In the Same Boat?
Exploring Treaty Rights, Resource Privatization, Community Resistance, and Mi'kmaq / non-native Solidarity in Bear River First Nation, through Video-based Participatory Research

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ABSTRACT

In the Same Boat?: Exploring Treaty Rights, Resource Privatization, Community Resistance, and Mi'kmaq / non-native Solidarity in Bear River First Nation, through Video-based Participatory Research

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This research/creation explores alliances between social movements resisting neo-liberal globalization, and Indigenous peoples' struggles for self-determination. This is done by examining dynamics in and around the Mi'kmaq community of Bear River First Nation (BRFN) through video-based participatory action research. The thesis includes an introduction; three chapters previously published in academic anthologies, two of which were co-written with Sherry Pictou, a community leader in BRFN; and a video documentary on DVD.

This thesis examines BRFN's position with regards to the recognition and exercise of their treaty right to fish, in the wake of the Supreme Court's *R.* v. *Marshall* (1999). It also details BRFN's strategy for defending those rights - with a particular emphasis on the conflict resolution and alliance building with neighboring non-Indigenous fishers that has been central to their strategy. These intersections are analyzed in three different contexts: within the movement to build community-based fisheries management as a means of asserting inherent treaty rights and as strategy of resistance against resource privatization and rationalization of the fishing industry; within the knowledge and cultural production integral to BRFN's strategy of solidarity building, and of asserting the Mi'kmaq concept of Netuklimuk; and within the current process of treaty right implementation that is intensifying colonial and neo-liberal dynamics. The

experiences of BRFN and neighbouring fishers are also presented through the video documentary, *In the Same Boat?*

Neo-liberal transformations, as they intensify both colonial and capitalist dynamics, have proven an interesting site for alliance building in BRFN's traditional territory of Kespuwick (Southwest Nova Scotia). Undoubtedly, it is the political ground won by the Mi'kmaq through *R.* v. *Marshall* that forced open such a dialogue. Also important are the dynamics of resistance: both groups emphasize local, direct-democratic governance, guided by a critical analysis of neo-liberal globalization and a desire to preserve subsistence livelihoods. While the dynamics of resistance within BRFN and non-native fishers are unique, and the lessons we can draw from this case study are not universally applicable, it has much to teach us about the ways colonial and capitalist dynamics intersect in resource dependent communities in Canada, the challenges facing Indigenous peoples' self-determination struggles in the context of neo-liberal globalization, the limits of Crown/First Nation negotiations within the current context, and of the need for social movements resisting neo-liberal globalization to learn from and ally themselves with the self-determination struggles of First Nations.

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Finally, I recognize the unseeded territory of Mi'kma'kik and the Indigenous Mi'kmaq people of this land. It is with deep humility and gratitude that I dedicate this thesis to the community of Bear River First Nation, their friends and allies, and to all those dedicated to polishing the covenant chains and honouring the treaties and agreements our government has made.

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PREFACE

Like most city folk from Halifax, I grew up knowing nothing about the fisheries; the Mi'kmaq were a people I had learned about in history class. All that changed the winter of 2002. A friend convinced me to attend a weekend-workshop in rural Nova Scotia for practitioners of "Community-based Resource Management" (CBM); he thought the community organizing work I was involved with at the time around urban agriculture and food security would fit well with that program. I got to the workshop, and found a room full of around 50 Mi'kmaq and non-native fishers, who less than two years prior, had been on opposite sides of what had been a very, *very* tense stand off.

The 1999 Supreme Court Marshall decision affirmed the continued validity of the 1760-61 Peace and Friendship Treaties the Mi'kmaq, Maliseet and Passamaquoddy negotiated with the British Crown; as well as the collective right these treaties enshrined for First Nations in the Maritimes[1] to earn a moderate livelihood through commercial fishing. The decision had sparked violent confrontations between non-native fishers and First Nations across the region. In Esgenoôpetitj / Burnt Church, NB, attacks on Mi'kmaq harvesters by non-native fishers, Fisheries and Oceans Canada (popularly known as DFO), Fisheries Department and RCMP officers, made news headlines the summer of 2000 and 2001. In Yarmouth, NS, the entire regional lobster fleet – nearly 800 boats – blockaded the harbour in a show of force designed to keep Mi'kmaq harvesters off the water.

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[1] *R*.v.*Marshall* [1999] made reference to rights enshrined in the Peace and Friendship Treaties of 1760-61, and impacts all status Indians descended from the signing nations. These include the Mi'kmaq and Maliseet whose traditional territories cover all of NS, NB, and PEI, much of Gaspé. While the Passamaquoddy, whose traditional territory straddles the New Brunswick / Maine border, were also signatories to this treaty, Canada does not recognize them as a First Nation residing within Canada and has excluded them from discussions regarding the implementation of the Decision. In my dissertation I refer to Mi'kmaq treaty rights, since my research focus is on developments in Nova Scotia, which is exclusively Mi'kmaq traditional territory.

That crisis had barely faded from the headlines; but at this workshop, these two groups were searching out common ground. Both felt threatened by the neo-liberal policy agenda of Fisheries and Oceans Canada (popularly known as DFO); both wanted local control over fisheries management based in ecological sustainability and local democratic self-governance - or in the case of First Nations, self-government. There was a clear sense among those present that the only hope non-native fishers had of opposing DFO's neo-liberal agenda was of joining forces with First Nations, whose treaty rights to the fisheries provided a stronger ground from which to demand conservation and the defence of local livelihoods and cultures. These relationships were young and tentative; but the fact that honest, frank dialogue had begun was exciting. On the last day, one non-native leader took the microphone, and said:

> "Back when the Marshall Decision came down, I'm the one who organized the Yarmouth blockade. Now, I been educated since then, and thank God for that, 'cause if we're gonna have a resource there to pass on to our children we're gonna have to learn to work together. So we got one day left. I want all the native and non-native fishermen from Southwest Nova in that corner: we're spendin' the day together and hammering out an action plan!"

I was blown away. It felt like an incredible moment of hope, or maybe that was just me: new to Aboriginal politics and naïve about the possibilities for progressive change. With time I become involved, first as an independent journalist, researching and publishing "United We Fish", an article for *Alternatives Journal* on how the movement to build community-based management of the inshore fisheries was building solidarity between Mi'kmaq and non-native fishers. Through that first project, I made exploratory in-depth interviews over the phone with 25 harvesters and community leaders from both Mi'kmaq and non-native fishing communities across Nova Scotia and New Brunswick who were fighting to preserve traditional and subsistence-based livelihoods in the

fisheries. That initial foray into primary research only served to pique my curiosity, as I learned the window of hope and opportunity the Marshall Decision had provided - no sooner opened, was slamming shut. These peoples' hope was that a joint Mi'kmaq / non-native opposition might create a crack in the dam of DFO's neo-liberal policy agenda; that the dialogue around fishing the Marshall Decision had forced open could help overcome the de-facto segregation between native and non-native communities in the Maritimes; that recognition of treaty rights would allow space and resources for empowering Mi'kmaq-driven community development and local governance processes to grow – outside the existing confines of Indian Act-dictated band council structures and downloading of programs and services.

As a community organizer, I recognized that their goals and practice were in line with the kind of ecologically sustainable, culturally-diverse vision of food sovereignty I was working towards in my own organizing work here in Montreal. A vision that maintains food systems grounded in local economies, sustainable farming and fishing practices, the cultures and ways of life these are attached to, and the ecosystems they help to sustain. It is also a vision that sees food as a human right and defends communities' right to define their own food policies, beyond the dictates of export market pressures and international financial institutions, property rights regimes, and the kind of neo-liberal government policies and regulations that DFO fisheries management typifies[2]. After all, the Marshall Decision recognized the continued validity of the treaties, and such a vision

[2] For more on the International Food Sovereignty movement, see La Via Campesina <www.viacampesina.org/en>, and the World Forum of Fisher Peoples <www.worldforumoffisherpeoples.blogspot.com/>

for food sovereignty certainly fit with the vision of the treaty relationship these people were teaching me.

What an exciting movement to become a part of! What a privilege those first conversations were! To be robbed of my cynicism, if only for a moment, and inspired by the stars fading from these peoples' eyes. To hear about the hope *Marshall* inspired; to have the treaty relationship explained to be by the traditional leadership in Esgenoôpetitj; to hear first-hand about the incredible conflict resolution that stopped that Yarmouth blockade from escalating to violence; to feel the strength and determination of these people who were trying to build the kind of world I want to be a part of.

But of course, ours was not the world the powerful economic and political forces that govern the fishing industry in Atlantic Canada were allowing to emerge. Instead, it seemed the federal government was successfully manipulating the situation to contain and constrain Mi'kmaq fishing efforts, to not only undermine Aboriginal self-governance and resource management capacity, but to solidify DFO control in the interests of continuing a program of fisheries privatization and rationalization. The hypocrisy of a federal government that could recognize treaty rights through a Supreme Court decision yet refuse to translate the decision into policy, the incredible power of the economic interests that govern the fishing industry - I was new to all this. Discovering the extreme contrast between what people were telling me *Marshall should* have lead to and what was transpiring, was a little like being 16 again and experiencing the refreshing outrage when I first discovered the world isn't fair.

I wanted to understand how this could happen, and find out if the cynical analysis of treaty rights "recognition" I was building through my research applied outside the

Maritimes. As a community organizer, I also wanted to learn from the organizing strategies that made these examples of conflict resolution and alliance building across such formidable odds possible. I wanted to learn more about the province where I had grown up; and the artist in me wanted to pick up a video camera - so I went to graduate school.

Confident I wanted to explore the intersections between non-native resistance to neo-liberal transformations in the fisheries and First Nations struggles for recognition and implementation of Aboriginal and treaty rights, I set out on a tour of Nova Scotia and New Brunswick to decide where to ground my field work. I visited four places where these two movements had come together: St-Andrew's NB, where non-native fishers associated with the local center for community-based management were supporting the Passamaquoddy in their struggle to be recognized by the federal government as Aboriginal People; Yarmouth, NS, where violent conflict between local lobster fishers and Acadia First Nation had been successfully mediated; Esgenoôpetitj, where the most dramatic clashes had taken place and where CBM had been part of Esgenoôpetitj's strategy to assert inherent Mi'kmaq rights; and Bear River First Nation (BRFN), which was working closely with non-native fishers associated with the newly-founded Marine Resource Center.

I decided to ground my research in and around BRFN. The community, as you will learn through my dissertation work, is in a rather unique situation as one of the two First Nations (out of the 36 affected by the Marshall ruling) to refuse to sign an interim fisheries access agreement with DFO in the wake of the Marshall Decision. I found BRFN's critique of the post-*Marshall* process compelling; an important perspective

completely absent from public discourse. I was both inspired by the integrity of the community's stand and the emphasis they placed on building collaborative relationships with surrounding non-native fishers. I was impressed by the strength of vision and the determination in both the Mi'kmaq and non-native sides. I also found that the process-oriented emphasis on relationship building, considered a central outcome of organizing, resonated well with my own history in community-organizing work.

But a dynamic I noticed in these budding alliances, both around BRFN and across the CBM movement in the Maritimes, was that the starting point for dialogue was responding to *fisheries* policy. There was very limited discussion of, let alone understanding within non-native communities of the treaty relationship contextualizing the Mi'kmaq's right to fish. I hoped my academic work might help deepen that dialogue and raise awareness within the non-native social movements BRFN interacted with. I also recognized my own need, as a non-native, to participate in that conversation, to deepen my own understanding of Indigenous perspectives, to learn how I could become an ally.

INTRODUCTION

In this introductory chapter I give a brief survey of the Marshall Decision in the academic literature, locate myself as a non-native researcher in relation to this topic, and explain why I have chosen to work with Bear River First Nation (BRFN) and surrounding non-native fishing groups. I then present some of the major theoretical concepts that help frame my research; these include neo-liberalism, evolving colonial relations in Canada, and Indigenous critiques of academic knowledge production. I then detail my research methodology and explain the video-based, participatory research/creation strategy I chose for my PhD program. I give an overview of my dissertation; and finally, I give future directions for my work.

My research/creation dissertation explores the potential for alliances between social movements resisting neo-liberal globalization, and Indigenous peoples' struggles for self-determination[3]. I have been exploring this question by grounding my video-based participatory action research in and around the Mi'kmaq community of BRFN on Nova Scotia's Bay of Fundy coast. My research examines BRFN's position with regards to the recognition and exercise of their treaty right to fish, in the wake of the Supreme Court's *R.* v. *Marshall* (1999). It also details BRFN's strategy for defending those rights - with a particular emphasis on the conflict resolution and local alliance building with neighbouring non-native groups resisting neo-liberal transformations in the fisheries, that has been so central to their strategy.

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[3] I do not mean to suggest there is uniformity in terms of the goals and aspirations of Indigenous peoples' struggles for self-determination. There is tremendous debate within First Nation communities about development models; indeed there are currents within Aboriginal communities that embrace neo-liberal ideology and free-market principles as a means towards and expression of self-determination. However I am specifically interested in those First Nations' struggles that understand colonialism and capitalism as evolving inter-related forms of power.

Neo-liberal transformations in the Maritime fisheries, as they intensify both colonial and capitalist dynamics, have proven an interesting site for alliance building between Mi'kmaq and non-native coastal communities in Bear River First Nation's traditional territory of Kespuwick, otherwise known as Southwest Nova Scotia. Undoubtedly, it is the political ground won by the Mi'kmaq through *R.* v. *Marshall* that forced open such a dialogue. Also important are the dynamics of resistance within these two communities: both groups emphasise local, direct-democratic governance, guided by a critical analysis of neo-liberal globalization and a desire to preserve subsistence livelihoods. While the dynamics of resistance within BRFN and non-native fishers are unique, and the lessons we can draw from this case study are not universally applicable, it has much to teach us about the ways colonial and capitalist dynamics intersect in resource dependent communities in Canada, the challenges facing Indigenous Peoples' self-determination struggles in the context of neo-liberal globalization, the limits of Crown/First Nation negotiations within the current political and economic context, and of the need and benefits for social movements resisting neo-liberal globalization to learn from and ally themselves with the self-determination struggles of First Nations.

Indigenous scholars have identified knowledge production as another site of anti-colonial struggle (Smith 1999; Battiste 2000; Brant Castellano 2004). Models for decolonizing Aboriginal research methodologies are emerging that demand a radical reformulation of the research process, beginning with a re-conceptualization of what counts as research, and how knowledge is created, owned and shared. An Indigenous research paradigm is emerging that is understood as necessarily participatory and action-oriented. As I will detail later in this chapter, these critiques have guided my

research/creation design, which includes the participatory production and distribution of the video documentary, *In the Same Boat?* I have also co-published two of the three book chapters presented in this dissertation with Sherry Pictou, a former chief and long-time community organizer within BRFN. I will argue that such an innovative research/creation design and co-authorship is an appropriate strategy to approach my topic, and one that attempts to address Indigenous critiques of academic research.

The Marshall Decision in the literature

Ken Coates' *The Marshall Decision and Native Rights* (2000) offers a rich description of *R. v. Marshall* and its immediate aftermath and provides analysis of both the department of Indian and Northern Affairs and Fisheries and Oceans Canada's inadequate and crisis-driven immediate responses. Academic scholarship has examined the implications of *R. v. Marshall* for Aboriginal jurisprudence in the Maritimes and Canada (Dufraimont 2000; Isaac 2001; Coates 2003). Historical analysis of Mi'kmaq anti-colonial resistance (Prins 1996; Wicken 2002) helps us to understand the case as part of a long legacy of Mi'kmaq struggle for self-determination centered on the affirmation and renewal of the historic treaty relationship. Anthropologists and geographers concerned with natural resource management have critiqued DFO's response in terms of its impacts for fisheries rationalization and privatization (Davis & Jentoft 2001; Wiber & Kennedy 2001; Kerans & Kearney 2006).

However there remains a gap in the academic literature documenting and analyzing critical Aboriginal perspectives of the federal government's response to the Marshall Decision. Especially absent are Mi'kmaq voices that differ from the rather

celebratory descriptions provided by DFO and official Aboriginal political organizations of the economic development initiatives, programs and services that have resulted from the decision (see for example FOC 2007; APCFNC 2009).

Why Bear River First Nation?

My video-based, participatory action research attempts to address this gap in the academic literature by providing a detailed account of BRFN's experience navigating the post-Marshall environment. BRFN has maintained a critical perspective on both the interim measures taken by the federal government in response to *R. v. Marshall*, the commercial Mi'kmaq fishery this has opened, and the tripartite negotiations currently underway with federal and provincial governments that aim to interpret and implement the historic Peace and Friendship Treaties in a modern day context. Also, this First Nation's emphasis on relationship and alliance building with surrounding communities resisting neo-liberal privatization offers an interesting case study to explore the interplay between colonial and neo-liberal power dynamics as well as the potential for alliances between social movements resisting these intersecting forms of power.

As a non-native scholar, grounding my political analysis in the experience and perspective of a dissenting First Nation could put me in the uncomfortable position of critiquing mainstream Mi'kmaq political leadership, and leave me open to accusations of intervening in a debate that should be internal to the Mi'kmaq nation. My intention is not to criticize other Mi'kmaq First Nations, nor do I aim to prescribe a course of action for Mi'kmaq self-determination. Rather my goal, as previously stated, is to build an analysis of the current political context.

Why wade into such risky academic waters? Or to borrow Findlay's question in considering the self-interest of non-native academics working to decolonize research, "what's in it for me?"(2000:viii). Quite simply, if we accept the analysis of community leaders in the BRFN area (Pictou & Bull 2009) and of Indigenous scholars such as Smith (1999) that colonialism and capitalism are interrelated forms of power; it follows that an understanding of evolving colonial power dynamics is necessary to diagnose and disrupt neo-liberalism. Our fates, as First Nations and non-native Canadians, are bound together. Non-native scholars who are critical of neo-liberal globalization avoid negotiating the messy power dynamics and ontological challenges involved in cross cultural research at our own peril.

Battiste (2000), for whom "cognitive imperialism" is central to the exercise of colonial power, sees bringing Indigenous and European knowledge into dialogue as a necessary step in diagnosing colonialism; part of a larger project to collectively "imagine and invoke a new society" (xvii). In her introduction to *Reclaiming Indigenous Voice and Vision* (2000) she shares a beautiful story, told to her by Chickasaw educator Eber Hampton, that sums up the utility of engaging in such an exercise:

> "[Hampton] told of an elder who asked him to carry a box. Thinking well of his own youthful stature, he felt proud to be chosen and agreed willingly. The elder then thrust forward what appeared to be an empty box, which puzzled him:
>
> His question came from behind the box, "How many sides do you see?"
> "one," I said.
> He pulled the box towards his chest and turned it so one corner faced me. "Now how many do you see?"
> "Now I see three sides."
> He stepped back and extended the box, one corner towards him and one towards me.
> "You and I together can see six sides of this box," he told me"
> (Hampton 1995:42 as quoted in Battiste 2000:xvii)

Choudry (2007) notes the tendency of progressive social movements in Canada to romanticize the Keynesian welfare state institutions being eroded with neo-liberal

transformations, and deny the colonial underpinnings of this settler-state. He argues such a "colonial blind spot"(2007:8) prevents a serious consideration of how power in this country functions; and warns that failure to analyze and challenge colonial dynamics not only entrenches them, it represents a lost opportunity for social movements resisting neo-liberal globalization to learn from Indigenous peoples who have been resisting these intersecting forces of capitalism and colonialism for centuries. Our task then, as non-native activists and researchers, is to deepen our critique of neo-liberalism through sustained, long-term engagement and solidarity building with Indigenous peoples' anti-colonial struggles.

But how do we find a point of entry? Kevin Thomas (2002) offers useful insight, commenting on the 1990 siege at Kanehsatake and the paralysis that beset some non-native supporters trying to choose between the conflicting approaches advanced by Mohawk leaders behind the barricades, and the mainstream political leadership of the Assembly of First Nations. He writes: "Non-native supporters need to bring some independent critical capacity and some of our own principles to the relationship, if we are to be true allies." (2002:221). Real solidarity involves organizing and challenging power from our own location: "Rather than looking for Aboriginal people to blaze a trail for us, I believe in making alliances where our paths converge"(2002:221).

As I've detailed in the preamble to this dissertation, my path converged with that of BRFN's at a workshop for practitioners of community-based resource management in the fall of 2002. As community-organizer and food sovereignty activist, I immediately identified with BRFN's vision for food sovereignty (although they had not yet aligned themselves with that global movement), and their approach to social justice organizing

that values long-term relationship building between different cultural groups as an integral component of effective action. Also, BRFN's critique of the post-Marshall process alerted me to a reality I had a vague awareness of, but little access to: an understanding of colonialism as a current phenomenon in Canada, and a relationship between the colonial power being exercised over Mi'kmaq people, and the forces of neo-liberal globalization impacting the wider non-native society. It is an awareness that has deepened as my dissertation research/creation has progressed.

Indigenous theorists have identified knowledge production as another site of anti-colonial resistance; and I have come to understand my journey as a non-native academic as another place from which my path converges with those of my research partners in BRFN and neighbouring non-native groups. I will discuss at length the Indigenous critiques of academic research and decolonizing methodologies that have inspired my research/creation design. But first, I outline some of the major theoretical concepts guiding my dissertation work.

Major Theoretical Concepts

Neo-liberalism

Collaborative relationships between BRFN and surrounding groups grew out of shared resistance to DFO neo-liberal policy; this conversation was the context for my introduction to both groups. It follows that neo-liberalism is a primary concept I use to frame my analysis of this case study. After all, the Marshall Decision dealt with the treaty rights of the Mi'kmaq to fish *commercially*; and the DFO has become one of BRFN's primary interfaces with the Canadian colonial state in the years following the decision.

And so an analysis of neo-liberal transformations in the fishing industry is necessary to understand the federal government's response to the decision, as well as resistance and accommodation within BRFN and non-native fishing groups.

Neo-liberal orthodoxy holds that maximum growth and efficiency can be achieved by transferring control of the economy from the public to the private sector. Neo-liberalism emerged in the early 1970s in response to the fiscal crises, high rates of unemployment and inflation in northern economies in that period. Since then, it has become a hegemonic discourse that permeates government policy; with the now-familiar program of privatization of resources and services, and the deregulation of markets spreading across the globe, propagated by governments either faithful to neo-liberal ideology, or coerced by the conditions attached to trade agreements or loans from the World Bank and International Monetary Fund.

Brenner & Theodore (2002), Jessop (2002), Harvey (2003; 2006), and McNally (2006), all charge that the public face of neo-liberalism is deceptive; and that its mantra of individual liberty, free trade and fair market competition, masks a very aggressive power grab, the consolidation of global class power. These writers argue that the neo-liberal world order that has emerged since the late 1970s is not the result of a rolling-*back* of government, nor has it evolved according to natural immutable economic laws; rather, it is the result of very pro-active state intervention. In the global north, this has resulted in the dismantling of large parts of the compromise struck between capital and organized labour that typified the Keynesian social welfare state in the post-war period. In the global south, neo-liberal policies have opened new markets for corporate investment.

David Harvey (2003; 2006) describes the dynamics involved in neo-liberalism's expansion and deepening of capitalist relations as 'accumulation by dispossession'; a 21st century renewal of what Marx considered capitalism's original sin of 'primitive accumulation', a dual process involving peoples' dispossession from subsistence economies and ways of life on the one hand, and their coercion into the labour market on the other. Harvey describes a number of ways that 'accumulation by dispossession' happens; these include the commodification and privatization of land and other natural resources, the conversion of common and state property rights to private property rights, suppression of rights to the commons, and colonial and neo-colonial appropriation of resources.

I find Harvey's insights crucial for understanding how evolving colonial and capitalist forces intersect in Maritime Canada, in order to theorize the grounds for solidarity between Bear River First Nation's struggle for self-determination and non-native groups resisting neo-liberal privatization. Of particular interest is the historical continuity Harvey's analysis provides by casting neo-liberalism as an intensification of a much older dynamic within capitalist relations; as well as his analysis of capitalism as a movement that *dispossesses* – not only Indigenous, but non-Indigenous people as well.

Smith (1999), and Alfred (1999; 2005) are likewise helpful with their analysis of neo-liberalism as an intensification of, or the latest form of constantly evolving, interconnected processes of capitalism and colonialism, which they understand as different expressions of a larger imperialism.

Following the above-mentioned authors, I understand neo-liberalism as a specific manifestation of a larger historical process, namely the continuing expansion and

deepening of capitalist relations, which are inseparable from evolving colonial power relations. While at times I use the terms 'neo-liberal' and 'capitalist' somewhat interchangeably to avoid unduly repetition, I refer to capitalism when stressing the larger, historical nature of this process; and neo-liberalism when referring to government policies and specific shifts in capitalist relations since the 1970s.

The Atlantic Fisheries: a case study in accumulation by dispossession

Neo-liberal restructuring in Canada's Atlantic fisheries since the 1980s has been well documented, and widely critiqued. Such a policy program includes the privatization of Crown resources, deregulation of resource management and of markets, as well as the devolution of political governance and the downloading of both management costs and responsibility for social-well being onto independent fishers in the industry. The impacts of this program include a dramatic concentration of corporate ownership and control over the industry and marine resources, as well as the related species collapse due to overexploitation of marine resources (Davis 1991; 96; Wiber & Kennedy 2001; Kearney 2005; Kearney & Kerans 2006).

My dissertation research provides a detailed account of how DFO's fisheries management regime has enacted a program of accumulation by dispossession, and served as a primary vehicle for the expansion and deepening of capitalist relations in non-native coastal communities, as well as the intensification of these dynamics with neo-liberal restructuring of the fisheries since the 1980s. But if the management regime enacting this accumulation by dispossession is offensive to the non-native fishers who have been forced off the water as a result of neo-liberal policies, it is more threatening to the

Mi'kmaq, for whom the ideological cornerstones of neo-liberalism, including the fetishization of individualism, rational action, the pursuit of self-interest, and the interdependence of economic and political freedom, are alien if not hostile to an Indigenous world view (Smith 1999; Shouls 2002; Brant Castellano 2004).

The theoretical underpinnings of our current resource management paradigm are most clearly made visible through a reading of resource economist Garret Hardin's seminal essay, "The Tragedy of the Commons" (1968), which virtually laid the foundations for modern resource management as we know it. Common property, according to his "inherent logic of the commons"(1968:1244), inevitably leads to resource depletion. Hardin illustrated his point using the metaphor of the Medieval English Commons, where each herdsman is "locked into a system that compels him to increase his herd without limit"(1968:1244). Hardin's "tragedy" assumed a world characterized by the *a priori* legitimacy of private property, the conflict between individual and collective interests, and controllable through sciences of biology and economics. This demanded the modernization of fisheries via the implementation of the private property regimes, and the regulation of resource use and market relations by centralized top-down state management regimes. Otherwise put, the "Tragedy of the Commons" presumed the theoretical cornerstones, and prescribed the regulatory framework of liberal embedded capitalism.

As I detail in chapter 5, Davis (1991;96) describes how the imposition of such a management regime by DFO disrupted the web of social and ecological relations that had previously governed the subsistence economies and ways of life of non-native fishing communities. In its drive to 'professionalize' the fisheries, DFO management

successfully inculcated capitalist relations, creating Hardin's self-fulfilling prophecy of atomized, rational individuals compelled by self-interest to maximize resource use. Intensification of these dynamics with the neo-liberal restructuring of the in-shore fisheries in the 1990s turned Crown ownership of the ocean commons into a legal fiction, and put an overwhelming number of the small family operations that characterized the fisheries, out of business, placing the industry in corporate hands. This spectre of disenfranchisement lies at the heart of BRFN's resistance to the imposition of such a management regime over Mi'kmaq harvesting practices.

Opposition: Community-Based Management

I have found Common-Pool Resource literature (Berkes et al. 1989; Dietz et al.2002) helpful to theorize Community-Based Management (CBM) as a strategy of opposition to neo-liberalism within BRFN and neighbouring fishing communities. Geographers, anthropologists, and other social scientists concerned with the design and impacts of resource management regimes have provided detailed accounts of the failure of top-down, state-centred fisheries management (Bryant & Wilson 1998; Neis 2005); and movements away from this command and control style, with calls for more participatory models via the rise of co-management and CBM (Agrawal & Gibson 1999; Berkes et al. 2001; Andersson et al. 2004). These trends have been documented in both Indigenous and non-Indigenous contexts around the world (Berkes 1989; Pinkerton 1989).

Commenting on neo-liberal devolution of governance more generally, Shragge (2003) and Jessop (2002) describe the increased role community organizations play in

neo-liberal transformations, as inheritors of responsibility for social well being; they also warn of the dangers posed by this new arrangement in terms of legitimizing the retreat of the state from its historic role as social purveyor. Similarly, Wiber et al. (2004) warn that in the current neo-liberal climate, CBM is in danger of legitimizing DFO downsizing and playing into state strategies to download the costs associated with management and responsibility for already decimated eco-systems, with little meaningful transfer of management authority or political power. Their arguments allow us to see CBM as a strategy of resistance to neo-liberal policies, albeit a rather compromised one.

But how do we understand analogous dynamics within Mi'kmaq First Nations where dispossession has been taking place in much different ways? Structural racism matched with the capital investments needed to enter the fisheries kept Mi'kmaq People largely out of the industry until *R. v. Marshall*, which opened a new relationship between Mi'kmaq First Nations and DFO. And the above-mentioned bodies of literature are helpful, but insufficient to analyze this relationship as an interface between Mi'kmaq struggles for self-determination and colonial/capitalist state regulation.

I have found the work of anthropologist Paul Nadasdy (2003; 2005) helpful in clarifying the complexity of colonial dynamics at play in resource management. Of particular concern to Nadasdy is the Indigenous worldview and relationships disrupted by conventional resource management regimes; and the ways the devolution of control through the establishment of co-management regimes resulting from land claims settlements actually deepens state power in Aboriginal communities as it inculcates a western worldview. Nadasdy (2005) also rightly points to a frustrating gap within the Common-Pool Resource literature: co-management regimes in the global south have been

scrutinized and critiqued as vehicles of a rather co-opted brand of participatory development, and understood as part of neo-colonial dynamics. However there is woefully thin political analysis of the relationship between the Canadian state and Indigenous peoples that contextualizes the emergence of co-management regimes in Canada, beyond merely situating the emergence of co-management within comprehensive land claim and modern treaty negotiations.

So we have a story about how resource management regimes function as vehicles for the expansion and intensification of capitalist relations. But this does not go far enough to help us understand these as governing institutions that are part of a colonial apparatus in transition, nor does it give us sufficient tools to consider dynamics of accommodation and resistance within BRFN. To do this, we need a better analysis of evolving colonial dynamics in Canada.

Evolving colonial power relations in Canada

Alfred (1999; 2005) calls the current configuration of power confronting First Nations "a post modern restatement of capitalist rule… from one state of oppression, achieved by previously excluding us and denying our rights, to another form of control predicated instead on integrating us as decultured individuals and defining our rights in conformity with the needs of the liberal capitalist state" (128:2005). For Smith (1999), describing the new set of challenges confronting Indigenous peoples in the era of globalization, resistance has shifted from battling marginalization and economic exclusion, to negotiating the terms of incorporation into the neo-liberal global economy.

The Marshall Decision and its outcomes provide an interesting case in point: Mi'kmaq people fought long and hard to get to the present moment where, from BRFN's perspective, they have to confront the double speak of the Canadian state using the pretence of treaty right recognition to assimilate them into the neo-liberal social, economic and ecological relations. It is a colonial relationship that is hard to diagnose. Can the story of accumulation by dispossession help us to understand BRFN's situation as an example of the shift in colonial relationships that we've we have seen over the past 30 years?

The rise of neo-liberalism coincides roughly with the rise of a nation-wide Indigenous rights movement in Canada. Since the notorious 1969 White Paper that sought to abolish the Indian Act in order to fully assimilate Aboriginal people into Canadian society, Indigenous peoples have made impressive gains. First Nations fought for and won the inclusion of section 35 (1) of the 1982 *Constitution Act of Canada*, which recognizes and affirms existing Aboriginal and treaty rights within the Canadian constitution. A string of Supreme Court victories have carved out a legal space for these rights, and a flurry of self-government and modern treaties have been successfully negotiated through the comprehensive land claim policy framework.

The Marshall Case is a good example of such gains: a Mi'kmaq victory at the Supreme Court recognizing collective treaty rights to earn a moderate livelihood through fishing. Band chiefs have since negotiated interim agreements providing their First Nations increased access to natural resources on their traditional territories and funds for job creation. Reluctant federal and provincial governments have been forced to the negotiating table to interpret the historic Covenant Chain of Peace and Friendship

Treaties in a modern-day context and clarify outstanding rights and title issues in the Maritimes. Is this colonialism?

Dene political theorist, Glen Coulthard and Mi'kmaq theorist Marie Battiste have no problem identifying it as such. Coulthard (2007) distinguishes colonial relationships, characterized by direct imperial rule, from post-colonial arrangements found in much of the global south, where imperialism persists as an economic and political force despite national liberation. "Canada, of course" he observes, "remains a settler colony in which indirect imperialism has never typified the relationship between Indigenous peoples and the settler-state and society" (2007:245). Battiste (2000) concurs, referring to post-colonialism as a desired goal, an "aspirational practice"(2000:xix).

And yet the devolution of political governance, strengthened rights within the Canadian constitution, and the increased inclusion in the global economy - which the Marshall Decision and its outcomes exemplify - are among the factors that make the contemporary variant of Canadian colonialism harder to diagnose. How can BRFN's experience navigating the post-Marshall environment, and the common ground they have built with non-native fishers resisting neo-liberal globalization, help us to unravel the complex ways colonial power is expressed today?

Jurisdiction

Clearly, there is an issue of jurisdiction at play in struggles to transform the colonial relationship between Indigenous peoples and the Canadian state. In the specific case of the Mi'kmaq, this struggle has played out in the context of winning recognition

and implementation of the rights secured through the Covenant Chain of Peace and Friendship Treaties negotiated with the British Crown in the 18th century.

Commenting on the Marshall Decision and its aftermath, Kwegsi (2001), a traditional leader in Esgenoôpetitj / Burnt Church First Nation, notes that the Marshall Decision in particular, and Supreme Court decisions in general, effectively reduce nation to nation treaties to domestic agreements, leaving Canada with full control over the exercise of Aboriginal rights and title. The result is not the recognition of inherent rights deriving from Indigenous peoples' relationship to the land since time immemorial; rather, they recognize rights deriving from treaties, and exercised via municipal style authority delegated by Ottawa. Kwegsi's critique of the Marshall Decision and its outcomes focuses on the spirit and intent of the Peace and Friendship treaties – as sacred compacts, a relationship forged between sovereign nations, negotiated by the Mi'kmaq in order to protect and maintain their way of life. Unlike later historical treaties negotiated in other parts of Canada, the Peace and Friendship Treaties were negotiated before the balance of power in North America shifted to the British; they make no mention of ceding land or sovereignty, and are closer in spirit and substance to political and commercial alliances (RCAP 1996; Brant Castellano 1999; Wicken 2002).

And yet as the treaty implementation negotiations underway as a result of the Marshall Decision exemplify, Supreme Court decisions may force federal and provincial governments to the negotiating table; but those negotiations are still guided by the comprehensive land claims policy, the crux of which demands the extinguishment of Aboriginal rights and title, in exchange for a limited set of defined rights emanating from the modern treaty. These are negotiated with the federal government acting as judge and

party, without outside arbitration. It is a policy framework that has remained startlingly immune to widespread criticism (RCAP 1996; Rynard 2000; Venne 2002).

Ontology

This helps us to think about colonial dynamics as they operate on the level of political jurisdiction; but does not go far enough in explaining BRFN's frustrations with the outcomes of the Marshall Decision. As I discuss at length in chapter 5, I have found the work of Postcolonial and Indigenous theorists such as Taiaiake Alfred (1999; 2005), Linda Smith (1999), Marie Battiste (2001), Paul Nadasdy (2003; 2005) and Glen Couthard (2007) crucial. The distinction they make between the concentration of economic power and the devolution of political governance; as well as their preoccupation with the cognitive dimensions of colonialism, and the social and ecological relationships, liberal ideology and worldview that capitalist relations instil*,* is particularly helpful in digging deeper and unravelling the Canadian colonial juggernaut to better frame BRFN's position.

Coulthard (2007) argues that Canada's once unapologetic program of assimilating Indigenous peoples and extinguishing their inherent rights has evolved into a deceptively innocuous "politics of recognition". Recognition of Aboriginal peoples inherent right to self-government, of Canada's treaty obligations, have become the main thrust of the Aboriginal rights movement in Canada; with the jurisdictional arrangements flowing from these negotiations resulting in land, money and power delegated from Ottawa to First Nations. With Alfred (2005), Coulthard considers such legalist strategies short sighted; and playing into an agenda Alfred terms "Aboriginalism", crafting Aboriginal

Canadian citizens who define their rights and build their identities in relation to the Canadian state, and who are assimilated into mainstream consumer capitalist culture. This is "assimilation's end game"(2005:37); and it does nothing to challenge the generative roots of colonial power, namely a capitalist economy, and the liberal ideology underpinning it.

Key for both Alfred and Coulthard, is how they frame revolt: as a self-conscious engagement with and re-appropriation of traditional cultural values, adapted to address current political, economic and social realities. I find their political analysis an appropriate frame for BRFN's misgivings with the post-Marshall process, as well as the First Nation's priority of exploring the Mi'kmaq concept of Netuklimk *Netukulimuk*, as a means of charting a path forward.

Research Methodology and Knowledge Production

Research is another site of self-determination struggles identified by postcolonial Indigenous thinkers. In the past decade there has been a relative explosion of Indigenous scholarship in Canada critiquing academic research frameworks anchored in western, colonial ontology. Models for Aboriginal research using decolonizing methodologies are emerging, anchored in and respectful of Indigenous ontology. This in turn requires a radical transformation of the research process, beginning with a re-conceptualization of what counts as research, the role of the researcher, how knowledge is created, owned and shared, as well as notions of objectivity, consent, and accountability. A new Indigenous research paradigm is emerging; a paradigm understood as necessarily participatory and action-oriented, anchored in a deep commitment to respect, community relevance and

reciprocity that builds on now well-established Participatory Action Research (PAR) methodologies.

As writers such as Fanon (1968) and Said (1978) have pointed out, colonialism operates not just at the level of economic, political or military relations, but also at the level of ontology. It is a charge that attacks the core of enlightenment ideology and the theoretical building blocks of capitalism, as well as the intellectual traditions that have grown from those roots. Battiste & Henderson (2000), Wilson (2001; 2003), Brant Castellano (2004), Cole (2004), O'Riley (2004) and Moeke-Pickering et al. (2006) are among those who have written extensively on how, as it operates at the level of discourse, research – willingly or not – enacts a colonial agenda.

Reasserting an Indigenous worldview, and creating and sharing knowledge that authentically represents Indigenous peoples' understanding of the world is considered an integral part of Aboriginal self-determination (Smith 1999; Brant Castellano 2004). Indigenous worldviews are founded on an entirely different social contract, one that includes all our relations, where Land is inalienable, and "everything needs to be seen in the context of the relationship it represents" (Wilson 2003:161). From an Indigenous perspective, knowledge is understood as relational, contextual, and grounded in what Battiste & Henderson (2000) call "a living, dialogical relationship with the world". Wilson (2001) summarizes this fundamental difference between Indigenous and dominant paradigms well:

> "… dominant paradigms build on the fundamental belief that knowledge is an individual entity: the researcher is an individual in search of knowledge, knowledge is something that is gained, and therefore knowledge may be owned by an individual. An Indigenous paradigm comes from the fundamental belief that Knowledge is relational. Knowledge is shared with all creation. It is not just interpersonal relationship, not just with the research subjects I may be working with, but it is a relationship with all of creation"(2001:176-7)

Brant Castellano (2004) expands on the contextual nature of relational knowledge, and the spiritual bond and responsibility this implies:

> "When you harvest salmon, you are engaging in a reciprocal relationship in which the spirit of the fish gives sustenance to human beings and humans in turn observe the protocols that demonstrate right relationship. When you seek knowledge from an Elder, you offer tobacco or other appropriate gifts to symbolize that you are accepting the ethical obligations that go with received knowledge. In each case, the exchange confirms a relationship that continues beyond the time and place of the exchange. Knowledge is not a commodity that can be purchased and exploited at will. (2004; 104).

These relationships entail a deep notion of accountability. Writes Wilson, "As a researcher you are answering to all your relations when you are doing research" (Wilson 2001:177); which, in turn, gives rise to a fundamentally different orientation for Indigenous methodologies - one that focuses on relevance, responsibility and reciprocity over objectivity and distance (Brant Castellano 2004; Davis 2004; Schnarch 2004; Moeke-Pickering et al. 2006). I quote Wilson again, who writes:

> "rather then asking about validity or reliability, you are asking how am I fulfilling my role in this relationship? What are my obligations in this relationship?… When I am gaining knowledge, I am not just gaining in some abstract pursuit; I am gaining knowledge in order to fulfill my end if the research relationship. (2001; 177)"

Battiste & Henderson (2000), Menzies (2001; 2003), Brant Castellano (2004) and Davis (2004) point to other means of accountability for outsiders researching with First Nations: legal frameworks. They see exercising jurisdiction over research as an Aboriginal right that deserves constitutional protection, question the legitimacy of existing institutions that control the research agenda (via peer review, funding, etc.) and protect "academic freedom", and suggest the Crown's fiduciary duties and duty consult extend to research. Their critiques also extend to the legal regimes that enshrine Intellectual Property Rights.

How do we, as decolonizing researchers, build research projects that reconcile such divergent worldviews? How can we make space within academic institutions for decolonizing methodologies? These questions are all the more urgent given the current context, where 95-98% of SHHRC funding for Aboriginal research goes to non-native academics, and where funding allocation, peer review and publication are carried out in an arena dominated by non-natives (Fleras 2004; O'Riley 2004).

For Indigenous academics, it is a formidable challenge to be accountable and maintain a holistic relationship to their community – spiritually, culturally and politically – while operating in an institutional context ignorant of and hostile to Indigenous worldviews (Meoke-Pickering et al., 2006; Loppie 2007). It seems to me that for non-native scholars, decolonizing methodologies entail a very different set of challenges, that is, how to operate in a context that is fully navigable by cultural insights they can never possess.

Legal theorist Bryan (2000), evaluating the challenges involved in comparing English and Aboriginal conceptions of property, offers a salient observation. He argues that in comparing Indigenous and non-Indigenous experience, we are engaging in the paradoxical exercise of striving to see across radically different worldviews. It is a task that those of us brought up in the west are not well predisposed toward. Bryan says the inheritance of our rationalistic, enlightenment philosophical tradition leaves us with a tendency to universalize, and attempt to explain Aboriginal reality according to western conceptual categories. The danger, he warns, is real: "to re-describe native reality is to actually change native reality; changed descriptions create new webs of meaning, and hence practices, identity and worldviews will be affected"(2000:5). Trying to know the

'Other' ultimately teaches us about ourselves, and in this case, reveals the radical nature of western ontology and liberal ideology. Bryan cautions this awareness must be a central guiding principle in Aboriginal research.

All the above were concerns I had as a non-Mi'kmaq academic, food sovereignty activist, and (former) community-based resource management practitioner, when building a research relationship with BRFN and their non-native allies. I now discuss participatory video, which I blended with Indigenous and PAR methodologies, before outlining the deepening research relationship I have built with BRFN and non-native harvester groups in their area.

Participatory Action Research & Participatory Video

With roots in third world anti-colonial struggles and the work of scholars like Freire (1970), PAR is research in which the goals and outcomes are embedded within a community-driven process of social change. Marginalized communities are partners in (as opposed to the subjects of) research; ownership and decision-making power are shared across all phases of the research; community capacity building is central; learning is understood to happen both ways; and knowledge co-created between university and community partners (Delemos 2006).[4] Evans, Foster et al. (2009) argue that while PAR is now widely accepted in research involving marginalized communities, less attention has been placed on the creation of research products and the distribution of research that *is*

[4] While participatory approaches have become widely accepted in academic research pertaining to marginalized communities; Jordan (2003; 2009) and Kapoor (2009) are among those critical of the ways PAR has become depoliticized from its emancipatory roots, and vulnerable to co-optation from university-located researchers who use token participation to win community buy-in and perceived legitimacy for their projects. This is happening within a larger political context of neo-liberalism, in which knowledge is increasingly commodified and participatory approaches appropriated a by actors such as the World Bank and international NGOs – a phenomena I explore in the second chapter of this dissertation.

relevant, inclusive and accessible. They note participatory video as an interesting tool for university-based PAR in this regard.

Put simply, participatory video (also referred to as collaborative or engaged filmmaking) is a method of video production in which the filmmaker engages their "subjects" in the project of deciding what story they want to tell, how, and to whom. The "filmmaker expert" becomes a trainer and social animator in order to make video with, not just about, people marginalized by mainstream media. The final product may not appear as polished and professional, but the point of view and content can more accurately reflect the experience of those on screen and overcome the problems inherent in romantic ethnographic depictions of the 'Other'. The process can be transformative and empowering, as it engages participants to reflect on, analyze, and present their experience as a form of political action – an exercise that entails questioning assumptions about power relations, claiming a voice in public discourse, and gaining skills, confidence and building networks of support that can help lead to other forms of political action. In some cases, public screenings and advocacy-oriented film distribution is considered integral to achieving the political goals of the project (Rodríguez 2001).

The practice emerged in Canada with the National Film Board's Challenge for Change / Société Nouvelle program in the late 1960s. Taking advantage of newly portable video camcorders, the NFB paired filmmakers and community organizers (MacKenzie 1996) to produce video as a tool for community development. Recent advances in technology have made possible a veritable explosion in participatory video, including within academic research. One can now shoot video with a relatively

inexpensive camera, edit on a home laptop computer, and distribute work via on-line portals such as YouTube or the NFB's CitizenShift.

Examples of such initiatives abound, with varying degrees of concern for social change, different degrees and types of collaboration, with each project striking a different balance between an emphasis on process or product. The NGO Witness (Gregory et al. 2005) emphasizes professional, high-production quality (in most cases) and the need to match the style and content of what they call "advocacy video" to target audiences based on the specific advocacy goals of a project. Participation often happens in the screening and distribution phase: Witness works with organizations to develop a targeted strategy to ensure maximum impact in terms of effecting political change. Other examples include the Wapikonimobile, which tours First Nations communities across Quebec training young people in video production. This project's emphasis is on the production process, with youth empowerment through media training and self-expression as a central goal.

Visual anthropologist Sarah Elder (1995) is among the increasing numbers of academic researchers using what she terms "collaborative filmmaking" as a research strategy. For Elder, participation happens in specific ways: she has learned through experience not to relinquish her expertise as filmmaker in community collaborations, and takes ownership over the aesthetic, structural, contextual decisions in the filmmaking process. Evans, Foster et al. (2009) strike a similar balance in their video-based PAR with Métis communities. Likewise, Kat Cizek[5] in describing her approach to collaboration in her filmmaker-in-residence project, stresses that while the original impetus and idea for a project comes from community, she retains her expertise as filmmaker.

[5] See http://www.nfb.ca/film/manifesto_animation_bonus_material/

"Participation" in the emerging field of collaborative video productions does not necessarily imply a relationship of shared power across all phases of the production process, or a project embedded in a community-drive process of social transformation - nor do many practioners of this relatively under-theorized approach claim such goals, or view them as necessary or desirable. For example, some filmmakers use 'participation' to win trust and capture intimate footage in order to make films that will move audiences; others assume control over the production phase, but work with communities to use a film as a means towards social change. So keeping in mind Jordan & Kapoor's (2009) criticisms of the way PAR has been co-opted and re-defined; how does one go about conceptualizing a participatory video project, in line with the more emancipatory strains of PAR? This is an enormously complex question, which I have not had the capacity to explore in full-detail in the context of this dissertation.

Media artist, jesikah maria ross offers an interesting point of reference (Ross in Miller 2009:72). Ross acknowledges the need to strike a balance between maximizing community engagement on the one hand, and acknowledging the responsibility this entails and the energy it diverts from other priorities on the other. She has termed 'a continuum of functional participation' to describe the range of forms community participation can take in engaged filmmaking projects. I find Ross' concept of a continuum helpful in describing my research/creation relationship with the participants of *In the Same Boat?* in that it evokes flexibility and leaves room for the evolution of relationships over time. It also helps dispel the assumption community partners want and should be "empowered" to participate fully in every stage of the production and

distribution process; rather roles and responsibilities can be defined (and redefined) in line with project goals, community capacity and priorities.

Research Relationships for *In the Same Boat?*

I began building a research relationship with BRFN and harvesters in the surrounding area, inspired by the above-mentioned projects. I understood from my experience as a community-organizer and former community partner in participatory academic research projects that relevance, accuracy, and empowerment tend to increase with community ownership of and participation in the research process. I also knew that the higher the degree of participation and ownership, the greater the impact my work would have in BRFN and neighbouring communities as a tool for reflection, analysis and popular education. But I also realized that community participation would divert valuable energy and resources from other priorities; so my expectations at the beginning of the research relationship, in terms of community participation, were modest. I proposed we begin a collaborative research project, one with the potential to deepen and grow with time.

Here I offer a brief summary of the stages our research relationship moved through before elaborating further on the scope and depth of our collaboration:

1. Introductions [April 2005]

I spent a month in BRFN with frequent day trips to Digby, the neighbouring non-native fishing town, in order to let people get to know me. During this time I did two-dozen exploratory in-depth interviews and participant observation. I proposed

experimenting with video (which I had never done), and discussed with community leaders and harvesters in both BRFN and Digby the political analysis and content for a documentary video. We agreed to begin two parallel video processes. I would have responsibility for filming and editing, in constant consultation with participants. Participants would have veto power over the use of their personal image, and the collective group involved in the video would have veto power over final content and responsibility to help me shape the content for the overall piece.

One video, *In Defense of our Treaties,* would profile the BRFN community's struggle to assert Mi'kmaq treaty rights and communicate the vision driving their stand to the outside world; another, *The End of the Line*, would present Digby fishers' resistance to DFO policies via a portrait of Terry Farnsworth, the last hand-liner on the Bay of Fundy. Together, the two films would explore the grounds for solidarity between BRFN and non-native harvesters, without smoothing over the very different stakes involved for both groups.

2. First Shoot [August 2005]

The second visit was a one-month stay in BRFN, with frequent day trips to Digby. On this trip I almost always had a video camera in hand, and did the bulk of the shooting for *In Defense of our Treaties,* and *The End of the Line*, the two parallel films that would become *In the Same Boat?*.

3. Initial Editing [fall 2005 / winter 2006]

I edited initial sequences of the videos over the fall and winter.

4. First Community Screening & Renewed Mandate [March 2006]

I returned in March of 2006 to continue this two-part parallel process in BRFN and Digby. I did individual screenings in the home of all participants, a group screening in each community that brought together harvesters and community leaders, and then met with all participants individually after the group screening. This was done in order to get feedback on the point of view, structure, and content of the films. This step deepened trust enormously and provided me with crucial feedback that fundamentally shaped the direction of the videos. It also motivated participants to continue, and in some cases deepen their involvement. For example, one BRFN participant told me: "oh so that's where you're comin' from. I get it! I guess I won't have to hold my tongue around you any more." Other participants began referring to the project as "our" video.

It was the feedback from these meetings, in addition to encouragement from my academic committee, that led me to fast-track from the Masters to the PhD level.

5. 2nd Shoot [August 2006]

I returned in August to finish filming, based on the feedback gained from the March meetings. For example, feedback in Digby had confirmed I was on the right track. One participant told me: "When I watch that, it gives me the exact same feelin' that I get when I go out on the water." In BRFN I was encouraged to widen my frame of analysis to include international alliances with the World Forum of Fisher Peoples. Another

BRFN participant had suggestions for shot locations and a traditional song to incorporate into the piece.

6. Joint BRFN/Digby Community Screening [Feb 2007]

I returned to screen *In Defense of our Treaties* with members in BRFN and *The End of the Line* with Digby harvesters. In both cases there were one-on-one screenings with each participant and a group screening. Once each film had met with their respective community's approval, we organized a joint screening at the BRFN Band Hall in coordination with the BRFN Chief and council, and local harvester organizations. Thirty out of approximately 125 BRFN band members, and a dozen non-native fishing leaders from five non-native harvester organizations attended. I facilitated a six-hour workshop that explored the issues brought up by the films; and established community screening and distribution goals and strategies. The group decided that *In Defense of our Treaties* and *The End of the Line* were two parts of a single, larger story, and should be presented together; and that a film tour through Mi'kmaq and non-native communities should be organized to engage audiences directly affected by the issues presented in the films. There was also a desire to continue exploring community media. I was asked to facilitate a two-part media production workshop in BRFN, which I did; however I considered it above and beyond the scope of my doctoral research.

7. Community Tour [Oct/Nov 2007]

I worked with the Halifax-based Ecology Action Center, in coordination with BRFN and the Bay of Fundy Marine Resource Centre (a harvesters' organization in

Digby), to fundraise for and coordinate a community tour of *In the Same Boat?*. Spokespeople from both Digby and BRFN were present for 12 out of the 13 screenings and community forums we organized across Nova Scotia and New Brunswick over a three-week period.

Treaty-based Research

> "What is it I'm signing? Asks the rez/downtown eastside interrogatee / researchee
> it's a university research ethics form it's like an academic treaty
> treaty! Oh oh wrong word doesn't that mean you'll be asking the people
> in our community who can't read and those who don't understand the idea of
> knowledge ownership to sign pieces of paper so you can make off with their
> intellectual properties post haste
> or perhaps pre haste no thank you we've been through that
> it has been etched tattooed onto our collective cv's subdermally injected
> do you have any hypoallergenic treaties or culturfair ones"
>
> -Peter Cole (2004:10-11)

I have come to think of the research relationship I established with BRFN community members in a similar way that I understand our treaty relationship. From an Indigenous perspective treaties are not fixed legal documents; one cannot refer to the frozen words on a page to establish what they "mean". Instead, treaties are considered deep, spiritual compacts based on mutual respect, a long term commitment to enter into an evolving relationship, one that must continually be re-visited, re-negotiated, and renewed (Wicken 2002). Likewise, the treaty-based research relationship I established was not forged when research participants and community leaders signed consent forms (though these documents provided participants with a clear set of minimum standards and rules of conduct for my behavior, and means of recourse to protect their rights within the research project). The scope, depth and agenda of the research itself, community and

individual consent, accountability – these were all things I felt a responsibility to revisit and renew on a continual basis. Trust was something I earned on a daily basis.

And so the scope and depth of my relationship with BRFN and their neighbouring allies evolved considerably over eight years through continuous negotiation. I first met leaders in BRFN and Digby in the fall of 2002 as a community-based resource practitioner and social justice activist; I approached both groups in the fall of 2003 as an independent journalist interested in their joint work. Once I became a Master's student, I proposed a research project exploring the grounds for solidarity between both groups. Together, we agreed to experiment with collaborative video production as a research method (with rather low expectations on everyone's part about the production value of a final product given my lack of video experience). Once my video work demonstrated potential, and community members gained enthusiasm, I fast-tracked from the Masters' level to the PhD in order to realize the video project's full potential. Once the video documentary, *In the Same Boat?,* was completed, we decided to work together to fundraise and coordinate a series of public events and screenings across the province. The impact of this process within BRFN and the wider community lead to a series of media production workshops that I animated at the request of BRFN, above and beyond the scope of my graduate work. Although my graduate research is now complete, I continue to participate in the dialogue my research helped deepen between BRFN and surrounding non-native groups resisting neo-liberal transformations.

I find the treaty relationship an appropriate metaphor for research relationships between non-native academics and First Nation communities in another sense; that being the legacy of broken treaty promises that has so fundamentally shaped the colonial

present. As a non-native researcher, I am attached to an academy that remains an institutional site of that continuing colonial power. As an aspiring decolonizing researcher and ally, I have to come to terms with my role as an unwilling cog in this machine; I have remained determined to disrupt and challenge those dynamics, to as much an extent as possible.

Of particular note in that regard, is the collaborative relationship I have developed with my now-colleague, Sherry Pictou, a community-organizer, international fisher peoples' advocate, and former chief in BRFN. Sherry's contributions to my research deepened as her enthusiasm increased, once the potential of the project became more clear through demonstrated results. Her role began as one of the community leaders who introduced me to harvesters in the BRFN community who might be interested in participating in my research, and to non-native fishing organizations in the area that had collaborated with BRFN in the past. As the community leader involved in BRFN's fishing activities, wider Mi'kmaq political life, and fisheries movement building at the international level, Sherry's expertise was invaluable. Her perspective was particularly helpful in guiding the research/creation process design and implementation, and giving me in-depth feedback on the analysis I was developing. Sherry also took care of the logistics for community screenings in BRFN, took an active role in helping to fundraise and coordinate the film tour, and spoke at 10 out of the 13 screenings around the province. When it came time to distribute the film, Sherry's role had grown to what might be called co-producer in the world of independent film production, and together we decided she should be credited with that role for *In Defense of our Treaties.*

Sherry holds a Masters Degree in Adult Education and was particularly impressed by the impact of *In the Same Boat?* as a tool for analysis and transformational learning, both within BRFN, and in terms of deepening the First Nations' relationships with neighbouring groups. She was also very satisfied by the authenticity of the film's portrayal of BRFN's position. As the co-chair of the World Forum of Fisher Peoples (an international alliance of small-scale and Indigenous fishing peoples) and a leader who represents her community regularly at conferences, workshops and other events, Sherry screens and distributes *In the Same Boat?* regularly as an education, advocacy and networking tool. So in 2009, when I was offered two opportunities to publish my research in academic anthologies, I proposed that Sherry and I continue to deepen our research relationship and become co-authors. This was appropriate given the now very active role she was playing in what was effectively becoming 'our' research. Co-authorship of this kind is becoming established practice in the world of PAR, particularly in the field of Aboriginal research. For example, the authorship guidelines set out in the Kahnawake Schools Diabetes Prevention's *Project Code of Research Ethics* (KSDPP 2007) and the Canadian Institute of Heath Research's *Guidelines for Health Research Involving Aboriginal Peoples* (CIHR 2007) both stipulate community members are entitled to receive due credit and participate in the dissemination of research.

I would argue that such a move is in keeping with the values and principles of PAR more generally. With Gilles and Castelden (2008), I question why participation, skill transfer and capacity building in PAR generally end at authorship. Theses authors note the structural pressures to maintain single authorship in the publish-or-perish world of academia, where single authorship holds considerably more merit. I would argue that

challenging such academic norms is both in line with the values of Indigenous research methodologies, and with the agenda of Indigenous research to decolonize not just methodologies, but the institutional context of the academy as well. In that spirit, sharing authorship can be considered a small step towards challenging the very western notion that knowledge can be created and owned by a single person, and is more in line with Indigenous concepts of knowledge as relational.

Structure of the dissertation

The three written chapters presented here examine the intersections between Mi'kmaq struggles for self-determination and non-native resistance to neo-liberal privatization in three different contexts: community-based resource management, knowledge production in social movements, and Canada/First Nations negotiations. The choice to analyze BRFN's position from these three perspectives was made in relation to the evolution of priorities within BRFN, the deepening of my research relationship with community members in that First Nation, and the publishing opportunities that were presented. The experience of BRFN and neighbouring non-native harvesters is also presented through the creation component of my dissertation, *In the Same Boat?* Each written chapter has been published in an academic anthology, and therefore takes a 'stand alone' form.

Chapter two, "Fisheries Privatization versus Community-Based Management in Nova Scotia: Emerging Alliances between First Nations and Non-Native Fishers", appears in editor Laurie Adkin's *Environmental Conflict and Democracy in Canada* (2009). The chapter uses CBM as a lens through which to examine the common ground

established between BRFN and surrounding non-native fishing groups. I felt CBM was an appropriate focus for this opening study given its importance for both groups; CBM was also my entry point into these communities, as well as the focus of discussions between the two groups at the time.

In the chapter, I provide a general overview of the emergence of CBM as a model of resource governance, a detailed account of its beginnings in non-native communities as a response to neo-liberal transformations in the fisheries, and in Mi'kmaq communities as a strategy to assert and win recognition for Aboriginal and treaty rights. I then assess CBM's impacts both as a larger political strategy, and in terms of allowing for conflict mediation in the aftermath of the Marshall Decision in the Bear River / Digby area.

Chapter three, "How do you say *Netuklimk Netuklimuk* in English? Learning through video in Bear River First Nation" was written collaboratively with Sherry Pictou and published in editors Aziz Choudry and Dip Kapoor's *Learning from the ground up: Global perspectives on social movements and knowledge production* (2010). Being solicited to contribute to this volume was a happy coincidence: in the years since I began my doctoral research in and around BRFN, informal learning has become an increasingly valued outcome, and considered a vital organizing strategy for social change within the First Nation. Community leaders there value my process-oriented video work, in part, for its impacts in terms of this transformational learning process.

The chapter presents our video-based participatory research methodology in the context of the transformational knowledge production that has come out of the last decade of work to deepen solidarity between BRFN and their neighbours. We begin from the position that overcoming the de-facto segregation between Mi'kmaq and non-native

people in Nova Scotia is crucial - both as a means of resisting neo-liberal privatization and for BRFN to assert inherent treaty rights. We then present our experience of cultural production as a useful means towards that end, focusing on the participatory methodology used for the documentary *In the Same Boat?,* the creation component of my doctoral work. The chapter also explores the impacts of this process within Bear River First Nation, as well as the wider communities of solidarity the documentary is helping to cultivate.

The fourth chapter (on DVD) is the creation component of my dissertation, *In the Same Boat?*, a two-part documentary that explores the grounds for solidarity between Bear River First Nation and their non-native neighbours, while showing the very different role fishing plays in both cultures. The film was produced with financial support from the Centre Inter-Universitaire des Arts Médiatiques, and in-kind support from the Montreal artist-run center, Vidéographe Productions. It is distributed through V-Tape Distribution in Toronto, has been purchased by academic institutions across Canada and the United States and has been screened at academic conferences and film festivals around the world, from Tunisia to Brazil.

Chapter five, "Recognition by Assimilation: Mi'kmaq Treaty Rights, Fisheries Privatization and Community Resistance in Nova Scotia", was written collaboratively with Sherry Pictou and appears in editor Kristen Burnett's *Aboriginal History: A Reader* (2011). The chapter presents BRFN's critique of and response to the post-Marshall environment. We begin from the premise that the restrictive policy framework guiding Canada's negotiations with First Nations, matched with the current neo-liberal climate, present First Nations sitting down at the negotiation table with an unacceptably limited

set of options. We then ground our discussion of these dynamics as they are illustrated in BRFN and the Mi'kmaq People's struggle for self-determination, and explore the potential of the alliances this First Nation is building with non-Indigenous communities and social movements resisting neo-liberal globalization.

Future Directions

My years of graduate studies leave me with many intellectual and creative horizons to explore. The role of collaborative video production and distribution within PAR and Aboriginal research is an area I've had less time to analyze through my graduate work. I would value the opportunity to dig deeper into not only Indigenous peoples' critiques of western research, but analyses of respectful research relationships and other attempts to decolonize university institutions. Of particular interest to me are questions of artistic representation, especially in the context of non-native/ native collaborations such as *In the Same Boat?* In my dissertation I have made reference, and contributed to a growing body of research exploring how western language and established conceptual categories shape the identities and worldviews of Indigenous peoples, contributing to the process of assimilation. But how do these critiques apply in terms of the *visual* language of video, and what are the implications for using video as part of decolonizing research methodologies? Another under-theorized practice in this expanding field, is participatory video distribution which is deepening more established forms of PAR dissemination.

In my doctoral research I have focused on dynamics of accommodation and resistance within BRFN the face of evolving colonial and capitalist power relations.

However my dissertation by no means provides an exhaustive analysis of how neo-liberal transformations - marked by the intensification and globalization of economic power, the devolution of political governance, the strengthening of liberal ideology, and the commodification and privatization of natural resources – are influencing the articulation of Indigenous resistance and the outcomes of Indigenous self-determination struggles. The potential exists to continue exploring these questions as they relate to those within the Mi'kmaq nation who are building a vision for self-determination anchored in the concept of Netuklimk as an articulation and assertion of Mi'kmaq governance, in the context of the tripartite negotiations currently underway between the Mi'kmaq, Canadian and Nova Scotian governments that aim to re-interpret the historic Peace and Friendship Treaties in a modern-day context.

Another focus of my doctoral work has been the potential of and grounds for solidarity between Indigenous anti-colonial struggles and non-native resistance to neo-liberal globalization. The production and distribution of *In the Same Boat?* contributed to a dialogue between BRFN and non-native groups resisting neo-liberal transformations that continues to deepen, as has my participation in these discussions. Since moving home to Nova Scotia in the summer of 2010, I have been invited into a talking circle that meets regularly in BRFN, bringing together community leaders from BRFN and non-native groups in the surrounding area. Together, we are sharing our distinct and shared historical relationships to BRFN's traditional territory of Kespuwick, the varied ways these have been threatened by continuous waves of enclosures (the historic colonial wave of enclosures that created crown or 'public' resources, as well as the current wave of neo-liberal privatizations), our personal struggles, and the strength we find in creative acts of

resistance. There is considerable appetite within the group to continuing exploring community media production and artistic expression as a means of resistance and solidarity building.

Finally, my in-depth explorations of colonialism, neo-liberalism, solidarity and resistance in Mi'kmaq territory, leave me with a desire to learn how these dynamics are playing out within other social movements, and in other Indigenous territories across Canada. One such avenue is my involvement in the Peoples' Food Policy Project (PFPP), involving activists from across the country in the drafting of a food sovereignty policy framework for Canada. The PFPP has taken meaningful involvement by Indigenous leaders as a central organizing praxis. My interest is in the organizing processes that have made meaningful Indigenous involvement possible, and the impacts of that involvement for the process and outcomes of the project. Another avenue to explore these dynamics has been in Algonquin territory. Over the past two years I have been working on a documentary film exploring the Barriere Lake Algonquins' struggle to maintain their traditional form of government in the face of attempts by the federal government to impose the Indian Act band-council system; and to win decision-making power in relation to development on their ancestral lands, without ceding their aboriginal title through the comprehensive land claims process and self-government policy framework the federal government insists on using in its negotiations with First Nations.

Chapter Two:

Fisheries Privatization versus Community-Based Management in Nova Scotia: Emerging Alliances between First Nations and Non-Native Fishers

By Martha Stiegman

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Fisheries Privatization versus Community-Based Management in Nova Scotia: Emerging Alliances between First Nations and Non-Native Fishers

The legitimacy of the federal government's role in fisheries management is hotly contested in Maritime Canada. Following the collapse of northern cod stocks, inshore fishers doubt the stewardship abilities of Fisheries and Oceans Canada (DFO) and are frustrated by policy that has facilitated a dramatic concentration of corporate ownership in the industry, effectively privatizing marine resources and deregulating fisheries management (Apostle, McCay, & Mikalsen 2002). Empowered by the Supreme Court's 1999 Marshall decision, First Nations see their participation in and management of commercial fisheries as a treaty right and are reluctant to fish under DFO jurisdiction.[6] In Southwest Nova Scotia, inshore fishing communities are building community-based management (CBM) as a means of improving fisheries management and as a strategy of resistance against fisheries privatization. In Mi'kmaq communities, CBM is also part of a long-standing struggle for self-determination. Through these efforts, they are developing a common vision for ecologically sound and democratic self-governance of the fisheries and building the foundations for a united challenge to DFO's privatization and deregulation agenda.

In this chapter, the potential of CBM as a model of local participatory governance is considered. This is done by examining the particular processes that have brought CBM into being in both Mi'kmaq and non-Native fishing communities, the political issues that CBM has helped these communities to address, and the impacts of CBM organizing at the local level. It is argued that, though CBM has not been sufficient to address larger

[6] *R. v. Marshall* [1999] recognized the rights of the descendants of the signatories to the 1760-61 Peace and Friendship Treaties to earn a "moderate livelihood" through participation in the commercial fisheries.

political issues, it has enhanced community capacity to deal with fisheries management in particular and local development issues in general -- most notably, in the strengthening of relationships between the Mi'kmaq and non-Indigenous fishers. The case study presented here is based on twenty key-informant interviews conducted over the winter of 2003 and field research carried out in the summer of 2005 involving three months of participant observation and in-depth interviews with two dozen community leaders and harvesters in Bear River First Nation and the neighbouring town of Digby, Nova Scotia, and with First Nations and non-native fisher organizations across the Atlantic region.[7]

What is Community-Based Management?

A sense of urgency prevails in fisheries management circles as stock depletion, the decimation of fishing communities, and shrinking government budgets become global phenomena (Neis, B. et al, 2005). Many perceive top-down, state-centred resource management to have failed (Bryant & Wilson 1998). There is now a global trend toward the decentralization of resource management (Jentoft and McCay 1995; Andersson, Gibson, and Lehoucq 2004). Multiple currents exist within this trend: one advocates the privatization of fishing rights and the deregulation of fisheries management (Hannesson 2004); another features the devolution of resource management to local populations and interest groups through state-stakeholder partnership arrangements known as co-management. Within the co-management literature, CBM refers to institutional arrangements that feature a high degree of local control grounded in democratic community-based governance. Both co-management and CBM have gained acceptance

[7] The author wishes to thank the communities participating in this study for their hospitality and generosity. Names of the interviewees have been withheld. Field research was supported in part by the Royal Canadian Geographical Society's Maxwell Studentship.

among social and natural scientists as potential vehicles for sustainable development and equitable resource use (Pinkerton and Weinstein 1995; Berkes et al. 2001).

The 1990s witnessed the beginnings of a paradigm shift in resource management. Arguments stressing the positive relationship of effective resource management to participatory local governance (McCay and Acheson 1987; Berkes et al. 1989; Jentoft 2000) were reinforced by international declarations calling for public participation in resource management and recognition of the rights of indigenous peoples. International agencies from the World Bank to the Nature Conservancy championed community-based approaches (Li 1996; Agarwal and Gibson 1999). In Canada, DFO claims community consultation and public participation as hallmarks of such a new approach.[8] First Nations, especially in the Far North, have won a limited voice in resource governance through co-management systems -- often established within comprehensive land claims settlements (Stevenson 1996).

A convincing case for devolution has been made; however, the continued frustrations of Indigenous (Nadasdy 2003) and small-scale resource users (Kearney 2005), and the growing disenchantment of government and international agencies (Brechin et al. 2002), suggest these actors hold very different understandings of both the definition and utility of "community-based" approaches.

Growing attention focuses on the neo-liberal political climate that contextualizes the emergence of CBM (Peet and Watts 1993). Neo-liberal orthodoxy prescribes the rollback of government in direct service provision and an intensification of state intervention to facilitate the privatization of publicly owned resources and assets.

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[8] For an example, see Fisheries and Oceans Canada, 2004 "A Policy Framework for the Management of Fisheries on Canada's Atlantic Coast," http://www.dfo-mpo.gc.ca/afpr-rppa/link_policy_framework_e.htm

Community organizations are not left out of this process -- they are assigned a leading role in the social economy and in social service provision (Jessop 2002; Shragge 2003). In such a policy climate, CBM is in danger of legitimizing DFO downsizing and playing into state strategies to download the costs associated with management and responsibility for already decimated ecosystems, with little meaningful transfer of management authority or political power (Wiber et al. 2004). In an era marked by the globalization of economic power, the decentralization of administrative responsibilities risks becoming what J. Anderson (2000) has termed "devolution without empowerment" and presents communities with the challenge of naming and negotiating these new power dynamics.

First Nations are well versed in the art of deciphering the double-speak used by the federal government to avoid genuine power transfer (Marshall, Denny, and Marshall 1989). Many commentators have noted the paternalistic approach and continued agenda of assimilation and rights extinguishment that make Canada's current colonial configuration difficult to distinguish from its colonial past (Angus 1992; Rynard 2000). CBM and co-management arrangements have become hallmarks of Canadian / Aboriginal relations. Yet, critics charge that token Aboriginal participation is the norm, with the end goal of management often predetermined by government partners to fit capitalist market imperatives (Stevenson 1996; Nadasdy 2003) -- a pattern First Nations rightly associate with Canada's long-standing project of assimilation (Green 1995).

In Canada, CBM has developed in three contexts: as the result of cutbacks and state downloading of management costs onto resource users (Bradshaw 2003), as a form of community resistance to resource privatization (Kearney 2005), and as a way for First Nations to appropriate resource management arrangements (Wiber et al. 2004). Given the

dialectical forces from which CBM emerges, it is important to defend a focused definition of the practice -- one that makes explicit the end goals and underlying values guiding resource management (Berkes 2003), one that includes power sharing between community and state actors (Castro and Nielsen 2001), and one that looks beyond the scale and mechanism of governance to see how CBM is both embedded in a larger political economy and the result of local political processes.

The Area of Study

Fishing virtually defines the culture and economy of Southwest Nova Scotia. Although the area was not as hard hit by the collapse of northern cod as the rest of the Atlantic region, groundfish landings are a fraction of historic levels and continue to decline despite more than a decade of severe quota reductions.[9] Most harvesters now rely on the lobster fishery for 80 to 100 percent of their income (Kearney 2005).

The area under study is roughly contiguous with Kespukwitk (which comprises the Southwest region of Nova Scotia) -- one of the seven political districts of the Mi'kmaq, whose traditional territory, Mi'kma'kik, includes most of the Maritime provinces, the Gaspé Peninsula, and the southern coast of Newfoundland. The Mi'kmaq are a coastal people, for whom fishing is of profound importance. It was a central component of their traditional migratory lifestyle and is foundational to the Mi'kmaq worldview (Ricker 1997). Systemic racism, matched with the large capital investments needed to enter the commercial fisheries, kept most First Nations people out of the industry, which has been dominated by Nova Scotians of Loyalist and Acadian descent.

[9] Groundfish species are those that live and feed near the ocean floor. In Atlantic Canada, those caught commercially include cod, haddock, and pollock.

However, the Mi'kmaq have established a growing presence on the water since the Supreme Court's 1990 Sparrow Decision opened an Aboriginal fishery for food and ceremonial purposes.

Privatization by Stealth: Resistance in Non-Native Fishing Communities

For those interested in the dynamics of capitalist development and neo-liberal globalization in Atlantic Canada, there is no better example than the fishing industry. DFO policy has long favoured the development of a centralized corporate-owned fleet capable of large-scale harvesting and processing for international trade, and has imposed industrial discipline on small-scale independent producers in order to integrate them into an ever-expanding and deepening capitalist market (Davis 1991; Veltmeyer 1990)[10] The current policy thrust is consistent with a wider neo-liberal agenda: privatize rights to commonly held resources, downsize government services, and deregulate management (Neis, B., et al, 2005). This is being achieved primarily through the imposition of individual transferable quotas (ITQs), a market-based approach to fisheries management whereby significant control is transferred from publicly accountable government bodies to private corporations. With the establishment of an ITQ regime, the total allowable catch (TAC) of any given species is divided among existing licence holders who may then transfer their quota by selling or leasing it. This is intended to set off market competition for control of quota, ending in the survival of the most "efficient" and

[10] Many note a significant exception to this trend in Romeo LeBlanc's 1977-84 tenure as fisheries minister, suggesting that LeBlanc's Acadian origins gave him greater understanding of and sensitivity to inshore concerns (Williams and Theriault 1990).

"competitive" fishers.[11] The approach assumes that a rationalization of the industry will allow for a reduced government role in regulation and that conservation can most effectively be achieved through the creation of private-property rights (Hannesson 2004).

Such a neo-liberal vision has guided DFO policy since the influential 1982 Kirby Report (Canada, Department of Fisheries and Oceans 1982).[12] It is a policy direction that has been criticized by many -- including the Senate Standing Committee on Fisheries and Oceans -- for its lack of transparency. Successive bureaucratic initiatives have put in place a de facto management regime that contradicts the public right to fish that exists in common law, as well as policies designed to keep ownership of the inshore fleet in the hands of independent fishers and to ensure that the benefits of that industry are distributed within coastal communities.[13] In short, DFO has effectively redefined its role as the steward of marine resources and is undermining public ownership of those resources, with no genuine public consultation or parliamentary debate (Canada, Senate Standing Committee on Fisheries 1998).

In Atlantic Canada, the result of this privatization by stealth has been a dramatic consolidation of corporate ownership and the near extinction of the small family-owned businesses that characterized the small-boat fisheries for generations (Kearney 2005). Related to this social disaster is an ecological one: the collapse of the northern cod and a

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[11] In Atlantic Canada, ITQs were first implemented in the early 1980s in the offshore groundfish trawler fleet; they were subsequently extended across the midshore sectors and much of the inshore fishery. For a more detailed account of this progression, see Canada, Standing Senate Committee on Fisheries (1998) and P. Kerans and J. Kearney (2006). For an analysis of the gendered impact of fisheries privatization, see M. MacDonald (2005).

[12] A Task Force on Atlantic Fisheries was commissioned by DFO following an economic downturn and the near collapse of the corporate trawler and processing sectors. Its report, *Navigating Troubled Waters: A New Policy for the Atlantic Fisheries,* became known as the Kirby Report, after task force head Dr. Michael Kirby. The report signalled a major change in orientation within DFO that sought to maximize economic efficiency within the industry through fisheries privatization.

[13] The fleet separation policy is designed to prevent vertical integration in the inshore fisheries by forbidding processors to own licences. Its owner/operator clause stipulates that licences must be owned by individuals who operate fishing vessels for their livelihood. See CCPFH (2001).

sustained downward trend in other groundfish populations (Copes 1998). In the words of one fishing leader interviewed by the author in 2003, "Unless something dramatic is done we are witnessing the last generation of family fishermen." This sense of urgency is found throughout what is left of the independent small-boat fisheries; many are convinced the department is wilfully undermining their position within the industry.

The Emergence of CBM and the Fundy Fixed Gear Council (FFGC)

In Nova Scotia, CBM emerged in the mid-1990s as a community response to DFO downsizing.[14] In 1994 the federal department announced that it would stop enforcing trip limits, a regulation designed to ensure an equitable distribution of catch among fishers. After groundfish quota reductions of close to 75 percent over the two previous years, the move would have resulted in fatal losses for all but the largest vessels with the greatest catching power. In response, fish harvester organizations formed an alliance and negotiated with DFO to manage their sector of the fishery at the community level, developing management plans for the various geographic areas concerned (Kearney 1998; 2005).

The 1995 fishing season proceeded under an experimental community-based management, having won the tolerance but not the support of DFO. Department officials continued working toward implementing ITQs; fishing communities were outraged. Protesters occupied DFO offices across the province, and thousands demonstrated, demanding a moratorium on ITQs and government support for CBM. DFO conceded, halting its plans to implement ITQs in this sector and negotiating with harvester

[14] It should be noted that CBM is a local strategy that evolved in diverse ways across the Maritimes and had distinct impacts in each area.

organizations to implement their proposed community management boards. On the Nova Scotian Fundy Coast, the focal point of this study, harvesters set up the Fundy Fixed Gear Council (FFGC) to coordinate the democratic self-governance of their fishery (see Kearny and Kearans 2006 for a more detailed discussion).[15]

Viewed in the larger context of the Atlantic fishing industry, the impact of the FFGC has been marginal. The inshore groundfish sector is a fraction of what it once was; the quota at stake represents a negligible percentage of the fishing economy for the region; and, although the number of fishers involved in FFGC is significant, no powerful capital interests were displaced by the move. What's more, fishers got a raw deal: neither money nor institutional support were made available for capacity building, the costs associated with managing quota were downloaded from DFO to fish harvesters, and no legislation was enacted to recognize community authority.

Although this critical evaluation of the FFGC may be accurate, it misses the tremendous victory the organization represents. The FFGC is a result of popular mobilization in response to government mismanagement of marine resources and in opposition to a corporate takeover of the fisheries facilitated by DFO policy and practice. The organization has played a crucial role in slowing and perhaps preventing the further corporate takeover of this sector and in providing a voice for independent fishers in resource management. The FFGC has, moreover, strengthened local democratic self-governance and has had ripple effects in the Digby area -- most notably in terms of mediating conflict and building relationships between non-Native fishers and First Nations.

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[15] "Fixed gear" refers to a category of fishing technologies that includes handline, longline, and gillnet. Generally more selective than other technologies and therefore ecological, they are used by small-scale inshore fishers.

The Marshall Decision and CBM in Mi'kmaq Communities

On 17 September 1999, the Supreme Court of Canada's Marshall decision sent shock waves through an already struggling fishery. On trial had been the validity and interpretation of the 1760-61 Peace and Friendship Treaties, which were negotiated between the British and the First Nations of what are now the Atlantic provinces of Canada. The court ruled that, despite the Crown's claims to the contrary, the treaties were valid and that the rights they defended for the Mi'kmaq, Maliseet, and Passamaquoddy included a collective right to earn a "moderate livelihood" through participation in the commercial fisheries (*R. v. Marshall* 1999).

R.v.Marshall is one of a series of cases focusing on Aboriginal access to fishing, hunting, and logging that have been brought to the Supreme Court to win recognition of First Nations rights in the Maritimes. As editorial comments in the September 1989 edition of the *Micmac News* make clear, harvesting and management of natural resources have been defended as part of a larger vision for Mi'kmaq self-determination: "Micmacs base their hunting rights on a covenant chain of 18th century treaties ... To the native community, such agreements were binding, political compacts between two independent and sovereign nations which form the legal foundation of their self-determination and self-government" (quoted in Prins 1996, 13-14).

To the Atlantic Policy Congress of First Nations Chiefs (APCFNC), the Marshall decision was an opportunity to develop a First Nations-driven and -managed commercial fishery as part of a larger project toward self-government. Referring to the First Nations' inherent right of self-determination and the nation-to-nation spirit of the treaties, the

APCFNC put forward a vision for community-managed fisheries tied to strengthened Aboriginal self-governance, local economic development, increased access to the traditional resource base, and the incorporation of traditional knowledge and values (APCFNC 2001a, 2001b). DFO's vision was very different.

The Federal Government responded to the Marshall ruling with a two-pronged approach. Over the long term, the parameters of a treaty-based fishery would be established through formal negotiations involving First Nations, the federal and provincial governments, as part of a larger process aiming to interpret and implement the historic Peace and Friendship Treaties in a modern context (the Kwilmu'kw Maw-klusuaqn (KMK), also known as Mi'kmaq Rights Initiative (MRI)).[16] In the short term, a negotiator was appointed to establish interim access agreements on a band-by-band basis. These "MacKenzie agreements" (named for the federal negotiator James MacKenzie) provided bands with funds to access communal commercial licences, vessels, fishing gear, and training. In exchange, communities agreed to "shelve" (Milley and Charles 2001) their right to manage their fisheries for the duration of the agreements and to fish by DFO regulations.

The MacKenzie process echoed the paternalistic divide-and-conquer approach of the earlier Aboriginal Fisheries Strategy (discussed in detail below) that had alienated Mi'kmaq communities. Many were dissatisfied with both the funds and the fishing access that DFO put on the negotiating table, its inflexible stance, and the rushed pace of negotiations that made a proactive approach difficult and gave DFO control of the negotiation agenda.

[16] See http://www.mikmaqrights.com/

Critics of DFO's neo-liberal agenda hoped the Aboriginal commercial fishery created via the Marshall decision would challenge the status quo by incorporating a diversity of regulatory schemes within a broad strategy for conservation. This might create a precedent for non-Native forms of CBM as well as potential allies in the fight for sustainable fisheries policy (Stiegman 2003); what has transpired is quite the opposite.

Faced with high levels of poverty and unemployment on reserves, and fearing violence from both DFO officers and neighbouring non-Native fishers, most chiefs felt they had little choice but to enter into interim access agreements. At present, thirty-two of the thirty-four bands in the Maritimes have signed such MacKenzie deals. Some have been able to develop innovative and distinctive community-based fisheries, but the general orientations of most First Nations' fisheries do little to challenge the status quo.

A comprehensive evaluation of the MacKenzie process and an inventory of the Aboriginal fisheries it helped to create have yet to be undertaken (such tasks are complicated by the fact that, because no single policy guided the negotiation process, the resulting agreements were diverse in nature). However, it appears that, if the process was successful in helping bands to enter the commercial fisheries, it was equally successful at establishing DFO control over the orientation and management of this Aboriginal fishery. The federal department has justified its course of action by referring to the Marshall ruling, which acknowledges DFO's prerogative to regulate commercial Aboriginal fishing in the interests of conservation. But, to many commentators, it appears that the department's primary motivation has been to retain control over management in the interest of furthering an agenda of rationalized fisheries development (Davis and Jentoft

2001; Wiber and Kennedy 2001). It is an approach that has been criticized on numerous fronts.

First Nations complain that DFO's refusal to cede management authority and its insistence on containing Aboriginal fishing rights within established regulations are infringements of the rights outlined in both the Marshall and Sparrow decisions (Milley and Charles 2001). Brought to the Supreme Court by the Musqueam First Nation of what is now British Columbia, *R. v. Sparrow* won recognition of the Aboriginal right to fish for food and ceremonial purposes, opening an Aboriginal food fishery on all three coasts (McGraw 2003). Both rulings limit DFO's regulatory authority unless justified on the basis of conservation. Many are cynical regarding the department's approach. In the words of one Aboriginal leader, "We don't see any evidence of DFO supporting conservation; we see them supporting big business" (field research interview 2003).

Although in principle, MacKenzie agreements are without prejudice to the negotiation of treaty rights, some fear that the federal government will consider the agreements to be part of the larger treaty implementation process by referring to the MacKenzie negotiations as consultation regarding the infringement of Aboriginal rights and by deeming the funds made available through these deals compensation for the infringement of such rights. Another concern is that interim agreements will undermine treaty rights by laying the foundations for an Aboriginal fishery within the dominant framework of the current colonial management regime. The danger perceived is that, once interests are created, they are difficult to uproot, and that interim agreements will determine the parameters of the treaty-based fishery being negotiated within the Made-in-Nova Scotia Process.

The MacKenzie process has also been criticized for its negative impacts in non-Native fishing communities. DFO made room for First Nations in the commercial fisheries through a voluntary licence buy-back program. Though the buy-back scheme did succeed in its intention of negotiating a peaceful transition and avoiding an overall increase in the fish harvest, its result has been to facilitate the concentration of corporate ownership in the small-boat sectors. This occurred because speculation caused by the licence buy-backs led to huge increases in the market value of fishing enterprises. In Southwest Nova Scotia, the value of a lobster licence and vessel more than doubled to over $1 million shortly after the Marshall decision.[17] At such a high price, it is corporations, not young fishers who can afford to buy a licence; and coastal communities fear that inshore lobster, the last independently owned sector of the fisheries, will "go corporate" in the coming decade as the next generation of fishers retires.

CBM and Conflict Resolution

Following the Marshall decision, First Nations across the Maritimes took to the water in celebration, exercising their treaty right to fish. Tensions flared, most notably in Esgenoôpetitj (also known as Burnt Church), where the community's determination to pursue a Mi'kmaq-managed fishery outside DFO jurisdiction made the village a target for government enforcement, non-Native reprisals, and media attention. Shocking images of RCMP officers beating Esgenoôpetitj fishers and DFO boats ramming Native dories made international news for two consecutive summers.

[17] Southwest Nova Scotia is home to the most lucrative lobster fishery in the Maritimes. Although the value of its lobster enterprises is not as inflated as in other areas, the pattern is consistent throughout the region.

In Southwest Nova Scotia, more than six hundred inshore fishermen blockaded Yarmouth harbour in a show of force to keep Mi'kmaq would-be fishers off the water. The standoff was diffused in a dramatic behind-the-scenes meeting in which the chiefs of the two local First Nations and non-Native fishing leaders were able to look past the crisis of the moment to begin discussing the underlying issues: their more than four hundred years of shared history, the legacy and continuing impacts of Canadian colonization, and their common interest in working toward ecologically sound community-based fisheries management. "At some point we realized we both wanted the same thing," recalls one non-Native fishing leader, describing initial meetings with Mi'kmaq organizations, "sustainable livelihoods developed through community management of the fisheries, based on democratic self-governance -- or in the case of First Nations, self-government" (field research interview 2003). Though the experience was not as transformative for rank-and-file fishers, the relationships formed around the table were strong enough to make future joint initiatives possible. Such a remarkable example of conflict resolution cannot be explained without leaving substantial room for inspired leadership and exceptional personalities. However, the experience of both Mi'kmaq and non-Native communities in building CBM was crucial in preparing the terrain for such a coming together.

Through the popular mobilizing that led to the creation of CBM, non-native fishers developed a political analysis of the privatization of the fisheries. Because they could identify DFO's bias toward corporate ownership as the greater threat to their livelihoods, they were able to see their Mi'kmaq neighbours as potential allies, not simply as competitors for marine resources. One fisher reflects on the lessons learned:

"Personally, I didn't feel threatened by [the] Marshall [ruling], because I knew already that there was enough corruption in the policies, in the fisheries, and within DFO, and all through the system -- without pointing fingers at Aboriginal people. I would never have known that if I were just a bystander, just listening to what I heard on the news" (field research interview 2003)

Also, engaging in the deliberative practice of allocating quotas and resolving conflicts among fishers from the various regional communities gave fishers practice in the art of managing a certain degree of cultural diversity. Finally, the FFGC and other NGOs created as a result of CBM were crucial in mediating conflict and facilitating dialogue with neighbouring Mi'kmaq communities in the wake of the Marshall decision (a similar momentum within Mi'kmaq communities is described below). Although the Yarmouth blockade and the overall climate of racial tension triggered by Marshall made such a mediation process critical, it was a dialogue that had begun years before.

DFO had responded to *R. v. Sparrow* by recognizing an Aboriginal food fishery through its Aboriginal Fisheries Strategy (AFS). The program established a federal licensing regime to regulate Native fishing, with financial support for economic development for bands that entered into AFS agreements (McGraw 2003). The DFO approach of negotiating agreements on a band-by-band basis sparked resentment in many Mi'kmaq communities, as did the conditions tied to the deals. AFS agreements allowed bands to access much-needed funds for job creation but at the price of reduced authority over Aboriginal fishing and with that, a lost opportunity to develop resource governance capacity (Milley and Charles 2001). Many First Nations saw the program as yet another

example of a paternalistic Canadian state denying Aboriginal communities the opportunity to build their own model of development.

Several bands refused to sign AFS agreements and pursued their food fishery outside the federal regulatory scheme. The 1995 creation of the Mi'kmaq Fish and Wildlife Commission (MFWC) was part of these efforts. This organization was established by the Assembly of Nova Scotia Chiefs to help Mi'kmaq communities develop resource management capacity, partly in anticipation of the rights the Marshall case might secure. Instead of reacting to DFO's proposals, the MFWC helped bands take a proactive approach by developing community-based management plans that combined traditional values with contemporary needs (ibid.). As a vision and approach that found resonance with progressive non-Native communities working to build CBM, this played an important role in building bridges between these two communities.

In making space for Aboriginal fishing in the commercial industry, DFO has been notorious for its insistence on negotiating with First Nations behind closed doors. The exclusion of non-native fishers from this process has contributed to tensions between them and their Native counterparts on both the Atlantic and Pacific coasts. In Southwest Nova Scotia, CBM has helped to diffuse these tensions by offering participatory structures to circumvent DFO's divisive approach.

In Defence of Our Treaties: Bear River First Nation's Stand

Given the exacerbation of divisions between Natives and non-Natives by the MacKenzie process and the corporate agenda advanced by DFO, Bear River First Nation has chosen not to sign an interim agreement until the department is willing to negotiate a

deal that reflects its vision for the fisheries. One Bear River Nation member, interviewed by the author in 2005, summarized the community's position in this way:

> Marshall was based on a commercial fishing right ... but for us it was so much more than that. It was connected to our identity, our whole way of being ... It was so much bigger than fishing ... We were hoping to introduce a whole traditional approach -- but in today's context -- of bringing back some of our traditional values about conservation of the resources and respect for those resources and what fishing would mean to us ... But before we knew it, there was this "*Marshall* agreement" ... To put it quite frankly, it was a way of assimilating us into the commercial fisheries ... There was no talk about the food fishery or for ceremonial purposes or small-scale fishing; community-based resource management wasn't even a concept.

The community is unwilling to sign a deal that it feels will place it in yet another relationship of economic dependence on Ottawa, compromise Mi'kmaq treaty rights and self-determination, threaten the viability of marine resources, and force it into a model of fishing that goes against Mi'kmaq cultural and spiritual values. Its process of reflection has led it to embrace CBM as a model of resource governance that it feels is adaptable to its culture as well as more appropriate to the exercise of its treaty rights.

For Taiaiake Alfred (1999), First Nation self-government will be meaningless unless it is informed by Indigenous principles, neither modelled on Western traditions and colonial institutions nor developed in reaction to them. Alfred advocates a self-conscious re-adoption of traditional values to address current political, economic, and social realities. Although such a vision does not reject modernization or participation in larger economies, it does challenge capitalism's insatiable desire to commodify everything. Most notably, Alfred identifies a spiritual connection to the land and stewardship responsibility as being at the heart of Indigenous traditions.

Alfred's analysis describes Bear River's approach well. But, as Alfred observes and this example demonstrates, such an uncompromising vision for self-determination is difficult to realize from a position of economic dependency. International commentators are often puzzled by the fact that most Indigenous organizing in Canada is funded by the very state from which First Nations seek greater autonomy (Long 1992). The practice is less confusing to those who realize that, if federal funding helps sustain Aboriginal community organizing, it also helps to solidify economic dependence and to structure both the scope and direction of local initiatives (Fiske 1990).

The experience of Bear River exemplifies the Catch-22 that contemporary politics presents to First Nations. Holding out on signing an interim agreement has meant foregoing the money and licences attached to such a deal, along with resources that could fund (or potentially co-opt) a community capacity-building process. As a result, Bear River has had a negligible presence in the commercial fisheries; and the frustration of waiting while other bands test their sea legs has caused divisions within the community. But, if negotiations with Ottawa have not offered Bear River the possibility of developing a fishery on its own terms, working with non-Native fishers organized along principles of CBM has provided an interesting alternative route.

When DFO negotiations proved unsuccessful, the band turned to neighbouring non-Native fishers working to build CBM. Recognizing that Bear River's stand strengthened their own movement, non-Native fishers leased the band a boat and a captain, and informed DFO that Bear River would be fishing with their support. DFO conceded, and a crew from the Bear River community fished lobster over the summer of 2003 (Stiegman 2003). One community member, interviewed by the author in 2005,

recalls, "It was a historic moment that probably went unnoticed by the media, but it was historic because we were doing that in cooperation with non-Native fishermen -- and DFO just basically had to toe the line."

Joining forces with this emerging movement to build CBM has helped Bear River to circumvent a DFO-led process it feels compromises its treaty rights and the long-term health of the fisheries. Instead, the band has embarked on an exceptional process that is strengthening relationships with non-Native fishers in its area and making a unique contribution to CBM.[18] These relationships have not been enough to get Bear River into the commercial fisheries on a permanent basis; nor have they increased its bargaining power with DFO enough to negotiate an acceptable interim access agreement. However, the common ground built by these two groups is a hopeful example of the benefits of local democratic governance; as such, it points toward the potential of alliances between First Nation and non-Native communities in their struggles to defend sustainable resource-based livelihoods.

Conclusion

That Ottawa does not represent their interests as Indigenous peoples is hardly news to the Mi'kmaq, for whom the Peace and Friendship Treaties and the Marshall case are but two examples of a more than four-hundred-year struggle for self-determination. In this period of neo-liberal transformations, small-scale non-native fishing communities also perceive the state to be hostile to their way of life. Inshore fishing communities are permeated by the sense that a crisis is occurring not just in the fisheries, but in Canadian

[18] Although Bear River First Nation's collaborative approach has been exceptional, it is one of a growing handful of examples of cooperation between the Mi'kmaq and non-Natives. See P. McKintosh and J. Kearney (2002).

democracy as a whole. This view appears to be well founded. Public ownership of marine resources is becoming a legal fiction as resources and management are effectively privatized through DFO's imposition of ITQs. Policy designed to protect the independent character of the inshore fisheries is wilfully being undermined by the department (Canada, Standing Senate Committee on Fisheries 1998). Cutbacks matched with public-corporate co-management arrangements are quietly shifting control of management from publicly accountable government institutions to the largest corporate interests in the industry (Copes 1998). As one fisher, interviewed by the author in 2005, described the situation, "I don't even think DFO gives a hoot about the fish. I really don't. To them it's resource extraction, pure and simple. Once the fish are gone, there won't be any pesky inshore fishermen to get in the way of oil and gas exploration, and the companies can move on to aquaculture."

In Southwest Nova Scotia, CBM has emerged as the result of interrelated processes of popular mobilization, neo-liberal transformations, and Mi'kmaq struggles for self-determination. Non-native inshore fishing communities see CBM as a strategy of resistance against an unstated DFO policy designed to push them out of the fisheries. Bear River First Nation is building CBM as a form of resource governance in line with Mi'kmaq culture and consistent with the exercise of its treaty rights. Although these two communities take up CBM with differing causes and concerns, they have found substantial overlap in their positions: both have interests in defending the place of independent small-scale harvesters within the fisheries, as well as in ecologically sound management grounded in local democratic governance.

Given the past failures of top-down, state-centred management, and the social and ecological crisis triggered by the neo-liberal policy proposed by DFO as a solution, the conclusion that CBM is a badly needed innovation in fishery management is obvious to those involved. But substantial political ground must be won if this model is to realize its potential.

Within CBM literature, it is generally accepted that communities should not be left to their own devices to manage resources. A number of issues cannot be dealt with at the local level. These include the migratory nature of fish stocks, the incapacity of communities to deal with large-scale environmental problems (Berkes et al. 2001; Bradshaw 2003), and -- as demonstrated by the case of Southwest Nova Scotia -- the fact that the regulation of capital lies beyond community control. Growing attention focuses on the need for cross-scale linkages -- cooperation among institutions at various scales from local to international (Berkes 2002; Stern et al. 2002). Central governments have crucial roles to play in CBM. These include devolving political power, recognizing local authority, and providing funds and support for community capacity building, technical training, and scientific research, to name but a few (Berkes et al. 2001; Bradshaw 2003). However, in Southwest Nova Scotia, CBM is not yet a site of cross-scale linkages: it is a local strategy of resistance to DFO's devoutly neo-liberal approach.

As other cases have demonstrated, alliances between environmental groups and Indigenous peoples are often fraught with contradictions; often, environmentalists' support for Indigenous peoples is grounded solely on the latter's ecological orientation (Head 1990). Yet, acknowledgment of past and present injustices -- as well as respect for First Nations self-determination -- are necessary steps toward reconciliation (Green

1995). In Southwest Nova Scotia, the legal ground won by the Mi'kmaq and the task of managing fish have forced non-Native small-scale harvesters to take the first step down such a path. It remains to be seen whether the movement to build CBM will succeed in deepening this alliance and mounting a substantial challenge to the now interrelated processes of neo-liberal transformations and evolving colonial power relations.

Chapter Three:

How do you say *Netuklimuk* in English?
Using Documentary Video to capture Bear River First Nation's Learning through Action

By Martha Stiegman & Sherry Pictou

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How do you say *Netuklimk* in English?
Using Documentary Video to capture Bear River First Nation's Learning through Action

Introduction

The Supreme Court of Canada's 1999 Marshall Decision recognized the treaty rights of the Mi'kmaq people to fish commercially, sparking a violent backlash from non-native fishers across the region. The case was the result of generations of struggle for recognition of the eighteenth century Peace and Friendship Treaties and the inherent rights they were meant to protect. But as Bear River First Nation has learned in the ten years since the Marshall Decision, treaty rights 'recognition' in the maritime provinces, on Canada's Atlantic coast, is being enacted through a process of assimilating Indigenous Peoples into the neo-liberal capitalist fishing industry. It is a process that has relied on the centuries-old divide and rule tactics--between First Nations, and between Indigenous and non-Indigenous fishing communities--that have so fundamentally etched racism into Nova Scotia's social fabric. This process has solidified Department of Fisheries and Oceans Canada (DFO)'s control over fisheries management in the interests of furthering a neo-liberal program of resource privatization and corporate concentration of ownership in the industry (Davis & Jentoft 2001; Wiber & Kennedy 2001; Stiegman 2009).

Maori scholar Linda Smith (1999) describes imperialism as a "process of systemic fragmentation"(p. 28) – fragmentation of Indigenous peoples from their lands, languages, and ways of relating to each other and the natural world; and as a project which has relied on the twin processes of colonialism and capitalism, a racist system of European control imposed in the interests of securing markets for resource exploitation. Smith's description resonates all too well in Nova Scotia, where the interconnected

systemic racism and ecological crisis of today have firm roots in our colonial past. As Bear River First Nation's experience illustrates, colonialism is alive and well in Maritime Canada, although it takes a new form in the context of neo-liberal globalization.

Globalization is eroding the political will and ability of nation-states to respond to local communities' needs. It is also creating new opportunities for alliance building. This has been the case in Southwest Nova Scotia where the outrage of non-native fishers, newly disenfranchised by neo-liberal DFO policy that has seen massive deregulation of fisheries management and privatization of resources, has elicited a certain degree of empathy with their Aboriginal neighbours. These were displaced by a much earlier colonial wave of enclosures that created the 'public' resources the majority society holds so dear.

Many of us are learning that the key to resisting these twin threats is to realize a common cause between the struggles of First Nation and non-Indigenous coastal communities. This solidarity is helping us build more effective resistance against the rampant resource exploitation and privatization that threatens the survival of all cultures. Winning the support of non-native fishers has proven key for Bear River First Nation in its stand of resistance to government attempts to undermine treaty rights in the wake of the Marshall Decision. Building solidarity is not an easy task; through our experience, we are discovering that the work is as much cultural as it is political (Pictou & Bull 2009).

In this chapter, we describe some of the cultural production that is helping build solidarity across communities that have been divided for centuries. We begin with the context of Mi'kmaq struggles for recognition of treaty rights and some of the ways this movement has intersected with non-Indigenous fishers' resistance to neo-liberal

privatization over the past decade. We then describe the participatory methodology used for the production of the documentary film *In the Same Boat?*. Finally, we look at the impacts of this video process within Bear River First Nation and we explore the wider communities of solidarity and resistance the documentary is helping to cultivate.

This chapter is itself a product and embodiment of these alliances. It is written collaboratively by Sherry Pictou, a grassroots community leader and former Chief of Bear River First Nation, and Martha Stiegman, a non-Indigenous video activist and doctoral student at Concordia University who grew up in the Nova Scotian settler community. Our relationship and the political analysis presented here have grown and deepened as a result of the collaborative video-based action-research project we describe in the second half of this chapter.

L'setkuk

L'setkuk, or Bear River First Nation, is a tiny community of 150[19], at the headwaters of Bear River, which flows into the Bay of Fundy, famous for the highest tides in the world and place of tremendous spiritual significance for the Mi'kmaq people. Traditionally, the way of life was migratory: people traveled throughout Kesputwick, the seventh traditional hunting and fishing district of the Mi'kmaq nation, in time with the seasons and cycles of life on which Mi'kmaq survival was so intricately dependent. Living in balance with all the creatures of Kesputwick was a responsibility given by the Creator.

[19] There are roughly 300 registered band members of Bear River First Nation, approximately half of whom live on-reserve.

In the Mi'kmaq language, L'setkuk means 'water that cuts through' or 'flowing along high rocks'. This was a summer fishing camp where families gathered over the warm months after spending the winter dispersed, hunting across the territory. The name L'setkuk describes the trajectory of the river well, as it cuts a swathe through the steep hills. It does not communicate the fact the community was largely cut off from these fishing grounds and confined to a reserve in 1801, that this reserve is now a postage stamp of green in a sea of clear-cut logging, or that most of the fish and animals the community once relied on--bass, haddock, mackerel, salmon, moose, cod--are severely depleted or now extinct.

L'setkuk is also a stone's throw from Port Royal, where first contact with Europeans took place in 1604. The Mi'kmaq would be mostly displaced over the next 150 years, though around Bear River much traditional harvesting practices and lifestyle continued until the 1940s. Colonization is very old in this part of North America. The Covenant Chain of treaties which the Mi'kmaq and their allies negotiated with the British Crown stretches back to the 1600s (Grand Council of MicMacs, Union of Nova Scotia Indians, Native Council of Nova Scotia 1987), with the last of the Peace and Friendship treaties negotiated in 1761. These sacred compacts enshrined a vision of sharing the land as "two states sharing one crown" (Marshall et al., 1989: 82), with the Mi'kmaq adding an eighth point to the star symbolizing the seven traditional districts of the Mi'kmaq nation (Grand Council of Micmacs, Union of Nova Scotia Indians, Native Council of Nova Scotia 1987). As long as the sun shines and rivers flow, the Mi'kmaq would be free to maintain their way of life; in exchange they accepted the newcomers to Mi'kma'kik. These promises were forgotten by the British no sooner than the ink had dried on the

page. And so began the Mi'kmaq peoples' long-standing project of learning how to decipher the doublespeak of the Canadian government, how to maintain Mi'kmaq values and practices while adapting the traditional way of life to non-Mi'kmaq economies, and of negotiating a balance between resisting colonial policies of extinguishment and assimilation, while accommodating and integrating into non-native society in a self-determined way.

Incredibly, though largely invisible to the majority society, the Mi'kmaq have survived despite over 400 relentless years of colonization, despite the outlawing of traditional government under the Indian Act; despite the criminalization of Mi'kmaq language and ceremonies until the early 1950s; despite the residential school at Shubenacadie; despite Nova Scotia's attempts in the 1940s to centralize all the Mi'kmaq in the province on two reserves at Indian Brook and Eskasoni.

Court cases and police clashes provide a public record of Mi'kmaq resistance - from the trail of Grand Chief Syliboy, who was charged in 1928 with illegal hunting, and referred to the 1752 Treaty to defend the Mi'kmaq's right to hunt and trap (*R.v.Syliboy 1928*), to the 1973 and 1981 armed raids by Quebec Provincial Police and DFO wardens on Listiguj fishers defending their way of life (Obomsawin 1984). But the headlines in the non-native media fail to capture the spirit driving these events: the intention of Mi'kmaq people to live--as Kerry Prosper, an elder from Paq'tnkek First Nation would say--according to the laws that are rooted in the land of Mi'kmaki. For the Mi'kmaq, this vision is expressed through Netukulimk, a concept central to Mi'kmaq culture and worldview: that "every living and non-living object was created equally, including

humans. Everything in life is inter-connected. To sustain life in a respectful manner, lives must be lived responsibly and with consideration" (Prosper et al., 2004: 2).

The Marshall Case

This tradition of resistance is the context for the late Donald Marshall Jr.'s act of community-supported civil disobedience in 1993, when he went fishing for K'at (eel), a creature and food of tremendous ceremonial, medicinal, and spiritual significance (Prosper et al., 2004). Marshall was arrested for fishing without a license out of season and for selling his catch. His defense insisted, referring to clauses in the 1760-61 Peace and Friendship Treaties, on the Mi'kmaq's right to earn a living from the land (Coates 2000; Wicken 2002). The Supreme Court agreed, affirming the currency of the Peace and Friendship Treaties and the communal rights recognized within these for the Mi'kmaq, Maliseet, and Passamaquoddy to obtain a moderate livelihood through participation in the commercial fisheries. The ruling also recognized the Crown's prerogative to regulate such rights for the purposes of conservation, though the current regulations were deemed to be in violation of such rights in that they failed to explicitly acknowledge them (*R. v. Marshall*, 1999).

The Marshall decision has been the political touchstone for events in Bear River First Nation over the past decade. As a reaffirmation of the currency and strength of Canada's treaty relationship with the Mi'kmaq, the decision is unparalleled. For Bear River community members, the decision was a deep affirmation of identity, of sacred attachment to the land, of *Netuklimk* and the way of life the treaties were negotiated to protect.

For non-native fishers the ruling was viewed as a threat and sparked a violent backlash across the Maritimes. The biggest headlines were from Esgenoôpetitj/Burnt Church, where shocking images of Royal Canadian Mounted Police (RCMP) officers beating Esgenoôpetitj fishers and DFO ocean cruisers ramming Mi'kmaq fishing boats made international news headlines for two summers (Coates 2000; Obomsawin 2002). But the backlash, which continues as a low-level conflict in many parts of the Maritimes, did not happen in a vacuum. It happened in the context of massive resource privatization and industrial overexploitation in the Atlantic commercial fisheries. In other words, the racism in Nova Scotian coastal communities is systemic: the legacy of colonial policies, and the evolution of capitalist relations and the current neo-liberal restructuring in the fishing industry (Pictou & Bull 2009).

Privatization and Resistance in Non-Native Fishing Community

DFO policy has long favoured the development of a centralized, corporate-owned fleet capable of large-scale harvesting and processing for international trade, and has imposed industrial discipline on small-scale independent producers in order to integrate them into an ever-expanding and deepening capitalist market (Davis 1991; Veltmeyer 1990). This trend intensified in the 1980s after the influential 1982 Kirby Report (Canada, Dept. of Fisheries and Oceans1982) that laid out a neo-liberal vision for fisheries restructuring, aiming to privatize rights to publicly-owned marine resources, downsize the DFO, and de-regulate management. This has been achieved primarily through the imposition of Individual Transferable Quotas (ITQs), a market-based approach to fisheries management intended to create market competition for control of

quota, resulting in the survival of the most ‘efficient’ and ‘competitive’ fishers. As a result, Atlantic Canada has experienced a dramatic consolidation of corporate ownership in the fisheries and the near extinction of the family-owned businesses that characterized the small-boat fisheries for generations (Kerans & Kearney 2006).

In 1995, when DFO threatened to impose ITQs on the small-boat cod fishery, coastal communities across Nova Scotia fought for and won the right to manage fishing quotas for their areas, and formed democratic organizations to coordinate community-based fisheries management at a local level. Around Digby, several organizations were created as part of this impetus, including the Bay of Fundy Marine Resource Center. The mobilization not only prevented a corporate take-over of the sector (though it should be noted that ground-fish populations have collapsed in the past five years because of larger privatization trends in the industry). Through that experience non-native fishers developed an intense distrust of DFO and a critical analysis of its privatization agenda, which would help lay the ground for dialogue with their Mi’kmaq neighbors after the Marshall decision.

Although Bear River First Nation is only a twenty-minute drive from Digby, where thousands had taken to the streets protesting ITQs, this was a history of struggle completely unknown in the Mi’kmaq community, which illustrates just how effective de facto racial segregation is in Nova Scotia. Though the outcome of the Marshall decision in most of the region further entrenched these divisions, around Bear River First Nation it helped foster change.

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> I held that feather in my hand and realized, because I'm Acadian, you know, and my people survived deportation by the British (in 1775) because we were hidden in the forest by the Mi'kmaq. So I held that feather and thought about that history and what my grandparents would want me to do now.
>
> - Non-native fishing leader, interview, 2003

While the media focused on the clashes at Esgenoôpetitj/Burnt Church, in Yarmouth, an hour's drive from Bear River, a potentially more explosive conflict was brewing. The entire Southwest Nova fleet, roughly 700 boats, blockaded the harbor in a show of force to keep Mi'kmaq fishers off the water. Politicians warned non-native fishers that the Mi'kmaq would destroy their livelihoods; reporters stoked the flames by refusing to cover any constructive dialogue. Violence seemed imminent and tension mounted daily. A secret behind-the-scenes meeting was arranged between non-native fishing leaders and the chiefs from the two First Nations in the area in an attempt to defuse the crisis. Frank Meuse Jr., former chief of Bear River, walked into that meeting with an eagle feather and asked that the meeting be conducted as a talking circle[20], that everyone put aside the issues of the moment and speak from the heart about what their grandparents would tell them to say.

That sharing circle not only averted a violent crisis, but was a deeply transformative experience for all involved – an emotional moment of empathy and of deep cross-cultural learning that lay foundations for further dialogue and eventual collaborative actions. It is an incredibly powerful story that has become a teaching tool in

[20] The use of talking circles emerged from an Indigenous democratic practice of uninterrupted speaking in council gatherings. Many Indigenous Peoples also use the talking circle for sharing and healing. Taking turns, the speaker holds a 'token' or sacred object such as an eagle feather, which is passed on to the next participant. While the object denotes the speaker, many objects are considered sacred and thus, provide strength to speak from the heart.

its own right; and several reflections stand out. One has to do with the culture of meetings and the importance of sharing not just our political analysis of the issues we face, but our humanity – our hopes, fears, stories, and cultures. Another relates to the importance of overcoming the systemic racism that has divided us. The conflict resolution achieved in a hotel conference room outside Yarmouth that day happened without interference from government bureaucrats, lawyers, or negotiators. It happened face-to-face between local Chiefs and community leaders from grassroots fishers' associations created by popular mobilizations. These democratic organizations, along with the safe, neutral space provided by the Marine Resource Center provided a space for harvester-to-harvester dialogue outside the pressure of DFO consultations or other official political negotiations. This has proven critical to circumventing government and industry's divide and conquer approach in the wake of the Marshall decision. The relationships established between Bear River First Nation and neighbouring non-Indigenous fishers through that initial conflict mediation have evolved; and we have since joined forces to oppose other forms of privatization in the area, including a proposed mega-rock quarry and the recent privatization of fourteen local beaches which is displacing clam harvesters (Wiber & Bull 2008). It has happened very differently in other parts of the Maritimes.

Government's Response to Marshall: Divide and Conquer

The government response to the Marshall decision was two-fold. Over the long term, the parameters of a treaty-based fishery are being established through formal negotiations involving First Nations, and the federal and provincial governments as part of a larger process to implement the historic Peace and Friendship Treaties in a modern-

day context. In Nova Scotia this is being carried out through the Kwilmu'kw Maw-klusuaqn (KMK) or Mi'kmaq Rights Initiative (MRI). In the short term, DFO negotiated interim access agreements on a band-by-band basis, offering funds to access communal commercial licenses, vessels, gear, and training. In exchange, communities agreed to shelve (Milley & Charles 2001) their right to manage their fisheries for the duration of the agreements, and to fish by DFO regulations. To date, thirty-two of the thirty-four First Nations affected by the Marshall ruling have signed interim access agreements; Bear River First Nation is one of two communities that refuse.

Bear River's reasons for doing so are many and extend far beyond a simple discomfort with accepting Federal jurisdiction over harvesting activities and treaty rights. The capacity and legitimacy of DFO to act as environmental steward is questionable given the collapse of cod stocks and the department's neo-liberal program of fisheries privatization - both of which are decimating coastal communities across the region (Kerans & Kearney 2006). While fishing agreements are supposedly without prejudice to the exercise of treaty rights, Bear River First Nation's concern was that these agreements would lay the foundations for the Aboriginal fishery being negotiated within the MRI, and retroactively be considered consultation and compensation regarding the infringement of treaty rights within those negotiations. Most importantly, Bear River finds it impossible to express our spiritual and cultural values through a fisheries management regime predicated on resource privatization, individual property rights, and hostility to the contributions of Mi'kmaq traditional knowledge.

Critics of DFO's privatization agenda were hoping that the Marshall decision, with its affirmation of treaty rights and the creation of a distinctive Mi'kmaq fishery,

could act as a crack in the dam of DFO's fisheries privatization agenda. The hope was that a progressive coalition of Mi'kmaq and non-native fishers advocating community-based fisheries management could challenge the status quo, and that the management regime would be forced to incorporate a diversity of local regulatory schemes within a broad strategy for conservation (McIntosh & Kearney 2002). What has actually transpired is quite the opposite.

DFO made room for First Nations entrants into the fishing industry by buying licenses from commercial fishers, then making these available to First Nations. These two processes happened separately, behind closed doors. In many instances this further entrenched divisions between First Nations and non-native fishing organizations. It also isolated First Nations from the critical analysis of fisheries privatization that non-native communities had developed through their struggles with DFO. The department's inflexible approach, the rushed pace of negotiations, and First Nations' lack of knowledge about the commercial fishing industry gave DFO effective control over the negotiation agenda. As a result, First Nations in Nova Scotia are given little more than local control over the implementation of DFO policy in the commercial Aboriginal fishery.

In justifying its actions, DFO has referred to *R.v.Marshall* (1999) which acknowledges the department's prerogative to regulate Aboriginal rights in the interest of conservation; but from Bear River's perspective, and that of other commentators, the department's primary motivation has been to maintain control in order to further a program of fisheries privatization (Davis & Jentoft 2001; Wiber & Kennedy 2001).

We have come to a juncture in history in which the very resources that sustain the

circle of life are in danger of collapse. So while the lawyers and bureaucrats negotiate treaty interpretation, Bear River First Nation is engaged in a grassroots process of cross cultural relationship and alliance building. With the colonial history and legacy of racism that plagues us still to this day, why follow such a strategy? On a study tour through British Columbia coastal communities in 2002, a Nuu-chah-nulth Tribal Council Elder put this into perspective, by reminding us that our responsibility is to take care of *all* of life in our traditional territories – including non-natives. All of life is integral to Indigenous Peoples; therefore all of life must find a way to live in balance.

In the Same Boat?

> *It's called displacement; we know all about that. I mean look at the handliners (hook and line fishers) – a whole way of life ended. We can relate to that - we have 500 years of relating to that.*
>
> - Bear River First Nation harvester at a community film screening (2007)

This was the context for the production of a documentary film: inter-cultural dialogue established in relation to fishing; community leaders having had transformative learning experiences but persisting racism and ignorance within the wider non-native community; common ground established in relation to resisting the ravages of neo-liberal privatization and joint political actions undertaken, but limited understanding of the treaties, let alone the inherent rights of the Mi'kmaq as Indigenous Peoples. Within Bear River First Nation, there were varying degrees of ownership of the community's political stand, a political position increasingly marginalized and invisible. Our hope was that *In the Same Boat?* would deepen these emerging dialogues, both within and across communities. In this section we describe the process of making the film, the impacts of

the collaborative methodology used in terms of transformative learning both within Bear River First Nation, and the widening circle of solidarity the film is helping to cultivate.

Participatory video is a method of video production in which the filmmaker engages their 'subjects' in the project of deciding what story they want to tell, how, and to whom. The filmmaker sheds the role of auteur and becomes a trainer and social animator in order to make video *with* not *about* people marginalized by mainstream media. The process can be transformative and empowering as it engages participants to reflect on, analyze, and present their experience as a form of political action – an exercise that entails questioning assumptions about power relations, claiming a voice in public discourse, and gaining skills, confidence and building networks of support that can help lead to other forms of action (Rodriguez, 2001).

Within this practice, there is a wide spectrum of films whose form, point of view, audience, and aesthetic are adapted both to their cultural and political context, and to the goals and priorities of those involved on both sides of the camera. In some cases training and mentorship are integral, with the aesthetic of the final product secondary to the impact of that process within a community organizing initiative. Other films have a very focused message, in relation to a specific campaign goal (for example, see Witness' model of video advocacy http://witness.org).

In other productions, as for *In the Same Boat?*, the filmmaker maintains the role of director, assuming aesthetic and structural decisions for the film; but there is a shared authorship with film participants. This involves a collaborative process to arrive at the right questions to ask, recognition on the part of the filmmaker of participants' agency to decide what parts of their lives they want to share – explicitly (what they want filmed)

and implicitly (how they 'perform' their lives for the camera). This is a slow process fueled by trust. In the case of *In the Same Boat?* it took us roughly two years.

Project Design and Process

What became a two-part documentary began as two parallel short films. *The End of the Line* chronicles the struggle of non-Indigenous hook-and-line fishers against DFO's privatization agenda. *In Defense of our Treaties* explores the vision guiding Bear River's political stand and work developing a fishery grounded in Mi'kmaq values and knowledge. Our hope was that the process of collaborative film production would deepen local discussion about the grounds for solidarity established between both groups, without glossing over their very real differences. We wanted to frame the question of common ground established around fisheries privatization in a way that would give voice to the Mi'kmaq perspective that is still so misunderstood in the non-native community.

Before shooting began, Martha Stiegman spent a month in Bear River First Nation working with harvesters and community leaders to establish the general content for a potential film. We agreed to begin an open-ended process: people could withdraw from the project at any time. They also had veto power over any material they did not want to appear in a final product. We spent a month shooting at the end of that summer, then Martha returned in the spring to screen initial edited sequences.

That first focus group brought together harvesters and community leaders to view the initial footage, offer feedback, discuss the issues it raised, and decide if we should move forward and turn these initial sequences into a film. If, as they say, a documentary film is really a record of the relationship between a filmmaker and the people on camera,

that exchange was the moment our relationship began. The visual, immediate, and accessible quality of video opened a two-way communication that allowed people to participate in the process of their own representation. It also gave participants the chance to give informed consent to move forward with the project and turn these initial sequences into a film. One person remarked: "oh I see where you're coming from now. I guess I won't have to hold my tongue around you anymore!" Through that group discussion and subsequent one-on-one conversations, people gave crucial feedback on the point of view of the film, on material that should be cut, and on missing elements of the story. Together we identified changes and a to-do list for a subsequent round of shooting later that summer. We worked together to establish what Mi'kmaq songs to include and which locations to shoot. Martha returned again that winter to present a full-length rough cut of *In Defense of our Treaties*. There was another series of vetting sessions - first with the people in the film, then with the political leadership of the community. Meanwhile, a parallel process was being carried out with fishers and community leaders in the neighboring non-Indigenous fishing community for *The End of the Line*.

Once both films had met with their respective community's approval, we organized a joint screening at the Bear River First Nation to see if and how these two stories worked together. The screening was open to everyone in Bear River, and invitations were sent to half a dozen non-native fishing leaders in the area. Forty people spent six hours watching the films, discussing the issues the films raised, debating who else should see them, and why. There was a unanimous sense that the two films were really two sides of a single, larger story; and so those two parallel shorts became the two-part film *In the Same Boat?* We now turn to the impacts of the collaborative film

production process within Bear River First Nation before considering how *In the Same Boat?* has helped strengthen the grounds for solidarity.

In Defense of our Treaties

The collaborative production process for *In Defense of our Treaties* opened a series of conversations: individual in-depth interviews, the exercise of choosing how to represent oneself on camera, focus group meetings to respond to that exercise of representation and to discuss the themes explored, as well as larger community screenings. These discussions created a unique reflective space for analysis and dialogue about the community fishery BRFN is working towards - outside of the structure of band meetings or the analytic confines and pressures of responding to political crises or DFO demands. This provided a space to recognize not just the hard work of harvesters, but also the important role they play as traditional knowledge keepers. Weaving together each person's thoughts and experiences in a single coherent narrative strengthened a feeling of unity and purpose within the community. After viewing a rough version of the film, one participant commented: "I don't think we realized just how much on the same page we all were!"

Cumulatively, this legitimized the community's experience, helping to turn a perceived negative into a positive. Fishing had been thought of as something the community was not doing: BRFN was *not* signing an agreement, *not* developing a commercial fishery, *not* getting out on the water and making money like other bands. This was reframed: BRFN *is* making a principled stand, *is* articulating a unique and important vision, *is* adapting Mi'kmaq knowledge and values in a modern-day context.

As one person commented during a community screening: “for us who were in the video, it’s sort of a reflection – you don’t think you’re doing anything. You get so de-motivated and tired of talking about the fisheries…but then you look at this video, and you see you’re actually doing something - you’re taking such a stand!”

It is impossible to quantify the impacts of such a process, but our feeling is that the series of reflective spaces *In Defense* opened up, has deepened the community’s understanding of the political stakes motivating the stand and strengthened harvesters’ commitment to BRFN’s project of building a unique, community-based fishery grounded in Mi’kmaq values and cultural practices. Proof of this lies in harvesters consistent prioritizing of developing low-impact wood lot management projects and fish habitat restoration work over efforts to engage with DFO to develop commercial fishing.

For BRFN, the video became an eagle feather or talking stick, giving the community a voice in a cultural and political environment that has turned a deaf ear to its perspective. It is a witness to the stand to defend our way of life, much as the treaties were for our ancestors who signed them in the eighteenth century. Two hundred years from now, there will be a record of the stand that is being taken here and of the vision guiding it. It is a deep affirmation of Bear River’s struggle to maintain and live-out the remnants of ancestral, traditional Mi’kmaq knowledge we hold so dear - knowledge we believe is critically important for the cultural and ecological survival of all the peoples who live in our traditional territory.

Much has been written about the difficulty of translating Traditional Ecological Knowledge (TEK) into a western framework. From a holistic, Indigenous perspective “knowledge” is not separate from culture, ceremony or story; to label this “traditional”

freezes and reifies authentic Indigenous culture as something existing in the past, that cannot evolve, incorporate elements from other traditions and make relevant contributions to the present (Nadasdy 2003). This has been an on-going challenge for BRFN, whether it involves explaining Bear River's vision to the university researchers with whom we collaborate, negotiating with DFO to whom the community tries to explain its position or find ways to fit its activities into the arbitrary categories of 'food fishing,' 'commercial fishing,' or 'habitat restoration'; or within the community as it wrestles with internal colonization and the difficulty of articulating its values in English as it reclaims the Mi'kmaq language that in BRFN has been all but lost. Yet something about the visual, narrative medium of video has allowed us to capture a glimpse of that vision and to document and share BRFN's Indigenous experience with outside audiences.

Deepening Solidarity through *In the Same Boat?*

> We're telling a story - it's not about the losses, it's about what was done. It's about our grandchildren being able to say 'something happened here and our grandparents did something.' It's not just about who won, its about what we did – this movie is for those who will come later.
>
> *- Non-Indigenous fishing leader at a community film screening (2007)*

We now turn our discussion to the process of dialogue *In the Same Boat?* is contributing to, beginning with that initial screening at the BRFN band hall that brought together community members from BRFN and non-native fishing organizations in the area. The sense in the room after watching the videos was of overwhelming identification. People recognized that a neo-liberal globalization agenda playing out in the region is privatizing the land and the waters, displacing small-scale fishers, decimating the natural resources both communities depend on, and threatening both

cultures' ability to pass knowledge and tradition down from one generation to the next. This non-native fisher's comments sums up the tone of the discussion:

> Watching these two films it becomes apparent our common enemy is our government and DFO. You in Bear River have been fighting with the government, [non-Indigenous fishers have], and we're no further ahead than thirty years ago, and why? DFO wants to keep us separated to give the fisheries to a few companies. Our battles are the same!

A response from a Bear River community leader highlighted the importance of cultivating solidarity, not just around fishing, but also Indigenous rights:

> We have been trying to explain what our treaty, and our title, and our rights are – and trying to get your support, saying that our community values are the same, if not identical to yours… If our rights and our title are recognized, that gives us leverage to sit at that table with government so that the next time they revise the Fisheries Act there's going to be First Nations sitting there, bringing our values. We lost that with Marshall, so we have to go back and build our case again and go back to the courts – but we need your help.

Community spokespeople have since toured *In the Same Boat?* through Mi'kmaq and non-Indigenous communities across the province. While Bear River area screenings presented an opportunity to deepen discussion of the issues related to fishing struggles, regionally, audiences--even those uninvolved in the fisheries--also expressed a sense of identification with the theme of being 'in the same boat.' People expressed a general sense that the neoliberal policy imposed on fisheries is the same agenda playing out in healthcare, education, and government generally. This current wave of neo-liberal enclosures is privatizing the public resources, goods and services the majority society in Canada holds dear. The sense of disenfranchisement and loss of sovereignty that Canadians now face echoes the colonial reality the Mi'kmaq have been dealing with for centuries as a result of the colonial wave of enclosures that swept across Mi'kma'kik 500 years ago.

The series of conversations *In the Same Boat?* opened, both through the

participatory production methodology, and via community screenings, has allowed us to build from this sense of empathy, deepen our political analysis of how the current wave of neo-liberal enclosures impacts First Nations and non-native communities, and make explicit the tacit lessons we've learned through our decade of shared work. Film production has allowed us to approach these questions through the lens of culture and experience, and in so doing, deepen the empathy, political analysis, and solidarity that ground our common political work. That work continues: locally, this is being done through our current struggle against the privatization of beaches and the displacement of clam harvesters in Kesputwick (Wiber & Bull 2008), and through the friendships that have evolved from our decade of collaboration. Nationally and internationally, we participate in learning circles with Indigenous and non-native harvesters and researchers (both within and outside the academy), where through bi-monthly conference calls and annual gatherings we are comparing struggles against privatization, colonial policies, and the intersections between these forces[21]. Finally, our participation in global networks like the World Forum of Fisher Peoples and Via Campesina allow us to link our struggle with peasant and Indigenous movements fighting for recognition of small-scale traditional fishing and land rights internationally.

[21] See http://sites.google.com/site/coastallearningcommunities/home/learning-circles/the-colonial-commons

Chapter Four:

In the Same Boat?
Two neighbouring fishing communities – one Mi'kmaq, the other non-native – both struggling to defend their way of life.

By Martha Stiegman
[see enclosed DVD]

http://inthesameboat.net

(synopsis and credits taken from the press pack created for the film)

SYNOPSIS

In the Same Boat?

two films about fishing / by martha stiegman
(Canada / 2007 / 38;37 minutes)

In the Same Boat? tells the story of two neighboring fishing communities – one Mi'kmaq, the other non-native - both struggling to defend their ways of life. Shot on Canada's east coast, the two-part documentary explores the common ground between Mi'kmaq and non-indigenous fishing communities in a way that honors the very different role fishing plays in both cultures.

Part one, ***The End of the Line***, is a portrait of Terry Farnsworth, the last handliner on the Bay of Fundy. Handlining is the most ecological fishing technology around; for Terry, it is a vocation. But as fish stocks plummet, and most fishing licenses are being bought-up by big companies, will Terry be forced off the water?

In Defense of our Treaties follows members of Bear River First Nation as they stand up to Canada's Department of Fisheries (DFO), who is pressuring them to sell out their treaty rights for a ticket into the commercial fisheries. For the Mi'kmaq, fishing is a right that comes from the Creator, and is protected by the Treaties. In 1999, the Supreme Court recognized those rights, and DFO has since signed agreements with 32 of the 34 First Nations in the region. The deals offer money to buy into the commercial fisheries, as long as the Mi'kmaq fish under DFO's jurisdiction. That's not good enough for Bear River, one of two communities refusing to sign.

Contact: Martha Stiegman. (902) 412 6106.
http://inthesameboat.net | info@inthesameboat.net

Why two Films?

The End of the Line
+ In Defense of our Treaties
= In the Same Boat

The End of the Line and **In Defense of our Treaties** can be viewed separately; but those of us who have been involved in the making of the film - on both sides of the camera - feel the stories have a special power when screened together.

I first met fishers from Southwest Nova Scotia in 2002. The Supreme Court's Marshall Decision had come down about two years before, recognizing the Treaty Rights of the Mi'kmaq's to fish commercially. Tensions on Canada's east coast were running high; but around Bear River First Nation, Mi'kmaq and non-native fishers had begun working together.

I wanted to show the grounds for solidarity between Mi'kmaq and non-native communities, but in a way that honors the very different role fishing plays in both cultures. Two parallel shorts seemed a good way to connect both points of view without glossing over their differences.

For non-native fishers like Terry Farnsworth, saving what's left of the in-shore fisheries means fighting the corporate take-over of their industry. For Bear River First Nation, fisheries privatization is a threat; but resistance is connected to the much older struggle of having the Treaties honored, and the Mi'kmaq's Inherent Rights respected.

The End of the Line and **In Defense of our Treaties** show the determination of each these communities to hold on to their livelihoods and traditions. Once the films were finished, it was obvious to all of us involved that the films were two halves of one larger story told in a way that lets audiences make the connections between two sides that are not so different after all.

Exhibition Format and Credits

Exhibition Format:	MiniDV, DVD, Beta SP
Sound Format:	Stereo
Director, Cinematographer, Editor:	Martha Stiegman
Co-Producers:	Martha Stiegman & Sherry Pictou, Bear River First Nation
Distribution:	V-Tape Distribution, Toronto Canada
Editing Consultants:	Frédéric Moffet, Liz Miller, Gwynne Basen
Audio mix & Color Correction:	Anthu Vu
Addition Sound Editing:	Andrea-Jane Cornell
Story Consultants: For *In Defense of our Treaties*:	Wanda Joudry-Finigan, Bubby Harlow, Robie McEwan, Chief Frank Meuse Jr., Dusty Meuse, Sherry Pictou.
For *The End of the Line:*	Arthur Bull, John Kearney, Terry Farnsworth
Title Design:	Mél Hogan
Music: For *In Defense of our Treaties*:	"The Twilight in Your Eyes" used with permission of Aaron White and Burning Sky "Kwanute, The Mi'kmaq Feast Song" performed by Wanda Joudry- Finigan
For *The End of the Line*:	Music recorded live and performed by Terry Farnsworth and friends
Archival materials used with permission of:	Christian Peacemaker Team in Canada & Esgenoôpetitj / Burnt Church community Mi'kmaq-Maliseet Nations News Nova Scotia Archives and Records Management Nova Scotia Museum The Toronto Star World Forum of Fisher Peoples
Additional footage from *One More Dead Fish:*	Used with the permission of Stefan Forbes & InterPositive Media
Produced in collaboration with:	Bear River First Nation Vidéographe Production, Montréal

Bay of Fundy Marine Resource Centre
Ecology Action Center

Selected Screenings

The 7th International Environmental Film Festival
Kairouan-Tunisia
March 12, 2009

EcoBahia International Festival of Environmental Audiovisual
Salvador, Bahia, Brazil
August 2008

On Common Ground: The Independent Media Arts Alliance Festival & Conference
Alternator Gallery, Vancouver
June 10-15 2008

The Aotearoa Environmental Film Festival
Palmerston North, Aotearoa / New Zealand
May 2008

On Common Ground:
National Media Arts Conference & Festival
The Alternator Gallery for Contemporary Art
Kelowna, BC, Canada
June 10-15 2008

EcoBahia International Festival of Environmental Audiovisual
Salvador, Bahia, Brazil
August 2008

The Anthropology Film Festival, Vancouver
Saturday, March 8th 2008
Sponsored by UBC's Ethnographic Film Unit

In the Same Boat? Maritime Tour
15 screenings in 3 weeks through First Nation and non-native fishing communities
November 2007
A project of Bear River First Nation and the Ecology Action Cente

Planet in Focus International Environmental Film and Video Festival
Toronto, Ontari
Thursday, Oct 25th, 2007

The National Film Board of Canada's *CitizenShift* http://nfb.ca/inthesameboat

Chapter Five:

Recognition by Assimilation:
Mi'kmaq treaty rights, fisheries privatization and community resistance in Nova Scotia.

By Martha Stiegman & Sherry Pictou

Originally published in:
Burnett, K, ed. Aboriginal History: A Reader. Oxford University Press, 2011

Recognition by Assimilation:
Mi'kmaq treaty rights, fisheries privatization and community resistance in Nova Scotia.

The Supreme Court of Canada's 1999 *R.v.Marshall* recognized the treaty rights of the Mi'kmaq and Maliseet to earn a moderate livelihood through commercial fishing. The case was part of generations of struggle on the part of First Nations in Canada's Maritime Provinces for recognition of the 18th century Peace and Friendship Treaties, and the inherent rights they were meant to protect. Initial Mi'kmaq forays onto the water were met with violent backlash from non-native fishers, struggling after the dramatic collapse of North Cod and battle-worn after a decade of mobilization against neo-liberal Fisheries and Oceans Canada (popularly known as DFO) policy aiming to corporatize the fishing industry. While the media focused on clashes in Burnt Church, in other places such as Bear River First Nation (BRFN), discussion between small-scale fishers and First Nations focused on potential collaboration. For those advocating community-based management and ecological sustainability, the Marshall Decision represented hope – that such a political alliance might slow, or reverse the neo-liberal privatization of the fisheries. That window of opportunity quickly slammed shut as DFO negotiated interim agreements on a band-by-band basis integrating First Nation fishers into the corporatized fishing industry under DFO jurisdiction, while a treaty-based fishery is established through long-term negotiations. It's a process that has undermined Aboriginal and treaty rights, solidified DFO control, locked in neo-liberal transformations, and left no room for BRFN's vision of sustainable practices and Mi'kmaq ecological knowledge. A nation-to-nation Mi'kmaq fishery grounded in self-governance and Indigenous principles has yet to manifest. In Nova Scotia, the parameters of such a treaty-based fishery are currently being negotiated

within the Kwilmu'kw Maw-klusuaqn, or Mi'kmaq Rights Initiative (MRI), tripartite negotiations to implement the Peace and Friendship Treaties in a modern context.

The treaty rights affirmed through *R.v.Marshall* and currently debated within the MRI are by no means limited to the fisheries; in fact separating fishing from hunting, and other traditional practices based on a whole way of life is problematic for many Indigenous peoples. However in this chapter we present BRFN's experiences of fisheries negotiations in the post-Marshall environment as an example that raises concerns about the larger MRI process and indeed, Crown / First Nation negotiations in general. Neo-liberal ideology now permeates government policy, as demonstrated by the vicious pace of de-regulation, commodification and privatization in the Atlantic fisheries. In BRFN's traditional territory of Kesputwick, industrial overexploitation and the related species collapse are advancing to such a degree that survival for subsistence harvesters and independent commercial fishers outside neo-liberal market relations (such as capital-intensive harvesting and fish farming), has become near impossible. The post-Marshall process has essentially been streamlined into this policy agenda of fisheries rationalization. This enclosure movement, matched with a negotiation policy framework determined to feed into these neo-liberal transformations, presents Aboriginal leaders with a very limited set of options when sitting down at the negotiation table. It is a political and economic context that places unacceptable limits on the exercise of Indigenous sovereignty.

For Dene political philosopher Glen Coulthard(2007), Canada's once unapologetically assimilationist policy framework has evolved into an innocuous "politics of recognition". Over the last 30 years, recognition – of Canada's treaty

obligations, of Indigenous peoples' inherent rights to self-government - has become the main thrust of the Aboriginal rights movement in Canada. In turn, economic development initiatives, comprehensive land claims and self-government negotiations are resulting in land, money and political power being delegated from Ottawa to First Nations. With Alfred (2005), Coulthard sees such legalist strategies as short sighted. They ease the pain of colonialism and the material conditions it imposes, but do nothing to challenge its generative roots, namely a liberal capitalist economy and colonial state, or the Eurocentric worldview underpinning them. Instead, the current neo-colonial arrangement is crafting Aboriginal citizens who define their identities and rights in relation to the Canadian state, a process Alfred calls "aboriginalism". This does nothing to challenge the subjective, internalized oppression of Indigenous people - an equally significant dynamic in colonial power relations.

Anthropologist Paul Nadasdy (2003) argues the co-management regimes emerging from such land claim negotiations actually deepen state power over the Aboriginal communities they seek to empower - precisely because colonial power dynamics are unacknowledged, and therefore unaddressed. The task of improving western science-based "resource management" by partnering with First Nations and including their "Traditional Ecological Knowledge" is generally viewed as a technical exercise, its political dimensions are obscured. Nadasdy reminds us that all knowledge systems – including western science – derive from, and depend on an epistemologically distinct social and political context for meaning. In other words, "resource management" regimes express a worldview and belong to a political-economic system that is neither universal, nor neutral; the name itself implies a commodification of and domination over

nature that makes no sense from an Indigenous perspective. Aboriginal people internalize this worldview, as they are "empowered" to participate in management.

This cognitive dimension of colonialism is pivotal for Indigenous scholars like Smith (1999), Battiste (2001), and Alfred (1999) who argue that self-determination struggles must target the Enlightenment ideology driving European imperialism, as a means of resisting the institutions that have grown from those roots. This is the "imperial imagination"(Smith 1999) that conceived the world as *terra nullius*, a savage empty wilderness waiting to be claimed by Europe; the ideal of Progress that relegates authentic Indigenous people to history. It is the ideology of Reason, which divides the sacred from the secular. It is the cult of Science that alienates nature from culture and aspires to control the environment; and liberalism's fetishzation of the individual as rational, free and compelled to pursue their self-interest in a capitalist economy founded on the myth of private property. Alfred argues the very heart and soul of Indigenous nations is "a set of values that challenge the homogenzing force of Western liberalism and free-market capitalism; that honor the … deep interconnection between human beings and other elements of creation (1999:60)."

There is a valid debate within the Mi'kmaq community about how to negotiate a balance between "traditional" values and integration into the modern global economy. The Marshall case, with its emphasis on commercial fishing, is certainly part of that debate. With Atleo (2008), we are cautious about the seeping of "neo-liberal dogma" into discussions Aboriginal self-determination; and frustrated by the extent to which the current politics of recognition has steered discussions away from peaceful co-existence for First Nations grounded in Indigenous worldviews. If we take the Aboriginal

commercial fishery opened by *R.v.Marshall* as a litmus test, it seems Mi'kmaq treaty rights are in danger of being equated with assimilation into the globalized economy.

Of fundamental concern to Bear River First Nation are the consequences of such political and economic assimilation in terms of the worldview this model of development imposes, and the intimate, respectful relationship with the land - known in the Mi'kmaq language as Netuklimuk - that it severs. And so in the decade since the Marshall Decision, BRFN's struggle to assert Netuklimuk has a new battlefront, against a process we term treaty right recognition by assimilation. This chapter tells the story of BRFN's decade of struggle, of internal grassroots renewal and engagement with Mi'kmaq traditional values to ground the community's vision, and of the local and international alliances built in order to defend that vision in the face of colonial and neo-liberal assault. It is a story of caution that asks questions about the vulnerability of Indigenous self-determination struggles in the context of neo-liberal transformations, and about the limited potential of negotiations within the current policy framework. It's also a story of hope that points to the potential of alliances between struggles for Indigenous sovereignty and broader resistance to neo-liberalism, and one that demands from all of us in this settler-colonial state that we find ways to uphold our responsibilities and connect these nation-to-nation negotiations with grassroots efforts to live by the treaties.

We begin our chapter with an analysis of DFO's fisheries management regime and its impacts in terms of extending and deepening both state control and capitalist relations in non-native fishing communities – a motion that foreshadows the "aboriginalism" agenda Alfred sees crafting Aboriginal-Canadian citizens of the globalized economy. We then ground our discussion of these dynamics as they are

illustrated in BRFN and the Mi'kmaq People's struggle for self-determination. Taking the Marshall Decision as a watershed moment in that movement, we explore the ways the federal government's response to that ruling has undermined the inherent treaty rights *R.v.Marshall* affirmed. We then present BRFN's strategy of resistance to this recognition by assimilation, and explore the potential of the alliances this First Nation is building with non-Indigenous communities and social movements resisting neo-liberal globalization.

This chapter is a product and an embodiment of these alliances, written collaboratively by Martha Stiegman, a non-Indigenous doctoral student at Concordia University who grew up in the Nova Scotian settler community, and Sherry Pictou, a grassroots community leader and former Chief of Bear River First Nation. The analysis presented here comes out of three decades of Sherry Pictou's community-based political work, as well as the last six years of Martha Stiegman's participatory-action doctoral research.

Fisheries Privatization and Resistance in non-Mi'kmaq communities

Fishing has long defined the culture, local subsistence economy, and the social fabric of coast communities in Atlantic Canada. These attributes have been viewed as a barrier to capitalist development (Hannesson 2004), and dismantled over the last 30 years by DFO policy aimed at integrating small-scale independent producers into an ever-expanding market, and on developing a centralized, corporate-owned fleet capable of large-scale harvesting and processing for international trade (Veltmeyer, 1990). The current policy thrust is consistent with a wider neo-liberal agenda: privatize rights to

crown-owned resources, downsize government services, and de-regulate management. This has been achieved primarily through the imposition of Individual Transferable Quotas (ITQs), intended to create market competition for control of quota, resulting in the survival of the most 'efficient' and 'competitive' fishers. As a result, Atlantic Canada has experienced a dramatic consolidation of corporate ownership in the fisheries and the near extinction of the family-owned businesses that characterized the small-boat fisheries for generations (Kerans & Kearney, 2006).

The Atlantic fisheries have always been integrated into an international capitalist market; this defined the opening phase of the colonial project in eastern Canada. But Davis (1991) describes how the intensification of capitalist relations in the fisheries during the 1980s systematically dehumanized non-native coastal communities, changing fishers' identity, relationship to the water, and to each other. Fishing used to be anchored in a deep attachment to place, a sense of collective destiny and central to a local subsistence economy. Fishing rules and access were things harvesters negotiated with their neighbours. With DFO's professionalization thrust, fishers became businessmen and clients of the state, accountable to the government and their creditors, not their local community. Competition was embedded in a management regime that both presupposes and creates the atomized, self-interested, rational individual at the heart of liberal capitalist theory; and fractured fishers along lines of geography, technology and species, making large-scale collective action difficult.

Tellingly, Davis (1996) describes this shift as one from "livelihood harvesting", made up of small-scale fishers with control over their means of production, anchored in social relations, local knowledge, using ecologically selective harvesting practices, to capital-

intensive “accumulation harvesting” – workers on the water engaging in resource extraction for profit. Coincidence of language aside, it is bitterly ironic that the 1999 Marshall Decision would affirm the treaty right to a “livelihood” fishery, the same sector of the fishery being actively dismantled by the very resource management regime DFO would impose on First Nations.

Harvey (2003; 2006) calls this process driving the expansion and deepening of capitalist relations “accumulation by dispossession”, a movement that dispossess people from the means of production, as it coerces them into labour market relations. Resistance in non-Indigenous communities to this enclosure of the ocean commons has been well documented (Kearney 1998; 2005; Kerans & Kearney 2006). It has also created painful divisions between fishers who’ve accepted the ITQ system, and those who resist privatization and maintain a vision for community-based management. The outrage and sense of betrayal among this former group is so raw, that some non-Indigenous fishers feel a sense of identification with the displacement and loss of sovereignty experienced by their Mi’kmaq neighbours as result of Canadian colonialism. But if the management regime enacting this accumulation by dispossession is offensive to non-native fishers, its even more threatening to the Mi’kmaq people for whom assimilation into the social and ecological relations dictated by this development model, is a modern variant on the colonial relations they have confronted for more than 400 years.

L'setkuk & Mi'kmaq struggles for self-determination

L'setkuk, or Bear River First Nation, is a tiny community of 150[22], at the headwaters of Bear River, which flows into the Bay of Fundy, famous for the highest tides in the world and place of great spiritual significance for the Mi'kmaq people. In the Mi'kmaq language, L'setkuk means 'water that cuts through' or 'flowing along high rocks'. This was a fishing camp where families gathered over the warm months after spending the winter dispersed, hunting across Kesputwick. The name L'setkuk describes the trajectory of the river well, as it cuts a swathe through the steep hills. It does not communicate the fact the community was largely cut off from these fishing grounds and confined to a reserve in 1801, that this reserve is now a postage stamp of green in a sea of clear-cut logging, or that most of the fish and animals the community once relied on – the bass, haddock, mackerel, salmon, moose, cod – are severally depleted or now extinct.

L'setkuk is also a stone's throw from Port Royal, where the French, first colonial powers in Mi'kmaqki, established settlement in 1604. The Mi'kmaq would be largely displaced in the next 150 years, though much of the traditional lifestyle continued until the 1940s. Colonial presence is very old in this part of North America; and the Covenant Chain of treaties that the Mi'kmaq and their Wabenaki allies negotiated with the British Crown stretches back to the 1600s (Grand Council of MicMacs, Union of Nova Scotia Indians, Native Council of Nova Scotia 1987), with the last of the Peace and Friendship treaties negotiated in 1761. Unlike the post-confederation treaties, these agreements contained no land surrender provisions; they enshrined a vision of sharing the land as "two states under one crown" (Marshall et al. 1989), with the Mi'kmaq adding an eighth

[22] There are roughly 300 registered band members of Bear River First Nation, approximately half of whom live on-reserve.

point to the star symbolizing the seven traditional districts of the Mi'kmaq nation (Grand Council of MicMacs, Union of Nova Scotia Indians, Native Council of Nova Scotia 1987). As long as the sun shines and rivers flow, the Mi'kmaq would be free to maintain their way of life; in exchange they accepted the newcomers to Mi'kma'kik. These promises were forgotten by the British no sooner than the ink had dried on the page. And so began the Mi'kmaq peoples' long-standing project of deciphering the doublespeak of the Canadian government, maintaining Mi'kmaq values while adapting to non-Mi'kmaq economies, and of negotiating a balance between resisting colonial assimilation, while integrating into non-Indigenous society in a self-determined way.

Incredibly, though largely invisible to the majority society, the Mi'kmaq have survived despite over 400 relentless years of colonization. Despite the outlawing of traditional government under the Indian Act; despite the criminalization of Mi'kmaq language and ceremonies until the early 1950s; despite the residential school at Shubencadie; despite Nova Scotia's attempts in the 1940s to centralize the Mi'kmaq on two reserves at Indian Brook and Eskasoni.

Court cases and police clashes provide a public record of Mi'kmaq resistance - from the trial of Grand Chief Syliboy, who was charged in 1928 with illegal hunting, and referred to the 1752 Treaty to defend the Mi'kmaq's right to hunt and trap, to the 1973 and 1981 armed raids by Quebec Provincial Police and DFO wardens on the people of Listiguj, defending their traditional fishery (Obomsawin 1984). But news headlines and history books fail to capture the spirit driving these events: the intention of Mi'kmaq People to live - as Kerry Prosper, an elder from Paq'tnkek First Nation would say - according to the laws that are rooted in the land and waters of Mi'kmaki.

The Marshall Case

This tradition of resistance is the context for the late Donald Marshall Jr.'s act of community-supported civil disobedience when he went fishing for K'at (eel), a creature and food of tremendous medicinal and spiritual significance (Prosper et al. 2004). Marshall was arrested for fishing out of season, without a license, and for selling his catch. Marshall held he was asserting his inherent right to fish, rights protected by the treaties his ancestors had negotiated with the Crown.

Since the 1982 *Constitution act of Canada*, those rights are protected through section 35(1), that recognizes and affirms Aboriginal and treaty rights – a constitutional addition First Nations across Canada fought hard to have included. The purpose of section 35(1) is to reconcile pre-existing Aboriginal and treaty rights which derive from Indigenous Peoples' occupation of and responsibility for the land since time immemorial, with the underlying sovereignty and title claims of the Crown established through the doctrine of discovery, the legal fiction of *terra nullius*. Section 35(1) has provided a powerful, though controversial legal tool for First nations. Critics point out Canada acts as defendant, judge and jury; within a framework of colonial state institutions that undermine Indigenous sovereignty, grounded in a liberal ideology hostile to Indigenous cultures. Never the less, judicial activism has proven an important strategy for First Nations in dealing with a federal government reluctant to acknowledge, let alone negotiate Indigenous Peoples' claims (see for example, Marshall 2006).

In the Maritimes, the focus of judicial activism has been on establishing access to natural resources, based on the contemporary relevance of the historic peace and friendship treaties. Until Marshall Jr. went fishing, the Mi'kmaq treaty rights recognized by the Crown included the right to hunt, established through *R.v.Simon* (1985) and the

right to fish for food and ceremonial purposes, established by *R.v.Sparrow* (1990). Sparrow was brought to the Supreme Court by the west coast Musqueam First Nation, and opened an Aboriginal food fishery on all three coasts; this buttressed the favorable food fishery ruling at the Nova Scotia Court of Appeal the Mi'kmaq won in early that year through *R.v.Denny* (Isaac 2001). Though Mi'kmaq access to resources was increasing, the Union of Nova Scotia Indians and the Confederacy of Mainland Mi'kmaq were frustrated with the limited management authority granted by DFO, and the department's unwillingness to discuss Mi'kmaq commercial fishing access. For these organizations, the Marshall Case was a chance to expand access to the commercial fisheries (Wicken 2002). Marshall's defense, referring to clauses in the 1760-61 Peace and Friendship Treaties, was asking the court to affirm the Mi'kmaq's constitutionally protected treaty right to earn a living from the land and waters of Mi'kmaki (Coates 2000; Wicken 2002). The Supreme Court affirmed the currency of the Peace and Friendship Treaties and the collective rights recognized within these for the Mi'kmaq and Maliseet to obtain a "moderate livelihood" through participation in the commercial fisheries. The ruling recognized the Crown's prerogative to regulate such rights for the purposes of conservation, though the current regulations were considered an infringement of those rights since they failed to explicitly acknowledge them (*R.v.Marshall* 1999).

The Hereditary leadership in Esgenoopotitj, or Burnt Church First Nation, rejected the subjection of inherent Mi'kmaq rights within Canadian domestic law, citing the spirit and intent of the treaties as nation-to-nation alliances of peace and friendship – not surrenders of land or sovereignty. They also noted international law binding Canada to respect these treaties. Given DFO's poor conservation record, they judged the

department incompetent, and their move to place Mi'kmaq fishers under federal jurisdiction, illegitimate (Kwegsi 2001; 2002). It was a stand that resonating with Mi'kmaq across the region and Indigenous people across the country, as reflected by the hundreds of supporters who came to stand with Esgenoopititj over the fishing seasons of 2000 and 2001 (Obomsawin 2002). The Esgenoopotitj Fisheries Act (Ward & Augustine 2000), drafted through community consultation, blended science, harvester knowledge and Mi'kmaq traditional teachings. It articulated a vision for broad community involvement and resource sharing, radically different than the model of economic development that characterizes the capital-intensive fishing industry in the non-native society. It won the support of conservation groups, but was met with violent backlash. Shocking images of RCMP officers beating Esgenoopititj fishers and DFO boats ramming Mi'kmaq dories made international news headlines for two consecutive summers.

While the media focused on clashes such as in Burnt Church, around Bear River, as in other instances across the region, fishers were quietly mediating conflict and negotiating the entry of Mi'kmaq fishers onto the water (McIntosh & Kearny 2002). In BRFN, this relationship building approach was motivated by the simple fact that, as one community member put it, "We have to live here year round. Our children go to school in the neighbouring community, and if we can't share the resource there's no point in our even having access"[23]. We have written elsewhere about the remarkable conflict mediation process in Southwest Nova Scotia that diffused the near-violent crisis triggered by the Marshall ruling. After dialogue was initiated, BRFN discovered that neighbouring non-Indigenous fishers shared a similar vision for ecologically sustainable, community-

[23] Field research interview, (2005)

based fishery management grounded in local self-governance - and had developed a rich critique of the neo-liberal fisheries management regime through years of resistance to the regulations dismantling their local fisheries. This analysis would provide BRFN with crucial insight in navigating the post-Marshall environment.

Government response

The government response to *R.v.Marshall* was two-fold. Over the long term, the parameters of a treaty-based commercial fishery are to be established as part of formal negotiations between First Nations, provincial and federal governments to implement the historic Peace and Friendship Treaties in a modern context. In Nova Scotia, this is being carried out through the Mi'kmaq Rights Initiative (MRI), or Kwilmuk Maw-klusuaqn negotiations. This comes after three decades of activism on the part of the Nova Scotia Mi'kmaq to bring governments to the negotiation table to address outstanding treaty, title and rights questions in Mi'kmaki (Marshall 2006). A framework agreement was signed in 2007 to guide the MRI negotiations; a final agreement is anticipated in 2011.

In the short term, DFO negotiated interim fishery access agreements, both as an immediate means of responding to First Nations demands, and to restore calm on the waters. These agreements, negotiated on a band-by-band basis, offered money for communal commercial licenses, vessels, gear and training. Signing bands agreed to "shelve" (Milley & Charles 2001) their right to manage their fisheries for the duration of the agreements, and fish by DFO regulations. This paternalistic response triggered broad resentment within Mi'kmaq communities; the federal government was not so much recognizing treaty rights as pressuring bands to put them aside. There was also

dissatisfaction with the funds and the fishing quotas put on the negotiating table, as well as the rushed pace and DFO's inflexible approach which gave the department effective control of the negotiation agenda.

BRFN's negotiations with the department are a revealing case in point. Here, the Marshall Decision represented a deep affirmation of Mi'kmaq identity. It also triggered a renewed exploration of Netuklimuk, and a grassroots process to envision a treaty-based livelihood fishery anchored in a renewal of this traditional concept. BRFN's fisheries management plan was drafted with support from neighboring fishing groups through a community-organizing process that strengthened self-governance, built relationships with neighboring communities, coordinated BRFN's fishing activities with those of surrounding fishers, and went much farther than DFO regulations in terms of conservation. It was completely rejected by DFO, who insisted on assimilating BRFN's fishing activities into the privatized fisheries management regime. Negotiations around Scallop harvesting are a poignant example. BRFN proposed to share the Scallop dragging license offered by DFO between several harvesters using traditional, ecologically sensitive methods. Instead, DFO insisted the band lease the license and hire a corporate boat using ecologically destructive dragging methods, to fish the quota in the band's name.

Given the sharp contrast between BRFN's vision for a livelihood fishery rooted in Netuklimuk, and the social and ecological relationships imposed through DFO's regulations, BRFN refused to sign an agreement. But faced with high levels of poverty and under fear of violence both from DFO officers and neighbouring non-native fishers, most Chiefs felt they had little choice; 32 of the 34 eligible bands in the Maritimes

entered interim agreements with DFO. Some have been able to develop innovative community-based fisheries; but for the most part, First Nations in Nova Scotia have been given little more than local control over the implementation of DFO policy, and a token advisory role at the local fisheries management level (APCNFC 2009).

It bears repeating that these interim agreements were not meant as a recognition of the rights affirmed through *R.v.Marshall*; in fact they are supposedly without prejudice to the exercise of treaty rights while MRI negotiations are on-going. However, BRFN's concern is these agreements will lay the foundations for the Aboriginal fishery being negotiated within that process, and retroactively be considered consultation and compensation regarding the infringement of treaty rights. We can only hope that the frustrations expressed by the 13 Nova Scotia Chiefs at the federal government's reluctance to address a treaty-based fishery within the MRI (Googoo 2009) does not signal those fears will be confirmed.

A comprehensive evaluation of the Aboriginal commercial fishery this process has put in place has yet to be undertaken. Many chiefs are reluctant to take substantive public positions while MRI negotiations are on-going. However it appears that if the process was successful in easing tensions and helping bands to enter the commercial fisheries, it was equally successful at establishing DFO control over the orientation and management of this Aboriginal fishery. The department uses conservation as justification for this infringement of Aboriginal rights; but for many, the department's primary motivation is retaining control over management in the interest of furthering an agenda of privatization and corporatization of the fishing industry (Davis & Jentoft 2001; Wiber & Kennedy 2001). In the words of one leader in Bear River, "We don't see any evidence of

DFO supporting conservation; we see them supporting big business."[24]

Resisting Privatization: Towards an Anti-Colonial Commons

Though Mi'kmaq and non-Mi'kmaq communities are impacted very differently by this neo-liberal enclosure movement, we feel it's important to frame these experiences of dispossession as moments in the same story, that is, the history of the expansion and intensification of capitalism driven forward by a system of colonial political control. This helps us better understand the forces we are resisting as we struggle to assert the treaties. It also forms a deepening basis of unity between BRFN and allied non-Indigenous groups in Kesputwick: as communities resisting capitalism's insatiable drive to commodify everything, with deep attachment to the natural world their livelihoods depend on and find meaning in, and who are concerned about the ecological destruction that comes with the industrial model of resource extraction the current neo-liberal agenda enforces.

For BRFN, resistance to this neo-liberal intensification of colonialism begins with what Coulthard (2007) would describe as "on-the-ground practices of freedom": trading the politics of recognition for a process of self-recognition, and building a radical alternative to the current neo-colonial arrangement through a critical engagement with traditional culture. Coulthard notes such a "transformational praxis" not only addresses the internalized oppression of Indigenous people; it makes contributions to the wider non-Indigenous society as well. He writes: "our cultures have much to teach the Western world about the establishment of relationships within and between peoples and the natural world that are profoundly non-imperialist"(2007; 456).

[24] Field research interview, (2003).

A key element of BRFN's transformational praxis is working with neighbouring communities to learn how the colonial-capitalist project has long pitted the interests of Mi'kmaq and non-Mi'kmaq communities against one another, and to overcome the de-facto segregation that characterizes much of rural Nova Scotia (Pictou & Bull 2009). In Bear River's traditional territory, the conflict mediation sparked by the Marshall ruling opened a dialogue that has matured over the past decade into cross-cultural alliances resisting the successive waves of privatization bearing down on local communities. The most successful example of this joint action is the united opposition BRFN and non-Mi'kmaq groups mounted again the White Point Quarry project, which forced an environmental assessment process that has delayed if not cancelled the mining project (Pictou 2009). But while that political victory is significant, of equal importance are the relationships and the political analysis that are deepening as a result of these joint actions.

Mi'kmaq scholar Marie Battiste (2001) sees a liberating potential in dialogue between western and Indigenous traditions. Together, we can more accurately diagnose colonialism as we imagine and invoke a new society together. Creating spaces for such cross-cultural pedagogy is an integral part of BRFN's political action; be it through cultural production, learning circles or other forums for reflection and cultural sharing. Broadening this discussion to include Indigenous and subsistence harvesters, and activist researchers (within and outside the academy) from across the country, is helping BRFN identify with the experience of other First Nations' whose way of life is being subverted by comprehensive land claims and modern treaty negotiations feeding into the agenda of accumulation by dispossession. Together we are imaging a post-neoliberal order that resists retrenching the colonial relations embodied in Crown "public" resources.

Meanwhile, privatization of the resource base the treaty relationship is meant to protect continues fast and furious. The most recent example being the de-facto privatization of 14 beaches in the area through 10 year leases signed between the Nova Scotian government and Innovative Fisheries Products Inc., a move that essentially gives that company monopoly control over the clamming sector as it expropriates ancestral clam beds historically used by BRFN (Wiber & Bull 2009). Though there is a legal duty to consult First Nations on these types of activities that threaten to infringe Aboriginal rights, these consultations happen in a top-down manner through the centralized MRI process, sidestepping and undermining the local alliances so crucial to BRFN's strategy to protect Kesputwick (Pictou 2009).

Conclusion

The Marshall Decision was a moment of hope, a window of opportunity in the Mi'kmaq's struggle for self-determination that could have lead to many things. It could have lead – as early declarations from the Atlantic Policy Congress of First Nations Chiefs (APCFNC 2001a; 2001b) demanded - down a road to strengthened self-governance and cultural renewal, increased access to hunting and fishing for traditional harvesters, and a significant voice for the Mi'kmaq nation in shaping the regulations that govern the fisheries. It could have been, as Bear River hoped, the grounds for alliance between Indigenous and non-Indigenous fishing communities, and a fundamental challenge to the privatization of marine resources, and the expansion and intensification of capitalist relations in the fishing industry. But that is not what happened; instead the window of opportunity opened by the Marshall Decision slammed shut. In theory, the on-

going MRI negotiations have the power to pry that window open; but the prevailing neo-liberal climate and limited negotiation policy framework leaves little room for optimism.

So where do communities find a voice, who are unwilling to choose between the limited set of options available through such compromised political negotiations? For BRFN, action at the international level has proven crucial through participation in social movements such as the World Forum of Fisher Peoples (WFFP), an international alliance of small-scale and Indigenous fishers. Within Canada, there is a collective denial of the colonial origins of this settler-state. This "Canadian psychosis"(Green 1995) is buttressed by a constitution that supposedly enshrines Aboriginal and treaty rights, and a policy framework for negotiating modern treaties that cunningly recognizes Aboriginal title and rights deriving from that title, only if negotiating First Nations agree to extinguish them. All this creates a veneer of democracy that makes Canadian colonialism hard to diagnose, let alone confront. But WFFP colleagues in the global south have no problem identifying their resistance to neo-colonialism and globalization with BRFN's experience.

"We were happy – for five minutes." That's how a South African WFFP comrade describes the euphoria in his country at the fall of apartheid. Pilger (2006) tells the story of the economic conditions the once-socialist ANC leadership was pressured to accept in negotiating the end of that system. In exchange for political control of the country, the ANC leadership quickly converted as born-again capitalists, implementing savage neo-liberal reforms that have seen income for blacks down 19%, up 15% for whites in the 15 years since. "Economic apartheid replaced legal apartheid with the same consequences" notes Pilger, "yet is greeted as one of the greatest achievements in world history"

(2006:287). It's an ominous tale for those struggling for Indigenous self-determination in Canada.

Across the global south, overt colonial rule has been replace by neo-colonial arrangements characterized by the now familiar neo-liberal prescription of privatization, trade liberalization, and de-regulation imposed through IMF structural adjustment programs and WTO-enforced free trade agreements. These are the tools of what Harvey (2003; 2006) calls "the 'new' imperialism", designed to extend the borders of global capital's reach. While this agenda of accumulation by dispossession is driven forward through trade agreements in the south; in Canada, a major frontier of capitalist expansion is Indigenous Peoples and their territories.

BRFN's challenges in asserting Netuklimuk demonstrate just how Crown negotiations with First Nations continue Canada's long standing project of assimilating Indigenous nations and extinguishing their rights and title in the interests of creating the certainty needed for capitalist development. We do not mean to understate the tremendous victory the Marshall Decision represents, or how hard the Mi'kmaq have fought to force the Crown to acknowledge, let alone honour the Peace and Friendship Treaties and negotiate a modern interpretation of these nation-to-nation agreements. Rather our intention is to clarify how the dynamics of accumulation by dispossession, matched with a policy framework determined to feed into these neo-liberal transformations, limit negotiations to such an extent that it makes the notion of self-determination in the current context very problematic. This presents a tremendous challenge for First Nation leaders working within established legal channels to find an acceptable compromise. It also points to a need for non-Indigenous social movements

challenging neo-liberal globalization to learn from and ally them selves with Indigenous anti-colonial struggles.

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