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Article abstract

Between Confederation and 1930, the economic life of the Mi'kmaq and Maliseet First Nations of New Brunswick underwent a broad transformation, as hunting, fishing and trapping were progressively supplanted by agriculture, the production of handicrafts and, especially, wage labour. The First Nations of the province experienced this transformation as a dual struggle of survival and resistance. They may have integrated, mostly out of necessity, into the larger provincial economy, but they also persisted in long-established patterns of fish and game harvesting, often in defiance of federal and provincial regulations. Moreover, the maintenance of hunting, fishing, and trapping as important economic activities was underscored by a consistent assertion that Native rights to the forest, fish, and game resources of the province were vested in treaties negotiated with British colonial authorities.

Survival, Resistance, and the Canadian State: The Transformation of New Brunswick's Native Economy, 1867-1930

BILL PARENTEAU and JAMES KENNY

In the 1990s, Nova Scotia and New Brunswick emerged as the venue for some of the most bitter and important political, legal, and social struggles over the long-standing issue of Native rights to natural resources in Canada.¹ These struggles have been highlighted by Supreme Court decisions and disputes – sometimes violent – between the First Nations, non-Native communities, resource processing corporations, and federal fisheries officers. The intensity of these disputes took most Canadians by surprise, for the region, as Ken Coates recently noted, is “generally known for an absence of conflict on First Nations issues.”² While Coates’ assessment of public perception may be correct, that perception is not based on detailed knowledge of the historical experience of First Nations in Nova Scotia and New Brunswick over the past 150 years. Because the historiography of First Nations in the Atlantic Region has been heavily focused on the pre-Confederation period, we know a great deal about early contact and, in particular, about the much-disputed treaties of the eighteenth century.³ By contrast, we know very little about the post-Confederation period. This paper is a preliminary step in addressing this void, specifically regarding the economic experience of Native people in New Brunswick. It suggests that the perception that the region has, until recently, been free from conflict over land and resources is a myth. And it is a dangerous myth because it contributes to a prevailing notion that “Native rights” in Atlantic Canada is an industry, driven by clever lawyers from outside of Mi’kmaq and Maliseet communities. Rather, it is best understood as a process,

1 This paper is drawn from a study entitled “A Preliminary Analysis of Native Use Patterns and Rights to the Forest, Fish and Game Resources of New Brunswick” prepared by the authors in 1998 as part of the Aboriginal Entitlement to Land and Resources in New Brunswick Project administered by the University of New Brunswick Department of Law for the New Brunswick government. The authors would like to thank Dr. William Wicken who provided helpful comments/criticisms on the original report.

2 Ken Coates, *The Marshall Decision and Native Rights* (Montreal and Kingston, 2000), ix.

3 See William Wicken, *Mi’kmaq Treaties on Trial: History, Land and Donald Marshall Junior* (Toronto, 2002) and Stephen Patterson, “Indian-White Relations in Nova Scotia, 1749-61: A Study in Political Interaction,” *Acadiensis* 23/1 (Autumn 1993): 23-59.

rooted in the historical relationship between the First Nations and the federal and provincial governments.

When New Brunswick entered Confederation in 1867, its First Nations peoples were in the midst of a transition that had been on-going for more than a century. They stood between two worlds. The first was the world of their ancestors, of long-established seasonal rhythms in the pursuit of fish and game. The second was the world of wage labour and the cultivation of the soil, which, to many, was still foreign. Over the next half-century, broad economic, political, and environmental movements both pushed and pulled New Brunswick's Native population into this second world. Among the most important of these movements were resource depletion, the opening of employment opportunities in the burgeoning lumber trade, the advent of modern fish and game administration, and the introduction of federal management of the affairs of Native people based on European notions of civilisation. Together these movements set Native people on the path to integration within the larger provincial economy by the early twentieth century.⁴

As elsewhere, New Brunswick's First Nations communities experienced the transformation of their traditional economy as a dual struggle of survival and resistance. Several factors drove Native people into greater participation in the wage labour economy, an intensification of agriculture, and the production of handicrafts. These factors include environmental change, the development of modern wildlife resource-management, and the "civilisation" program of the Dominion Department of Indian Affairs. While hunting, fishing, and trapping played a steadily diminishing role in the Native economy of the province in the half-century after Confederation, the First Nations continued to engage in these older pursuits, in the face of powerful forces discouraging them. Throughout the period from 1867 to 1930, Mi'kmaq and Maliseet people continually thwarted Indian Agents and fish and game wardens by fishing, hunting, and trapping "illegally"; moreover, as far back as the early 1870s, they met attempts to curb these traditional activities with assertions of treaty rights. Changes in

4 Few scholars have examined explicitly the economic history of Atlantic Canada's Mi'kmaq and Maliseet peoples in the post-1867 period. A good overview is Harald E. L. Prins, "Tribal Network and Migrant Labor: Mi'kmaq Indians as Seasonal Workers in Aroostook's Potato Fields, 1870-1980," in *Native Americans and Wage Labor: Ethnohistorical Perspectives*, eds. Alice Littlefield and Martha C. Knack (Norman and London, 1996), 45-65. See also Prins, *The Mi'kmaq: Resistance, Accommodation and Cultural Survival* (Toronto, 1996). Native economic history in Atlantic Canada is touched on in: L.F.S. Upton, *Micmacs and Colonists: Indian-White Relations in the Maritimes, 1713-1867* (Vancouver, 1973); Wilson D. Wallis and Ruth Wallis, *The Micmac Indians of Eastern Canada* (Minneapolis, 1955); Ellice Gonzalez, "An Ethnohistorical Analysis of Micmac Male and Female Economic Roles," *Ethnohistory* 29/2 (1982): 117-29; Charles Martijn, ed., *Les Micmacs et la Mer* (Montreal, 1986); Daniel N. Paul, *We Were Not the Savages: A Micmac Perspective on the Collision of European and Aboriginal Civilization* (Halifax, 1993), chapters 14-16.

the provincial and federal state in the decades after Canadian Confederation – the advent of the Department of Indian Affairs and modern wildlife management regimes – were pivotal in setting the foundation for the political economy of survival and resistance which has persisted into the twenty-first century.⁵

* * * *

As in other regions of Canada, changes in the economic life of New Brunswick's Native people were stimulated by a variety of conditions related to dramatic increases in the non-Native population of the province. Starting with the Loyalist migration of the 1780s, the population of New Brunswick increased exponentially for the next several generations. In the period from 1805 to 1851, for example, the population of the colony grew from less than 25,000 to 193,000.⁶ The most important implication of non-Native population growth was competition for natural resources. As historian L.F.S. Upton has noted in his study of the Mi'kmaq, "the white invasion had an immediate impact on the Native people, for here [Nova Scotia and New Brunswick] as elsewhere both they and the whites favoured the same locations."⁷ Native people, obviously, did not fare well in the competition with settlers. Soon after New Brunswick became a separate colony in 1784, the government began apportioning land and resource rights to accommodate the growing agricultural and commercial interests. The process of dividing the resources of the colony proceeded over the following half century with little consideration of what customary usage or treaty rights the Mi'kmaq and Maliseet may have held. Native interests were protected only occasionally and in a piecemeal fashion, by the setting aside of reserves for Native people who petitioned or otherwise appealed to colonial authorities. Thus, Native people throughout the colony were pushed to the margins of many areas in which they had traditionally hunted, fished, and, to a lesser extent, engaged in agriculture.⁸

5 This paper is a preliminary investigation into a very complex question. It relies heavily on documents generated by various levels of the provincial and federal governments, including the Department of Indian Affairs. Clearly, these documents have limitations. For instance, it is not always clear what methodology the Indian agents or other state officials used in collecting and tabulating statistics. Nor is it clear how rigorously the Indian agents applied that methodology. Moreover, the observations of state officials were made through the lens of cultural bias common to the era. An attempt has been made to read through this bias and to use government documents and statistics cautiously to show general trends only. Native oral histories gleaned from interviews with First Nations' elders would undoubtedly enhance the understanding of economic transformation but this task is beyond the scope of the present study.

6 Graeme Wynn, *Timber Colony: A Historical Geography of Early Nineteenth Century New Brunswick* (Toronto, 1981), 33.

7 L.F.S. Upton, *Micmacs and Colonists: Indian-White Relations in the Maritimes, 1713-1867* (Vancouver, 1973), 98.

8 Upton, *Micmacs and Colonists*; W.S. MacNutt, *New Brunswick: A History, 1784-1867* (Toronto, 1963); Graeme Wynn, *Timber Colony: A Historical Geography of Early Nineteenth Century New Brunswick* (Toronto, 1981).

The development of the colony brought environmental changes that were beginning to further inhibit hunting and gathering activities by the middle of the nineteenth century. Not surprisingly, an increasing population led to the depletion of fish and game resources, as these resources were an important contribution to the pioneer phase of the European settlement economy in the province. Natural habitats were also being permanently altered. The clearing of forest land for farming, and the fires that accompanied the commonly used slash and burn method, destroyed the habitats of game animals. Land clearing and lumbering operations along the colony's rivers also created environmental conditions that were incompatible with migratory fish runs. By 1850, soil erosion, silting, rapid changes in water levels, frequent summer droughts, and a general rise in water temperature were evident on many rivers and streams in the colony, disrupting the optimal balance of spawning conditions necessary for salmon and other migratory fish species. The ever-increasing number of mill dams and indiscriminate disposal of mill refuse further damaged valuable river fisheries.⁹ By the time of Canadian Confederation, the depletion of fish and game resources in the province was an issue of pressing concern to the provincial and federal governments. Both the continuation of habitat degradation and government efforts to manage dwindling fish and game populations would have an impact on patterns of Native resource use in the following decades.

At the time of Confederation, the Native people of New Brunswick were among the poorest in Canada; they were consistently singled out in the early reports of the Indian Branch of the Department of the Secretary of State for the Provinces as needing additional relief moneys. The New Brunswick government was well behind in administering and protecting the reserves of the colony's Native inhabitants. In Upper and Lower Canada, a system of selling the land and timber assets on reserves had been in place for decades by the time of Confederation. Although by no means without problems, this system did result in the accumulation of trust fund accounts (some of which were substantial) for most of the communities in the two colonies. None of the New Brunswick bands had such trust funds. The administration of Native land and timber resources was virtually non-existent, leaving squatters and timber operators to gnaw away at the natural resources of the reserves.¹⁰

9 R. W. Dunfield, *The Atlantic Salmon in the History of North America* (Ottawa, 1985); D. Wilson, "Report on the Salmon Fisheries in Certain Rivers of New Brunswick, 1862," in *Journals of the New Brunswick House of Assembly*, 1863, appendix, pp.1-30; Wynn, *Timber Colony*; Gilbert Allardyce, "The Vexed Question of Sawdust: River Pollution in Nineteenth Century New Brunswick," *Dalhousie Review*, 52 (1972): 171-190; Bill Wicken and John Reid, "An Overview of the 18th Century Treaties Signed Between the Mi'kmaq and Wastukwiuk Peoples and the English Crown, 1725-1928," report submitted to the Land and Economy Royal Commission on Aboriginal Peoples, 1993.

10 See, for example, Canada, *Annual Report of the Department of the Interior*, for the year ending 30 June 1870, pp. 7-8. In the 1840s, the Lieutenant Governor and his unofficial advisor

The first priority of Canadian Indian administration in the post-Confederation period was the settling of Native people into agricultural communities on their reserves. It was part of a "civilisation" program that also included the promotion of Christianity and education. After Confederation, the federal department of Indian Affairs tried a number of strategies to entice Native people to abandon the "wandering life" in favour of farming, including instruction, providing seed and farm implements, and the awarding of prizes.¹¹ Less positive methods were also employed by individual Indian Agents, such as pouring kerosene over seed potatoes so that they would not be eaten by the hungry before planting. As elsewhere, the results of these efforts in New Brunswick were mixed. Judging from the disappointment frequently expressed by the province's Indian Agents, none of the reserves in New Brunswick ever approached the level of agricultural improvement envisioned by the department. Indeed, the enthusiasm of the early post-Confederation years for promoting agriculture had by 1890 given way to resignation based on the belief that interest within the Native communities of the province was limited. Statements such as the "Indians with but few exceptions are not prepared to devote their whole time to farming" were by this time commonplace in the reports of the agents.¹²

On the other hand, all of the reserves in the province containing arable land did grow potatoes for their own consumption. Some of the reserves also produced enough oats, buckwheat, corn, and hay for their own needs. With rare exceptions, all of the agricultural production on the reserves was for subsistence rather than for the market. The most substantial production took place on the Kingsclear, Tobique, and Big Cove reserves, which not surprisingly had the largest populations and the most arable land. The annual reports of the New Brunswick Indian agents strongly suggest that the amount of encouragement and, especially, assistance that reserve residents received from the department was as important as environmental conditions in determining agricultural production in any one year. In 1895, for example, James Farrell, the Indian Agent

on Indian Affairs, Moses Perley, attempted to create an Indian Fund from revenues created from the sale and leasing of Crown lands as the first step in the establishment of a provincial Indian policy. However, legislation passed by the Assembly in 1844 to this effect focused more on the interests of the squatters already on reserve land; an Indian Fund was created but it generated little revenue. Upton, *Micmacs and Colonists*, pp.104-12.

11 See Sarah Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy* (Montreal-Kingston, 1990) and Helen Buckley, *From Wooden Ploughs to Welfare: Why Indian Policy Failed in the Prairie Provinces* (Montreal-Kingston, 1992).

12 *Annual Report of the Department of Indian Affairs* (1892), p. 37. On the place of agriculture in the civilisation program of the Department see Antoinette Duplessis, "The Civilization Program of the Department of Indian Affairs on New Brunswick Reserves, 1867-1932," (M.A. thesis, University of New Brunswick, 1993).

for the Kingsclear Reserve, noted that the instruction and \$218 in seed, ploughing and fertiliser he had provided to the reserve resulted in a substantial increase in production.¹³ Table 1 suggests that between 1876 and the end of the century a relatively stable level of agricultural production was achieved; however, these figures must be used with caution.¹⁴

Table 1

Agricultural Production on Reserves in New Brunswick, 1876-1901

Year	Horses (no.)	Stock* (no.)	Potatoes (bushels)	Other crops (bushels)**	Hay (Tons)	
1875		51	265	4,610	6,199	460
1880		36	208	10,250	4,568	405
1885		32	249	7,610	5,629	256
1890		33	315	6,221	3,958	204
1895		49	251	6,660	5,241	216
1900		68	298	12,087	9,318	379

*Stock includes cows, sheep and pigs and "young stock."

**Other crops mainly oats and buckwheat, but also peas, corn and barley.

Source: *Annual Reports of the Department of Indian Affairs*, 1877, 1882, 1887, 1892, 1897, and 1902.

In the post-1900 period, Indian agents continued to criticise the Natives of the province for their inattention to farming. However, there were signs of increased production between 1900 and the end of the First World War, particularly in the slow increase in the number of beef cattle and pigs kept. Some Natives also began to keep larger numbers of chickens, geese, and ducks during the early decades of the century.¹⁵ Potatoes, oats, and buckwheat continued to be the staple crops and were produced in subsistence quantities on several reserves.

Based on the available evidence, it would seem that the Native people of New Brunswick were not unlike the lowest strata of the non-Native rural population of the province in their attitudes toward farming. Studies of nineteenth-century agriculture in the Maritime provinces have broadly divided the

13 *Annual Report of the Department of Indian Affairs* (1895), pp. 37-8

14 These figures are presented only to give a general picture of the level of agricultural improvement. No indication is given in the reports as to the methodology used by agents, or if it was applied consistently over time. There are, as well, a variety of other unanswered questions, such as at what time of year the data was gathered, which would certainly have an impact on the statistic on livestock. Moreover, it is not certain if the production of white settlers working on shares on the Edmundston Reserve is included in the statistics.

15 See, for example, *Annual Report of the Department of Indian Affairs* (1910), p. 53; (1912), pp. 71, 79; (1913), pp. 57-8.

farming population into three groups. The poorest of these groups did not have the land, capital, and/or family labour to engage in farming as a full-time occupation. For survival they depended upon fishing, participation in forest economy, farm labour, and a range of other labouring activities. Some within this group eventually achieved "independence," but the pattern of occupational pluralism was permanent for a large majority.¹⁶ This was particularly true for the "settlers," who moved on to Crown Land under the province's farm settlement program and were as reluctant as the Native people to devote their whole time to farming. Moreover, they were recipients of the same moral homilies from state administrators on the benefits of farming over other occupations and subject to the same criticisms for their failure to meet expectations.¹⁷ The achievement of the status of an independent yeoman farmer, as idealised by the Department of Indian Affairs, required sufficient quantities of capital, labour, knowledge, and arable land. It was a combination of conditions that occurred infrequently among the Native population of the province; although settling First Nations into stable agricultural communities was a fundamental tenet of Indian administration, the department never made a commitment to providing the land and resources necessary to meet this objective. Thus, a deep commitment to farming made no more sense for Native people than it did for the many other poor people in the province struggling to carve out a meagre existence on sub-standard land in an unfavourable environment.

While New Brunswick's First Nations peoples did not emerge as a class of yeoman farmers, they did become further integrated into the rural labouring class in the decades after Confederation. This transition had been underway throughout the nineteenth century but accelerated after 1867. Although statistics on the participation of Native people in the labour market are not available until 1900, the reports of New Brunswick Indian agents suggest that the trend towards increased wage labour among Native people mirrored the general industrial development taking place in the province in the second half of the nineteenth century. By 1900, Indian agents reported that labouring wages

16 Rusty Bittermann, Robert A. MacKinnon and Graeme Wynn, "Of Inequality and Interdependence in the Nova Scotia Countryside, 1850-1870," *Canadian Historical Review*, LXXIV/1 (March 1993): 1-43; Rusty Bittermann, "Farm Households and Wage Labour in the Northeastern Maritimes in the Early 19th Century," *Labour/LeTravail*, 31 (Spring 1993): 13-46; T.W. Acheson, "New Brunswick Agriculture at the End of the Colonial Era: A Reassessment," in *Farm Factory and Fortune: New Studies in the Economic History of the Maritime Provinces*, ed. Kris Inwood (Fredericton, 1993), 37-60; Beatrice Craig, "Agriculture in a Pioneer Region: The Upper St. John River Valley in the first half of the Nineteenth Century," in *Farm, Factory and Fortune*, pp. 17-36.

17 Bill Parenteau, "Settlement and the Forest Frontier Revisited: Class Politics and the Administration of the New Brunswick Labor Act, 1918-1929," in *Contested Countryside: Rural Workers and Modern Society in Atlantic Canada, 1800-1950*, ed. D. Samson (Fredericton, 1994), 180-224.

accounted for close to one-half of the total income of all Native people in the province.¹⁸ This trend would continue over the next two decades, peaking in 1916 when, in the midst of the Great War, wage labour accounted for nearly seventy percent of the total income of Native people in New Brunswick. In the post-war period, Native participation in the labour market decreased as the regional economy entered a general decline that would last through the 1930s.¹⁹ Nevertheless, by this time, wage labour had become an important component of the survival strategies of New Brunswick's Native population.

The forest industries provided the greatest source of income for Native people in New Brunswick. In common with a large segment of the non-Native rural population of the province, the economic fortunes of Native people were tied to the lumber economy by the late nineteenth-century. Native people participated in every phase of the industry from stump to ship. Because of their experience on the rivers, Native men were well regarded as drivers and raftsmen, high-paying but extremely dangerous occupations. The attraction of these occupations during the spring, Indian agents at times remarked, caused Native men to neglect their farms.²⁰ For reserves located up-river, away from major centres, participation in the lumber industry was mostly restricted to the outdoor operations – cutting, hauling, and driving or rafting. For the people of St. Mary's, Burnt Church, and other reserves located near major lumbering centres, work at the booms, in the lumber mills, and especially loading wood on ships was common.²¹ When, after the Great War, lumbering gave way to pulp and paper as the dominant industry in the provincial forest sector, Native people appear to have made a smooth transition, finding wage employment cutting and delivering pulp.²² However, because few Native people possessed much capital and/or access to credit at this time, they did not play an entrepreneurial role in the province's forest industries. Instead, timber rights on those reserves containing large forest resources (such as Tobique, Burnt Church, and Big Cove) tended to be leased to non-Natives by the Indian agents, in an effort to

18 *Annual Report of the Department of Indian Affairs* (1902), pp. 218-219. Dependence on wage labour was higher among the Maliseet (54%) than among the Mi'kmaq (41%). On the integration of Native people into the wage economy elsewhere in Canada, see, for instance, Rolf Knight, *Indians at Work: An Informal History of Native Labour in British Columbia 1858-1930* (Vancouver, 1996); John Lutz, "After the Fur Trade: The Aboriginal Labouring Class of British Columbia, 1849-1890," *Journal of the Canadian Historical Association* (1992): 69-93.

19 Wage labour as a percentage of total income among the province's Aboriginal population declined to 50% in 1921, increased slightly to 56.5% in 1926, and then dropped off to 47% in 1931. See *Annual Reports of the Department of Indian Affairs*, 1913, 1917, 1922, 1927, and 1932.

20 *Annual Report of the Department of Indian Affairs* (1884), p. 31.

21 These observations are based on a close reading of the annual reports of New Brunswick Indian Agents for the years 1875-1900.

22 Bill Parenteau, "The Woods Transformed: The Emergence of the Pulp and Paper Industry in New Brunswick, 1918-1931," *Acadiensis*, XXII/1 (Autumn 1992): 5-43.

enhance the band trust funds and prevent the trespass cutting which had been a problem since before Confederation.²³

A growing sport-tourism industry also provided a number of wage employment opportunities for the province's Native people in the late nineteenth-century. Mi'kmaq and Maliseet men had acted as guides to sporting parties in New Brunswick at least as far back as the late eighteenth-century. By the 1880s, men from virtually every reserve worked as guides and it had become a primary means of income in the summer and autumn months for the favourably situated St. Mary's, Tobique, and Pabineau reserves. Native guides were valued for their knowledge of the habits of animals and ability to navigate the forests and streams of the province. For some nineteenth-century sportsmen, Native guides also performed a cultural function, serving as a symbol of man's primitive past and thus lending a veneer of authenticity to the wilderness experience. Indian agents were ambivalent about the participation of Native men in guiding. Some viewed guiding as an extension of the "wandering" life – a barrier to becoming civilised. More commonly, Indian agents were in favour of any activity that reduced the need for relief expenditures; compared with other wage labour occupations, the pay for guiding was generally quite good. Fish and game officials fully supported Native participation in the guiding industry, as it placed the segment of the reserve population most likely to engage in poaching under the supervision of sportsmen.²⁴ There are some indications that the opportunities for Native men to guide sportsmen were diminished after 1900. Indian agents noted guiding activities less and less frequently in their annual reports during the period from 1900 to 1914. The professionalisation and licensing of guides after 1900 may have acted to push Native people out of the profession.²⁵

Beginning in the 1920s, many New Brunswick Native people also travelled to Maine's Aroostook County to harvest potatoes on a seasonal basis. The majority of these migrant labourers were Mi'kmaq, although Maliseets and other regional Aboriginal groups also participated. This cross-border movement of labour was facilitated by a 1927 American court ruling that "'Canadian Indians' could be constituted domestic labor for the purpose of agriculture."²⁶

23 This was particularly the case for the Tobique reserve. See *Annual Report of the Department of the Interior* (1875), pp. 6-7; *Report of the Deputy Superintendent of Indian Affairs for the year ending 31 December 1876*, p. 31.

24 Bill Parenteau, "'Care, Control and Supervision': Native People in the Canadian Atlantic Salmon Fishery, 1867-1900," *Canadian Historical Review*, 79/1 (March 1998): 1-35; Patricia Jasen, "Who's the Boss?: Native Guides and White Tourists in the Canadian Wilderness, 1850-1914," unpublished paper, presented at the Annual Meeting of the Canadian Historical Association, Ottawa, June, 1993; Patricia Jasen, *Wild Things: Nature, Culture and Tourism in Ontario, 1790-1914* (Toronto, 1995).

25 *Annual Report of the New Brunswick Crown Land Department* (1901), p. 91, (1903), pp. 133-4.

26 Prins, "Tribal Network and Migrant Labor," pp. 50-1.

Potato picking in Maine would remain an important component of the economic life of New Brunswick and Nova Scotian Native people until the 1960s, when the use of mechanical harvesters became widespread. Harald Prins notes that because these relatively well-paying seasonal labour opportunities were located close to Mi'kmaq and Maliseet reserves, the Native people involved maintained "a vital linkage with their tribal communities." Moreover, the additional income also allowed the reserves to survive economically and, perhaps, culturally.²⁷

Wage labour was not the only option for Native people in the developing capitalist economy. Some Mi'kmaq and Maliseet were small-scale entrepreneurs engaged in the production and sale of handicrafts for a largely non-Native market. This activity originated in the late 1700s but expanded significantly in the last two decades of the nineteenth century, in part because of the development of the tourist trade in Maine and New Brunswick.²⁸ One of the manifestations of the anti-modern impulse sweeping urban North America during this era was a fascination with all facets of Native life. Tourists who visited the "watering places" of Maine and New Brunswick were interested in going home with a little piece of Native culture and purchased considerable quantities of traditional and perhaps not-so-traditional handicrafts. New Brunswick Indian agents commented regularly on the importance to the reserve economies of the production of handicrafts such as barrel staves, splint baskets, axe handles, canoes, snowshoes, moccasins, and bead and quill work. Agency reports and departmental statistics suggest that by the turn of the century, the sale of handicrafts and artisanal goods accounted for between fifteen and twenty percent of total Native income in the province; some reserves earned as much as \$3,000 per year.²⁹ However, beginning in 1911 this industry declined in importance, perhaps because of competition from manufactured goods. Indeed, as early as 1900, factory-produced shoes were having a negative impact on the moccasin trade. The one exception to this decline was the production of splint baskets, sales of which remained strong well into the 1920s.³⁰

The Maliseet of the province were much more involved than their Mi'kmaq neighbours in the manufacture and sale of handicrafts and artisanal

27 Prins, "Tribal Network and Migrant Labor," pp. 55, 64. Prins also argues that the migrant labour experience "contributed to the process of Mi'kmaq nation formation," as it facilitated "interaction among tribespeople hailing from remote and widely dispersed communities." (p. 65).

28 Bunny McBride, *Our Lives in Our Hands: Micmac Indian Basketmakers* (Halifax, 1990), 11.

29 *Annual Report of the Department of Indian Affairs*, (1893), p. 35; (1895), p. 38; (1902), pp. 218-9.

30 McBride, *Our Lives in Our Hands*, pp. 20-1. On the decline of traditional arts, see Wilson and Ruth Wallis, "Culture Loss and Culture Change among the Micmac of the Canadian Maritime Provinces," in *The Native Peoples of Atlantic Canada: A Reader in Regional Ethnic Relations*, ed. Harold F. McGee (Ottawa, 1974), 138-41.

goods. It appears to have been the most important economic activity for the reserves at St. Mary's and Woodstock and was also important to the larger Kingsclear and Tobique reserves. Until the early 1890s, when replaced by the "shoe pack," the Maliseet at St. Mary's were involved in supplying the lumber camps of the St. John River valley with moccasins. They also sold at least fifteen canoes per year, for approximately \$20 each. Residents of the St. Mary's and Woodstock reserves travelled to the tourist venues of Maine and New Brunswick each year to sell their wares, living in makeshift shanties for the season.³¹ In other instances, Native people marketed their merchandise locally or through middlemen, who bought in bulk and resold the goods at the same tourist venues. Indian agents viewed the trade as a mixed blessing. Most saw it as a means of eliminating the need for relief, especially for the aged. However, there was some concern that it also perpetuated the wandering habits of the Native people, which the agents were so anxious to amend.

One of the most distinguishing features of the Native economy in the decades after Confederation was the slow but steady decline in hunting, fishing, and trapping. There were both continuities which stretched back into the eighteenth century and new state initiatives which served to restrict the harvesting activities of First Nations in New Brunswick. Increased competition for many fish and game species as well as habitat degradation, both products of the settlement process, continued to reduce the ability of Native families to sustain themselves by hunting and fishing. The Maliseet hunters interviewed by noted American anthropologist Frank Speck in the 1910s suggested that the deer and caribou in their traditional hunting territories had been "reduced to the disappearing point" by the end of the 1870s, by settlers who were "bent on wholesale destruction of the game animals and fur-bearers".³² Mi'kmaq hunters interviewed by Wilson D. Wallis noted a similar decline in the older economy but were less precise in dating the trend.³³ The problems related to carrying on traditional harvesting activities were well stated by the Indian Agent for the Maliseet in New Brunswick in 1876. "Hunting," Superintendent William Fisher noted, "is not carried on to the extent that it was formerly, owing to the great distance of travel, and occupation of the hunting grounds by so many other people in common with themselves. They employ themselves partially in catching muskrats on the rivers and streams during the proper season for that purpose." He continued, "Fishing is carried on in a small way, especially the catching of salmon to a limited extent; in consequence of the operation of the Fishery Laws, they merely obtaining a small amount for their

31 *Annual Report of the Department of Indian Affairs* (1891), p. 24; (1892), p. 35.

32 Frank G. Speck and Wendell S. Hadlock, "A Report on the Boundaries and Hunting Areas of the Maliseet Indian of New Brunswick," *American Anthropologist* (1946): 360-1.

33 Wilson D. Wallis and Ruth Wallis, *The Micmac Indians of Eastern Canada* (Minneapolis, 1955), 25.

own use, and occasionally being enabled to sell a few in their own immediate neighborhood and market, if there is one convenient.”³⁴ As Superintendent Fisher suggested, state regulation of natural resources was also becoming a factor in limiting the hunting, fishing, and trapping activities of New Brunswick’s Native population within a decade after Confederation.

Throughout North America in the last quarter of the nineteenth century, governments began to enact stricter fish and game regulations and make greater efforts at enforcement. As historians of the conservation movement have noted, these new regulatory regimes were intimately related to a growing interest in hunting and angling among middle- and upper-class urbanites. Between 1860 and 1900, the number of men and women who hunted and fished as a leisure activity grew dramatically each decade. Increased participation in field sports was related to the general expansion of leisure time in North America and was fuelled by the “anti-modernism” of the period. Hunting and angling, along with other outdoor activities, came to be romanticised as a means of recapturing the primitive essence of mankind – of escaping the increasingly onerous environmental conditions in cities and the complex societal divisions that accompanied the process of modern industrial development.³⁵

Accompanying the growing interest in field sports in late nineteenth-century North America was the adoption of aristocratic notions of hunting and fishing, which were embedded in the so-called “code of the sportsman.” The code was a set of rules of etiquette for capturing fish and game. Its main focus was on promoting “sporting” methods of hunting and fishing, and the observance of well-defined seasons for pursuing fish and game species. To cite but one example, advocates of the code insisted that salmon be taken only by fly fishing and that the season be limited to the period from the start of the spring run until the beginning of spawning in late summer. Ultimately, the objective of this code was to conserve stocks of fish and game which were diminishing rapidly in the more urbanised areas of the eastern states and provinces.³⁶

Promoted by an expanding sporting tourism industry, the “code” exerted a profound influence on the development of modern fish and game administration in North America. Sporting interests were successful in guiding state

34 *Annual Report of the Department of the Interior* (1875), p. 50.

35 Ian McKay, *The Quest of the Folk: Antimodernism and Cultural Selection in Twentieth Century Nova Scotia* (Montreal and Kingston, 1994), xv. The classic statements on anti-modernism and the cult of wilderness in the late nineteenth century are T. Jackson Lears, *No Place of Grace: Antimodernism and the Transformation of American Culture, 1880-1920* (New York, 1981) and Roderick Nash, “The Wilderness Cult,” in his *Wilderness and the American Mind*, 3rd edition (New Haven, 1982).

36 John Reiger, *American Sportsmen and the Origins of Conservation* (New York, 1977); James A. Tober, *Who Owns the Wildlife?: The Political Economy of Conservation in Nineteenth Century America* (Westport, CT, 1981); Richard Judd, *Common Lands, Common People: Grass Roots Conservation in New England* (Cambridge, MA, 1998).

resource-management initiatives toward promoting recreational over commercial and subsistence forms of exploitation. They also made financial commitments to conservation measures at a time when state funding for resource management was not a priority. Most importantly, salmon clubs employed dozens of private fishery-wardens each year, providing an immense boost to federal and provincial enforcement programs in New Brunswick. The regulatory regime that grew out of the "code of the sportsman" targeted most of the traditional hunting and fishing methods employed by Native people.³⁷

Beyond the intimate relationship between elite sporting clubs and state administrators was the fact that sporting tourism blossomed into an important industry in the late nineteenth-century. With the development of convenient rail and steam transportation and tourist accommodations, New Brunswick developed an excellent reputation as a "sportsmen's paradise."³⁸ There were great economic incentives to maintaining the population levels of desired species for the benefit of tourists, which certainly figured in the development of fish and game law. New Brunswick Commissioner of Fisheries J. Henry Phair captured the impact that tourism had on the resource development ideology within provincial governments in his 1889 annual report, when he compared the angling of tourists with the net fishing of Native and white residents. "I think I am within bounds," he suggested, "when I say that one salmon killed by an angler distributes more money in the province than 20 taken in a net."³⁹ By this date, significant restrictions had been placed on the various forms of net fishing.

Even before Confederation, New Brunswick and the other British North American colonies had begun to enact conservation-oriented fish and game laws. In 1851, the province passed a fisheries act that included a ban on spear- ing and netting salmon on their spawning beds, both of which were common Native practices regarded as "villainous" by the sportsmen. The act also provided for the issuance of exclusive angling leases on waters running through ungranted Crown Land. In 1865, the colony established a closed season for moose and the following year enacted a bag limit. Interestingly, both acts provided partial exemptions for Native people for subsistence purposes, a recognition, perhaps, of traditional use rights and/or the importance of these

37 For an excellent discussion of the relationship between sportsmen and state administrators in New England see Richard Judd, *Common Lands, Common People*. On the Atlantic Salmon fishery see, Bill Parenteau, "Creating a Sportsman's Paradise: Salmon Fishing Regulation and Social Conflict in New Brunswick, 1867-1900," paper presented at the biennial conference of the American Society for Environmental History, Las Vegas, Nevada, March 1995.

38 See, for example, Charles G.D. Roberts, *The Canadian Guide Book: The Tourist's and Sportsman's Guide to Eastern Canada and Newfoundland* (New York, 1891).

39 *Annual Report of the New Brunswick Department of Crown Lands* (1889), p. 87.

resources to the Native community.⁴⁰ In any event, in the absence of community support or any enforcement apparatus, these and other earlier attempts at regulation made little impact on the harvesting activities of either Native or non-Native residents.

The decades after Confederation brought wholesale changes to fish and game regulations and the development of more comprehensive efforts at enforcement. When the Dominion government assumed control of the fisheries at Confederation, a comprehensive set of fishing regulations was enacted and supported by hundreds of wardens and guardians.⁴¹ Within a decade of Confederation, restrictive game laws were also being enacted at the provincial level. In 1875, New Brunswick introduced a closed season for mink, otter, beaver, sable, fishers, partridge, snipe, woodcock, deer, and caribou. The following year, an "Act to prevent the destruction of water fowl" was passed, which rendered illegal the netting of ducks and geese in tidal waters, a method used by Native people. A more detailed "Act for the protection of certain birds and animals" was enacted in 1879, which, among other provisions, provided for the appointment of game wardens and banned such common practices as hunting large game animals with dogs ("dogging") and the use of lights to hunt waterfowl at night. The movement toward a modern game management regime in New Brunswick culminated in 1893 with an "Act to consolidate and amend several acts for the protection of certain birds and animals," a seventy-page set of regulations covering every species of animal in New Brunswick with commercial, recreational, or nutritional value.⁴² Refinements to the game laws and greater commitments to their enforcement continued into the twentieth century.

The cultural image of Native people and the fact that most reserves were located on rivers and near hunting grounds made New Brunswick's First Nations an obvious target of the new wildlife management regime. This was the case, in particular, with the Dominion fisheries department, which spent a disproportionate amount of time attempting to curb the fishing habits of First Nations in the 1870s. Following the practices of colonial legislation, the federal "Act for the Regulation of Fishing and Protection of the Fisheries," enacted in 1868, allowed the Minister of Fisheries, in certain cases, to exempt Native

40 On the "abuse" of salmon fishing privileges by Native people, see D. Wilson, "Report on the Salmon Fisheries in Certain Rivers of New Brunswick, 1862," in *Journals of the House of Assembly* (1863), appendix, pp. 1-30.

41 On the impact of this new regulatory and administrative regime see Parenteau, "Creating a Sportsman's Paradise."

42 *New Brunswick Acts* (1875), Chapter 27, "An Act for the Protection of Certain Birds and Animals," pp. 188-9; (1876), Chapter 9, "An Act to Prevent the Destruction of Waterfowl," pp. 20-1; (1879), Chapter 45, "An Act for the Protection of Certain Birds and Animals," pp. 127-33; (1893), Chapter 13, "An Act to Consolidate and Amend Several Acts for the Protection of Certain Birds and Animals," pp. 92-162.

people from the prohibition against spearing, a traditional Native method of fishing.⁴³ In the first years after the act was passed, the department experimented with allowing Native people on a few rivers to spear salmon in specifically defined locations for a few weeks during the salmon run. On the Restigouche River, this arrangement soon proved to be unsatisfactory to the fishery wardens, as the Mi'kmaq at Mission Point ignored the limitations on the time, duration, and boundaries of their "privilege"; moreover, the river became a meeting place for other Mi'kmaq located on rivers where spearing was not allowed.⁴⁴ The experience on the Restigouche and other rivers prompted the department to end the experiment with spearing privileges and, in general, hardened the attitude of fishery officers toward Native fishing. Indeed, the presence of armed sailors from a Department of Marine and Fisheries patrol boat was deemed necessary to prompt the Mission Point Mi'kmaq to sign an agreement to cease the practice of spearing salmon. In the early 1870s, the Department of Fisheries also began granting net fishing licenses to Native groups who were deemed worthy of compensation for the loss of their fishing rights. In practice, department officials much preferred that the Natives hire a white settler to fish the net on shares or under a lease, as it was felt that the Native people could not be trusted to maintain the nets from year to year.⁴⁵

The campaign to curb Native fishing in the 1870s had a deleterious effect on First Nations, and the Department of Indian Affairs appealed to the Department of Marine and Fisheries for significant alterations to fisheries policy. In July 1878, the Deputy Superintendent of Indian Affairs, Lawrence Vankoughnet, complained to the Minister of Fisheries that the new regulations interfered with "the Indians of Ontario, the Lower St. Lawrence in the province of Quebec and the Maritime Provinces in obtaining (as they formerly did) an important part of their subsistence from the waters in which from time immemorial they had been in the habit of fishing unrestricted by any regulations." Noting that, in some instances, the regulations contradicted treaties guaranteeing "unrestricted rights of fishing" and that the Department of Indian Affairs had insufficient funds to "compensate them for their deprivation," Vankoughnet asked his counterpart to give "serious consideration" to "important modifications" of the application of regulations to Native people.⁴⁶

43 Canada, *Statutes of Canada*, 31 Victoria (1868), Ch. 60, p. 183.

44 National Archives of Canada (NAC), Records of the Department of Marine and Fisheries, RG 23, vol. 1978, file 5967, John Mowat to Minister of Marine and Fisheries, 4 March 1876.

45 Parenteau, "'Care, Control and Supervision'"; NAC, Records of the Department of Marine and Fisheries, RG 23, vol. 298, file 2331, R. Mitchell to L. H. Davis, Minister of Marine and Fisheries, "Report on Burnt Church Indian Fishing," 31 May 1897.

46 NAC, Records of the Department of Indian Affairs, RG 10, vol. 2064, file 10,099, L. Vankoughnet, Deputy Superintendent of Indian Affairs to Minister of Marine and Fisheries, 18 July 1878.

Deputy Minister of Fisheries W.F. Whitcher was unmoved, contending that many Mi'kmaq were "better off in every moral and material respect than ever before in their lives." He continued, "Any proposal, therefore, to restore the illegal abuses which Indians seem to claim some hereditary right to indulge in" would require stronger justification and parliamentary approval.⁴⁷ Nevertheless, on occasion the Department of Marine and Fisheries made concessions (through the relaxation of closed seasons and special permits) to meet the "requirements of urgent cases" brought to their attention by their colleagues in Indian Affairs.⁴⁸

The misplaced paternalism exhibited in encouraging First Nations to lease their net fishing stations to white settlers was evident also in the practice of arranging for the leasing of waterfront property on reserves to sport-fishing interests. In the 1890s, after obtaining a legal opinion confirming the department's authority, Indian Affairs officials arranged the surrender of waterfront lots on the Pabineau, Big Hole, and Tobique reserves.⁴⁹ Officials believed that the people on these reserves would benefit both from the yearly rental fees and the guiding opportunities to be gained by attracting salmon anglers. Little is known about the events leading up to these surrenders, but it appears that the enticement of financial rewards played a part in the decisions of the Native people on each of the reserves; indeed, the value of fishing leases and property fronting salmon pools increased substantially in the 1890s. For the people of the Tobique reserve, a second reason may have been that their rights were effectively limited to fly fishing in open season; the reserve was located on non-tidal waters where net fishing was prohibited.⁵⁰ There was, however, at least one case of Native opposition to the "leasing of the fishing privilege" at Pabineau. In 1891, a group of Mi'kmaq opposed the surrender on the grounds that "they are not employed as guides or otherwise can fish for themselves and if the pool was leased they would be prohibited".⁵¹ The issue was temporarily put off until a lease was finally executed in 1896.

47 NAC, RG 10, vol. 2064, file 10,099?, W.F. Whitcher, Deputy Minister of Marine and Fisheries, to L.Vankoughnet, 13 September 1878.

48 NAC, RG 10, vol. 3909, file 107,297-3, E.E. Prince, Deputy Minister of Marine and Fisheries, "Memo. for the Minister, re: Fishing Privileges of the Indians," 5 April 1898.

49 NAC, RG 10, vol. 2325, file 66,357, pt. 2, Charles Seargeant to Lawrence Vankoughnet, Deputy Superintendent of Indian Affairs, 11 April 1890 and 2 May 1891; A. Power, Deputy Minister of Justice, to Lawrence Vankoughnet, 27 August 1890; Vankoughnet to Seargeant, 3 September 1890; Canada, *Indian Treaties and Surrenders in Canada, 1880-1902*, vol. III (Ottawa, 1912), pp. 73-4; 185-6.

50 NAC, RG 10, vol. 2500, file 103,557, James Farrell, Indian Agent, to Assistant Superintendent of Indian Affairs, 28 June 1893; William Smith, Deputy Minister of Fisheries, to Lawrence Vankoughnet, 10 July 1893.

51 NAC, RG 10, vol. 2325, file 66,357, pt. 2, Charles Seargeant to Lawrence Vankoughnet, 27 June 1891.

There is substantial evidence that – like the non-Native rural poor – New Brunswick’s Mi’kmaq and Maliseet population engaged in illegal harvesting activities throughout the late nineteenth-century. The statement of a fisheries officer in 1898 that the Burnt Church residents “observe the close season when they can not make sale of their fish, they do not believe in a close season for the Indians,” was indicative of less-than-full submission by Native people to the Dominion regulations in the decades after Confederation.⁵² There were four common methods of illegal fishing practised in New Brunswick: spearing, stake netting, drift netting, and dynamiting. Native people engaged in the first three, but did not have the resources to afford dynamite. The difficulty in making an estimate on the level of Native poaching lies in the fact that only a very tiny percentage of all illegal fishing acts were punished. For example, fishery officers confiscated dozens of stake nets for every owner who was fined. Similarly, torches, offal, and other refuse from night spearing operations was regularly found, but prosecutions were relatively few.

For all of the factors working against the continuation of traditional pursuits, fishing, trapping, and hunting remained an important component of the Native economy in New Brunswick into the twentieth century. Fishing, in particular, remained the primary economic activity for Natives who were favourably situated, most notably those at the Eel River, Burnt Church, Big Cove, Red Bank, and Indian Island reserves. In addition, most of the Native population engaged in some hunting and trapping, with the Maliseet tending to depend more upon trapping than their Mi’kmaq neighbours. Fishing, hunting, and trapping were not recorded by the Department of Indian Affairs as distinct categories until 1900, but the figures for the first decade of the new century reveal the extent to which they persisted. In 1901, the department placed the total “income” (including consumption and sale) of the fishing and hunting activities of Native people in New Brunswick at \$16,170, or almost nineteen percent of total income generated.⁵³ However, the importance of fishing, hunting, and trapping was undoubtedly greater. It is very likely that the developing resource management regime created disincentives for Native people to fully report the extent of their catch. In general, the introduction of closed seasons and bag limits for most species of game meant that Native hunters who reported large kills were open to scrutiny. In 1900, specifically, there was a province-wide ban on the killing of beaver and partridge, and a prohibition on hunting moose and caribou in some counties. It is probable that Native hunters were

52 NAC, RG 10, vol. 3908, file 107,297-1, J.W. Anderson to W.D. Carter, Secretary, Department of Indian Affairs, 18 January 1898. Much less is known about game administration in New Brunswick for 1867-1900, mostly because the records of the Department of Crown Lands have not survived from the pre-First World War period.

53 Fishing accounted for \$7,626 and hunting for \$6,050 of the total. *Annual Report of the Department of Indian Affairs* (1901), pp. 218-219.

reluctant to report the killing of these species. In any event, the total income from fishing, hunting, and trapping continued to exceed the total value of farm products (\$10,941) sold and consumed by Native people in the province at the turn of the century.

This state of affairs would change dramatically in the first two decades of the twentieth century. Departmental statistics suggest a precipitous decline in hunting and trapping by New Brunswick's Native population between 1901 and 1921 as income generated by these pursuits declined from \$7,400 to \$2,450.⁵⁴ The number of Native men hunting, trapping, and fishing in the decade from 1906 to 1916 shows a similar trend. Between 1906 and 1911 the number engaged in these occupations declined from 234 to 194; by 1916 the total number of Native men fishing, hunting, and trapping had fallen to 153, a decline over the decade of thirty-five percent.⁵⁵ As the income from fishing did not fall nearly as far as the income from hunting and trapping, it may be assumed that Native men abandoned the latter two occupations in disproportionate numbers.

Beyond the always difficult-to-assess factor of resource depletion, there were certainly developments in the management of New Brunswick game resources to discourage Native people from hunting and trapping. A number of further restrictions on the trapping of fur-bearing animals were introduced during the period between 1900 and 1914, the most important of which was a reduction in the length of the open season for muskrats.⁵⁶ More comprehensive efforts to enforce game regulations were also undertaken after the passage of a revised and strengthened Game Act in 1899. Shortly thereafter, the province increased fees for visiting sportsmen and introduced license fees for residents and guides, producing during the period from 1897 to 1904 an increase in revenues from \$1,993 to \$16,216.⁵⁷ Most of these funds were used to employ a larger number of game wardens and to monitor the practices of fur traders and merchants who sold game meat. A system of tagging moose, deer, and caribou was introduced, making it easier to identify illegally killed game. The ideology behind the new commitment to game protection was neatly stated by the New Brunswick Minister of Crown Lands in his 1909 report: "It is not expected that the Game will be a revenue producer to the Province, but that it will bring a class of wealthy sportsmen and vacationist who spend their money freely, and

54 *Annual Report of the Department of Indian Affairs* (1901) (1911) (1921). While these figures must be viewed with caution because they are dependent on the self-reporting of hunters (for whom there was little incentive by this time to make a full return), it must be noted that this was also the case before the turn of the century.

55 *Annual Report of the Department of Indian Affairs* (1907), p. 142; (1912), p. 61; (1917), p. 93.

56 *New Brunswick Acts* (1901), Ch. 4, "An Act of Amend the Game Act," p. 24; (1909), Ch. 46, "An Act for the Protection of Game," pp. 182-228; (1912), Ch. 9, "An Act to Amend the Game Act of 1909," pp. 118-9.

57 *Annual Report of the New Brunswick Department of Crown Lands* (1904), p. 99.

the same being distributed among the rural sections of the Province.”⁵⁸ The message was clear: the interests of recreational hunters were to be promoted over the needs of traditional resources users, including Native people.

The rise of local fish and game protective associations in the first decade of the twentieth century, which were dominated by guides, outfitters, merchants, and others who supported the tourism-inspired conservation ideology of the government, further supported the movement toward closer surveillance of hunting and trapping. A province-wide New Brunswick Forest, Fish and Game Protective Association was incorporated by an act of the legislature in 1911. One of the significant clauses in the act provided that the association receive one-half of any fines levied against poachers, when a member played a part in a successful prosecution.⁵⁹ The result of all of these developments was the full emergence of a modern game-protection regime. For Native hunters and trappers, as well as the considerable number of non-Natives who made their living by exploiting game resources, there were fewer opportunities to carry on operations legally and more people interested in their activities. In spite of these efforts, fish and game administrators continued to believe that the level of illegal hunting and fishing by New Brunswick First Nations was significant and unacceptable into the post-First World War period.⁶⁰

At its core, the problem of convincing or forcing the Mi'kmaq and Maliseet of New Brunswick to submit to modern fish and game regulations was ideological. Despite the limitations of the surviving historical record, it is clear that the First Nations could not be dissuaded from the strongly held notion that they had signed treaties which preserved their rights to fish and hunt without restriction. This notion was present in two examples, discussed earlier, from the first decade of federal administration. The Mi'kmaq of Mission Point asserted their treaty rights when they were forcibly removed from the salmon fishery at the inception of federal fisheries administration in the early 1870s; the continuing assertion of treaty rights is evident in the correspondence between the departments of Indian Affairs and Marine and Fisheries in 1878.

When the Department of Indian Affairs conducted a nation-wide survey of Native fishing practices in 1898 because there were questions “constantly coming up” and causing “considerable trouble,” the message was equally clear.

58 *Annual Report of the New Brunswick Department of Crown Lands* (1910), p. xiii.

59 *New Brunswick Acts* (1911), Ch. 95, “An Act to Incorporate the New Brunswick Forest, Fish and Game Protective Association,” pp. 392-5. See also Tina Loo, “Making a Modern Wilderness: Conserving Wildlife in Twentieth-Century Canada,” *Canadian Historical Review* 82/1 (March 2001): 91-121.

60 NAC, RG 10, vol. 8862, file 1/18-5, pt. 1, C.G. Pincombe to The Secretary, Dominion Parks Branch, 5 May 1919. The main source for game violations during this period is the Fish and Wildlife Papers of the New Brunswick Department of Natural Resources (Provincial Archives of New Brunswick, RS110).

Indian agents were asked to comment on any special privileges held, the observance of fishery regulations, and the grievances of the Native people in the districts they administered.⁶¹ William Carter, Indian Agent for the Northeast Division of New Brunswick, reported that, “[t]he Indians of this agency complain of being forced to observe the close season and declare that by the treaty which their forefathers entered into with the whites of that time no restriction was ever [to be?] placed on their right to hunt and fish at all seasons.”⁶² When, in 1898, John Dominick of the Red Bank Reserve was convicted for killing a moose out of season he asserted, in correspondence with the Department of Indian Affairs, that “it is lawfull [sic] for an indian to kill a moose at any time of the year.” Indian Agent Carter was asked to investigate; he reported that Dominick was one of several men who were convicted of hunting moose that winter and that he “could not get them to believe that the game laws of the province were made to apply to Indians.”⁶³

The persistent claims of First Nations and uncertainties as to their validity in law brought the question of Native rights to fish and game to a head in the last years of the nineteenth century. When the survey of Native fisheries was completed in 1898, the Department of Indian Affairs consulted with the Department of Marine and Fisheries to discuss the possibility of changes to the regulations. The response of the fisheries department was again negative. After accusing Indian agents of encouraging Native people to assert their rights, the Deputy Minister of Marine and Fisheries, E. E. Prince, stated that “the fishing rights in public waters cannot be made exclusive except under the express action of Parliament” and added that “Indians are entitled to use the public fisheries only on the same conditions as white men, subject to the fisheries act and fisheries regulations.”⁶⁴ The Department of Indian Affairs subsequently asked for a legal opinion whether or not Native people were bound by the fishery regulations on waters within or bordering their reserves. The Deputy Minister of Justice, A. Power, informed his colleagues in Indian Affairs that the “treaties do not as a matter of law, limit the power of Parliament to impose regulations otherwise within its jurisdiction...” Two years later, in 1900, the Department

61 NAC, RG 10, vol. 3908, file 107,297, pt. 1, copy of a circular letter to Indian Agents, dated 31 December 1897.

62 NAC, RG 10, vol. 3908, file 107,297, pt. 1, W.D. Carter, Indian Agent, to J. D. McLean, Secretary of Indian Affairs, 21 January 1898.

63 NAC, RG 10, vol. 8862, file 1/18-11-5, pt.1, John Dominick to Deputy Superintendent of Indian Affairs, 2 March 1898 and W.S. Carter to J.D. McLean, Secretary, Department of Indian Affairs, 7 April 1898; see also Elizabeth Paul to Clifford Sifton, Superintendent General of Indian Affairs, 26 February 1902 and Chief Joseph Paul to Department of Indian Affairs, 2 May 1912, NAC, RG 10, vol. 8862, file 1/18-5, pt. 1.

64 NAC, RG 10, vol. 3909, file 107, 297, pt. 3, E.E. Prince, “Memo. for the Minister, Re: Fishery Rights of the Indians,” 5 April 1898.

of Indian Affairs sought a similar opinion regarding the applicability of provincial game laws to New Brunswick's Native population. Again, the Department of Justice asserted that Native people were not exempt.⁶⁵ From this point forward, the Department of Indian Affairs intervened less frequently on behalf of the province's Native people with its federal counterparts at Fisheries and with provincial authorities.⁶⁶

The advent of what might be termed the modern era of Native rights in New Brunswick dawned in the 1920s. In May 1925, two Mi'kmaq men (Alex Bernard and Peter Jacobs) were arrested in the parish of Salisbury for unlawfully trapping beaver. Both men pleaded not guilty before Moncton Police Magistrate C.A. Steeves, swearing that they had neither set traps nor captured beaver. It was a routine game-violation case, except for the fact that the counsel for the accused, W. Emmett McMonagle, entered as evidence a set of documents that included the Treaty of 1725, the Treaty of 1752, Belcher's Proclamation of 1762, the Royal Proclamation of 1763, and the British North America Act. The newspapers also reported that Bernard and Jacobs presented as evidence a "medal, supposed to have been given to the tribe during the reign of George third and kept by them since that time." McMonagle made a number of arguments based on the documents, but in the end, the Police Magistrate ruled that there was not sufficient evidence of a violation to convict Bernard and Jacobs. There was therefore no need to deal with the broader question of treaty rights raised by the defendants.⁶⁷ It is notable that the Bernard and Jacobs treaty defence in New Brunswick took place three years before the more celebrated and influential Syliboy case (1928) in Nova Scotia. In that case, Mi'kmaq Grand Chief Gabriel Syliboy was convicted by a County Court judge of a charge of hunting out of season. Like Bernard and Jacobs, Syliboy argued that the Treaty of 1752 had granted Mi'kmaq the right to fish and hunt as they pleased and exempted them from fish and game laws.⁶⁸

65 NAC, RG 10, vol. 11194, file 4, A. Power, Acting Deputy Minister of Justice to Secretary, Department of Indian Affairs, 8 July 1898; and NAC, RG 10, vol. 8862, file 1/18-5, pt. 1, C, Lionel Hannington, Barrister at Law, to J.D. McLean, 20 December 1900; McLean to Hannington, 27 December 1900.

66 There are some exceptions to this new attitude on the part of the Department of Indian Affairs. In 1908, an unsuccessful appeal was made on behalf of the Mi'kmaq for free game licenses. In 1914, Deputy Superintendent of Indian Affairs Duncan Scott asked the provincial government to apply game laws leniently against the province's Native population at a time when the market for furs was flat. These kinds of interventions, however, were becoming less common. NAC, RG 10, vol. 8862, file 1/18-5, pt. 1, J.D. McLean to R.A. Irving, 24 August 1908; Duncan Scott to J.B. Daggett, Deputy Minister of Agriculture, New Brunswick, 10 September 1914.

67 *Moncton Transcript*, 23 May 1925 and 30 May 1925.

68 William Wicken, "'Heard It From Our Grandfathers': Mi'kmaq Treaty Tradition and the Syliboy Case of 1928," *UNB Law Journal* 44 (1995): 145-6. On the Syliboy case, see also Daniel Paul, *We Were Not the Savages*, pp. 221-6.

Soon after the Bernard and Jacobs trial, Native people began making inquiries regarding their treaty rights to the Department of Indian Affairs. One such inquiry came from George Mitton, a lawyer who had been retained by the Eel Ground Mi'kmaq. In this case and others, the department's reply was as it had been since the beginning of the century: "This Department has recognized the exclusive right of the province to legislate with regard to hunting and fishing and has advised the Indians that they must obey the laws of the provinces with respect thereto."⁶⁹

By 1927, some of the documents submitted at the Bernard and Jacobs trial were being presented to state officials by Native people as evidence of their rights to fish and hunt as they wished. B.A. Vanderbeck, a government lumber-scaler, reported in October 1927 that John Augustine, a resident of the Tobique reserve, was in possession of three deer carcasses. He reported that Augustine had showed him "papers that they claim they [sic] can shoot game whenever they like."⁷⁰ In April 1929, the Department of Indian Affairs received a letter from Mrs. Peter Narvie, of the Eel River Reserve, asking the Superintendent of Indian Affairs to intervene on behalf of her husband, who was serving a prison sentence for a game law violation:

[S]everal years ago an Indian from an other [sic] Reserve came here to our Reserve and sold Treaties stating that the Indians could fish and hunt any time of the year for their own use.... [N]ow my Dear sir, my husband and three other men went by those Treaty's [sic] and went in the forest to get enough meat for a few meals because we were almost starving ... and he was arrested for that and put in jail to serve a fifteen day sentence or thirty dollar fine.

Commenting on the incident, Indian Agent Charles Hudson informed the department that "I have repeatedly cautioned the Indians about hunting in the close season, and told them that the old treaty did not give any legal authority to hunt or fish."⁷¹

In his examination of the Syliboy case in Nova Scotia, historian William Wicken argues persuasively that within the Mi'kmaq community there was a long-standing interpretation – passed down through oral tradition – of the eighteenth-century treaties between their ancestors and colonial authorities. An essential element of that community understanding was that the Mi'kmaq people had the right to hunt and fish as they pleased.⁷² This study suggests that

69 NAC, RG10, vol. 8862, file 1/18-5, pt.1, George Mitton to Superintendent General of Indian Affairs, 26 October 1925 and J.D. McLean to George Mitton, 2 November 1925.

70 NAC, RG10, vol. 8862, file 1/18-5, pt.1, B.A. Vanderbeck to H.H. Ritchie, 21 October 1927.

71 NAC, RG10, vol. 8862, file 1/18-5, pt.1, Mrs. Peter Narvie to Secretary, Department of Indian Affairs, 4 April 1929 and Charles Hudson to J.D. McLean, 26 April 1929.

72 Wicken, "Heard It From Our Grandfathers," pp.145-61.

Mi'kmaq living in New Brunswick shared these understandings and, when confronted with restrictive fish and game laws in the period from 1867 to 1930, asserted what they saw as their treaty rights. While sometimes vague and indirect in the late nineteenth-century, these assertions became more explicit in the 1920s as enforcement of fish and game laws became stricter.

Despite the resistance of Native people, restrictive game and fishing laws combined with resource depletion undoubtedly contributed to the decline in the importance of hunting, fishing, and trapping in the Mi'kmaq and Maliseet economies in the period from 1867 to 1930. In observing this trend among the Maliseet in the 1910s, Frank Speck noted: "The life-supporting activities of the Indians of the river were subsequently centred more than ever in farm-land pursuits near their villages and varied forms of employment furnished by whites."⁷³

While changes in the Native economy were evident earlier in the nineteenth century, Confederation marked a watershed in the economic lives of New Brunswick's Mi'kmaq and Maliseet people. The creation of a new Canadian state committed to Indian "civilisation" and strict fish and wildlife management policies made it increasingly difficult for Native people to pursue their traditional way of life between 1867 and 1930. In the ensuing struggle for survival, the province's First Nations were drawn into the agricultural economy and, to a greater degree, the wage labour market. Another component of this struggle was resistance. From the very beginning, Native people challenged the new regulatory regime that threatened their traditional way of life by asserting their treaty rights. While this resistance undoubtedly reflected the importance of fish and game in meeting basic subsistence needs, it perhaps also reflected the cultural importance of hunting and fishing to Mi'kmaq and Maliseet societies (an issue which is beyond the scope of this study). This paper should be viewed as a preliminary step in understanding the foundations of modern relationships between Maritime First Nations and the Canadian state. It suggests that the new state structures that emerged in the late nineteenth-century contributed to the development of a culture of survival and resistance among New Brunswick's Native people, a culture that continues to shape interactions between governments and First Nations. Seen in this light, the recent conflicts over Native rights in the Maritime provinces seem to be the latest chapter in a historical struggle rather than an aberration.

73 Speck and Hadlock, "A Report on Tribal Boundaries and Hunting Areas of the Maliseet Indian of New Brunswick," p. 361.