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Lobster Poaching and the Ironies of Law Enforcement

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This article studies law in action as it relates to organized lobster poaching in Canada. It examines the distinct pattern of relationships that constitutes poaching as a business enterprise and analyzes how "living law" operates as an ironic facilitative form for that which it tries to control. We argue that business poachers evade, avoid, and neutralize fishery laws and regulations by creatively using and manipulating the legal boundaries and organizational resources at their disposal. In effect, the law is an enabling structure for blue water illegality. We analyze business poaching activities as a type of workplace crime, and we account for regulatory failure in the lobster fishery.

Introduction

This article studies "law in action" as it relates to poaching in the lobster fishery of Southwest Nova Scotia, Canada. For decades, tensions between fishers and the state have been escalating. Conflicts over quotas, regulations, licenses, procedures, and enforcement have been widespread and volatile. Poaching has become what Scott (1986:18) terms "a routine form of everyday resistance," part of the ongoing process of testing and negotiating the terms of lobster harvesting and merchandizing. Central to the development of poaching have been a series of legal changes whereby informal, community-based property rights, local management strategies, and folk forms of resource knowledge and use have been displaced and outlawed by new state property rights and claims and by new social regulations about harvesting, development, and management (Hanson & Lamson 1984; Apostle, Kasdan, & Hanson 1984; Barrett 1987; Clement 1986; Davis & Thiessen 1988; Sutinen & Gauvin 1989; Sutinen, Rieser, & Gauvin 1990).

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This regulatory explosion has resulted in a climate of uncertainty for fishers, social divisions among them, and conflicts between fishing communities and the state. The media characterization is one of “lobster wars,” “black market fisheries,” “piscatorial piracy,” and “coastal communities on trial.” Indeed, the prosecution records of the Department of Fisheries and Oceans (DFO) reveal the seriousness of business poaching. Of the 531 reported lobster offenses we studied, three-quarters of them were committed by commercial fishers and involved offenses such as using illegal gear and fishing undersize lobsters (McMullan, Perrier, & Okihira 1993:128–30). Of course, these statistics tell only part of the story. We found that there is also a large hidden figure of unrecorded illegality in the fishery. While prosecution files provide useful information about the age, location, attitudes, and behavior of offenders and about the methods of law enforcement, they do not provide a coherent understanding of either the social organization of poaching or the legal relations and enforcement strategies surrounding the translation of law into social practice.

Our concern in this article is to examine the distinct pattern of relationships that constitutes business poaching in Southwest Nova Scotia and to analyze how law operates as an ironic facilitative form for that which it tries to control. We study how and why business poachers creatively use and manipulate the legal boundaries and organizational resources at their disposal to effectively evade, avoid, and neutralize fishery laws and regulations. We examine how lobster fishing is an encapsulated operation within a larger system that renders it susceptible to insider illegality and illicit organization as a business racket. “Living law,” in this instance, combines lawful and unlawful behavior and demonstrates that rules and regulations may be exploited by small independent producers to support their interests even though they do not possess much power or enormous wealth.

This article is organized as follows. First, we discuss our research methods. Second, we outline the regulatory regime governing the lobster fishery and discuss how this has contributed to social conflict between fishers and the Department of Fisheries and Oceans. Third, we define business poaching as one type of poaching organization. Next, we describe the system of law enforcement as it relates to poaching. Then we examine the relationship that business poaching has with the state’s law enforcement apparatus: opportunities for illegalities, methods of detection and surveillance, apprehension and preventive capabilities, prosecution, and deterrence. We compare poaching with other forms of workplace crime and show how poaching organizations have effectively mediated law as a field of rules, regulations, and sanctions and have transformed it into an “enabling structure” for successful illegal or extra-legal activities. Finally, we

conclude by discussing the implications that our research has for understanding social crime, the hidden economy, regulatory compliance, and law in action.

Research Methods

Our research is based on the following methods: a historical analysis of government legislation and regulation, an archival study of the DFO prosecution records and legal documents over a ten-year period, a social survey of the entire population of fishery officers and administrators ($n = 57$) in Southwest Nova Scotia, and a random survey of lobster fishers ($n = 100$) located in three distinct regions of that same area.

Our research strategy was to obtain information from government sources first and then to obtain the cooperation of local lobster fishers. We gained the assistance of the DFO by meeting with the regional director and explaining our research objectives to him. After some deliberation and meetings with his staff in Halifax and Ottawa, he arranged for us to gain access to sensitive prosecution data, provided they were treated confidentially and reported without attribution. This allowed us to compile a trend analysis of violations in the lobster fishery which documented the following: name, age, sex, and address of offender; type of offense; date and place of offense; offender behavior; law enforcement action; court date; location and name of judge; pleas and dispositions; and dollar value of dispositions. The regional director also contacted area managers under his authority and they in turn arranged for us to gain access to field supervisors and fishery officers. With their cooperation, we conducted detailed interviews with enforcement officers at ten offices in Southwest Nova Scotia. All participants enthusiastically endorsed the research process, and no questions went unanswered. Indeed, we were surprised by the volume of information provided and by the candor with which fishery officers volunteered information to us. They were especially forthright about the organization of illegal fishing and about the capacity of their own organization to enforce the laws against poachers.

The interview schedule for fishery officers consisted of both closed and open-ended questions. Interviews were taped and transcribed and lasted for approximately two hours. Each interview focused on the following: (1) demographic background characteristics; (2) work history and work roles; (3) danger and violence on the job; (4) relations with communities, fishers, and poachers; (5) relations with regulatory bodies and the legal system; and (6) internal organizational relations. The information was collected over a two-year period in accordance with officers' work schedules. The data were then coded, and a ranking index was constructed that measured cooperation and conflict between

fishery officers and fishers. We discussed our initial findings, which documented the capacity of the enforcement regime, with senior officials in the DFO and then presented them at the DFO's annual convention. The feedback from this meeting encouraged us to refocus our research on lobster poaching and to include data from the fishers themselves.

We decided to revisit our interviews with fishery officers to determine whether the qualitative information would allow us to map the organizational dimensions of poaching and explain how laws and regulations were transformed into social practices. The data from the interviews were especially detailed and complete. We extracted specific information from each interview, clustered and compared responses according to communities, and developed a typology of poaching organizations. Furthermore, the qualitative data permitted us to piece together a relatively coherent picture of how "unofficial law" and "living law" operated at sea, on public wharves, in government offices, and in coastal communities. In particular, it afforded insight into the paradoxes and gaps between law "in text" and law "in action" and about how law functioned as a "facilitative form" for specific poaching enterprises (McBarnet 1993).

While the data collected from official government sources provided a perspective on poaching and law enforcement, they did not include narratives from those who were either fishers or poachers. Obtaining data from fishing communities, however, was not straightforward or easy. Suspicion of outsiders, mistrust of researchers in general, and the continuing conflict between government and fishing communities made access difficult. We solicited support from the Maritime Fishermen's Union (MFU) to overcome these problems. We outlined our project to their research officer and shared our preliminary findings on law enforcement with the union executive. We asked for their participation in the study and assured them that all information would be collected confidentially and reported anonymously. The MFU was relatively receptive to our research endeavor. They were especially concerned about overfishing in the lobster sector and about problems their members were having with law enforcement officials. After a period of deliberation, they endorsed our study. They arranged for us to obtain a list of all registered lobster fishers in Southwest Nova Scotia from the DFO. They identified specific clusters of communities where fishing was intense and overfishing was common. We catalogued these clusters into three distinct areas of Southwest Nova Scotia and employed the services of a research institute to draw a random sample from each area and to arrange for personal interviews with 100 fishers.¹

¹ The sample size of fishers was restricted to 100 due to our limited funding support. We recognize that this is not a representative sample. However, we tried to stratify

Because of enmity between fishing communities and previous researchers, we decided to use interviewers from the local communities to conduct the interviews. We employed the services of the Gorsebrook Research Institute (GRI), an inter-university agency, to help us select interviewers who had research experience in fishing communities. After we designed an interview schedule, we went to Southwest Nova Scotia and held a one-day training session with the three GRI interviewers. We reviewed the questionnaire with them and counseled them on interview skills, techniques, and etiquette. The interviewers were assigned to one area, and each interviewer pretested the interview schedule in communities in his or her area. After the pretest, we returned to Southwest Nova Scotia, analyzed the results, and modified our final interview schedule accordingly.

The interviewers (two females and one male) administered the questionnaire over a four-month period when fishers were not at sea. Relations with the research team were generally cordial and cooperative. Fishers seemed especially interested and eager to state their views on fishing laws, regulations, enforcement, and illegalities. Interviews were conducted in their homes and lasted approximately one hour. Many respondents, however, were reluctant to have their comments tape-recorded. Only one-third agreed to this arrangement; the remainder allowed us to record their answers on the questionnaire schedule.

Each interview contained closed and open-ended questions and focused on the following: (1) demographic background characteristics; (2) work history in the lobster fishery; (3) cooperation and competition in harvesting the resource; (4) the regulations and laws governing lobstering; (5) the organization of poaching; and (6) the capacity of the state to detect, apprehend, charge, convict, and sanction illegal fishing.

The data from these interviews added enormously to our portrayal of poaching organizations. In particular, they allowed us to detail the illegal techniques of poaching; the size of poaching teams; the economic value of business poaching; the relations between front-line suppliers and background operators in the organization of business poaching; the *modus vivendi* that business poachers have with the state, the community, and other fishers; and the capacity of business poachers to either neutralize the law or use it to their advantage.

our sample so that we obtained interviews from diverse communities where licensed fishers were highly concentrated. We are reasonably confident that our qualitative data accurately reflect the fishers' perspective.

Regulation and Social Conflict in the Lobster Fishery

The commercial lobster fishery was founded in the mid-nineteenth century and managed by a laissez-faire approach. Few regulations governed the commons, and community customs structured the rights of access, management, and stock protection. Informal norms among fishers set the fishing boundaries, defined the shares of the commons, and limited the harvesting effort. Fishers established informal property rights to territoriality, community exclusivity, and local fish stocks (Acheson 1975, 1987, 1988; Martin 1979). Relatively stable moral economies, organized on a harbor-by-harbor basis, established definite insider/outsider rules and provided mutual welfare and folk wisdom about the sea and its resources that amounted to a code of fishing conduct (Davis & Kasdan 1984; McCay 1978, 1984; Mathews & Phyne 1988; Miller & Van Maanen 1979). This code guarded territory closely and punished interlopers informally and at times severely. Sanctions were quick, and transgressors were forced out or put out of business. In the end, common use rights to piscary were not open to all, but they were exclusive to community-defined groups that cooperatively managed the resource (Ciriacy-Wantrup & Bishop 1975; Davis & Kasdan 1984). By the mid-1880s, lobster fishing began to undergo a major transformation. Markets expanded, canneries proliferated, and landings, landed values, and fish prices escalated. Technological innovations in the form of gas engine boats and closed-end hoop nets increased fishing capacity and allowed for more efficiency and effectiveness. Stocks were heavily fished inshore as well as in the near shore. Capitalization of the resource eroded the communal use rights of lobster fishers. Privatization controlled by cannery operators "established implicit property rights over particular fishing grounds" (Scott & Tugwell 1981:26). The state, for its part, sought to manage the commons by introducing regulatory measures: district controls, seasonal closures, lobster size restrictions, trap size capture rules, and prohibitions on harvesting egg-bearing lobsters (DeWolf 1974; Scott & Tugwell 1981). From 1873 to 1927, the federal government used legislation, commissions, and regulations to diminish the informal comanagement responsibilities of fishers and to gradually establish itself as *the* sole manager of the resource.

The years between 1927 and 1960 were ones of further state intervention. Legislation and regulations calibrated the carapace length size, restricted lobster fishing to one season a year, reterritorialized lobster fishing grounds, and regulated the use of gear and vessels more intensively. As Scott and Tugwell (1981:27) note, "Capital, vessel and gear mobility were drastically restricted by the introduction of a regulation which stated that no one could use in lobster fishing any boats, traps, or other lobster fish-

ing equipment that had been used during that year in lobster fishing operations in any other lobster district.” Furthermore, the post–World War II period ushered in state-supported financial and social welfare plans and policies for fishers, including trap insurance schemes; guaranteed low-interest loans for gear, boats, and engines; subsidies for new vessel construction; assistance for storage, equipment, maintenance, and bait; and unemployment insurance premiums.

The period from 1960 to the present refined and reconfirmed these measures and added new regulations that prohibited possession of lobsters out of season, prevented vessels from transporting lobsters without permission, outlawed hauling lobster traps on Sundays, and forbade fishing by means other than lobster traps. Most important, the panoply of regulations was accompanied by an extensive and controversial tag trap limitation program and an ambitious, limited-entry licensing program. These programs were designed to control fleet capacity, size, and mobility in what had become a lucrative corporate fishery with large vessels possessing sophisticated engines, radar, depth sounders, and parlor traps. Southwest Nova Scotia trap limits ranged over the years from 250 to 375 to 425 per boat, per fisher (McEachern 1969).

Trap limits were immediately followed by the implementation of *boat* licensing rather than *fisher* licensing. Class B licenses were issued to all boats with less than 100, 75, or 50 traps. Class A licenses were issued to “all boats with a number of traps greater than the upper limit for Class B licenses” (Scott & Tugwell 1981:29). When a Class B boat was no longer used for lobster fishing, the license was not renewed. When a Class A boat stopped lobster fishing, the boat as well as the license was sold and the government reserved the right to buy back boats and to retire licenses (Scott & Tugwell 1981:29). The effect of this policy was to phase out “moonlighters” and part-time fishers, but not to eliminate the number of Class A lobster boats that accounted for most of the harvesting effort (DeWolf 1974:26). As a result, incomes for lobster fishers stayed low and capture capacity remained high. By 1977, the government reconsidered its boat licensing policy and reverted to licensing fishers; however, the previous trap limits for boats were carried forward and allocated to individual fishers. Thus A-licensed fishers were designated as full-time, B-licensed holders were considered part-time, and the new category C-licensed fishers was created for those who had acquired a registered lobster fishing vessel after 1968 but were not eligible for either A or B licenses.

By 1980, regulations were legion and complex. To many fishers, these state interventions were confusing, cumbersome and a curb on their rights to harvest the resource. As Hanson and Lamson (1984:5) note, “[t]his resulted in a climate of uncertainty

with rules applied and quotas assigned in a manner not clearly perceived by all participants as being either equitable or efficient.” Furthermore, the declaration of a 200-mile offshore economic zone by the federal government in 1977 rapidly capitalized the already competitive primary and secondary fishing sectors in the lobster industry. Fishers in the in-shore and near-shore small-boat sector were encouraged to invest in better equipment and larger vessels. At government behest, they borrowed large amounts of money from loan boards to finance these ventures. More and more fishers became dependent on financial institutions and government programs for the acquisition for their capital outlay and fishing technologies (Stiles 1972; Davis & Kasdan 1984:113). Although these programs were designed to rationalize capacity and increase incomes, they ultimately created a severe debt-dependent situation for fishers. As Davis and Kasdan (1984:112) put it, this relationship was “a tightening noose from the fishermen’s perspective.”

These government initiatives contributed to the restructuring of property relations in the lobster fishery. The communal use right to piscary was usurped and replaced with private property and state property rights (MacPherson 1978:4–5, 201). By creating a system of selective licensing and establishing a *privilege* to fish, the right to the commons was transformed into the private property of the fisher, albeit a highly restricted right to access and harvest the resources. Indeed, private ownership was strengthened when the government sanctioned the transfer of the right to fish to others for profit. Thus one could “buy out of” and “buy into” the lobster fishery. However, the rights of owners did not include management rights normally associated with property. According to Marchak (1987:5), “[f]ishers do not make the crucial decisions with respect to the resource, control of habitat and water ways, allocation of licenses, and limitations on capture capacities.” These were claimed by the state and bureaucratically imposed on the private user. But unlike the community, governments are institutionally committed to manage not one resource but many, not one use but many; and they are required to balance, negotiate, and decide about conflicting interests outside of the fishery such as logging and mining (Marchak 1989:10). Thus, for most resources, the issue for government is not conservation in perpetuity, or comanagement for communities, but administration for profits and long-term fiscal success.

In effect, these legal tools and regulatory instruments were used to exercise social control over customary productive and local management practices, and they quickly produced collision, conflict, and disorder between fishers, communities, and the state.² In legal terms, this privilege to fish conveyed inclusion and

² For a more detailed analysis of illegality and social conflict in the Nova Scotia lobster fishery, see McMullan, Perrier, & Okihiro (1993:121–46).

exclusion and constituted categories of violators that were previously nonexistent but that were increasingly subject to sanctions: the communal poachers, who had no license to fish or fished out of season; the outlaw poachers, who fished as they pleased and were a law unto themselves; and the business poachers, who did not abide by the rules or regulations about lobster size and trap limits.

Poaching Organizations

Poaching then includes acts committed by noncommercial and commercial fishers who violate seasonal and area closures, trap and gear restrictions, lobster size restrictions, and licensing rules. In previous research, we analyzed communal, outlaw, and business poaching organizations in considerable detail.³ *Communal poaching*, we found, is a steady, routine activity perceived as a “natural” event in many maritime communities. As one fishery officer put it, “[i]f poaching is not repeated every day or night and the proceeds not sold, the poachers are left alone by the community. That is a policy that has been here for hundreds of years . . . and before regulations.” Communal poachers are not, then, normally rich or strangers. They are known to neighbors, family, and kin. They poach for subsistence or to supplement a low income or wage. The primary method of social control, therefore, is containment—to keep their poaching activity within community traditions and to integrate their deviant activities into an acceptable norm (Netboy 1968; Hay 1977; Howkins 1979; Taylor 1981, 1987). The division of labor is elementary—usually a small team of two or three people, although single poachers are not uncommon. Poaching work of this type is regular and unhurried. Communal poachers use nonviolent techniques of stealth, accept small returns, and poach for personal or family consumption.

Outlaw poaching, we discovered, is “troublesome” to commercial fishers and to many fishing communities. These poachers cannot rely on communal goodwill to avoid detection or censure (Kuperan & Sutinen 1998). Like communal poachers, most outlaw poachers are not commercial fishers. But unlike the former, their poaching is for profit. The principal method of social control is usually exclusion. Outlaw poaching functions on the margins of a community or in the spaces between them. Even though outlaw poachers have access to vast, remote, and nonpoliced fishing spaces and the equivalent of safe havens or sanctuaries, they still need to interact with the communities against which they are poachers. They require equipment, supplies, and accomplices to

³ See McMullan and Perrier (1997) for a detailed discussion of these three types of poaching organizations.

dispose of their illegal catch. To emerge safely from these face-to-face encounters, outlaw poachers make use of superior technology (better boats, equipment, and communications), superior force (violence or the threat of collective violence), and superior strategic planning (nocturnal fishing, fishing in remote areas, appropriating licensed traps, and calibrating escape techniques to evade the law).

So outlaw poachers are in a precarious position. They have to be ready to take flight to evade detection, yet they have to devise routine practices of poaching. They cannot be constantly on the move, nor can they afford a high-risk game of capture and reprisal. Unlike other types of rural or maritime deviants who are “open” about what they do, outlaw poachers devise deceitful techniques to minimize their personal risk (Hobsbawm 1969; Hay 1977; O’Malley 1979; Best 1980; Taylor 1981; McCay 1984; Peace 1996).

Their division of labor is more complex than communal poaching. Typically, outlaw poaching involves fairly permanent teams of between three and six people largely drawn from family or kin relations. Their organization requires positions for tacticians and strategic planners who ensure security of operations and merchandising of catches to local and regional markets. However, outlaw poachers are more likely to resort to coercion in managing relations with other fishers and law enforcement officers (Cressey 1972; McIntosh 1975; Best & Luckenbill 1982; Jones 1982; Sharpe 1984:121–31).

Poaching as a *business enterprise*, however, is conceived of, planned and carried out by full-time, licensed commercial fishers who supply illegal catches as part of their lawful fishing activities. Organizationally, it overlaps with other forms of commercial and regulatory practices and procedures that are structured by normative activities such as fishing for a livelihood, interacting with other resource users, responding to the regulatory requirements of sea-level bureaucrats, cooperating with law enforcement people, and so on. Business poaching, which is essentially a violation of trap quotas or carapace length requirements, is embedded within the social relations that make up normal lobstering. The full-time, routine working relationships of fishing provide the environment for conducting illegal activities. Business poachers are not full-time miscreants; unlike outlaw poachers, illegal lobstering is not their major occupational role.

Business poaching, then, is not a separate illicit organization; it is a subterranean one whose illegal activities blend into the normal intersecting processes of fish harvesting, production, and distribution. Victims—that is, other fishers and members of the community—know what is occurring. The compliance literature suggests that about 10% of fishers persistently violate major regulations around trap and gear allocations, quotas, seasonal clo-

tures, catch size, and, in the case of the lobster fishery, carapace length and egg-bearing lobsters. The other fishers generally comply, exhibiting lower violation rates, but they rarely intervene to prevent overfishing (Sutinen & Kuperan 1989; Feldman 1993; Sutinen, Rieser, & Gauvin 1990; Kuperan & Sutinen 1998). So in the short run, the burden of prevention falls on the state, and business poachers are chiefly in conflict with the state rather than with communal entities, although they are concerned to contain their rival—the outlaw poacher. Insofar as they wish to develop a sideline operation into a poaching business, they must garner support and cultivate cooperation *within* the existing institutions with which they constantly interact. In McIntosh's (1973:40) words, "[a] racket operates almost like a legal business."

Law Enforcement Practices, Communal Poaching, and Outlaw Poaching

The task of enforcing the law against poaching in Southwest Nova Scotia is in the hands of unarmed fishery officers and their supervisory and administrative staff, who have to police about 1,700 registered fishers located in approximately 185 communities spread out over 2,500 miles of coastline.⁴ Resource management and conservation is organized by an area concept. At the apex of this scheme is an area manager who reports directly to a regional director of fisheries operations. The area manager's responsibilities include consulting with fishers and processors regarding changes and amendments to fishery regulations. The staff consists of an administrative assistant, a senior advisor of policy program and development, a statistical coordinator, and a licensing liaison administrative officer, as well as a chief enforcement officer and an area inspection chief who report directly to the area manager. Four field supervisors, in turn, report directly to the chief enforcement officer, and each has a staff consisting of licensing clerks, operations officers, statistical officers, and fishery officers. Southwest Nova Scotia has 49 officers engaged in frontline enforcement.

The chief methods of law enforcement in the lobster fishery are boat patrols, wharf checks, stakeouts, informants, community watch programs, and special task forces. Boat patrols are used to survey harbors, bays, inlets, and easily accessible open waters. Boats are not standardized, and the fleet consists of 14- and 16-foot aluminum vessels, 20-foot skiffs, small speed boats, Boston whalers, Cape Island vessels, and the occasional 42-foot vessel with a captain and engineer aboard. These boats are used to

⁴ The Coast Guard can board vessels and arrest fishers, but it usually turns over the cases to the DFO for prosecution. The Navy mainly provides material and logistical aid to the other two agencies.

check licenses, fishing locations, trap quotas, tagged gear in the water, safety equipment, and illegal catches. Boat patrols occur primarily in the spring and are conducted 1 to 3 miles from shore. According to one fishery officer, "We all take our turn on the boats . . . and we pretty well work the whole area depending upon what fishery is dominant." However, the fleet is rarely deployed in offshore waters, and it lacks both the personnel and the capacity to tow boats and haul traps on trawls. In the words of one field supervisor,

You are going to hear the same complaint from everyone, and that is the lack of personnel and equipment to do the job. Right here all we have are small patrol boats . . . skiffs up to 20 feet, and we have no capability for hauling gear that is out there and no capability to go far out to sea. . . . I have four fishery officers here and I need a minimum of six.

Not surprisingly, dock checks at public wharves are the primary tool of law enforcement. They are used to regulate seasonal openings and closures, verify licenses and registrations, monitor gear before it is set in the water, seize illegal traps and tags, manage landed catches and, where appropriate, issue warnings for violations. One fishery officer recounted,

Prior to November 30 (opening day of the lobster season), about a month and a half we are busy issuing new tags, registering vessels, and so on . . . and then through the first two or three days we are looking mainly for untagged gear. . . . We more or less show the flag on the wharf, and hopefully discourage a few people who may think about using untagged gear or are thinking of getting a jump on others in leaving early for the fishing grounds.

Fishery officers also charge most fishers on or near the wharf for violations of the Fisheries Act.

You get a guy with short lobsters on board the boat and if they are segregated when he comes into port there is definite intent. If the short lobsters are found in his truck and you know they came off his boat . . . you're going to get a conviction. . . . Once you get away from the high tide mark, you are going to get a conviction.

Stakeouts, where officers conceal their presence, are additional investigative and enforcement techniques that either anticipate where illegal activity will occur or allow apprehension in the act. General stakeouts involve setting up proactive checkpoints on either sea or land. Undercover tactics include dressing as civilians, using unmarked vehicles, and deploying unknown vessels to survey, approach, and apprehend poachers. As one officer remarked, "With outlaw poachers, I try to apprehend them on the water because there is no way they are going to be apprehended on the wharf. If I do that I'm going to have a big fight on my hands." Stakeouts are often difficult to organize. They are

costly, time-consuming, and labor-intensive. They involve overtime, night work, backup, and planning, yet they only cover specific incidents and limited coastal areas. As one officer stated, "It takes a special time, you might go in there 12 hours early and just lie there and wait or you have to go in the middle of the night." Communication equipment is described as "the peanut system." It is either absent or antiquated with limited range, poor transmission quality, and no central operating node. Two other officers observed,

There is one night scope within the whole district and when you need it, try and find it! . . . If I get down on the eastern side of ——— bay below the granite outcrop I can't reach anyone by radio We have no 24-hour monitoring system so if you are working up in ——— at 2 o'clock in the morning and you need help or assistance, you can't get it. You're just by yourself, so you can be in a pretty bad situation.

So general stakeouts are relatively ineffective in detecting violations, apprehending poachers, enabling prosecutions, and registering convictions. Indeed, it is not uncommon for stakeouts to be "staked out" by poachers who monitor officers' movements and communications on scanners. While driving to a stakeout, one officer almost struck a deer on the highway. He radioed his fellow officers about the incident and later that evening three local fishers asked, "How big was that buck that almost struck you?" All in all, stakeouts result in charges less than half the time they are used.

Informants are also used to control poaching. Typically, information is offered individually and secretly, and is shared in the normal course of work activities. From time to time fishers pass on information anonymously by telephone or through third parties. In rare cases where violations cannot be managed by community persuasion, formal collective reporting may occur. One officer noted, "I had at least fifty fishermen come in here and tell me about one fellow who was setting well over his limit on trawl and they went so far as to offer their boats to me to see for myself."

In some areas where poaching is low, informants account for the discovery of four out of every five cases of illegal activity. "We need the eyes of the fishers and the communities. . . . Without them we might not hear about violations until two or three months later," stated one regional supervisor. So the majority of informants are usually fishers and fish plant managers who are cultivated as regular "snitches" by fishery officers.

You seldom stumble across a poacher. You stake them out. . . . I received word on Saturday from a fisherman that poachers had illegal lobsters and were going to take them out of the water. So we set up a stakeout . . . in plain clothes and no government vehicles. It was strictly a dropoff situation. You drop officers off

at various places along the shore where you suspect something is going to be happening and where you have good visibility. You watch the poachers go out, do their poaching, and come in. . . . You have maintained continuity of that vessel that hauled the traps until you get to the beach. Then you move in!

However, in other areas where poaching is intense and communities are close-knit, there is little information exchange. One officer explained,

The people around here are very closed-mouth and they won't tell you a great deal. . . . They won't complain like in other areas. . . . If you are not aware of the problem, you can't do very much about it. You can't identify a problem if there are no complaints.

In these communities, informants are typically members of the general public and not from the fishing industry. Another officer emphasized, "There is a lot of fear of reporting poachers. . . . I find the people who complain to me are not fishermen. . . . Out of fifty-five fishermen maybe, just maybe, three or four report things." Taken together, the use of informants is a commonplace enforcement practice whose success varies from one community to another.

The difficulty in acquiring reliable and systematic information about poaching has led the DFO to institute a formal "Report a Poacher" program. This anonymous telephone exchange initiative operates 24 hours a day and offers financial rewards for information that leads to convictions. This information, in turn, has enabled fishery officers to enhance surveillance and organize specific stakeouts. One officer explained,

A lot of time people won't give you information directly, but will hint at something . . . you have to almost read between the lines and figure out who is doing what . . . they tell you maybe you should drive in there, or maybe you should ask where so and so was last night at 7 o'clock.

Ironically, many telephone calls have directed fishery officers to sites where no illegalities have occurred or were made by disputing parties to enact revenge for past grievances. The program has been more symbolic than instrumental and has been the least effective law enforcement tool in detecting and apprehending violators. According to one officer, "No information came from calls on the Zenith number . . . to me a fishery officer has to be in a community at least five years before he develops any rapport and a system is up that he can actively use to get information."

Finally, the government deploys an operational task force to patrol, survey, and assist law officers in apprehending poachers. As the area manager reported, "The idea is to centralize resources in one office and create an organization that is designed to support everyone else." The tactical unit is composed of about thirty people and is equivalent to a mobile strike force. Typically,

the task force draws four or five officers from its registry and moves them from one area to another. It is equipped with the latest advanced technology and equipment, including 42-foot patrol vessels, helicopters, night scopes, and communication devices. The task force gathers intelligence, conducts aerial surveillance, bolsters normal law enforcement routines, and manages periodic social crises in the fishery (Perrier & McMullan 1996; Arai 1990, 1994; Phyne 1992:529, 530). It is primarily deployed in the ground fishery and is only used for lobster enforcement when there are collective mobilizations by angry fishers and their organizations. It is most effective as a reactive mechanism to anticipated disorder, but it is an uncertain method to proactively enforce lobster regulations on a daily basis. The unit takes too much time to assemble and plan its activities, and task force members have to overcome their lack of familiarity with the target areas before they can be effective in translating law into an enforcement practice.

All three types of poaching organizations have shown a remarkable capacity for survival and for avoiding and evading the law enforcement regime. Fishing out of season without a license and with untagged gear are violations of the Fisheries Act. If they are not careful, communal poachers can attract the attention of fishery officers. However, evading the law is not too difficult because the law is seldom there to be evaded in the first place. As Sutinen and Gauvin (1989) and Furlong (1991) observe, the typical odds of being caught violating fishery regulations are below 1% and often at or near zero. There are so many coastal communities to regulate that the state can have only a distant and indirect connection to most of them. Furthermore, the community often operates to shield the communal poacher from law enforcement techniques. The presence of the fishery officer is typically greeted with warnings—car horns, radio alerts, and the like. Poaching simply desists until the coast is clear. The small scale and nonthreatening nature of communal poaching means that it is often undetected. Commercial fishers are unlikely to sanction or betray local communal poachers to the state because they poach for personal use and do not threaten the commercial fishery (Martin 1979; Phyne 1990). Law enforcement agencies, for their part, cannot rely on good information from the community to track down leads, develop surveillance, or plan stakeouts. Even wharf checks and sea patrols have only a limited impact on communal poachers. They easily avoid the public docks where fishery officers are likely to be stationed. They effectively land their illegal catches at many points along the shore. They escape detection while fishing illegally by monitoring the whereabouts of fishery officers and scrupulously avoiding them, and by skillfully concealing, even destroying incriminating evidence in order to poach another day.

Outlaw poachers also keep away from law enforcement officers who are interested in bringing them to account. Not only do they fish covertly at night, or in out-of-the-way places and at irregular times of the year, but they also evade detection while they are at work. They fish outside the limited geographical and tactical reach of the DFO. As one officer remarked, "We really don't have the capacity to inspect and apprehend; our equipment is still in the dark ages . . . it is like having an RCMP [Royal Canadian Mounted Police] constable in a four-cylinder car try to catch speeders." Nor is it easy to secure evidence against outlaw poachers. The L Flag procedure, which required all vessels to cease fishing and make ready for boarding and inspection, no longer applies to domestic vessels. "Poachers see us coming," declared one officer, and "they just outrun us or they throw everything overboard." A fisher from one community summed up the difficulties: "We talk about it, we swear about it, but you can't catch them guys. We did report them. The fishery officers tried, couldn't catch them."

Outlaw poachers also use superior force in evading the law. "The outlaws are poaching all the time," complained one officer. "We've been rammed by them, and in one case they tried to sink us." Another fishery officer recounted a similar episode:

One night on a stakeout, we saw two fellows fishing illegally. I had a night scope with me and we came to arrest this guy. He tried to kick me in the groin. I deflected the kick. . . . On another occasion . . . this guy had untagged gear on board and I tried to seize the trap as evidence but he got a hold of the other end. He told me . . . in no uncertain terms that the trap was going to stay with him and it was his property, and there was no way I was going to get it, even if it meant a fistfight.

Nor is violence restricted to the act of poaching. It can occur against law enforcement officials away from the job. One officer had all the windows in his house smashed, a second had his tires slashed three times, a third received harassing phone calls, a fourth faced an arson threat, and a fifth was warned to watch out for his safety. As one officer stated, "Outlaw poachers are a different breed . . . with the commercial fishermen, they are more sophisticated . . . you don't have the violent confrontations."

In sum, enough people are ready and able to form a "subculture of resistance" within which techniques of outlaw poaching can be refined and passed on from generation to generation. One senior fishery officer put it as follows:

In these harbors there are strong cultures . . . and it is part of the local culture . . . they have much less tolerance of the law. . . . They think they have a right to fish even if they do not hold a license. . . . I think it has a lot to do with the grandfather, the father, and the son who always fished as they pleased.

Business Poaching and Law Enforcement

The business poacher cannot evade state control by working stealthily, counting on the quick escape, or directly confronting enforcement officers, as do outlaw poachers. Because the techniques for obtaining illegal lobsters are often a series of “insider work crimes,” such as exceeding conventional gear limits; manipulating government tags on lobster traps; overstating trap losses due to bad weather, frigid temperatures, and routine hauling; and concealing illegal gear in the water (i.e., untagged traps), business poachers use and manipulate the law rather than avoid or evade it.

Lobstering and Insider Illegality

Two major factors underpinning lobstering render it susceptible to insider illegality. First, the entire process occurs in a context whereby actions and settings are privatized. Self-regulation is the preferred method of harvesting the resource and preserving law and order in the fishery. Little control from above is exerted over the structure of fishing activity. The bureaucratic organization of the state is less than a coherent and integrated system. Overall coordination and oversight are lacking. Gaps between “on the water” enforcement and administrative centers and between state policies and their implementation are many and easily exploited by fishers. A large variety of innovative rules, short-cuts, and legal neutralizations occur at the interstices of law enforcement and fishing activities. These legal maneuvers result in the formation of discrete informal lines of action, communication, influence, and control that both enable and routinize business poaching (Chambliss 1973:353–80, 1978). As Kuperan and Sutinen (1998:310) observe, “[p]assion, inadvertence and accident rarely cause a fishery violation; most are the result of deliberate choice.”

Second, not only is lobstering an “encapsulated system”—operating with its own set of rules within a larger system—it is also a relatively solitary activity (Acheson 1987). Most lobster fishers fish alone or in small work crews (two to three people) from diesel-powered boats equipped with depth sounders, hydraulic haulers, ship-to-shore radios, and compasses. Lobsters are caught in wooden traps or “pots” about three or four feet long and made of oak frames covered with hardwood slats or vinyl-covered wire. Typically, lobster fishers have 350 to 425 legal traps each. On a calm day a lobster fisher might haul 100 to 200 traps (Acheson 1987).

Work activities, however, vary greatly from season to season. In winter months lobstering is much more difficult, distant from the shore, dangerous, and unprofitable. Spring and late fall are

unquestionably the busiest months of the year, when traps are near shore, more plentiful, and pulled frequently. Although most lobster fishers move their traps according to this general pattern, they are not all equally productive. Experience, as well as ability and willingness to work, greatly affect catches and income. As Acheson (1987:39) notes, “[I]n some instances skilled fishermen catch more than twice as many lobsters as unskilled fisherman with the same number of traps in the same territory.”

While licensing, seasonal closures, and trap quotas regulate the work habits of lobster fishers, territoriality also limits production. Competition for fishing bottom has resulted in diverse territorial arrangements ranging from relatively open, nucleated, and mixed fishing patterns to closed, exclusive, perimeter-defended patterns (Acheson 1987: 42–45). This has led to the formation of “harbor gangs,” who carefully guard fishing space, regulate resource ecology, monitor boundary disputes, and limit newcomers. Most conflicts, regardless of their size and intensity, are resolved informally and privately, although not always peacefully. Suspicion of outsiders is strong among many lobster fishers, as is the feeling that they do not need added mediators to control competition or manage the commons. Silence and secrecy are the preferred methods of coping with trouble. Even the victims of territorial disputes remain mum. The immediate working team and the harbor community are the basic units of loyalty, friendship, and policing (Acheson 1987, 1988).

Processes of boundary maintenance and change, as well as the seasonal movement of gear and the daily routines of setting and hauling traps, occur without much direct state supervision or oversight. While this allows for a regime of self-regulation for and by fishers, it also permits the modification of rules and procedures independent of local, state overseers (Acheson 1987:39). Fishers can step outside their formally mandated work relations and techniques, acquiring in the process enormous nondelegated and unofficial powers. As one fisher observed, “Poachers that are licensed fishermen . . . they are proud of it . . . the only reason they do it is because they know they can get away with it . . . nobody checks . . . the officers are not around when you set them (traps) or when you haul them in.” It is these very features of lobstering—encapsulation, isolation, silence, suspicion of outsiders, and an absence of supervision from above—that contain the possibilities for routine, self-righteous, illegal profiteering by insiders.

Poaching as a Business Organization

Poaching as a business racket includes skippers, family members, crew, fish buyers, and other distributors who operate informally and loosely in a network of common interest and purpose.

A conservative estimate places the number of involved participants in any given setup at five to seven. They compose a rather flexible organizational unit, and their power is local and shapeless. The rackets are small, relatively discrete units, infiltrating and operating parallel to established spheres of harvesting and distribution, and any given community has multiple operators and multiple competitors. As one officer noted, "The problem of poaching for profit is not restricted to any one community . . . it is spreading all along the coast . . . you have more boats, more gear, more traps on the boats, and the attitude out there among fishermen seems to be to hell with the regulations."

Lobster pounds and fish plants in coastal communities are very much part of the racketeering networks. They link the illegal supply brought about by overfishing to a legitimate marketplace. Illegal catches are often logged and certified as legal inventories and then transported by air or by road to cities like Halifax, Boston, and Montreal. One fishery officer noted,

Buyers tend to overlook the illegal activities of fishermen because they have nothing to lose by being caught with lobsters that were caught in untagged lobster traps. Once the lobsters are in the plant, who is to know . . . you don't have to doctor records, the more for them [fish buyers] to take to the United States and the more profit for everyone.

The overall operation requires few expenditures. Expensive items such as labor, capital, expertise, equipment, and technology are not needed. Legitimate lobstering activities and associations provide the know-how, contacts, material outlay, and legitimations. Financial arrangements mirror those of the normal market. They are backed by a continuous organization with local and national agents who are experienced in finding purchasers (Mack 1972; Cohen 1977; Munsche 1981; Sharpe 1984:127–31).

Social ties in the poaching organization are instrumental, and recruitment to this form of poaching is relatively open—a form of controlled friend/kin sponsorship. Some skippers, crews, and fish plants run tight operations. For others, the circle of accomplices is wider and more flexible. The production of illegal catches in some communities is constant, while in others it is intermittent. For example, many ports in Digby County and the northern portion of Yarmouth County report catches that are within the lawful limit, while many ports in the southern regions of Yarmouth County and in the northern part of Shelburne County report trap usage that is on average 100 to 200 traps above the 400-trap limit (Kearney 1988:7–8). This system of deteriorating compliance is consistent with Gauvin and Bean's estimates that about 10% of the fishers in the Massachusetts lobster and Rhode Island clam fisheries are frequent violators and that 30 to 40% are occasional violators (cited in Kuperan & Sutinen 1998:330, 311).

Insofar as fish plant owners and managers are involved in the illegal businesses, they work regularly and normally. Most fishers, as well as other community members, know what buyers are up to and cooperate with them over a period of time. For example, collusion between small draggers, trucking firms, and fish buyers is not uncommon. Class C draggers and scallop boats periodically drag the lobster areas to supplement their income, then off-load the crates onto trucks and move them to different fish plants for merchandising. As one fishery officer observed,

The problem is catching them . . . the commercial crime section of the RCMP is checking local fish plant records but they supply false documents when caught . . . and we charged the manager and owner of this plant, and by the way the fish was trucked from a small dragger that had landed in Lunenburg. The plant had their truck there to pick up the load, but they lied to us . . . I think the skipper will pay the fine as will the fishing company. After all, what's \$5,000 . . . they can make up the loss later.

While this illegal fishing certainly aggravates relations between lobster fishers and the small boat ground-fish fleet, it also demonstrates the desire to make illicit profiteering part and parcel of known regularized enterprises. Unlike rackets that surround small-time embezzlement or blackmail, where restricted customers get to hear of the illegal businesses and where the scale of the racket is severely limited, the lobster rackets strive to be organized on a permanent and continuous business basis.

The collaboration of the victim is crucial to the organizational potential of business rackets (McIntosh 1973:35–69). This raises the question of why those with a self-interest in compliance are unwilling or unable to betray the poacher to the state and support stronger law enforcement. In many coastal communities, noncompliance is not a major problem. Even though violations are hard for officials to observe and act upon, most fishers in these communities live within the limits of the law. However, in the resource-rich lobster fishing areas of Southwest Nova Scotia, the pattern of compliance is different and problematic, for three compelling reasons.

First, many fishers claim a cognizance of business poaching and for a time at least tolerate it because they do not see violations as causing immediate and obvious harm to the fish stocks. One fishery officer remarked,

The lack of control exercised by fishers over lobster poachers and licensed fishers infringing the regulations . . . reflects the abundance of the resource over the past few years.

Appeals to community loyalty, tradition, and knowledge; to local trust and cooperation; and to the need to stay competitive further seduce the reluctant ones to participate in overfishing or at least to stay silent about it. As one fisher stated,

The worst problem we get is poaching by fishermen . . . when you abide by the law and you see a fellow coming in with twice the catch and nothing happens, what can you do? How can you remain honest? . . . So you just shut up about it and go about your own business.

Indeed, the social reputation of a lobster fisher is not likely to be affected if the fisher poaches in communities where large numbers of fishers are also poaching and where communities acquiesce to this type of behavior (Kuperan & Sutinen 1998:321–22).

Second, fishers are often reluctant to report illegal overfishing because they have little confidence that the state can do anything about it (Taylor 1987:295, 303, 304; Furlong 1991; Sutinen, Rieser, & Gauvin 1990). As Kearney (1988:9) notes, “[t]he vast majority of fishermen are in favor of a trap limit and strict enforcement of that limit . . . however when faced with competition from the fishermen who do not respect the limit and who are not likely to be charged by the D.F.O. the average fisherman feels forced to put more traps in the water in order to remain competitive.” Nonviolators must compete with violators for fish resources, and when the outcome of the regulation “favors one group against another it erodes the legitimacy the individuals in that group grant to the institutions enforcing the regulation, thus increasing non-compliance” (Kuperan & Sutinen 1998:325). The process of illegal fishing as a business racket then spirals upward and outward from that mistrust of state power. Furthermore, the fishers involved in business poaching actually possess a perceived level of legitimate power that exceeds that of the state. One fishery officer put it astutely:

Overfishing has a lot to do with the culture of the area. . . . The people that are held up as heroes in their community are the people who catch the most fish, the people who spend the most money, and those who fight for the most or talk the loudest. Their lifestyle is one of ‘fight back.’

Finally, threats and intimidation are also present in coastal communities where business poaching thrives. Most fishers in these communities also know that illegal entrepreneurs can resort to strong sanctions to ensure silence and support for their poaching activities. “Semi-isolation and intolerance of the law,” according to one area manager, “breeds the Wild West spirit.” This contributes to what another DFO official called the “fear factor.” “There is a lot of fear reporting poachers . . . that gear will be damaged or their boats, or [that] the heads of their traps will be cut off.” This in turn discourages communal betrayal of poachers to the state. As one fisher put it,

I say 75 percent of us would ignore them. It isn’t worth the risk of squealing on one. I got an investment in my boat and lobster gear of \$150,000, he [the business poacher] could damage that.

So the self-regulation regime among lobster fishers seems to accommodate the illegal violations of the business poacher, provided, of course, that the illegalities do not destroy the commons for everyone.

Using, Manipulating, and Neutralizing Laws

Poaching operations on this scale, of course, cannot remain unknown to state agencies, so the possibility of this kind of law-breaking flourishing depends not only on secrecy and invisibility but also on the inability of the state to suppress it. To start, the law is often confusing and confounding. The Fisheries Act, the specific lobster regulations, and the variation orders add up to a complex, bewildering, and ever-changing amalgam of legal rules, programs, and procedures (Phyne 1990; Arai 1994; Perrier & McMullan 1996). What is a regulation or a rule one day may not be the next, and officers at any given time may not know what is appropriate or inappropriate conduct. As one area supervisor observed,

The system has become so complicated that it feeds itself on paper. . . . It is difficult for one or any fishery officer to do our jobs now . . . this year the sum total of changes in variation orders has been around thirty. Changes in some fisheries, changes in the quotas, changes in vessel quotas, and changes in the season; every time a variation order comes in now it is to correct something in the regulations . . . the system is now sort of consuming itself.

If regulations and rules are complicated and ambiguous, then procedures required to determine guilt are no more obvious. In the lobster fishery, it is illegal to catch undersize lobsters. Fishers are supposed to measure their catch immediately upon removal from a trap and return immature and egg-bearing lobsters to the sea. But a legal decision of due diligence (*R. v. Bellevue* 1986) now exempts them from having to do so until the first appropriate opportunity. This has made charging for undersize lobsters a virtual impossibility. As one officer stated, "Judges felt it wouldn't be logical to measure their lobsters immediately because of poor weather conditions and so unless a fisherman segregates his 'shorts,' he has no fear of interference from us at sea, and even if he lands them at the wharf and can drum up a good enough story, he walks." The due diligence decision also makes it hard to enforce regulations regarding untagged traps. A fishery officer has to prove intent to use the traps illegally. Business poachers easily claim that they did not know that the gear was untagged when it was in the water, or that the tags were removed by normal wear and tear. In the words of one senior officer, "It is really difficult to establish strict liability . . . we are now in a situation that unless you're with the boat from the time a

fisherman leaves until he comes back, you can't really prove in court that he caught fish illegally." The DFO is losing 4 out of 5 cases brought to court. "It is a free-for-all," reported a fishery officer, "Chances are fishermen are going to be found not guilty."

Moreover, the nature of much fishery law and regulation is administrative and thus similar to tax laws, drug legislation, and environmental regulations (Department of Fisheries and Oceans 1990). The state is the primary victim, and fishery officers seldom obtain testimony from others to lay a charge. They rarely seek convictions unless they have actually witnessed an infraction, and so they are slow to follow up on information received from the community (Grimshaw & Jefferson 1987:52). This gives rise to the perception among fishers that the government is unable to properly manage the commons and police poachers. Fishery officers, as a result, have low public credibility. They possess a weak and ambiguous authority. Their self-presentation at sea creates discrepant definitions. Unable to exert their duties forcefully, they are often denounced or disbelieved (Arai 1994; Phyne 1988, 1990, 1992; Perrier & McMullan 1996). One fisher remarked, "I don't know how they can enforce them [*sic*] lobster regulations. I haven't seen a fishery officer on the wharf in God only knows how long . . . over two years." By contrast, fishery officers are the objects of surveillance by fishers. Their routines and whereabouts are tracked by walkie-talkies, ship-to-shore radios, telephones, and vehicles. As one fisher stated, "We know where the fishery officers are at all times because there ain't enough of them . . . it is told on the radio that they are out (on patrol at sea)."

For fishery officers, more and more enforcement work is bureaucratic report writing—weekly work plans, monthly accounts, violation reports, boat registrations, daily schedules, licensing records, and so on. About 35% of all fishery officers' time is taken up with managing the flow of clerical information, activities, and duties, and this directly and drastically limits the amount of time officers spend in field activities implementing their work plans. Monday, for example, is commonly known as "office day," and one seldom finds fishery officers on the water or on the wharves. Report writing, of course, is initiated and responded to by supervisors who monitor daily routines and then assign or reassign priorities. As one officer observed, "The whole system is driven from above . . . it is a paper chase, chasing itself."

Offenses under the Fisheries Act and violations of lobster regulations are neither prioritized nor ranked by seriousness, so management decisions effectively impose a semblance of order on a rather complex compendium of laws, policies, and procedures. Indeed, enforcement work is often directly decided by department policy and administrative objectives and is therefore highly controversial (Arai 1994; Phyne 1990). At the beginning of the lobster season, for example, officers are ordered to devote

almost their entire time to this fishery. They neglect other sectors and do not attend to habitat and conservation matters. Similarly at the start of the ground fishery, all other fisheries are left nonpoliced. As one supervisor explained, "I am constantly shifting people into those areas that need it the most . . . but frankly it is a political maneuver . . . all we are really doing is fire fighting."

The DFO increasingly takes counsel from advisory groups composed of fishers and other state personnel. On one occasion these groups were instrumental in convincing government policy makers to allow lobster fishers to set traps 24 hours before the opening of the season. This, it was thought, would reduce congestion on the wharves and allow for a more orderly setting and hauling of gear. But it also meant that fishery officers could not enforce any regulations since they had no authority to charge individuals for trap offenses before the beginning of the season. As one officer commented,

Everything was nonenforceable. All we could do was stand there, as they set all the untagged lobster pots they wanted to. . . . The advisory group came up with a plan that beat the regulations, and our people went along with it.

So the laws, regulations, and procedures are often imprecise guides to action (McBarnet 1978, 1981, 1993; Jones & Levi 1983; Manning 1977; Ericson 1982; Shearing 1981). They are also not easily enforceable on the open sea. Budgetary restrictions and staff shortages ensure that contacts between law officers and business poachers are infrequent and entirely predictable. About 1 in 4 fishery officers is now a seasonal employee, hired from May to September and so unavailable to police lobster violations during peak lobster season. Contacts between regulators and regulated occur mainly in government offices, where licenses and records are monitored, or at public wharves, where catches are intermittently invigilated by fishery officers (Perrier & McMullan 1996).

The condition of the government fleet is such that many vessels cannot patrol in rough seas more than a few miles from shore. They have aging boats that can barely handle tidal currents, let alone pursue sophisticated poaching operators. Many vessels do not have hydraulic haulers on board, so the process of inspection is laborious and time-consuming. "It's a joke," quipped one officer, "Right now most of us can only catch poachers if fishermen let us on their boats." Communication equipment is similarly ineffective. Business poachers have UHF and portable radios that are superior to those used by government officials. "We tune into their channels and monitor them right on their boats," declared one poacher. Day scopes and night scopes are also limited in range and highly cumbersome to carry on stakeouts. "Our communication system is always breaking down," noted one officer. "We have lost poachers simply because we couldn't talk to our partner who was a mile away. We

could not intercept . . . hell, I could be assaulted by fifteen people with machetes and the last words that would go over the system would be 'Is anyone on the air?'

Fishery officers lack many of the resources to routinely patrol at sea or conduct effective surveillance or undercover work. They have the ability to mount periodic trap hauls and to dispense special task forces to "trouble areas," often to quell disorder after the fact, but they are only rarely able to exact a uniform compliance through their enforcement regime. Not surprisingly, only 10% of those charged with fishing out of season, 20% of those charged with fishing undersize lobsters, and 33% of those charged with overfishing beyond the trap limit were apprehended at sea (McMullan, Perrier, & Okihiro, 1993:139; Phyne 1992; Arai 1994).

Finally, law enforcement officials are not able to count on sustained support from the judiciary in convicting and punishing business poachers. Prosecuting lawyers are not especially experienced, effective, or predictable in obtaining convictions. In addition, most judges are reluctant to find business poachers guilty because severe penalties, such as license suspensions and seizures of fishing equipment, deprive fishers and those dependent upon them of an economic livelihood. The courts tend to impose sanctions on only the most blatant offenders as measured by the illegal gains or social harm caused by the *detected* and *proven* violations (Sutinen, Rieser, & Gauvin 1990; Sutinen & Gauvin 1989). The following is a typical observation:

We get a lot of help from judges when the poaching is committed by outsiders or those who do not have a license. But fishermen can do what they want. . . . Every time you make a case the judges find a reason to dismiss it . . . their loyalties are with the fishermen because they make a living from the resource.

Moreover, penalties do little to deter business poachers. They generally are not large relative to illegal gains. Blewett, Furlong, and Toews's (1987) analysis of Canadian fisheries enforcement, Furlong's (1991) study of regulatory enforcement in the Quebec fishery, and Sutinen, Rieser, and Gauvin's (1989) research in the northeastern United States found that most penalties have no deterrent effect on violations. An average fine of \$500 and even those as high as \$3,000 do not prohibit persistent and organized lobster poaching. A fisher put it as follows:

Look, a fine of \$1,000 is nothing. It is bullshit. You know, if I go out and catch four or five loads of fish and make good money off it, the most you can burn me for is \$5,000. OK, if you catch me, and 90% of the time you won't . . . then it is just the cost of doing business.

So the organization of business poaching does not require corruption. There is no evidence that front-line or background operators purchase immunity from the state by bribing or influenc-

ing public officials. Fishery officers are not “on the take.”⁵ Nor do poaching rackets have positions for enforcers who control rivals and discipline nonconforming members. There is no evidence that these sideline businesses coordinate their activities into any confederation or cartel. Nevertheless, business poachers do plan strategically for long-term matters such as safety, and they do share market contacts. They develop tactics to eke out illegitimate businesses under cover of their legitimate work roles. They organize the immediate act of poaching rationally, risk-free, and relatively successfully (Cressey 1972; Cohen 1977; Munsche 1981; Best & Luckenbill 1982; Jones 1982). The organization of business poaching is larger in scale and more complex and continuous than the other two kinds of poaching. Its security of operations is ensured because it depends, in a way that no other poaching organization does, on relationships with legitimate sections of society that have been built up interactively over time.

Social Crime, Workplace Crime, and Regulatory Failure

These findings raise questions about the role of poaching and its status as either a social crime or a type of borderline crime. Hay’s (1977) work on poaching and the English game laws suggests that poaching then was a collective action whereby the poor poached game with some notion of a common right to the resource. This sense of an organized, nonmonetary use right gave the commoners a feeling of solidarity and an idea of shared values within which poachers were often tolerated. People breaking such laws and hence defying the authority of the propertied class and the state were, in effect, asserting popular attitudes in defense of customary rights to access and harvest all natural resources. Gleaning, wrecking, smuggling, rioting, and exerting the right to traditional perquisites at work were all social crimes that were regarded as normative or at least justifiable on quasi-legal grounds by large sections of the population, even though they were increasingly classified as “real crimes” by the courts and the statute books (Winslow 1977; Rule 1977; Thompson 1977; Sharpe 1984; Linebaugh 1991).

In our study, communal poaching is certainly motivated by claims to rights of piscary, based on an alternative moral defense of community resource access and conduct. Licensing and enforcement of trap limitations do go against customs of the commons in that they restrict access to the resource, limit the size of

⁵ However, Kuperan and Sutinen (1998:328), in their study of “blue water crime,” suggest that detection and conviction of violators may be low because syndicates try to “influence enforcement personnel” or obtain information on surveillance activities from “insiders who warn fishermen of the Department’s planned surveillance activities so that they can avoid detection and arrest.” But the authors admit that the evidence is not compelling.

lobster catches, disturb gear once it is set on the ocean bottom, and prevent the neighborly exchange of lost or damaged traps to their rightful owners. As Kearney (1984:50) observes, these practices have “transformed community traditions and services into illegal acts liable to prosecution in a court of law.” Indeed, fishing illegally has a lengthy history in Southwest Nova Scotia. Divergent attitudes to property rights have resulted in routine evasion, avoidance, and noncompliance with fisheries law throughout much of the twentieth century. Lobster fishers do not easily or willingly recognize the state-based constitutional right of jurisdiction over the resource as either valid or sensible (Prince 1899; Department of the Environment 1975; Department of Fisheries and Oceans 1975). As noted, this has led to two distinct approaches to fish harvesting and organization: one based on traditional communal practices and the “right of access,” and the other based on state control, property relations, and the ascribed “privilege to fish.” These in turn are often in conflict, and communal poaching has emerged as a form of everyday resistance to state regulation. It continues to receive local tolerance and support and to preserve, in part, the onstage theater of power that characterizes social relationships between fishers, state law, and their communities.

However, something else is also at play. Outlaw and business poaching are primarily concerned with profiting from the provision of legal goods in an illegal manner. Their candidacy for inclusion as a “social crime” is undermined by the fact that they have been organized to supply a black market in illegal lobster and not to ensure immediate subsistence or to defy state property management. In this regard, these two types of poaching organizations are not unlike “gentlemen” poaching enterprises of the eighteenth and nineteenth centuries, many of which poached for profit and were not composed of the rural poor. As Sharpe (1984:130) observes of this type of poaching, “[t]he game trade existed in a ‘legal twilight’ . . . not only was the poacher able to find someone willing to buy game from him, but the purchaser would often encourage the poacher to take yet more.” Poaching then was thus more of a commercial enterprise than a subsistence activity, and this was largely responsible for the legal conflict and violence that surrounded it (Munsche 1981; Jones 1982).

This suggests that business poaching may be better appreciated as a form of “borderline crime,” such as fiddling or pilfering. Studies of small businesspeople, salespersons, dock workers, garage mechanics, bartenders, supermarket and retail clerks, bakers, and amateur traders in illegal goods, for example, indicate that the type of job is largely irrelevant to whether a hidden economy actually operates (Ditton 1977; Henry 1978; Henry & Mars 1978). Mars (1984:136–59) suggests that some social factors

favor workplace crime: “passing trade,” which refers to the transitory nature of patron-client relations; “exploiting expertise,” which refers to the imbalance of power and knowledge between goods and service providers and customers; “gatekeepers,” which refers to the management of imbalances between supply and demand; “triadic occupations,” which refers to the complex of alliances that can be made by any two parties against a third, and “special efforts/skills,” which refers to work situations where economic returns are directly related to individual effort or skill and where economic pressures exist for extra rewards. In addition, four supplementary functions interact with and reinforce the social factors: control systems, ambiguities surrounding goods and services, the ease of converting and smuggling goods to private use, and the anonymity arising from the work organization itself. The main social factors, Mars says, are concerned with power, while the supplementary functions are concerned with the nature of goods and services and the social exchanges between them and the people who produce, handle, and buy them. Together the supplementary functions, acting in concert with one or more main social factors, facilitate what Mars (1984:137) terms *workplace crime*, or *fiddle-proneness*.

While Mars (1984:152) recognizes that a hidden economy is growing and likely to expand in the personal service sector of the economy, he neglects to consider how workplace crime operates in the primary resource sector. Our data suggest that gatekeepers, triadic relationships, and special efforts/skills factors are critical to explaining business poaching. With regard to the imbalance between supply and demand, we find that lobster fishing is a competitive business, where the consumer exerts influence and where there is a surplus of supply relative to demand. Poachers who supply illegal lobsters are not required to work for background patrons. Rather, they are in a relatively autonomous relationship with merchandisers and, if anything, the economy of poaching is in a state of vertical malintegration. This, we suggest, allows for widespread outlaw and business poaching to supply both the legal demand for lobster and the hidden economy. While power is vested in the hands of background operators like fish processors, competition and rivalry over shares and markets are also common. Unlike rackets in the construction business, in the provision of laundry and sanitation services, or in historic forms of gambling, where suppliers and customers are prevented from selecting other competitive services and must be made to conform to a monopolistic agenda, lobster poaching is a relatively independent and mostly nonviolent enterprise that has community support and does not require official corruption.

Ditton (1977) points out that many forms of workplace crime also involve triadic relations, where two parties form alliances to cheat or fiddle a third party. In his study of the baking industry,

he describes the collusive training whereby managers teach their staff how to overcome bureaucratic restrictions by learning to fiddle customers. Of course, fiddling does involve situations where employees and customers form alliances to cheat corporate employers. But the triadic fiddle frequently makes a victim of the state. Not only is it common in the catering industry and in the building construction trades for both management and employees to cheat government taxation systems, but it is also common for resource workers in the forestry and fishing sectors to collude with corporate actors to deceive governments of rightful revenue (Royal Commission of Pacific Fisheries Policy 1982; Marchak 1984; Marchak, Guppy, & McMullan 1987).

This is precisely the situation with regard to lobster poaching! Outlaw poachers enter into alliances with hotels, restaurants, community groups, and private citizens to dispose of their illegal catches, and business poachers sell their illegal catches through the normal distributors and retailers. These arrangements amount to an underground economy, in that restaurants and hotel operators, for example, buy lobsters cheap from outlaw poachers and sell them at a greater profit. Lobster pounds and fish companies purchase lobsters from business poachers on a cash-only basis without providing official receipts. Business poachers thus acquire both legal (declared) and illegal (undeclared) incomes. Retailers for their part profit by selling off their unofficial, unrecorded illegal inventory to buyers without government knowledge. Taken together then, outlaw poachers, business poachers, fish plants, and other purchasers receive an invisible, illegal income and governments, both federal and provincial, are shortchanged of tax revenue.

Lobstering is a fishing practice where levels of skill and effort vary immensely (Clement 1986; Acheson 1987, 1988; Davis 1991). Economic return is directly related to individual commitment or ability. However, carapace size regulations, licensing and registration systems, trap quotas, and seasonal closures place severe limits on the economic rewards that the market might otherwise permit. These regulations function to bureaucratically and collectively fix formal rewards for all resource harvesters. But the real market price of the resource increases economic pressure for the financial rewards to be calibrated with the market demand for lobster. This, we suggest, encourages individual and insidious arrangements, including outlaw poaching networks that operate at the interstices of law, community, and marketplace and business poaching rackets that are essentially the fiddling activities of employed, aggressive, and skilled fishers, whom Mars (1984:40) calls "hawks." These fishers overcome the bureaucratic impediments that limit differential payments and use the collusion of communities and private capital to "moonlight" in order to match supply to fluctuating demand. Knowledgeable and ex-

perienced fishers' real earnings, then, are based, in part, on their participation in the hidden economy.

These three main factors explaining borderline crime are augmented by supplementary functions (Mars 1984:154–59). As noted above, control systems in the lobster fishery are very expensive and complicated to install. Instead, the regulatory regime operates according to a compliance model that favors persuasion, education, negotiation, avoidance, and cooperation, resulting in a “watch” style of law enforcement that is reluctant, reactive, remote, and symbolic (Lundman 1980:45–49). In many harbors, the imbalance between supply and demand, the vertical malintegration in the industry, the collusive relations between suppliers and buyers, and the economic pressures for overfishing combine with this difficulty of control to make lobster poaching a virtual certainty.

Ambiguity over the quantity and quality of lobsters and the ease in converting and smuggling them for private use also enhances the development of poaching. As in the building business or in amateur trading, where materials and goods delivered to a site may not easily be quantified (Henry 1978; Mars 1984), lobster catches sold to processing companies, hotels, restaurants, and private civic clubs are not always properly recorded, or in some instances, not even recorded at all. At busy times and especially in a sellers' market during December, May, and June, ambiguity is increased. Traps are unaccounted for, tags go missing, short lobsters get mixed into legal catches, suspicious landings go unobserved, illegal catches disappear into community institutions, and “poached” lobsters are converted into legal trade by fish processors. Furthermore, fishers who harvest lobsters easily overfish them because they operate with little oversight at sea and can land at private wharves all along the coastline because there is little concerted control on shore. Ambiguity of quantity and category is especially exploited when the state cannot physically account for the accumulative value of the hidden economy in “fiddled fish” and when the state lacks enforcement expertise and is itself one of a triad. Lobster pounds and outlaw poachers easily move illegal lobsters into the local economy, sell them under the table, and bypass the government's system of declared earnings.

A common facilitator of workplace crime is the anonymity and scale of organization. Mars (1984) emphasizes the size and impersonality of larger organizations. He argues that bigger is not always better because moral attachments and property rights are inversely related to organizational complexity. This may be true when fiddling is a form of “theft” victimizing larger corporate actors. We find, however, that lobster poaching does not require impersonal and large-scale organizational structures to be successful. The fact that lobstering is autonomous, relatively soli-

tary, and a territorially bound and insular, in-group work activity means that it contains many possibilities for routine illegal profiteering by insiders. The decentralized relations between suppliers, purchasers, and government actually allow illegal activities to overlap and intersect with licit fishing activities. The relations between the many scattered front-line suppliers and the less numerous background intermediaries are not relations in which the latter administer the former. There is no tendency toward a centralizing business type of poaching organization. Nevertheless, there is a viable hidden economy where small-scale producers and their employees, as well as outsiders to the industry, can earn dishonest wages by "fiddling the state."

Our discussion of the role of poaching, the tragedy of the commons, and the hidden economy raises the issue of negotiated noncompliance, or regulatory failure. The socio-legal regulatory literature enumerates different styles of enforcement. Some writers favor dichotomous distinctions such as persuasion versus punishment or deterrence versus conciliation, while others see three polar types rather than two: deterrence, persuasion, and education (Hawkins 1984; Hopkins 1994; Pearce & Tombs 1997; Hutter 1999; Winter & May 2001). Grabosky and Braithwaite (1986) develop an even more elaborate schema of seven different identifiable enforcement types that they locate along two axes: detached command-and-control regulation versus cooperative self-regulation, and enforcers versus nonenforcers. Indeed, existing research strongly suggests that national differences exist between regulatory regimes. The United States, for example, tends to employ a more proscriptive, deterrence-oriented style of regulation resulting in ambitious regulatory rules, strict legalistic enforcement, frequent and larger regulatory sanctions, and the production of detailed records and reports as well as evidence of compliance. In Canada and in other countries such as Australia, New Zealand, Denmark, Japan, and the United Kingdom, the preferred style of regulatory enforcement is more cooperative and negotiated in nature and relies heavily on persuasion, standard-setting, and the circulation and dissemination of information. The regulated populations in these studies comprise industrial sectors, individual corporations, small businesses and employers, managers, and employees. Some of these groupings are complex, well organized, and transnational, whereas others are simple, small-scale, and local (Bardach & Kagan 1982; Braithwaite 1985, 1993; Snider 1990; Hutter 1999; Aoki, Kagan, & Axelrad 2000; Kagan, Gunningham, & Thornton 2001).

Not surprisingly, some regulatory programs achieve their basic objectives, at least to some degree, and some do not, and of course, the reasons for compliance and noncompliance are various and numerous (Bardach and Kagan 1982; Gunningham

1987; Hutter 1999). We find that the reasons for regulatory non-compliance are four-fold. To start, self-interest, which is a major reason for compliance, especially corporate compliance, is not compelling in the case of small-scale lobster producers. Lobster fishers do not view strict compliance as necessary for the viability of their work or for the long-term future of the resource because they believe that they are able managers. Nor are they particularly concerned with protecting their image among their peers or in their communities. Communal and business poaching are not perceived as susceptible to external pressures from consumers, distributors, retailers, or other fishers. In addition, moral suasion that provides powerful reasons to comply with the law out of a genuine concern for protection, conservation, and security of the resource is minimal. The fishery officers we researched believed that fishers can be divided into two groups: those that feel an obligation to comply with the law and those who feel that the spirit and the letter of the law are unfair because the regulatory regime goes against communal, customary practices. For the latter group, the commitment to comply with the law is low. They question the state's need for a regulatory regime and are skeptical of the experts who claim to be able to better manage the resource.

Cost, which includes factors such as profit maximization, financial needs, working conditions and equipment, and worker morale is also a much-cited reason for regulatory compliance and noncompliance (Gunningham 1987; Snider 1990; Hopkins 1994; Pearce & Tombs 1997). The fishers we interviewed believed that they were caught in a contradictory policy. As a result of government programs to capitalize the fishing industry, fishers in the small boat sector have borrowed large sums of money to finance investments in new equipment and vessels. They became dependent on financial institutions and government loan boards for capital outlay. Although these programs were initially designed to rationalize the "right to fish," they have ultimately forced fishers into a severe debt-dependent position. This is complicated by the regulatory restrictions that, in effect, have restructured property relations in the lobster fishery and made the state the custodian of the resource by creating a system of selective access and control. Fishers have found themselves on the horns of a dilemma. On the one hand, capitalization has created overcapacity and the problem of too many fishers chasing too few fish. On the other hand, regulations have restricted fishing effort. Complying with the rules is a costly proposition. Fishing outside the rules has been one way for licensed fishers, in particular, to maintain flexibility in a restrictive fishery where debt loads have skyrocketed and bankruptcies and repossessions have grown.

Other authors, notably Bardach and Kagan (1982), mention intraorganizational pressures such as internal audits and inspections, task forces, expert planners, and labor management committees as reasons for compliance. We found that these pressures are rather weak. As noted earlier, little administrative control is exercised over the harvesting process. Fish companies do not set work standards or production quotas. In fact, this dispersed situation is exploited by both fishers and buyers to form a hidden economy based on negotiated noncompliance. Industrywide agencies, local advisory committees, and representative associations of producers, retailers, fishers, and governments do not function to produce an industry that is highly motivated to comply with DFO regulations. Similar to companies where the size of the firm, the work site, and the labor force are small, we have found that fishers are primarily reactive in their attitudes toward promoting compliance and controlling workplace deviance. These intraorganizational groups tend to promote minimalist standards, rules, and inspections.

The question that is fundamental to this research is the extent to which knowledge of the law and enforcement of it affects compliance. The socio-legal research suggests that knowledge of the law may be unclear for both regulators and regulated (Bardach & Kagan 1982; Hutter 1999). We found that neither the law nor its interpretations are clear to many fishery officers, area managers, and regional directors. Front-line regulators feel that knowledge of the legal system used to enforce fisheries policy is patchy and poorly understood and resourced by area managers and regional supervisors. This is perceived rather widely as symbolic of disinterest among the higher echelons of the DFO. If the threat of formal legal sanction is necessary for legal regulations to be effective and for compliance to be achieved, then the rules must be clear and the sanctions certain. We found that regulators in the lobster fishery are uncertain of laws, puzzled by the frequency and complexity of amendments and variation orders, and convinced that the sanctions are paltry and symbolic. The regulated, for their part, perceive the enforcement and implementation of fisheries law as occasional, uncertain, and aggravating. They define much fishery regulation and enforcement as "bureaucratic schemozzel," where officers with ambiguous authority have the unenviable task of enforcing many laws perceived as irrelevant and inconsistent by those being regulated.

Indeed, poachers who are allegedly subjected to the legal process in theory often subject the law to their own use in practice. They manage the "edges of illegality" to their own advantage. They play with, work on, and in some instances even invent boundaries to law-breaking. However, an important finding is that the subjected, "the officially labeled," may from time to time be in control of the labeling process. Laws, regulatory statutes,

and variation orders are not only a mechanism of social control but are also a mechanism for escaping it. In defining what is to be controlled, law also defines the limits of control and the limits of its power. Business poaching is especially dynamic and creative. It subverts the power of the state by clever and rational means. When the due diligence decision is invoked, the consequence is the erosion of strict liability. Fishers avoid the regulations by claiming that tags on traps have been “removed” by nature (i.e., climatic conditions), and that “tinkers” (undersize lobsters) could not be measured at sea because oceanic conditions have prevented it. Law at sea is more a fiction than a reality. More complex adaptations to state power are also commonplace. These include the routine surveillance of fishery officers at their places of work and in their communities as well as the promotion and development of nonenforceable rules and procedures governing how and where fishing can occur.

One way to limit maneuvers at the boundaries of the licit and the illicit, of course, is to remove the boundaries or refuse to say where they are demarcated. This is precisely what occurred in the due diligence case (*R. v. Belliveau* 1986) brought by fishers against the DFO. The judge interpreted fishery laws and regulations by looking beyond the specific violation to its real social purpose. The legal judgment, which was widely criticized by the DFO, invoked the ideology of the rule of law to actually restrict regulatory control over fishers. It argued against retrospective law by insisting on certainty and clarity before the law; insofar as intent was concerned boundaries were made clear, but no exact precedents for the future were established since the law was said to be still evolving. In short, this legal decision short-circuited the law enforcement regime and unwittingly facilitated illegal fishing.

Of course, the opportunity to creatively use and manipulate legal boundaries is not equally available to all poachers. Communal and outlaw poachers, who are not normally registered fishers, have little scope or recourse to fiddle with the law in this manner. Their choices are deceptive, evasive, and quick-escape schemes. At an elementary level the difference is not what they do, but how they do it. Unlike outlaw poachers, business poachers stay on the “right side of the law” because they have the opportunities and resources to manipulate the law to escape control and yet remain legitimate. This they accomplish in two ways. First, they play on problems of enforcement by making themselves “invisible” and by calculating the presence, or rather the absence, of law enforcement personnel and technology. Second, they work creatively on the fabric of law itself so that enforcement officers are confronted with the paradox of trying to secure compliance under the law when the literal requirements of the law and its regulations are already being met.

An implication of this research, contra those who say that only “corporate elites” or “high net worth individuals” can creatively mediate and manipulate the law, is that immunity from the law may be more widespread (McBarnet 1993). Our research shows that laws and regulations can be “bent” by small independent producers to support their interests even though they do not possess much power or enormous wealth. Ironically, in this instance, law is translated into the very practices that it seeks to control. Law in action, we suggest, is an aid to the organization of business poaching and a practice that is easily evaded and avoided.

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