one well integrated vertically into the secondary markets ; five large firms but each having less than a third the output of the major producer ; and another eight firms less than a quarter the size of the second tier firms. Together, these 14 firms (out of 218 processors and buyers) account for almost all the Nova Scotia groundfish exports. (« Export » includes sale in Canadian Central and Western markets, but refers mainly to the U.S. market which takes over 75% of the groundfish, most of the scallops, and well over 50% of the lobsters.)

Ease of entry and difficulty of exit reinforces the pattern of many very small firms, and few large ones. In this market structure, the prices

¹⁷ *Ibid.*, pp. 138-167.

set by the largest firm to its own trawlers form the base for the entire landings level price structure in groundfish.

Vessel ownership patterns, too, strongly reinforce market power. Where processors do not own outright, they invest in vessels, and lend capital to fishermen. 54% of all Offshore vessels, and all of the vessels over 100 gross tons are completely processor owned, i.e., processors « buy » their own fish. Another 29% are owned by private joint stock companies of fishermen having substantial processor equity, and which therefore sell to designated (invested) processors as a *quid pro quo* for floating the company, and thus making the would be owner-fishermen eligible for vessel subsidies. Thus, 83% of the Nova Scotia Sharesmen (about 3,000) work on processor owned or strongly influenced vessels. The financial independence of the remaining Offshore vessels is alleged to be more nominal than real in most instances.

Independent fishermen are similarly « enthralled ». The isolation and relative immobility of these Inshore fishermen in Atlantic Canada helps extend the major processors' hegemony in price determination from the processors' own fleets in the large fishing centres to the independent fishermen in the small outports. Added processor influence derives similarly from extension of capital for, as well as direct investment in the « Independent » Fishermen's boats, but also, from the custom of lending working capital, and providing critical services to the boatowners, again, with sales agreements as *quid pro quo*. « Dependent Contractors »¹⁸ rather than « Independent Fishermen » is a far more accurate designation for the market position of Atlantic Canada's small-boat owners.

THE LEGAL REMEDY

Actual, rather than potential monopsony power stems then from the size distribution of firms, the extent of processor vessel ownership and equity, outport isolation with its limited capital, mobility, and alternatives to fishermen, and not least, from the Marshallian « very short run » in which the Independent Fishermen, with inadequate public freezing and holding facilities, must dispose of their fish. In view of the fishermen's traditional attempts to unionize and bargain collectively with processors as a solution to their weak market position, bilateralization of both the

¹⁸ The source of this term is the excellent, H.W. ARTHURS, « The Dependent Contractor : A Study of the Legal Problems of Countervailing Power », *University of Toronto Law Journal*, University of Toronto Press, Toronto, Vol. XVI, No. 1, 1965.

labour market for Sharesmen, and Independent Fishermen's primary markets for raw fish seems a very reasonable remedy.

There is, as mentioned above, the complex constitutional problem of governmental legal jurisdiction over fishermen's collective bargaining. If one sets aside the question of whether the federal or provincial governments should legislate the collective bargaining rights of Canadian fisherman, how to do so is clear. Sharesmen should be defined as « employees » unequivocally, and included in the appropriate trade union act. Independent Fishermen may then be defined as « dependent contractors », and also included. For either or both actions to be effective, the anti-combines act must be amended to exclude bargaining over fish prices by fishermen from restraint of trade restrictions. Fish prices loom too large as an earnings variable to be eliminated as a bargainable item. The anti-combines problem has been too long the source of legal snares.

COLLECTIVE BARGAINING AND FISHERIES ECONOMICS

Some writers explicitly recognize the possibility of monopsonistic « exploitation » of fishermen's immobility.¹⁹ One writer opts unequivocally for collective bargaining by fishermen on human grounds.²⁰ But conclusions of the main body of fisheries economics²¹ imply that collective bargaining by fishermen is fruitless or worse. Open-access, « common property » resources (fisheries), it is said, are typically overexploited and yield no rent. Entry ceases only when average cost equals average revenue, but at this point maximum biologically sustainable fish yields were by passed and marginal yields are negative so that at the « equilibrium » point (where $AC = AR$) marginal cost exceeds marginal revenue.

¹⁹ James A. CRUTCHFIELD, « Collective Bargaining in the Pacific Coast Fisheries : The Economic Issues » ; *Industrial and Labour Relations Review*, Vol. 8, No. 4 ; July, 1955, pp. 541-556 ; see also James A. CRUTCHFIELD and Giulio PONTECORVO, *The Pacific Salmon Fisheries*, pub. for Resources for the Future, by Johns Hopkins Press, Baltimore, Maryland, 1969, pp. 35-36.

²⁰ Roger L. RANDLE, « Labour Agreements in the West Coast Fishing Industry : Restraint of Trade or Basis of Industrial Stability ? » *Industrial and Labour Relations Review*, July 1950, pp. 514-541.

²¹ The now very extensive literature perhaps begins with, H. Scott GORDON, « The Economic Theory of a Common-Property Resource : The Fishery », *The Journal of Political Economy*, Vol. LXII, No. 2, April 1954, pp. 124-142 ; and, Anthony SCOTT, « The Fishery : The Objective of Sole Ownership », *The Journal of Political Economy*, Vol. LXIII, No. 2, April, 1955, pp. 116-124.

The analysis tacitly rests on acceptance of the coadventurers doctrine, and treats all fishermen as entrepreneurs. This can be a substantial error in the assumptions for Atlantic Canada, especially since processor and fish buyer monopsony seems very real regardless of fishermen category. The supply curves for both Sharesmen's labour (most Offshore fishermen) and for raw fish in the Independent Fisherman's submarkets have a clearly positive slope in the relevant range. The relationship between the processor and (both types of) fishermen suggests that factor market analysis is not only appropriate, but reveals some « rent », and therefore room for negotiations over fish prices and shares.

However, in the Canadian East Coast context, even negotiation of fish prices above zero-rent levels need not necessarily diminish fishermen's shares.²² Direct price elasticity of demand for individual fish species can be « high » but is well less than unity for « all fish and fish products ». Income elasticity of demand is positive, and per capita consumption is stable : all estimates reflect secular trends. Moreover, Canadian Atlantic fishermen have a distinct and ongoing (at least 1948-1974) cost advantage in the major U.S. markets.

Given the very large present Canadian East Coast fisheries vessel and shoreside processing plant investment, short-run elasticity of factor substitution is zero, and quite low in the long-run ($\eta > \sigma$). Elasticity of derived demand (for fishermen and raw fish) should be less than unity even in the fairly long run. The secular supply trend, however, is gloomy, and foreshadows continued rises in retail prices, but not because of fishermen's negotiations. Despite unionization and *ex-vessel* price increases since 1969, the processors' « spread » has remained constant to the present.

For Atlantic Canada, standard fisheries analysis seems irrelevant with regard to unionization, and fishermen should be encouraged to unionize and bargain on economic as well as social grounds.

²² For the following conclusions, see again The Dissertation, pp. 299-324.

Quelques aspects économiques du droit de négociation dans les pêcheries de l'Atlantique

Les pêcheurs canadiens ne jouissent que de droits de négociation limités. À l'exception de dispositions récentes, partielles et nullement éprouvées, ils sont pour la plupart exclus de la législation du travail. Les propriétaires de bateaux de pêche sont écartés en tant qu'entrepreneurs. Des décisions judiciaires répétées excluent aussi les pêcheurs « participants » (non-propriétaires) en les considérant comme des associés à responsabilité limitée plutôt que comme des salariés, parce qu'ils sont rémunérés au prorata des prises. De plus, à quelques exceptions près, propriétaires et coparticipants s'exposent à des poursuites en vertu de la *Loi relative aux enquêtes sur les coalitions* s'ils concluent avec les acheteurs une convention collective fixant le prix du poisson... variable hasardeuse de leurs revenus. Le louage de services échappe à ses sanctions, mais non pas la pêche.

Cet article vise à démontrer que, depuis la deuxième guerre mondiale, les changements technologiques ont révolutionné les flottilles de pêche de haute mer, formé un corps de pêcheurs sans propriété qui sont, quoique en disent les tribunaux, les « salariés » des propriétaires de bateaux. Le marché primaire du poisson brut est aussi un marché du travail pour les services des pêcheurs.

Étant donné que la demande passée pour le poisson salé s'est déplacée vers le poisson frais, le centre de gravité économique de l'industrie de la pêche dans l'Atlantique s'est également déplacé des pêcheurs côtiers (propriétaires indépendants de petites embarcations) vers les usines de mises en marché et de transformation installées sur le rivage et financées par les flottilles de pêche en haute mer, d'où il s'ensuit que les propriétaires des usines « achètent » leur propre poisson. Ainsi, l'industrie se trouve-t-elle structurée de telle façon qu'elle compte quelques grandes et beaucoup de petites entreprises de préparation et de vente.

L'isolement et la relative immobilité des pêcheurs côtiers favorisent l'hégémonie des grandes usines de transformation dans la fixation des prix à commencer par leurs propres flottilles dans les grands ports de pêche jusqu'aux petits havres de partance. L'influence accrue des grandes usines de transformation provient encore du fait qu'elles financent directement les bateaux des pêcheurs indépendants, mais aussi de la coutume qui s'est implantée d'avancer à cette catégorie de pêcheurs le capital de roulement et de leur fournir des services comportant un certain risque en retour de contrats de vente compensatoires. L'oligopsonie, stabilisée par le *leadership* que les usines de préparation exercent sur les prix, caractérise donc l'état des marchés primaires du poisson dans les provinces de la Côte Atlantique.

De cette analyse, force est de conclure que la loi est illogique et injuste en écartant les « coparticipants » du statut de « salarié ». Un sous-marché monopsonie réel plus que potentiel montre que le remède se trouverait, d'une part, dans l'existence d'un marché du travail pour les « coparticipants » et, d'autre part, de marchés du poisson brut pour les pêcheurs indépendants qui seraient alors tenus pour des « entrepreneurs dépendants ». Il faudrait enfin que ces gens-là ne tombent pas sous le coup des sanctions de la *Loi relative aux enquêtes sur les coalitions*.

L'analyse économique permet de constater que la négociation collective pourrait remédier à la situation. Les courbes de l'offre tant pour le travail de pêcheur que pour le poisson brut s'orientent vers la hausse. L'étude des facteurs relatifs au marché indique qu'il y a place pour des négociations avec les usines de transformation au-delà de ce qu'on pourrait appeler le « loyer ». Même la négociation des prix du poisson au-dessus des niveaux de « loyer-zéro » ne diminuerait pas nécessairement la part des pêcheurs. L'élasticité naturelle de la demande pour des espèces données de poisson peut être « forte », mais elle l'est beaucoup moins lorsqu'on considère l'ensemble du marché du poisson. L'élasticité des revenus tirés de la demande présente un caractère positif et la consommation par habitant est stable. Sans inclure les statistiques pour l'année 1974, toutes les évaluations font voir une tendance constante vers la hausse. De plus, les pêcheurs canadiens de l'Atlantique bénéficient aussi d'un avantage supplémentaire pour amortir leurs coûts sur les marchés américains.

Compte tenu des sommes investies par les pêcheries canadiennes en équipement, l'élasticité du facteur remplacement est nulle à court terme et basse à long terme ($n > \sigma$). En ce qui concerne la demande (pêcheurs et poisson brut), l'élasticité devrait être moindre que la stabilité au cours d'une période relativement longue. Cependant, la tendance imprévisible de l'offre a pour effet de rejeter dans l'ombre le phénomène des hausses de prix de détail quand on le considère en longue période, mais cela n'a rien à voir avec le droit de négociation pour les pêcheurs.

Pour les économistes spécialisés dans l'industrie des pêcheries, la négociation collective serait pour le moins stérile pour les pêcheurs parce que, à cause de la « propriété en commun » de ressources auxquelles tout le monde a libre accès, les pêcheries sont surexploitées et ne rendent pas. Les arrivages ne cessent que lorsque le coût moyen des prises égale le revenu moyen qu'elles rapportent, mais, à ce stade, les rendements maximaux de poisson biologiquement soutenables sont dépassés et les coûts marginaux dépassent les revenus marginaux, ces derniers étant négatifs au point d'équilibre.

L'analyse est juste, mais elle s'appuie implicitement sur la théorie de la « co-participation » et considère l'ensemble des pêcheurs comme des entrepreneurs. En agissant ainsi, on ignore complètement le facteur d'analyse des marchés et on sous-estime la situation de monopsonne existant du côté des acheteurs. En conséquence, en ce qui a trait à la négociation collective, l'analyse n'est pas juste dans le cas des pêcheries canadiennes de l'Atlantique et l'on devrait favoriser la *syndicalisation* des pêcheurs de cette région.