



**TAKING STOCK OF FISHERIES MANAGEMENT:
CHANGES IN ACCESS FOR NL FISHERIES AND COMMUNITIES SINCE 1977**

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Abstract

This background paper focuses on key characteristics, issues and changes in resource access policies for fisheries in Newfoundland and Labrador (NL). Access to fish resources is a precondition for the development of commercial fisheries and, in turn, for the well-being and sustainability of coastal and Indigenous fishing communities that depend on these resources, but few studies have examined the enablers of and barriers to access in Canada or in NL.¹ Access, in the context of fisheries resources in Canada, can be defined as “the opportunity to harvest or use the fisheries resources, generally permitted by licenses or leases issued by the Department of Fisheries and Ocean (DFO) under the authority of the Minister of Fisheries and Oceans.”^{2,8} This opportunity may be impacted or changed by the DFO’s recognition and implementation of Indigenous and treaty rights and/or other related considerations. Similarly, allocation in fisheries management is defined as “the amount or share of the fisheries resources or allowable catch that is distributed or assigned by the Minister of Fisheries and Oceans to those permitted to harvest the resources.”^{2,8,39} Over the last four decades, the conditions under which people and communities in NL fisheries have been able to gain access to commercial fisheries have been shaped by the development of complex governance institutions at multiple scales, principally at the national or federal level, but also at international and provincial levels. This research paper is primarily based on the comprehensive review of literature and documents from government and non-governmental sources and provides evidence on how fisheries management policies during and after the creation of Canada’s EEZ in 1977 have contributed to or created avenues for access opportunities and/or vulnerabilities for NL fishers, coastal and Indigenous communities. It seeks to highlight high profile access policies and debates as well as those that are often overlooked in studies of access in NL fisheries.

1.1 Introduction

“Who has access to the resource and how it should best be used are pressing issues and will increasingly be considered in future fisheries decision making”³

In Atlantic Canada and particularly in NL, wild capture fisheries remain a significant part of the economy and culture of coastal communities and regions⁴ but the economic and cultural impact of fisheries has varied over time in response to the changes to access to fishery benefits. The province’s fishery sector has evolved in response to changing international and local policies and practices, popularly classified into the periods before and after Canada’s adoption of the 200- nautical mile Exclusive Economic Zone (EEZ)². From a largely ad hoc system and “free for all”^{2,5,13} fishery before the early nineteenth century, Canada’s fisheries sector has evolved into a regulated and coordinated system, influenced by various international, national, provincial and regional events, policies and laws. In Canada, the federal government leads most, if not all fisheries management and the Minister of Fisheries and Oceans is the final authority on all decisions that pertain to access for inland fisheries and ocean fisheries up to the 200-mile limit^{6,7}. The Northwest Atlantic Fisheries Organization (NAFO) has been responsible for the management of and access to straddling and migratory fish stocks that fall within and beyond the EEZ’s of countries bordering the Atlantic Coast, including Canada since the 1970’s¹³. Fisheries management and priorities in Canada and on the Atlantic Coast over the years have been responsive to or connected with a particular event (or events) that occurred in that time period⁸. The 1970’s was marked by governmental efforts to extend jurisdiction over Canadian waters, capitalize control over the EEZ and develop capacity of the industry to access and harvest fishery resources. The focus of management in the 1980’s turned to issues the capacity and growth of fish harvesters and processors in particularly the inshore sector, and enhancing the independence of the inshore sector. The 1990’s marked the downturn of ground fish commercial fisheries on the Atlantic Coast after the infamous cod fishery collapse and subsequent moratoria on cod and other groundfish species and the shift to Atlantic shellfish fishery. Programs and policies introduced at this time sought to limit access in the commercial fishery, promote collaborative management between government and resource users/stakeholders, increase Indigenous participation and access to fisheries and promote conservation and sustainable fisheries. These notable periods in Canadian fisheries and the policies that have evolved have been described in Section 2 of the report.

This report therefore seeks to highlight some of the key changes, strengths, and vulnerabilities associated with access policies within NL fisheries during these periods. As the CURRA policy paper observed, access to fisheries for fish harvesters and coastal communities in NL “continues to be based on important principles like historical attachment and adjacency, and on fleet separation and owner-operator policies...[that] help to anchor people and wealth in coastal communities through harvesting, processing and other kinds of employment”⁹. For the report authors, however, access to NL fisheries is vulnerable to claims that problems in fisheries can be solved by turning fisheries quotas and licenses into commodities and getting rid of policies that limit vertical integration⁹ (p. iii). While these themes feature prominently in the history of access policies and controversies in NL fisheries, this report suggests that less attention is given to a variety of institutions, policies and instruments that influence access. While prominent access policies and arrangements such as limited entry licensing, individual quotas, owner-operator and fleet

separation policies have received quite a bit of attention amongst practitioners and researchers, the attention paid to other policies and instruments, such as core and non-core categories, residency requirements and professional certification are far less recognized and understood in the literature. This report therefore suggests that in addition to high-profile access policies and debates surrounding very important issues such as quota arrangements and owner-operator policies, access is influenced by a range of other factors and instruments for which our knowledge is far more limited.

1.2 Methodology/Methods Used

The study is based primarily on an extensive review of secondary sources of literature that detail the history of fisheries management approaches, policies, practices legislations and from the period during the EEZ creation to present day and the resulting impacts on coastal communities and Indigenous fisheries, with focus on Newfoundland and Labrador (NL). Three broad classifications of fisheries management periods in Canada and specifically on the Atlantic Coast (adapted from work by Barrow et al., 2001, DFO, 2001 and Gough, 2007) were developed and served as a guide in the process of retrieving, segmenting, narrating and discussing relevant literature findings throughout the writing process of this paper. They are:

1. the period during and after the adoption of the EEZ (1977 – 1989);
2. the period leading to the cod moratorium decision and after (1990's to present); and
3. Indigenous Fisheries Management (1970's to present).

Data used for this study were retrieved from a number of academic and non-academic sources, as well as international and national/regional and provincial government documents (as detailed in table 1)

Table 1: Data Sources

Data Type	Method of Retrieval
Government Documents/Sources	International fisheries policy documents and legislations were mainly retrieved from the United Nations website and the Northwest Atlantic Fisheries Organization (NAFO) Fisheries policy documents and related reports at the national, regional and provincial-government level were retrieved mainly from the Department of Fisheries and Oceans, Department of Justice, NL Department of Fisheries and Aquaculture websites.
Academic Sources	Scholarly, peer-reviewed articles and published books relevant to the paper were accessed through MUN library's database and Google scholar. Downloadable versions of these papers are available to the OFI governance (via the OFI drop box account) and are listed in the reference section of the paper.
Non-Academic Sources	Data from non-scholarly documents or grey literature such as government reports, conference papers, newspaper articles, unpublished research works, etc. were also used and are downloadable versions are available via the OFI drop box account.

With respect to information pertaining to Indigenous fisheries governing arrangements, access and rights to fisheries, some Department of Fisheries and Oceans officials were consulted and provided online links

to a number of useful policy documents and related works on treaties, current and emerging policies for Indigenous fisheries access, (provided in the Appendices).

To guide the analysis of policy documents influencing fisheries access, we adapted the access analytical framework developed by Ribot and Peluso (2003) as applied by others in the fisheries context such as Bennett et al. (2018). For Ribot and Peluso, access analysis is “the process of identifying and mapping the mechanisms by which access is gained, maintained, and controlled” (p. 160).¹⁰ In the Canadian fisheries context, Bennett et al. suggest that there is:

“a continuing lack of knowledge about access to ocean and coastal resources and spaces in Canada [that] undermines our ability to effectively address related aspects of coastal and Indigenous community well-being... Further, research is needed both on describing the current institutional, social, ecological, and economic situation, including both drivers and outcomes of changes in access, as well as on developing solutions (research methods, governance processes, policies, and management practices) to address access issues within key decision-making processes related to coastal community well-being, economic development, fisheries management, marine spatial planning and marine conservation”¹¹ (p. 189).

Access analysis involves (1) identifying and mapping the flow of the particular benefit of interest; (2) identifying the mechanisms by which different actors involved gain, control, and maintain the benefit flow and its distribution; and (3) an analysis of the power relations underlying the mechanisms of access involved in instances where benefits are derived (p. 161).¹⁰ This analytical approach provided a means to undertake a multi-scalar analysis of the opportunities for fisheries access as well as resulting vulnerabilities on NL coastal and Indigenous fishers and communities from fisheries management policies along the broad access categories of:

- (1) governance and management: enabling/restrictive legal and policy and institutions that affected/affect access to fisheries in NL are identified;
- (2) capacity of NL fisheries: assessed overarching patterns of access to capital, labour, technology, and related resources that influence the ability to access and benefit from resources;
- (3) geographic location: the significance of the proximity of NL and coastal fishers and communities to adjacent fishing areas and how this influences access/allocation decisions and ongoing policy debates over access are noted;
- (4) social identity: the role of identity in legitimizing access through place and ethnic-based historical, social, economic and cultural links to the fisheries, including Indigenous and settler claims to fisheries adjacent to NL are discussed
- (4) property and spatial rights: discussed the introduction and effects of limited entry, individual quotas and transferrable quotas in some NL fisheries as well as the vulnerability of owner-operator policies and practices
- (5) ecological change: discussed the major environment transformations interacting with access policies and opportunities and looming responses to climate change in relation to fisheries access.

2.0 Background/Overview: Historical reconstruction of access policies, practices and principles

Fisheries access and allocations constitute a significant aspect of fisheries management on Canada's Atlantic Coast, and in other fishing areas around the world². Thus, in mapping out access opportunities, benefits and vulnerabilities for NL fishers and communities, a necessary step is to provide a historical sketch of international, national, provincial and regional policies that have impacted on access and access decisions in Canada and in NL specifically. These policies, laws and programs are identified and described under the period during and after the adoption of the EEZ (1977-1989), the period leading to the indefinite cod moratorium decision and after (1990's to present) and the changing relationship between Indigenous peoples and fisheries management (1970's to present).

2.1 Period during and after the adoption of the EEZ (1977 – 1989): International and national dimensions

In the late 1970s, the political and institutional context governing access for fisheries and coastal communities in Newfoundland and Labrador were fundamentally changed through international processes of nation-state enclosure of adjacent oceans spaces under a developing consensus at the United Nations regarding coastal state access rights.^{11,12} The extension of Canada's sea fisheries jurisdictional sovereignty up to 200 nautical miles off its coast in 1977 through provisions of the United Nations Convention of the Law of the Sea (UNCLOS) negotiations and the adoption of the UNCLOS Treaty in 1982 authorized the Canadian government's claims for more access and control over ocean fisheries^{2,13,39}. An additional stretch of the Atlantic Ocean, 3.7 million square kilometres¹³ came under Canada's jurisdiction through the implementation of this policy^{2,13}. Part five: Sections 55 to 58 of the UNCLOS Treaty indicates the extent and limits of the Exclusive Economic Zone, the rights of coastal states or communities to determine how resources within these zones are harvested, used, managed and protected and as well, entrusts coastal states with the right to determine how other states access the EEZ, based on the Treaty's provisions¹⁴. Canada's rights over the 200-mile limit¹⁴ of the ocean and the power of the minister to control and authorize fishing and non-fishing activities in consultation with user groups and stakeholders was subsequently entrenched in the 1996 Oceans Act of Canada³⁷ and the Fisheries Act, respectively.

While the direct relevance of international governance institutions and norms were most acute during the development of UNCLOS, international concerns and measures to promote responsible and sustainable ocean fisheries management continue to influence the Canadian and NL context. For example, the "Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas" for the governance of straddling and highly migratory stocks¹⁵ and the Code of Conduct for Responsible Fisheries¹⁶ in the mid-1990's (adapted into the Canadian Code of Conduct for Responsible Fishing Operations in 1998 by the Canadian fishing industry)^{20,17} directly impact fisheries decision making processes within Canada. The Code recognizes the provisions of the UNCLOS, and emphasizes the need for management and conservation measures to consider the needs of small-scale, artisanal fishers and coastal communities as indicated in Article 6.18 and Article 7.2.2 (c)**Error! Bookmark not defined.** These international fisheries policies and management are recognized by and in some cases, have shaped some Canadian and Atlantic/NL fisheries policies, programs and practices in direct and indirect ways.

In the period following the extension of jurisdiction, the Canadian government's efforts to limit foreign fishing access intensified leading to major cutbacks to foreign allocations^{2,13} and reduction in total allowable catches(TACs)², this did little to reverse or even halt the decline of groundfish stocks on the

Atlantic Coast. The associated reason being that groundfish species were the most exploited (NL fishery was the least diversified fishery, and the concentration then was on the northern cod fishery)^{2,18}. As identified in the bilateral agreements between Canada and countries that fished on the Atlantic Coast, Canada's committed to share fishery resources surplus to the harvesting capacity and needs of Canadians' within the 200-mile limit, which presented more opportunities for more access and expansion of local fisheries. Canada, however, lost access to some fisheries off the Atlantic Coast as other coastal countries extended their jurisdiction¹³.

Within the domestic context, the most direct mechanism that the Government of Canada utilized for formalizing access is the fishing license. For DFO, a fishing license is:

“an instrument used by the Minister, under the authority of the Fisheries Act, grants authorization to a person, including an Aboriginal organization, to harvest certain species of fish or marine plants subject to the conditions attached to the license. This is a temporary grant as licenses are issued for a fixed period, usually annually”.¹⁹

Developed partly in preparation for the extension of fisheries jurisdiction, Canada's Commercial Fisheries Policy of 1976 aimed at rationalizing the fishery and improving efficiency in the use and management of fishery resources in the hopes of addressing the issues arising from the “common pool” nature of wild fisheries^{4,21}. While rudimentary quota management in Canada began in the early 1970s, this policy contained further measures for controlling entry into and participation in the commercial fishery¹³ towards addressing the concerns of expansion (in capacity and participants) of the fishery, one of the major occurrences after the establishment of the EEZ. The growth in registered fishermen by approximately 25 percent in Newfoundland and 19 percent Canada-wide between 1978 and 1980 provides evidence of increased access, with the highest number of registered fishermen recorded within this period. In addition to concerns about the over-expansion in the fishery, harvesting and processing interests competed for power to control access to the fishery, foreshadowing future and ongoing conflicts between the sectors over access policies and control²⁰. This influenced decisions to separate activities of harvesting and processing as instituted in the Fleet Separation Policy initiated in 1979 and the Owner Operator Policy in 1996.

The 1979 Fleet Separation Policy was introduced as a means to protect access rights of inshore harvesters/fishermen who operate vessels less than 65 feet in length, by discontinuing the issuing of fishing licences for the less than 65 feet vessel fishery to corporate and processing sectors. However, there were exceptions to this policy involving processing companies/corporations with license(s) to this fishery prior to the year 1979. These access arrangements/licenses ensured these companies could maintain access to the fishery and could transfer access to another a corporation that existed in the fishery before 1979 and thus maintained a channel for continued corporate access and participation in fisheries adjacent to NL. The objectives of DFO's Owner Operator Policy for Eastern Canada similarly has the objective of protecting access to fish resources for the inshore sector and ensuring that benefits and operators and limiting corporate involvement by requiring that licence holders for this fishery personally fish their licences. There are some formal exceptions for this policy as well. These include “licence holders who are covered under the ‘grandfather clause’ and are able to designate an operator for one or more of their vessels as they did in previous years” and/or for licence holders who are unable to fish their licences personally due to situations outside their control and thus designate a substitute operator to fish on their

behalf. In recent years, the introduction of the Policy for Preserving the Independence of the Inshore Fleet in Canada's Atlantic Fisheries (PIIFCAF) as part of a larger Fisheries Renewal Program by the DFO, seeks to promote the Fleet Separation and Owner Operator Policies²¹. The main objective of the PIIFCAF is to promote the independence of the inshore sector and ensuring that the main beneficiaries of the fishery are the fishers and coastal communities in the Atlantic region²¹. There are further exceptions and nuances within the PIIFCAF (see <http://www.dfo-mpo.gc.ca/fm-gp/initiatives/piifcaf-pifpcca/ecfe-ldce-eng.htm>).

Within this context, three different harvesting categories have been developed within Canadian fisheries, with different policies and access relationships. These include the "inshore," where license holders are restricted to using vessels less than 19.8 m (65'), "Midshore", where license holders are permitted to use vessels up to 30.5m (100'), and "Offshore," where license holders are permitted to use vessels greater than 30.5 (100') (<http://www.dfo-mpo.gc.ca/reports-rapports/regs/licences-permis/nfld-Labrador-tn-labrador-eng.htm#term>).

While policies such as the Owner-Operator and Fleet Separation policies were designed to embed fisheries benefits in communities¹¹, the history of access policies and relations are marked by growing pressures to adopt market-oriented access policies and practices. In the early 1980's, for example, the concept of individual transferable quotas (ITQs) ("exclusive rights" to a quota(s) of a TAC and the ability to transfer quotas to qualified participants) gained attention in Canadian fisheries management²², partly influenced by recommendations in the 1982 report of the Kirby Taskforce on Atlantic Fisheries¹³. Government and industry efforts were focused on rationalizing the fishery towards achieving economic and social viability, and improving the bankruptcy situation of the fisheries industry at this time. Policy interventions such as the merging of the five large processing companies in the region into two companies to improve the economic efficiency of the processing sector, and the implementation of the Enterprise Allocation system for regulating access to harvesting in the offshore sector took off in the 1980's.

The theme of overcapacity also persisted through this period. Further governmental attempts to restrict access and capacity in the Atlantic fishery, particularly for groundfish stocks, led to the introduction of several restrictions on vessel replacement and the formulation of the 1982 Sector Management Policy. The Sector Management Policy for Canada's Atlantic Inshore Groundfish Fishery was put in place to manage and control access to groundfish stocks between the fishing sectors to avoid occurrences of overfishing or fishing below capacity and in effect, to restructure the Atlantic fishery^{20,26}. The policy eradicated the practice whereby license holders, mainly the small vessel fleets, could fish almost everywhere on the Atlantic Coast where quotas were available, and instituted a more restricted but structured system which required licence holders to fish in a defined fishing area or zone²¹. Policies, laws and interventions were also introduced to control the groundfish fishery through access restrictions and TAC reductions^{24,23}, however, as we now know, these measures were not adequate to address nor salvage the impacts of the growing capacity and overfishing in the Atlantic fishery, resulting in the continuing decline and eventual to the collapse of the Atlantic groundfish fishery**Error! Bookmark not defined.** Findings by the 1987 Alverson Taskforce and the 1989 Scotia-Fundy Groundfish Task force and the 1990 Harris Panel reiterated the problem of overcapacity in Atlantic fisheries and the unhealthy decline in the stock abundance, and called for interventions that would restructure the fishery and rebuild declining stocks, particularly northern cod.

2.2 *Period leading to the cod moratorium decision and after (1990's to present):*

The decline in northern cod and other groundfish stocks and reduction in catches on the Atlantic coast persisted into the 1990's, and this necessitated the introduction of an initially temporary ban (2-year moratorium) on access to northern cod fishing in the year 1992^{13,20,39}. The government introduced and funded the income assistance program – the Northern cod Adjustment and Recovery Program (NCARP), which facilitated the removal of close to 900 licences from the fishery. Not only was the moratorium on northern cod extended indefinitely in 1994, the government also placed bans on the fishing of other groundfish species that had high northern cod bycatches or showed serious declines in abundance. The Atlantic Groundfish Strategy (TAGS) replaced the NCARP in 1994, and was succeeded by the Canadian Fisheries Adjustment and Restructuring Program in 1998; these programs introduced measures to match capacity in the ground fishery to the available fish resources, and sustain the process of rebuilding depleted groundfish stocks. The DFO's main focus was on financing support programs that promoted the removal or early retirement of licences in addressing the situation of overcapacity in the harvesting and processing sectors.

The cod and other groundfish moratoria bring into focus the social and community impacts of reduced access to fish resources that result from overfishing and ecological change. The harsh impact of the closure of the commercial fishery for cod (and other groundfish fisheries) and other measures to limit access to the fishery on Atlantic fishers, specifically fish harvesters and outport communities in NL, remains noticeable. With about 35,000 jobs lost from the moratoria, the highest population outflux (of 40 percent) was also recorded in NL coastal communities during this period²⁴.

Table 1. Newfoundland fleet, selected years

	Year	Fleet
Over 100 ft.	1984	90
	1991	76
	1999	22
35-100 ft.	1984	1,438
	1991	1,342
	1999	1,008
Under 35 ft.	1984	15,020
	1991	13,678
	1999	8,605

Source: Gough, 2007¹³

New access trends developed or intensified in the wake of the radical closure of access to cod. Coinciding with the collapse of the northern cod and groundfish fishery, was the growing abundance of and high catches of crustacean stocks, mainly snowcrab, shrimp and lobster in the province and on the Atlantic coast, which yielded more revenue compared to the cod fishery^{20,24,25}. This raised the hopes of the NL populace and communities affected by the cod fishery that they would gain access or opportunities to participate in these shellfish fisheries. The DFO started out by giving sizeable amounts of shrimp and crab, as temporary licences/allocations, to the inshore harvesting and onshore processing sector affected by the cod fishery closure, the large vessels were already involved in this fishery since the 1970's²⁴. Over

2000 crab licences were out to the inshore sector on a temporary basis and were converted to permanent licenses in 2003, and by the late 1990's, the value of landed fish in NL had shot up to about \$1 million CAD with a large fraction of this amount being proceeds from the shellfish fishery²⁴. Also, provincial government interventions supported the onshore processing sector; ensuring that existing and new regulations supported the reconstruction of groundfish processing plants to suit shellfish processing and/or the building of new plants for shellfish processing (with over \$140 CAD invested in these activities)²⁴. While increased access to shrimp, crab and lobster enabled some fish harvesters, processors and to adapt and, in some situations, thrive during a period of decreased access to groundfish, “many harvesters and workers who depended on groundfish and other fisheries did not benefit from the expansion in shellfish resources (p.12).[insert footnote 14?]. This points to an fundamental dilemma in developing access policies: they are effectively and unavoidably, at least in situations with significant capacity and interest, policies of exclusion too.

Overcapacity and the concept of rationalization of access continued to emerge as themes in key policy discussions and arenas. For example, the 1995 Montreal Round Table, a conference of industry—government collaboration, advocated a reduction in capacity in both harvesting and processing sectors, and recommended that Individual Quotas, Individual Transferable Quotas, and Enterprise Allocations be considered if a clear majority of license holders supported the access measures (p. 13)²⁰.

These themes were incorporated into some of the most significant policies of the 1990s. DFO's Commercial Fisheries Licensing Policy for Eastern Canada introduced in 1996, is mainly aimed at “reducing capacity, improving the economic viability and preventing future growth in capacity in the commercial fisheries” on both the Atlantic Ocean and in freshwaters within the Atlantic region and in the NAFO Convention area (excludes commercial freshwater fisheries in Quebec). This policy establishes or incorporates various elements and criteria associated with the protection and prioritization of small-scale, community fisheries and Indigenous fisheries. These include the ‘core group’ criterion, and residence or home port criterion for determining access, the adjacency principle for resource access, the owner-operator and fleet separation policies, and the recognition of Indigenous fishing rights and treaties provisions. This policy has shaped the relatively newer Fisheries Licensing Policy for the Newfoundland and Labrador Region developed by the DFO, for specifically managing and regulating the inshore commercial fisheries and plants on the coast and inland waters of NL.²⁶ This policy guarantees the ‘independent core’— a new category emanating from the PIICFAF, prioritized access to and the most benefits from the fishery; these benefits were previously assigned to core harvesters (core harvesters are expected to provide evidence that they are free from any controlling agreement to qualify as independent core)²⁶.

These new policies and categories point to an important finding in this paper. In addition to mechanisms such as limited entry, fishing licenses and fishery sectors, there are further mechanisms, relationships and institutions which have developed over time which make the access relations more complicated and diverse in practice. These include core, non-core, independent core, and key licenses, which describe different types of enterprises/licenses, as well as controlling agreements, buddy-up arrangements, and enterprise-combining. Within some of these categories, moreover, it appears that various appeals processes and procedures exist. In the context of Newfoundland and Labrador, professionalization classification emerged in the 1990s, setting out particular criteria for individuals to meet before one can qualify for certification as an inshore fish harvester¹⁹. To our knowledge, these various mechanisms and instruments have received very little scholarly attention.

The professional classification is particularly important for individuals who wish to become fish harvesters within NL. The professionalization of the inshore harvesting sector had roots in the early 1990s through discussions and consultations led by the Fish, Food and Allied Workers Union and generally supported by fishing co-operatives, DFO, the provincial Department of Fisheries and Aquaculture at the time, and other government and educational institutions (<https://www.pfhcb.com/background-of-the-pfhcb>).³⁸ In 1997, the Government of Newfoundland and Labrador House of Assembly passed the Professional Fish Harvesters Act, which facilitated the creation of the non-profit the Professional Fish Harvesters Certification Board (PFHCB). When the PFHCB was created, DFO's "registration system and categories of full-time/part-time fisherman was replaced with the new designations of Apprentice Fish Harvester, Professional Fish Harvester Level I, and Professional Fish Harvester Level II" (<https://www.pfhcb.com/background-of-the-pfhcb>)³⁸.

Another key instrument that formalized in the 1990s were Integrated Fisheries Management Plans (IFMPs). IFMPs were introduced by the DFO, also a co-management approach, in the mid-1990's as a framework for facilitating conservation and sustainability agenda for fisheries while serving as a process for managing fisheries over a time period and is applied in managing a particular fishery (of a given species) in a defined area or region. IFMPs were designed to address three broad management areas or concerns:

- to incorporate the Sustainable Fisheries Framework, in particular the precautionary and ecosystem approaches to fisheries management (see <http://www.dfo-mpo.gc.ca/reports-rapports/reg/sff-cpd/ifmp-pgip-back-fiche-eng.htm>);
- to take into consideration Canadians request for more stability, fairness and transparency from fisheries management systems; and
- to factor a rules-based approach into decision-making, which is transparent, rigorous and systematic.

In meeting the objectives of ensuring stability and transparency in fisheries management, any IFMP for a fishery (of a particular species) is required to report access sharing arrangements, quotas and allocations over the management period, subject to modifications by the Minister of Fisheries and Oceans only, which must be updated in the plan. About 20 fisheries in the Newfoundland and Labrador Region and Gulf Region had or currently have IFMPs, and renewal processes for IFMPs in 2007/2008 and in 2010/2011 were focused on widening the scope of application of IFMPs to cover major fisheries on the Coast and incorporating new sustainability-related components (see <http://www.dfo-mpo.gc.ca/fm-gp/peches-fisheries/ifmp-gmp/guidance-guide/preparing-ifmp-pgip-elaboration-eng.htm>).

While many policy discussions continued to emphasize overcapacity in the 1990s, efforts to reduce capacity were not universal, however, partly because ecological conditions provided opportunities for new access to various species. For example, federal and provincial efforts to diversify access to fish species harvested and to develop "underutilized" fish species shaped the New Emerging Fisheries Policy introduced in 1996. This policy directed government investments into the development of a number of underutilized fish species on the Atlantic Coast and led to the creation of employment and "important opportunities for the preservation and development of coastal regions and communities" (see <https://www.canada.ca/en/news/archive/2007/08/four-exploratory-fisheries-converted-commercial-fisheries.html>). The Atlantic Fisheries Policy Review Process, which commenced in 1999, brought about the framework for managing fisheries on Canada's Atlantic Coast, which serves as a guide in decisions

related to sharing and allocation of marine and inland fish resources in the region, and in the development of policies related to access and allocations (including the New Access Framework, Integrated Fisheries Management Plans and New Emerging Fisheries Policy and emphasized Indigenous rights and treaties pertaining to Atlantic Canada's commercial fisheries. These evolving access policies and arrangements did not materialize without controversy.

The issue of access to new and emerging species created controversies leading to major policy reviews and evaluations. For example, in 1997, the Auditor General of Canada pointed out problems with the implementation of the 1996 Commercial Fisheries Licensing Policy for Eastern Canada. According to a subsequent summary, the policy:

“did not clearly establish how the underlying principles governing the allocation of fish (e.g. adjacency to the resource, historical attachment to the fishery) were to be reflected in practice. The Auditor found that the absence of a formal fisheries policy meant that decisions on resource use were made on an *ad hoc* and inconsistent basis rather than part of an overall framework, and recommended that the federal government move forward in its efforts to clarify the fisheries policy framework in legislation”²⁷.

These and similar critical analyses from provincial governments and industry helped facilitate the development of still more consultations and review processes. Examples include the launch of the Atlantic Fisheries Policy Review (AFPR) in 1999 to set out a broad framework for fisheries management on Canada's Atlantic Coast; the Independent Panel on Access Criteria (IPAC) in 2001 to review the principles and criteria of access decisions; and the release of the discussion paper entitled Preserving the Independence of the Inshore Fleet in Canada's Atlantic Fisheries to strengthen the Owner-Operator and Fleet Separation Policies so as to “ensure that inshore fish harvesters remain independent, and that the benefits of fishing licences flow to the fisher and to Atlantic coastal communities”²¹.

The 2002 New Access Framework, which emerged out of these IPAC process, establishes the adjacency, historical dependence and economic viability criteria for determining access in times of ‘boom’ or new access to a commercial fishery, after conservation issues are considered. During the AFPR process, the Government of Newfoundland and Labrador raised concerns such as “access by non-Newfoundland and Labrador-based interests to fish resources adjacent to our province; the apparent erosion of the owner-operator and fleet separation policies; and, the lack of recognition of the fish processing sector in the policy framework”.

While these efforts appeared to provide some clarity over access principles and criteria, the challenges of implementation, conflicting principles, and enforcement of policies remained an issue that periodically surfaces in NL fisheries, including policies widely understood as protecting access for independent fish harvesters and coastal communities. The erosion of the Owner-Operator through Trust Agreements and similar legal maneuver are common across the Atlantic provinces²⁸, including NL. Challenges regarding the application of the adjacency principle became a significant issue in the northern shrimp fishery as fishery and ecological conditions changed dramatically in the early 2010s¹². These examples point to the importance of enhancing knowledge and understanding of the development, application and effects of various access policies, principles, and criteria. This knowledge will be important in influencing current and looming discussions and debates over access to cod and other groundfish, as well as declining fisheries under conditions of environmental and climate change.

This knowledge is crucial at the current juncture of ecological, social and political change. For example, recent moves by the Government of Canada point to further changes with potentially significant implications for access arrangements in Atlantic Canada and NL. The proposed bill C-68 (amendments to the Fisheries Act) affirms government's stance towards the objective of strengthening the inshore sector and protecting benefits from the fishery that go to coastal communities. This is communicated in one of the proposed policy additions, which states that the government will commit to "the preservation or promotion of the independence of licence holders in the commercial inshore fisheries", and the consideration of "social, economic and cultural factors in fisheries management decisions"^{32,33}. Demographic changes, however, are creating potentially significant vulnerabilities even if policies to preserve access for the independent fleet are fortified through legal measures. While the focus on "rationalization" and reduction in capacity continued to gain support in major assessments of the fishery through the 2010s²⁹, there is also evidence of potential looming and current shortages in fish harvesting labour capacity in the inshore sector³⁰.

To summarize aspects of this (limited) history of trends, opportunities, and vulnerabilities in access, it is useful to reflect on Gough's summary of a similar period. In summarizing some trends in access regarding the Newfoundland region, Gough suggests that:

In theory, access and allocation...remained firmly in the hands of the minister, to grant or withdraw as he [sic] pleased. In practice, licenses had more and more taken on a life of their own, with transfers generally allowed, and with the government feeling obliged to pay compensation when it removed a license. Although Individual Transferable Quotas furthered "rationalization" by reducing the number of vessels in some fisheries, they also drew charges of fostering overfishing and misreporting and of extending corporate control at the expense of the independent fishermen. Clear progress had appeared at least in one respect: a fisherman was far more likely in 2000 than 30 years earlier to have a share of the overall catch that he could count on. The "core fisherman" policy further buttressed the position of serious fishermen" (p. 452-453)¹³.

2.3 Indigenous Fisheries Management 1970's to present

It was not until the early 1990's that Indigenous rights and access to fisheries (for various uses, including commercial purposes) gained substantial attention and consideration in national fisheries management and policy decisions²⁰. The outcome of the *R. v. Sparrow* legal case, which the Supreme Court ruled in favour of Sparrow (the accused Indigenous fish harvester) marked a turning point for Indigenous access to fisheries in Canada and in NL. The Court authorized Indigenous fishing beyond food fishery (which was the only permissible fishery for natives at the time) to include fishing for social and ceremonial purposes, and as well prioritized Indigenous rights and access to fisheries, second only to conservation measures.³¹ This incidence factored into the creation of the 1992 Aboriginal Fisheries Strategy (AFS) with the objective of managing Indigenous fisheries where land claims settlements had not initiated a fisheries management system; this policy has been fishing access and provided economic opportunities in the fishery²⁰. Some of the AFS objectives are:

- To provide Aboriginal groups with an opportunity to participate in the management of fisheries, thereby improving conservation, management and enhancement of the resource.
- To contribute to the economic self-sufficiency of Aboriginal communities.
- To provide a foundation for the development of self-government agreements and treaties.
- To improve the fisheries management skills and capacity of Aboriginal groups.

As part of this initiative, non-Indigenous fishermen voluntarily relinquish their licences as part of a business transaction, which then makes it available to Indigenous groups. The goal of this process is to maintain an equilibrium of licences. Indigenous groups do not receive new licences. In some cases, Indigenous groups may receive these licences with support from government initiatives such as the Allocation Transfer Program (ATP) or by self-funding. The Allocation Transfer Program (ATP) is a program under the AFS. The Government of Canada utilizes these programs in its efforts to facilitate reconciliation with Indigenous groups. There are three primary tools the Government of Canada uses to issue licences to Indigenous groups:

- 1) Aboriginal Communal Fishing Licences Regulations (ACFLR)
<http://laws-lois.justice.gc.ca/eng/regulations/SOR-93-332/page-1.html>
- 2) Commercial Fisheries Licensing policy for Eastern Canada:
<http://www.dfo-mpo.gc.ca/reports-rapports/regs/licences-permis/index-eng.htm>
- 3) 2. NL Regional Licensing policy
<http://www.dfo-mpo.gc.ca/reports-rapports/regs/licences-permis/index-nfld-Labrador-tn-labrador-eng.htm>

There are five Indigenous groups in Newfoundland and Labrador that DFO maintains a working relationship on fish related matters with:

- 1) Innu Nation
- 2) Miawpukek First Nation (MFN)
- 3) NunatuKavut Community Council (NCC)
- 4) Nunatsiavut Government (NG)
- 5) Qalipu Mi'kmaq First Nation Band (QMFNB)

Some proposed changes to the Fisheries Act (Bill C-68) presented to the Parliament of Canada in February 2018, informed by reviews and consultations/engagement with stakeholders which started in 2012,³² have implications for Indigenous peoples access to fish resources and participation in fisheries management. Section 2.3 and 2.4 of these changes align with the Canadian government's current provisions to reconcile existing and emerging policies with principles that give recognition and respect to Indigenous land claims and rights to natural resources, and promote partnerships with Indigenous and/or First Nation groups^{32,33}. While there are some studies highlighting the development and changes in access and allocation for Nunatsiavut (e.g. ^{34,35}), the overall documented understanding of the history and current context for Indigenous access to fisheries within NL is limited.

3.0 Conclusion:

Access policies and principles are influenced by a range of policies and principles from the global level at the United Nations to the national, where the state has ultimate authority through the minister to make decisions on access. However, despite the ultimate discretion of the minister, a plethora of institutions and requirements have developed. Most of these are from the DFO and evolving policies from the fisheries department, but others are specific to the NL context, such as professionalization legislation and criteria. From the analytical perspective of access analysis, there are a wide variety of mechanisms that influence access in NL fisheries. Moreover, the history of access policies and relations is characterized by power struggles and power relations, such as the conflict between harvesting and processing sectors over controlling access to the fishery. These power relations are generally the focus of scholarly literature. For example, the debate about the opportunities and vulnerabilities associated with market-oriented access approaches continues to figure prominently as both a struggle over principles and control over access. The recent policy report by the Community-University Research for Recovery Alliance (CURRA) argues that claims that problems in NL fisheries can be solved by turning fisheries quotas and licenses into commodities and getting rid of policies that limit vertical integration are unfounded⁹. According to the CURRA policy report, “if implemented, [such policies] would devastate the economies of many coastal communities, be costly for those who actually work in the industry, erect new barriers for the entry of young people into fisheries, and would not deliver the conservation and other benefits claimed”⁹. It further suggests that such policies would create intergenerational transfer of fishing access more difficulty and that “young people are likely to be disproportionately negatively affected by privatization of access to fisheries resources and related reductions in the number of plants, fleet downsizing, and vertical integration, because they have less seniority in fishing and processing, higher debt loads, and less control over licenses than do older workers and enterprise owners”⁹. While these high-stakes access debates are understandably the focus of much research, less well understood, however, are other access policies, categories and relationships, such as core and non-core, residency requirements, professional certification, as well as related requirements outside the purview of fisheries management, such as access to capital, labour, household supports, and insurance.

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APPENDIX

ACCESS ANALYSIS: SYNTHESIZING FINDINGS (WORKING DRAFT)

Access Mechanisms	Opportunities for NL Communities and Indigenous groups (1977 and beyond)	Resulting Vulnerabilities on NL Communities and Indigenous groups (1977 and beyond)
Governance and management	<p>International <i>Creation of EEZ and UNCLOS agreement (1977/1982)</i>¹³. Error! Bookmark not defined.³⁹</p> <ul style="list-style-type: none"> - Federal government extension of jurisdiction (and control) up to 200-nautical miles off the Atlantic coast. - Foreign fishing operations restricted especially in inshore waters and in some areas within the EEZ. <p>UNCLOS agreement provisions³⁶ relating to the conservation and management of straddling and highly migratory fish stocks:</p> <ul style="list-style-type: none"> - As a general principle, the rights/privileges, needs and welfare of artisanal/small-scale fishers and fish processors, coastal and indigenous communities, must be duly considered in relation to the harvest and use of fish resources. - Coastal communities must be actively involved in the management of fisheries (in this case, straddling and highly migratory stocks) that impact on their fishing activities. <p><i>1995 Code of Conduct for responsible Fisheries</i> Article 6.18 “Recognizing the important contributions of artisanal and small-scale fisheries to employment, income and food security, States should appropriately protect the rights of fishers and fish workers, particularly those engaged in subsistence, small-scale and artisanal fisheries, to a secure and just livelihood, as well as preferential access, where appropriate, to traditional fishing grounds and resources in the waters under national jurisdiction.” (p. 7) Article 7.2.2 Management measures to maintain or restore stocks ought to ensure that: (c) “the interests of fishers, including those engaged in subsistence, small-scale and artisanal fisheries, are taken into account.” (p. 10)</p> <p>National/Federal <i>Commercial Fisheries Licensing Policy for Eastern Canada (1996):</i> As part of measures to protect the inshore sector</p>	<p>International - USA’s implementation of the EEZ displaced over 50 Canadian vessels that fished halibut off the coast of Alaska.¹³</p> <p>National/Federal -Canada’s Commercial Fisheries Licensing Policy – terminated open access fishery and instituted license requirements for sea fisheries in Canada. -Introduction and setting of total allowable catch (TACs) to restrict fish harvests.² - DFO’s resource assessments of shellfish (northern shrimp stocks) in the late 2000’s revealed serious declines and poor health of the stock. DFO implements Last-In First-Out policy and cut down or remove shrimp allocations in inshore and offshore.²⁴</p> <p>Atlantic Region <i>1982 Sector Management Policies</i> – further restrictions for small scale operations to specific fishing areas or zones. Strict vessel replacement rules were introduced to restrict expansion of fisheries.³⁹</p> <p><i>1992 Cod Moratorium / moratoria on other groundfish stocks (made indefinite in 1994).</i>^{2,13} - Over 1400 licences exited the fishery through licence retirement/early retirement (assistance) programs.²⁰</p> <p>Newfoundland-specific Cod fishery impacts on NL fishers and communities: 35,000 people lost their licences in NL; 40 percent of out-migration was recorded in coastal communities in NL after the moratorium. These cutbacks have been reported to have</p>

	<p>(vessels less than 19.8 (65') feet), participants are required to meet the criteria of a 'core' group, i.e. must head the enterprise, hold key licences (or vessel-based licences), be attached to and dependent on the fishery and additionally for new entrants (1996 and after), must be certified as a professional fisher. The core group is granted multiple licences and most benefits from the fishery are expected to go to this group.</p> <p><i>Owner Operator Policy (1996 Commercial Fisheries Licensing Policy for Eastern Canada)</i>²¹ Licence holders restricted to using vessels less than 65 feet will be required to fish their licence personally, unless permitted to designate to an operator under a Grandfather clause.</p> <p><i>Fleet Separation Policy (1996 Commercial Fisheries Licensing Policy for Eastern Canada)</i> "New fishing policies for fisheries where only vessels less than 65 feet are permitted to be used may not be issued to corporations, including those involved in the processing sector of the industry."</p> <p><i>Canada's Oceans Act (1996)</i>³⁷: "Whereas Parliament wishes to affirm in Canadian domestic law, Canada's sovereign rights, jurisdiction and responsibilities in the exclusive economic zone of Canada." (p.1) "Whereas Canada recognizes that the oceans and their resources offer significant opportunities for economic diversification and the generation of wealth for the benefit of all Canadians, and in particular, for coastal communities." (p. 1) Bill C-68 (Proposed Changes to the Fisheries Act)^{32,33}: Section 2.5: "social, economic and cultural factors and the preservation or promotion of independence in commercial inshore fisheries" should be considered and incorporated in fisheries management, policies and interventions to preserve access to and benefits from the fishery to fishers and coastal communities.</p> <p>Atlantic Region <i>Consolidation of Fleet Separation and Owner Operator Policies in PIICFAF</i>²¹ Establishes the new category 'independent core' – which requires inshore operators to meet all the criteria for eligibility under the core category and additionally, show evidence of not being bound by</p>	<p>had significant impacts on NL inshore sector and communities compared to the offshore sector as policies have tended to protect the offshore sector's access to the fishery²⁴</p> <p>The application of the LIFO Policy (abolished in 2016/17) in the Northern Shrimp Fishery</p> <p>Erosion of the policy through "trust agreements" and related contractual maneuvers</p>
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any controlling agreement.

New Emerging Fisheries Policy (1996)

As at 2007, “a total of 60 sea urchin licences, 9 shrimp beam trawl licences, 170 toad and 30 rock crab licences had been approved for commercial fishing in NL.”

The New Access Framework (2002)

The following criteria are to be considered in access decisions (after conservation measures):

- a. Adjacency – people who live closest to a fishery resource should benefit the most from them (applicable in cases where fish stocks are sedentary or less mobile)
- b. Historic dependence – priority should be given to fishers who started a fishery or have relied on a fishery over a significant period of time to their benefit and the benefit of the communities they come from.
- c. Economic viability – On a broader scale, the fishery must be economically sustainable and support offshore, inshore and onshore employment and bring socio-economic benefits to fishing communities.

Newfoundland-specific

Small fishermen groups and individual fishers join the NL Fishermen, Food and Allied Workers and gain bargaining rights.¹³

Development of the shellfish fishery (shrimp and crab) in late 1980's/early 1990's: (Mather, 2013)

Access granted to NL coastal communities and the inshore fishers e.g. 2500 temporary crab licences issued to the inshore sector by 1998, converted to permanent licences after 2003.

About 10 plants were renovated or newly built for shellfish processing after 1997. Over \$140 CAD invested into converting groundfish plants to shellfish plants or building new plants for shellfish processing.

Professional Fish Harvesters Act by the NL House of Assembly, 1997³⁸

Created the Professional Fish Harvesters Certification Board and developed a professionalization program that replaced the full-time/part-time categories of fishermen into new categories of Apprentice Fish Harvester, Professional Fish Harvester Level I and Professional Fish Harvester Level 1 and Professional Fish

	<p>Harvester Level II.</p> <p>As part of the general certification/renewal of certification criteria, candidates who are unable to show that they are provincial residents of NL (i.e. “a Canadian or landed immigrant whose principal residence is in the Province or who meets the requirement of the Elections Act, 1991 and can vote in the Province”) will not be approved for certification as a professional fish harvester. The number of years of full time fishing on an NL based fishing enterprise is also considered.</p>	
<p>Capacity of (NL) Fisheries</p>	<p>International</p> <p>National/Federal</p> <p>Assistance from Fishing Vessel Insurance Program increase in the 1970’s and even more after the creation of the EEZ (for vessels ≥ 25ft)¹³</p> <p>Atlantic Region</p> <p>Newfoundland-specific</p> <p>17 offshore licenses (issued before 1991) held by 12 corporate entities in the northern shrimp fishery. Benefits (employment, economic development, etc.) from the fishery (harvesting & processing activities) flow to about 30-40 coastal communities in NL.³⁹</p>	
<p>Geographical location</p>	<p>International</p> <p>National/Federal</p> <p>Atlantic</p> <p>Commercial Fisheries Licensing Policy for Eastern Canada (1996).</p> <p><i>Parameters for issuing licences that engage the principle of adjacency:</i></p> <p>“Adjacency to the resource recognized as a priority factor for the issuance of new regular/exploratory licences and for the issuance of replacement licences.”; and</p> <p>“Geographic distribution of economic opportunities maintained”</p> <p>In issuing new or replacement licences, one of the eligibility considerations is the “residency, area of historical fishing or homeport” of the applicant.</p> <p>Newfoundland-specific</p> <p>The Fish, Food and Allied Workers (FFAW) represents the inshore sector and the coastal communities dependent on this sector. The organisation champions the course of the inshore harvesting and onshore processing sector (and is a strong advocate for the principle of adjacency in fisheries access and allocations), as seen for instance, in their presentations for the LIFO policy</p>	

	review. ²⁴	
Social Identity	<p>International</p> <p>National/Federal</p> <p><i>Canada's Fisheries Act (1985)</i>⁶: Sections 6(a), 35(1), 37(1), 38 (2bii), 38(4) are explicit policy statements within this Act that protect indigenous fisheries and their access rights to these fisheries.</p> <p><i>Aboriginal Fisheries Strategy (1992)</i> - About 900 or more licences have been issued to indigenous group since 1993/1994. - Approximately 1300 seasonal jobs are created per year from indigenous commercial fishing, processing, and related activities.</p> <p><i>The Aboriginal Communal Fisheries Licencing Policy of 1993 (in pursuant to Section 43 of the Fisheries Act)</i> provides legal backing for fishing by indigenous groups and organizations and as well sets limits and regulations for the fishery.</p> <p><i>Canada's Oceans Act (1996)</i>³⁷: “...nothing in this Act shall be construed so as to abrogate or derogate from an existing indigenous or treaty rights of Canada under section 35 of the Constitution Act, 1982.</p> <p><i>Bill C-68 (Proposed Changes to the Fisheries Act) pertaining to indigenous access and participation in fisheries</i>^{32,33}: Section 2.3 introduces new provisions that affirm that the Fisheries Act will continue to protect and acknowledge all legal arrangements that protect the rights of Indigenous people in Canada; Section 2.4 institutes a “new obligation” on the Minister of Fisheries to consider potential adverse impacts of management decisions on access rights of indigenous people; Sections 2.5, 34.1 and 61.2 call for the consideration and protection of indigenous traditional knowledge in fisheries allocation, regulation and management decisions; Sections 4.1 and 4.2 gives authority to the Minister of Fisheries and Oceans to enter into agreements with Indigenous group leaders or related land claim agreement bodies, and the inclusion of fishery-related laws by indigenous fisheries governing bodies, respectively. Subsection 7(2) “clarifies the authority to make regulations to enable the Minister to issue classes of</p>	

	<p>licences (e.g. those licences issued under the Aboriginal Communal Fishing Licences Regulations) for a period greater than nine years.”</p> <p>Nunavut interests hold 5 out of 17 northern shrimp licenses in the Northern shrimp fishery, based on the adjacency principle.³⁹</p> <p>Atlantic Region Commercial Fisheries Licensing Policy for Eastern Canada (1996) Individual natives and indigenous groups are to be given special consideration in the process of determining access to commercial fisheries for their economic benefit. The application of this policy must be consistent with the provisions of the DFO Aboriginal Fisheries Strategy (thus, the licensing policy’s eligibility criterion for the issuance of replacement licences, for instance, is nullified in indigenous contexts). This licensing policy does not derogate/impact licences issued under the Aboriginal Communal Fishing Licences Regulation.</p> <p>The New Access Framework (2002) <i>Guiding principle:</i> new or additional access to increases in commercial fish stocks on the Atlantic coast must acknowledge and incorporate indigenous fishing rights in accordance with constitutional provisions and First Nations treaty agreements. Newfoundland-specific</p>	
Property and spatial rights	<p>International National/Federal Atlantic Region Newfoundland-specific Introduction of ITQs/IBQs/EAs during the late 1970’s and early 1980’s, partly influenced by the recommendations of the Kirby Taskforce ^{13,22,39}</p>	
Ecological change	<p>International National/Federal Atlantic Region and NL</p>	

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