

# INDIGENOUS RIGHTS AND PROPERTY RIGHTS IN THE FISHERIES: A CASE STUDY FROM MI'KMAKI (ANCESTRAL HOMELANDS) – ATLANTIC CANADA

By: Sherry Pictou, PhD Candidate, Dalhousie University

and

The Bay of Fundy Marine Resource Centre

International Learning Circles Project

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# FOCUS

- What is the relationship between a property rights approach and Indigenous rights in the fisheries?
- This presentation will look at a specific case where these two kinds of rights were both (and continue to be) in play.



# OVERVIEW BACKGROUND

- Mi'kmaki/Atlantic Canada
- ITQ system introduced in groundfish, herring, scallop and other fisheries in 90's
- The Supreme Court of Canada Decision known as the Marshall Decision (1999)
- Response to Marshall
- A Mi'kmaq Perspective

# MI'KMA'KI HOMELANDS





Mi'kmaq Elder, 1930s  
Prosper, K & Paulette, M. J. (2002).



Kerry Prosper, & Grandson Seeking Netukulimk (2013).



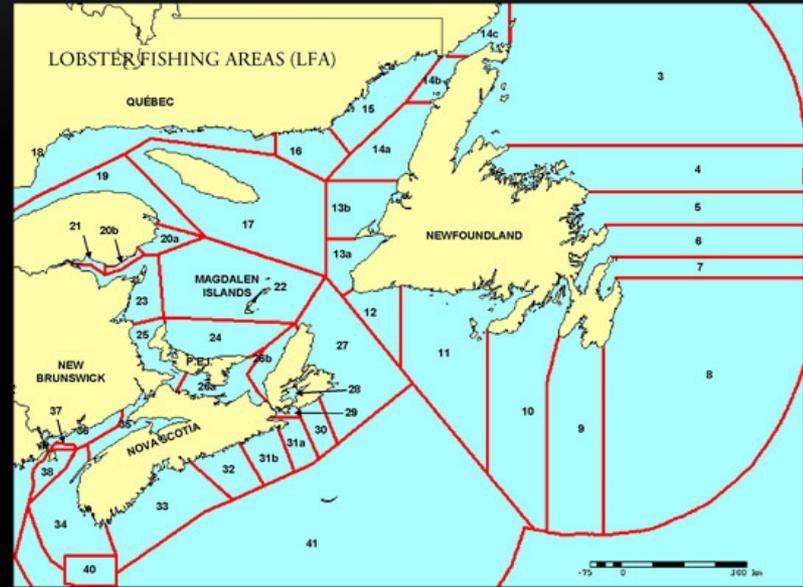
Jim Harlow (Jungle, Pup)



William Harlow (Grandson, 2014)



L'sitkuk Traditional Use Study 2007



[dfo-mpo.gc.ca/](http://dfo-mpo.gc.ca/)

# PROPERTY RIGHTS: ITQS IN NOVA SCOTIA: "THE TRAGEDY OF PRIVATIZATION"

1. Groundfish: mobile gear fleet 1991
    - Result: concentration of ownership, dumping discarding
  2. Scallops: Digby scallop dragger fleet
    - Result: Concentration of ownership, poor Labour conditions
- Other examples: herring, offshore scallops, offshore groundfish
  - ITQs primary management approach



([redgreenandblue.org/2011/11/14/occupy-the-ocean-dont-let-the-1-privatize-fishing/](http://redgreenandblue.org/2011/11/14/occupy-the-ocean-dont-let-the-1-privatize-fishing/))

# RESISTANCE TO ITQS

- Widespread resistance to ITQs in <45' fixed gear fleet
- 1996 protest
- Mi'kmaq Fish & Wildlife Commission Support against ITQs and Krill Fishery
- community-based quota introduced and a community based management approach



<http://halifax.mediacoop.ca/sites/mediacoop.ca/files2/mc/imagecache/bigimg/clearingthewaterssears.jpg>

# MARSHALL DECISION



"I got a treaty!" (Quoting Donald Marshall Jr. McMillan, J. L. 2012, 2013).

1999 Supreme Court of Canada decision known as the Marshall Decision reaffirmed a 1760 & 61 treaty right to a moderate livelihood in the fishery but not a right to accumulate wealth

# RESPONSE TO MARSHALL

- Property rights (disguised as conservation) via agreements only option given by DFO.
- The infamous buy back program
- Communal vs Privatization ?
- Royalty fishery, not livelihood fishery?



# MIK'MAQ RESISTANCE TO PROPERTY RIGHTS

- BRFN and Paqtnkek's position
- Alliance with other SSF



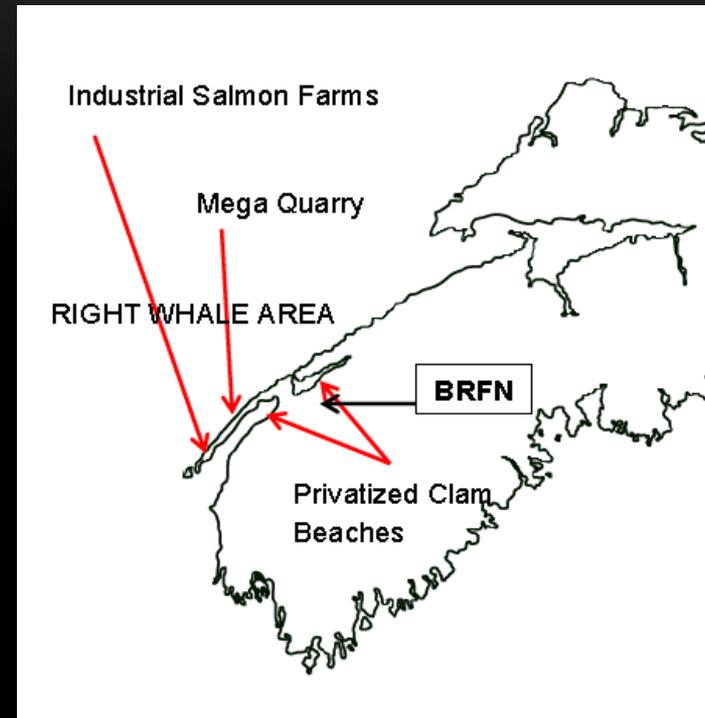
In defense of our Treaties 2007,  
Martha Stiegman & Sherry Pictou



Seeking Netukulimk 2013,  
Martha Stiegman & Kerry Prosper

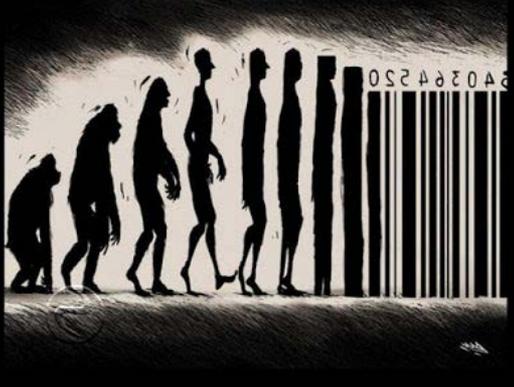
# ALLIANCES (OUR SMALL “t” RELATIONS)

- The Bay of Fundy Marine Resource Centre
- Alliances with Clammers and Other Independent Fishermen (2003,2007).
- International Learning Circles on SSF (MRC) 2012 to present
- WFFP, WFF, & ICSF



# PROPERTY RIGHTS AT ODDS WITH INDIGENOUS RIGHTS –WHY?

- in a property rights approach the marketplace is supreme and placed above Indigenous rights
- in countries like Canada, where we have had property-rights fisheries (ITQs etc) for a long time, we have seen how they have undermined small scale fisheries and livelihoods
- For First Nations fisheries and fishing communities, the property right approach runs counter to the SSF Guidelines and the Tenure Guidelines, which both have human rights, including Indigenous rights as their basis, with no mention of property rights
- property rights regimes commodify treaty and other legal obligations, putting them on the market to be bought and sold – taking out the human ecology.



<http://viridislumen.blogspot.ca/2012/02/essay-future-of-modern.html>

There is no opportunity for our communities (Bear River and Paqtnkek) to even consider a fishery as Government Mandate is limited if not non-existent. In essence no mandate means no fishery for our communities despite the courts recognition of our Aboriginal & Treaty Rights through several court cases: Denny, Paul, and Sylliboy (1990); Sparrow (1990); and Marshall (1999). So the promise of the Rule of Law or impersonal law does not seem to exist for the Mi'kmaq. In other words it does not matter what the highest court (SCC) states on the highest law (s.35) since it all comes down to politics despite the Honour of the Crown. Chief Paul Prosper 2015.





# UN REPORT ON INDIGENOUS PEOPLES & OWNER OPERATOR

- Considering the recent scathing UN special rapporteur's report on the rights of indigenous peoples
- Considering that the Recommendations from the Parliament of Canada Standing Senate Committee on Privatization and Quota Licensing in Canada's Fisheries were never implemented (1998).
- For example:
  - Treaty and aboriginal claims remain "persistently" unresolved
  - The Committee urges the Department of Fisheries and Oceans to more thoroughly consider the long-term social and economic effects of individual quota licences, especially those that are transferable, on Canada's coastal communities, Aboriginal and other, and not extend the individual quota regime until the needs of coastal communities, Aboriginal and other, have been fully assessed.
- We must work even more fervently to ensure the International Guidelines on SSF is implemented from the perspective of SSF including Indigenous Peoples.
- Lets be clear what we mean when we are talking rights based because for SSF and Indigenous People it means something different than ITOs



# THE FUNDAMENTAL DIFFERENCE

- Between Property Rights-Based and Indigenous Rights-Based Fisheries
  - ancestral rights
  - spiritual dimension (Netukulimk)
- We used any resources we needed and left the others for future use. We used what we needed and spared the rest. The geological and ecological relationship that developed , formed a spiritual, genetic and biological relationship to these resources. We found and developed our place within the biosphere, and a humble place in the food chain that kept the balance for all within it - a relationship that brought together a deep understanding of our place in the web of life. (Elder and Former Chief, Kerry Prosper).
- [https://www.youtube.com/watch?v=jrk3ZI\\_2Dd0](https://www.youtube.com/watch?v=jrk3ZI_2Dd0)



**M'sit No'kmaq  
(All My Relations)**

**Welalin  
(Thank You)**

**Questions?**

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