

**Ojibwa Fishing Grounds: A history of Ontario fisheries law, science,
and the sportsmen's challenge to Aboriginal treaty rights, 1650-1900.**

By

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Abstract

This dissertation investigates the question: what happened to the Ojibwa right to fish in southern Ontario? The region is one of the oldest and most complex in Canada for Aboriginal and treaty rights negotiations and fisheries law. The study involves community-based case studies with four Mississauga and three Chippewa First Nations. It reconstructs their system and laws for the conservation of their valued ecosystem components prior to their first treaties with the British Crown in 1783. This forms the critical environmental context from which to interpret Ojibwa treaty strategies. The Crown made no records of the first treaties, but Ojibwa oral histories of the agreements hold that they reserved the regions' wetlands and fisheries for their exclusive use, agreeing only to cede arable uplands to the Crown for agricultural settlement. The dissertation corroborates the oral histories in British records. Further, the study demonstrates that the parliament of Upper Canada protected the Ojibwa treaty fishing rights in a series of *Acts for the Preservation of Salmon* (1807, 1810, 1820, 1823); settlers bore the burden of the first conservation laws. The dissertation then asks what happened to these treaty and legislative protections? It identifies a cabal of mid-19th century sportsmen who developed a series of enduring arguments against Aboriginal rights and infiltrated parliament to effect new legislation that criminalized Ojibwa fishing systems and entrenched their own methods. The final component applies methods from science and technology studies to demonstrate how sportsmen's associations influenced the early development of fisheries science research to make scientific truth statements that endorsed their social interests and recast the Aboriginal fishing systems as a serious threat to the conservation of stocks. The sportsmen's 19th scientific truth statements are critically studied for their roots in a colonial power struggle. They remain at the core of modern fisheries management principles and continue to obstruct the rehabilitation of Ojibwa fishing systems and treaty rights.

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On the north shore of Lake Superior, one special piece of academic scholarship helped me interpret my data: Dianne Newell’s *Tangled Webs of History*. After finishing my Nipigon project, I knew that there was more to Mr. Quackageesick’s question that I had yet to answer. I then traveled to UBC to study with Professor Newell. Fisheries research is necessarily multidisciplinary and she promptly introduced me to a group of scholars who held the disciplinary knowledge that could shed interpretive light on my data. In ethnohistory, she introduced me to Professor Arthur Ray, the leading thinker on how to reconstruct and understand the aboriginal past from historical sources. In the faculty of law, she introduced me to Professor Wes Pue who taught me to explore the relationships between law and society. Here, I also had the fortune to meet Professor John Borrows, a leading aboriginal scholar who expressed interest in my questions. Within my classes, there was another student, Douglas Harris, who was asking many of the same questions about the relationship between aboriginal fishing cultures, law, and colonialism. He became a most trusted colleague without whom this story would have been lonelier and without him, my data and theory would have been much less mulled over. In the Fisheries Centre, Professor Newell introduced me to a dynamic group of people dedicated to understanding past and present issues in fisheries management. In the Department of Geography, she introduced Professor Cole Harris who enticed me with new ideas in post-colonial geographic thought. Through all my travels between disciplines, she kept on top of my explorations, kept my ideas grounded in the discipline of history, and pushed me to think harder about many aspects of the fisheries that she understands so well. She also introduced me to the literature on the history of science that opened another interpretive door. I am very grateful to Professor Newell who

understands the many forms of research taking place at UBC and linked me with some far corners of the campus that should not be working in isolation.

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**For my grandfather, William John McCandless (1902-2002), a lumberjack,
farmer, hunter, and fisher who never considered himself to be a sportsman.**

Introduction

Sportsmen and Ojibwa fishers

The persons making the bargain on behalf of the government, stated that their people were tillers of the ground, and no[t] hunters, that they wanted the lands to till, and not to game and to fish [sic]; the game and fish should still be the property of the Indians.¹

Chief Joseph Sawyer, 1844

*[There was a] treaty that we should hunt on the creeks, but the land is not ours.
The white man have the dry land, but we have the wet land.²*

Chief Robert Paudash, 1923

Introduction

Between 1784 and 1788, the southern Ojibwa and the British crown negotiated a series of treaties that opened the door to European settlement of Upper Canada (Ontario). British officials failed, however, to keep written records of the treaties.³ As a result, the agreements are a source of confusion to all historians who have sought to explain them.⁴ The Ojibwa, it appears, preserved more complete records of the agreements in their oral histories. They hold that they agreed to cede parcels of arable uplands to the British but reserved southern Ontario's wetlands with its fish and animal resources for their exclusive use. In essence, they claimed that they pursued a strategy for an ecological co-existence with the newcomers: they retained wetlands, the most productive habitats of fish and wildlife, and ceded dry lands to settlers for agriculture.

The southern Ojibwa oral histories also contain an intriguing claim that runs contrary to our current understanding of the history of Ontario fisheries law. Most

¹ National Archives of Canada [hereafter NAC], RG 10 (Indian Affairs), vol. 1011, Chiefs Joseph Sawyer and John Jones, petition to Governor General, dated Credit River, 5 December 1844.

² NAC, RG 10, vol. 2332, file 67,0171-4C, Bound volume of Testimony to a Commission, Chaired by A.S. Williams, investigating claims, by the Chippewas & Mississaugas of the Province of Ontario, to compensation for land not surrendered by the Robinson Treaty of 1850 (1923), testimony of Robert Paudash: 229.

³ Alexander Fraser, "Indian Lands", in *Sixteenth Report of the Department of Archives for the Province of Ontario* (Toronto: Clarkson W. James, 1921): 219.

⁴ Donald B. Smith, "Who are the Mississauga", *Ontario History* 67 (1975): 211-223; Donald B. Smith, "The Dispossession of the Mississauga Indians: A Missing Chapter in the Early History of Upper Canada", *Ontario Historical Society* 63.2 (June 1981): 67-87; Robert Surtees, *Indian Land Surrenders in Ontario 1763-1867* (Indian and Northern Affairs, Research Branch, Corporate Policy, Canada: 1984): 37-46; Leo A. Johnson, "The Mississauga - Lake Ontario Land Surrender of 1805", *Ontario History* 83.3 (September 1990): 233; Robert J. Surtees, "Land Cessions, 1763-1830", in Edward S. Rogers and Donald Smith (eds.), *Aboriginal Ontario: Historical Perspectives on the First Nations* (Toronto: Dundurn Press, 1994): 92-121.

startling, they assert that the first fisheries laws passed in Upper Canada, *Acts for the Preservation of Salmon* (1807, 1810, 1821, 1823), were designed to preserve the fisheries for the themselves, pursuant to agreements made in each of their treaties, and that the legislation made non-natives bear the burden of the fish conservation measures.⁵

Today, provincial officials deny the existence of such arrangements and a reverse state of affairs exists. Ontario's Ministry of Natural Resources (MNR) restricts aboriginal commercial fishing to a few water lots in the deepest parts of the Great Lakes.⁶ In all other aquatic environments, it privileges and encourages sport fishing while it holds traditional aboriginal fishing seasons (i.e spawning times) and methods (i.e. spears and nets) to be illegal. If an Ojibwa person wishes to fish with traditional technologies at the season of his or her choosing, they must do so within a few meters of their Indian Reserve waterfront or risk charges under the *Ontario Fisheries Act*. If charged, they must defend themselves in costly court proceedings. This has been the case since the late 19th century.⁷ Most recently, in 1984 the MNR charged George Howard, an Ojibwa fisher from the Hiawatha First Nation, for fishing pickerel out of season for family food. He appealed his conviction, in the case that bore his name, to the Supreme Court of Canada, where he lost.⁸

In 1990, the Ontario government briefly reconsidered its fisheries allocation priorities when the Supreme Court of Canada ruled in *Sparrow* that a Musqueam fisher in British Columbia held an existing aboriginal right to fish in the manner, time, and place of his choosing and that only concerns about conservation and public safety could bear on

⁵ Provincial Archives of Ontario [hereafter PAO], A.E. Williams Papers, F 4337-1-0-13, G. Mills McClurg, memo to chiefs, "Re: Hunting and fishing rights reserved by the Indians, in their different surrenders of territory to the Crown from the earliest period, onward," dated Toronto, 5 September 1911.

⁶ Ontario Ministry of Natural Resources [hereafter MNR], Lake Huron Management Unit, *Status and Outlook for the Major Commercial Fish Species of Lake Huron*, 1996 (Toronto: 1996): 4, 103.

⁷ Starting in 1892, the Department of Marine and Fisheries printed a "Report of Cases" in its annual report in the *Canada Sessional Papers* [hereafter CSP] identifying its fishing prosecutions. The lists contain the prosecutions of Ojibwa fishers in various treaty regions for a variety of offenses. See for example: CSP 1895 no 58: 34-39. In 1893, the Ontario Game and Fish Commission began to report cases of fish and game violations in its annual reports printed in the *Ontario Sessional Papers* [hereafter OSP]. See for example: OSP 1893 no. 17: 36-39; OSP 1895 no. 33: 32-45; OSP 1896 no. 31: 33-51; OSP 1897 no. 30: 32-33; OSP 1899 no. 33: 42-53; OSP 1900 no. 68: 48-53; OSP 1901 no. 30: 26-32; OSP 1902 no.30: 30-33. For media reports on cases in the early 20th century, see: Anon., "The Appeal of an Indian", *Toronto Globe*, 9 May 1928; Anon., "Indians are fined for having a spear ready for lunge", *Ottawa Citizen*, 6 February 1938; Anon., "Indians claim right to fish and hunt not given up", *Orillia Packet and Times*, 16 June 1938. For a recent reported case, see *Regina v. Taylor and Williams*, 34 *Ontario Reports* (2d) (1982): 360.

the exercise of his rights.⁹ The ruling had implications across Canada wherever aboriginal fishing rights had not been specifically surrendered in a treaty. In response, Ontario implemented an *Interim Enforcement Policy on [the] Aboriginal Right to Hunt and Fish for Food* that gave precedence to aboriginal fishing over non-native commercial and sport fishing, subject to sustainable yields determined by fishery biologists.¹⁰ A non-native backlash to the *Sparrow* decision began almost immediately. Sports fishers' were reported to be "furious" and lobbied against priority for native fishers as a type of 'reverse' racial discrimination. A writer with the *Toronto Star* reported that, "declarations that native people have special rights are fuelling anger and threats of violence in the great outdoors" and "outraged many non-natives who argue that they're being made the victims of discrimination". The reporter declared that a "war" between natives and sportsmen had erupted in Canada's outdoors (figure 1).¹¹

The return to a rights-based fisheries allocation system concerned sportsmen who tried to reconfigure the issue as "racial". In the end, however, sportsmen chose to ground their defense in the supposed truths of western fisheries science and its primary tenets for the conservation of fish: 1) that fishing be limited to certain "seasons", and 2) that the realm of fishing technologies be restricted to angling. In an example of these arguments in action, a writer with *The Chronicle-Journal/ The Times News* of Thunder Bay argued



Figure 1: Patrick Corrigan, *Toronto Star*, 4 August 1991.

⁸ *R. v. Howard*, 2 *Supreme Court of Canada Reports* (1994): 299.

⁹ *Regina v. Sparrow*, *Supreme Court of Canada Reports* 1 (1990): 1075.

¹⁰ Ontario MNR, *Interim Enforcement Policy on Aboriginal Right to Hunt and Fish for Food*, pamphlet (Ontario 1991).

¹¹ Peter Gorries, "Hunting and Fishing Wars: Can Prairie peace plan bring reason back to the woods?", *Toronto Star*, 4 August 1991.

that native hunting year round, without the restrictions set out in "closed-seasons", was a violation of "sound conservation principles".¹²

Ontario's largest sportsmen's lobby, the Ontario Federation of Anglers and Hunters (OFAH), with 74,000-members, led the pressure on the Ontario government to revoke the *Interim Enforcement* measures. The OFAH placed scientific arguments at the centre its campaign.¹³ It argued, for example, that, "any fishing outside regular seasons will put the fisheries in danger."¹⁴ It also intervened in each step of Howard's appeal to the Supreme Court to oppose the recognition of his rights. In the courtroom, the OFAH president, a university professor of biology, marshaled the authority of fisheries science to argue that *Sparrow* was poorly reasoned and that Ojibwa fishing methods were not biologically justified because they did not respect "normal seasons... established for conservation purposes".¹⁵ Hence, the OFAH held that lifting restrictions on Ojibwa treaty rights was a threat to the sustainability of the fisheries. These arguments are not new. In this current study, I observed that between 1820 and 1870, sportsmen made claims to be practicing the only "scientific" methods of fishing.¹⁶ In my research on the colonial contest to control the Nipigon River fishery, I noted that in the late 19th century, sportsmen and the Ontario government often made recourse to knowledge claims in the emerging ecological sciences to argue for restrictions on the Ojibwa treaty right to fish.¹⁷ These scientific or biological arguments for restricting aboriginal fishing rights obviously

¹² Bryan Meadows, "MNR enforcement based on skin color is infuriating public", *The Chronicle-Journal/The Time-News*, 4 May 1991: F1.

¹³ Dave Ankney, president, The Ontario Federation of Anglers and Hunters [hereafter OFAH], and Rick Morgan, Executive Vice President, "OFAH challenge Indian leaders on conservation", printed in the *Nipigon Gazette*, 21 May 1991: 7; Anon., "Natives not charged over out of season kill", *Angler & Hunter* (March 1992); Anon., "Natives force delay of cull", *Angler & Hunter* (March 1992); Anon., "Natives kill wild turkeys", *Angler & Hunter* (March 1992); Anon., "Hunter returns licenses to protest native hunting", *Angler & Hunter* (March 1992); Gary Ball, "Non-Natives worried about self-government negotiations", *Angler & Hunter* (March 1992). OFAH, "Dear Mr. Rae...", postcard printed in *Angler & Hunter* (March 1992); Dave Ankney, "An idea for the First Nations Circle on the Constitution: Hunting, fishing spiritual for all", *Angler & Hunter* (March 1992): 41.

¹⁴ Anon., "OFAH seeks Scugog Council support to stop special rights for natives", *The Scugog Citizen*, 5 October 1994.

¹⁵ Supplementary Affidavit of C. Davison Ankney, in Supreme Court of Canada, court file no. 22999, *George Henry Howard (Appellant) and Her Majesty the Queen (Respondent) and the Ontario Federation of Anglers and Hunters and the United Indian Councils (intervenors)*, para. 7.

¹⁶ These claims are documented in chapter 6 of this study.

¹⁷ J. Michael Thoms, "An Ojibwa Community, American Sportsmen, and the Ontario Government in the Early Management of the Nipigon River Fishery", in Dianne Newell and Rosemary Ommer, eds., *Fishing Places, Fishing People: Traditions and Issues in Canadian Small-Scale Fisheries* (Toronto: University of Toronto Press, 1999): 189-192.

remain pervasive today. In fact, in 1996, OFAH achieved its objectives when it persuaded a newly elected Conservative provincial government to cancel the *Interim Enforcement Policy*. As a result, Ontario dispensed with the principles established in *Sparrow* and once again, Ojibwa peoples cannot practice their traditional fishing systems without the risk of prosecution. Therefore, the origin of sportsmen's scientific arguments and the source of its power to marginalize Ojibwa treaty fishing rights need investigation.

OFAH's statement that closed seasons are "normal" do not clarify the science behind this conservation measure. In fact, the use of the word "normal" is a red flag to most historians who seek to answer how and why certain assumptions are normalized. One question for this research is how did this current fisheries management formula using restrictions on seasons become normal? In addition, I found it curious that both the Ojibwa and sportsmen established their cultural practices (i.e. spearing or angling) before the ecological and aquatic sciences emerged in the late 19th century. While both cultures' methods predated this period, fisheries science developed tenets that opposed native systems but justified the traditional practices of sportsmen. How is it that western science advanced the sportsmen's practices and censured the other? I set out, therefore, to also investigate the historical social context in which these scientific truth statements were made about the contrary impacts of aboriginal over sport fishing systems.

The OFAH also credits sportsmen with the origin of the conservation movement in Ontario.¹⁸ This perspective is consistent with a historiography promoted by Roderick Nash who posited that at the turn of the 20th century, sportsmen helped shift public values towards preservation ideals through enlightened intellectual leadership.¹⁹ Many popular histories of Ontario sportsmen's contribution to conservation programs were written in this vein and suggested that sportsmen's objectives were visionary and altruistic and that there was little public resistance to the new legal regime that privileged recreational

¹⁸ The OFAH president credited "the organized conservation [that] movement began in the early 1900s" with the reduction of commercial fishing and hunts. He argued that non-native citizens became enlightened to the need for conservation at this time: "the non-native residents of Ontario willingly gave up their right to use fish and wildlife as a primary food source... Because they wished to preserve a more important right, the right to harvest fish and wildlife for spiritual, cultural, and ceremonial purposes." Dave Ankney, OFAH President, "An idea for the First Nations Circle on the Constitution: Hunting, fishing spiritual for all", *Angler & Hunter* (March 1992): 41.

¹⁹ Roderick Nash, *Wilderness in the American Mind*, 3rd edition (New Haven: Yale University Press, 1983).

fishery use.²⁰ This historiography forms the premise to a new Ontario law, entitled, *An Act to recognize Ontario's recreational hunting and fishing heritage and to establish the Fish and Wildlife Heritage Commission* (2002). The *Act* purports to elevate the non-native privilege to hunt and fish to a "right" and places sportsmen at the centre of all resource management decisions in Ontario in appreciation of their "important contributions to the understanding, conservation, restoration and management of Ontario's fish and wildlife resources."²¹ Whether this historiography, which is very influential, is accurate, requires investigation. It is also needs to be determined how long sportsmen have opposed Ojibwa fishing rights and why?

The research problem

Many scholars are addressing a common research problem: what happened to the aboriginal right to fish in Canada? Most studies address the conflict between aboriginal and non-native commercial fishers;²² the conflict with sportsmen is understudied.²³

²⁰ G.C. Armstrong, "An Historical Review of the Management of the Sport Fishery in Ontario", *Ontario Fish and Wildlife Review* 6 (1967): 25-34; Richard Lambert, with Paul Pross, *Renewing Nature's Wealth* (Ontario: Ontario Department of Lands and Forests, 1967); C.A. Walkinshaw, "Early Organization of Hunting, Angling and Conservation Associations in Ontario", *Ontario Fish and Wildlife Review* 6.3-4 (1967): 15-19; David H. Loftus, *The Charter Boat Fishery for Lake Trout in Southern Georgian Bay: 1920-1955* (Ontario: Ministry of Natural Resource, Lake Huron Fisheries Assessment Unit, 1979).

²¹ Ontario Government, "preamble", Bill 135, 2001.

²² Victor Lytwyn, "Ojibwa and Ottawa Fisheries around Manitoulin Island: Historical and Geographical Perspectives on Aboriginal and Treaty Fishing Rights", *Native Studies Review* 6.1 (1990): 1-30; John J. Van West, "Ojibwa Fisheries, Commercial Fisheries Development and Fisheries Administration, 1873-1915: An Examination of Conflicting Interest and the Collapse of the Sturgeon Fisheries of the Lake of the Woods", *Native Studies Review* 6.1 (1990): 31-64; Lise C. Hansen, "Treaty Rights and the Development of Fisheries Legislation in Ontario: A Primer", *Native Studies Review* 7.1 (1991): 5-6; Victor Lytwyn, "The Usurpation of Aboriginal Fishing Rights: A Study of the Saugeen Nation's Fishing Islands in Lake Huron", in Bruce W. Hodgins, Shawn Heard, John S. Milloy, eds. *Co-Existence? Studies in Ontario--First Nations Relations* (Peterborough, Frost Centre for Canadian Heritage and Development Studies, Trent University, 1992): 81-103; Dianne Newell, *Tangled Webs of History: Indians and the Law in Canada's Pacific Coast Fisheries* (Toronto: University of Toronto Press, 1993); Roland Wright, "The Public Right of Fishing, Government Fishing Policy, and Indian Fishing Rights in Canada", *Ontario History* 86.4 (December 1994): 337-362; David T. McNab, "All in the Family: The Batchewana First Nation, Fishing and Land Rights, 1989-91", in David T. McNab, *Circles of Time: Aboriginal Land Right and Resistance in Ontario* (Waterloo: Wilfred Laurier Press, 1998): 117-134; Arthur J. Ray, "Ould Betsy and Her Daughter": Fur Trade Fisheries in Northern Ontario", in Newell and Ommer, eds. 1999: 80-96; Douglas C. Harris, *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia* (Toronto: University of Toronto Press, 2001); Kenneth Coates, *The Marshall Decision and Native Rights* (Montreal: McGill-Queen's University Press, 2000); William Craig Wicken, *Mi'kmaq Treaties on Trial: history, land and Donald Marshall Junior* (Toronto: University of Toronto Press, 2002); Douglas C. Harris, "Indian Reserves, Aboriginal Fisheries and Anglo-Canadian Law, 1876-1882", in John McLaren, ed. *Property Rights in the Colonial Imagination and Experience* (in progress).

Ontario is a significant focus for study because it represents one of the oldest and most complex areas in Canada for aboriginal treaty negotiations, fisheries regulations, and aboriginal and treaty rights issues. After beginning my project, I refined my research problem to several crucial questions: can the southern Ojibwa oral histories be corroborated? If so, how did southern Ojibwa treaty rights and the *Salmon Preservation Acts* get overturned? Did the Ojibwa manage their fisheries? How long have sportsmen been in conflict with Ojibwa fishing systems? Did sportsmen play an historic role in the transformation of Ojibwa fishing grounds into non-native angling places? What is the origin of scientific arguments against aboriginal fishing methods? Did sportsmen influence the scientific bodies that produced these "truths" which have negative implications for how and when the Ojibwa can fish while simultaneously privileging their sporting systems?

Methodology

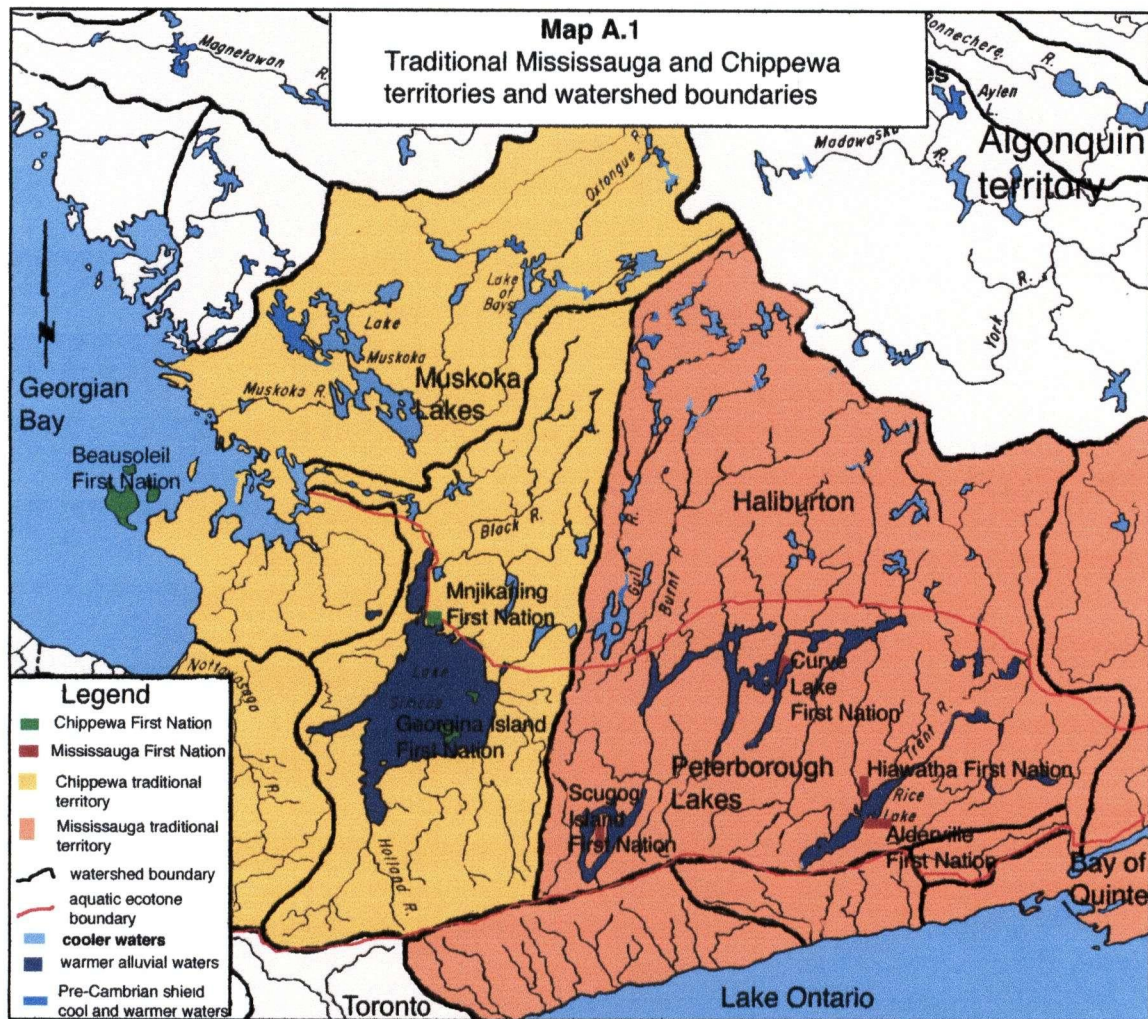
I decided to address my research problem through a case study. Two rationales informed my decision. First, I determined to take a case study approach for ethical reasons. The recent Royal Commission on Aboriginal Peoples (1997) emphasized that research respecting First Nations should be conducted with the knowledge and input of the communities concerned.²⁴ Case studies offer the most appropriate means to do this. I decided not to predetermine case study sites, but instead, in 1998, I sent out a letter to several Ojibwa communities explaining my project and proposed a mutually beneficial arrangement in which I would receive community input into the refinement of my research questions, access community records, and speak with oral history holders in the collection of data for my independent analysis. In turn, I committed myself to conveying the relevant archival records I found and prepare briefs and memoranda on aspects of

²³ Thoms 1999; Bill Parenteau, "'Care, Control and Supervision': Native People in the Canadian Atlantic Salmon Fishery, 1867-1900", *The Canadian Historical Review* 79.1 (March 1998): 1-35; Harris 2001; J. Michael Thoms, "A Place Called Pennask: fly-fishing and Colonialism on a BC Lake", *BC Studies* 133 (Spring 2002): 69-98.

²⁴ Royal Commission on Aboriginal Peoples, "Sharing the Harvest: The Road to Self-Reliance, Report of the National Round Table on Aboriginal Economic Development and Resources", in *Royal Commission on Aboriginal Peoples* (CD-ROM) (Ottawa: Libraxis, 1997). See also, First Nations House of Learning and the UBC Museum of Anthropology, University of British Columbia, Vancouver British Columbia, Canada, "Spirit of the Conference Statement", *Protecting Knowledge: Traditional Resource Rights in the New Millennium*, conference, 24-26 February 2000: <http://www.ubcic.bc.ca/spirit.htm>.

their fishing histories. In this way, the research would then proceed from a case study of an Ontario fishery that a First Nation wanted undertaken.

Several communities responded. In 1998, I selected seven Ojibwa communities in south-central Ontario that are currently affiliated as the *United Anishnaabeg Councils* (UAC) as the focus of my study (see map A.1).²⁵ A note on terminology is important here. In the United States, the name “Chippewa” generally refers to the cultural group known in Canada as the “Ojibwa”. In this case study, however, three communities self-



identify as Chippewa (The Beausoleil Island, Georgiana Island, and Mnjikaning First Nations) and thus my references to Chippewa are to these Ontario communities. Four of the communities are part of the Mississauga culture (the Alderville, Curve Lake,

²⁵ In the spring of 1998, I signed a research agreement with the UAC in which I made a series of commitments, including the development of an electronic database for their internal archives, the organization of two workshops with community members about how to conduct archival research, and

Hiawatha, and Scugog Island First Nations). These Chippewa and Mississauga peoples recognize themselves as members of the Ojibwa cultural group and prefer the name "Anishnaabeg" to "Ojibwa".²⁶ I decided to use the term "southern Ojibwa" when referring collectively to all seven communities due to its familiarity in the literature.

Secondly, I chose a case study approach because I wanted to ground my research in the aquatic ecosystems in which the historical events occurred. The historical geographer, Arthur Ray, and the historian Dianne Newell, have demonstrated the critical importance of understanding aboriginal adaptations to and modification of very specific terrestrial and aquatic micro-environments.²⁷ In terms of fisheries, it is important to document the fishing places that the Ojibwa socially produced. These places were at the intersections of where fish spawned, Ojibwa technologies could be used to capture them, and their culture informed their decisions. I draw this approach from Newell who found that Pacific Coast aboriginal fishing places were formed by the "coincidence" of fish ecology, people's fishing technologies, and their culture.²⁸ For the Ojibwa, these places included river mouths, shoals around islands, shallow streams, and marshlands. The same interplay between culture, technology, and ecology is true for where sportsmen chose to fish. Their places included some of the same places the Ojibwa fished or were close to them and thus both groups assigned competing cultural meanings to the same small points in a river or lake's ecosystem. In *The Organic Machine*, the environmental historian, Richard White, demonstrated the importance of understanding the precise points in the Columbia River where different cultural groups placed competing meanings and property claims. He emphasized that the colonial contest to control the river was not a struggle for control of its entire length, but rather, a contest over a very few precise points along its course. White cautioned the historian that a failure to understand how

instructional tours of the National Archives of Canada (Ottawa) and the United Church Archives of Canada (Toronto).

²⁶ For an overview of cultural divisions within Algonquian-speaking peoples, see Charles Bishop, "Territorial Groups Before 1821: Cree and Ojibwa" in June Helm, ed., *The Handbook of North American Indians, Volume 6: Subarctic* (Washington: Smithsonian Institution 1981): 158-160.

²⁷ Arthur J. Ray, *Indians in the Fur Trade: their role as hunters, trappers and middlemen in the lands southwest of Hudson Bay 1660-1870* (Toronto: University of Toronto Press, 1974), revised with a new introduction, 1998; Arthur J. Ray, "Fur Trade History and the Gitksan-Wet'suwet'en Comprehensive Claim: Men of Property and the Exercise of Aboriginal Title", in Kerry Abel and Jean Friesen, eds., *Aboriginal Resource Use in Canada: Historical and Legal Aspects* (Winnipeg: University of Manitoba Press, 1991): 301-316; Newell 1993: 28; Ray 1999.

²⁸ Newell 1993: 28, 32.

precise points in an aquatic ecosystem are culturally demarcated, given meaning, and claimed, "can lead to basic mistakes."²⁹ I decided that a case study grounded in the contours of specific ecosystems was the best means to draw-out the micro-environmental, technological, and cultural factors that shaped Ojibwa fishing places. Whether the settler society developed strategies to disrupt the Ojibwa's cultural and technological relationships with their local ecologies can then be studied.³⁰ This level of detail would be impossible in a broad study of Ontario fishing history.

The Mississauga and Chippewa's historical fisheries are suitable for such a micro-level study. In map A.1, I illustrate their division of south-central Ontario into discrete national territories around two major watersheds that divide in what is now the southeastern corner of Algonquin Park. The Chippewa controlled the watersheds that drain into the southeastern corner of Georgian Bay. The Mississauga claimed the Lake Ontario watershed between the Rouge and the Trent Rivers, which included the Trent's headwaters in the Haliburton region. The two territories represent major variations in Ontario's aquatic environments that range from the cooler waters of Lake Ontario and Georgian Bay to the warmer alluvial waters of Lake Simcoe and the Peterborough Lakes to the mixed cool and warm waters across the pre-Cambrian shield. The fact that the Mississauga and Chippewa's territories are defined by watershed boundaries makes the case study approach culturally and ecologically cohesive.

The Mississauga and Chippewa's traditional territory is also an important region for study because settlers built some of their first commercial and sport fisheries within its limits. Finally, I noted that the OFAH challenged the fishing rights of the seven communities during the 1990s, especially when it intervened in George Howard's appeal to the Supreme Court of Canada. This case therefore offers an excellent opportunity to examine OFAH's arguments specific to these communities and their traditional environment.

²⁹ Richard White, *The Organic Machine* (Hill and Wang: 1995): 39.

³⁰ I applied this approach in my analysis of the colonial struggle over the culturally and technologically determined productive ecological areas of a lake in the British Columbia interior: Thoms 2002.

A Review of the Literature

The historiography on Ojibwa fisheries

Until the mid-1970s, most historians and anthropologists focused on the hunting and trapping attributes of Ojibwa culture and under-emphasized the importance of fishing.³¹ In 1972, one anthropologist even dismissed Ojibwa fishing as relatively unimportant during the fur trade.³² More recently, historians undertook case studies of extensive aboriginal fisheries around the Saugeen Peninsula,³³ Manitoulin Island,³⁴ the Sault Saint Mary rapids,³⁵ Lake Superior,³⁶ the Lake of the Woods,³⁷ and the central subarctic.³⁸ In 1993, I conducted my M.A. research on the Red Rock Band's fishery on the Nipigon River in northwestern Ontario.³⁹ The studies reveal that fish were crucial to subarctic people's economies, especially the Ojibwa, and became even more central when terrestrial resources became scarce during the fur trade.⁴⁰ Given the overwhelming evidence of the importance of the fisheries to the Ojibwa, some scholars recently pondered why this realization came so late. One school of thought is that because aboriginal women were the primary labourers in many native fisheries, the Ojibwa being no exception, that fur traders and other male observers neglected to describe these crucial

³¹ Edward S. Rogers, *Ojibwa Fisheries in Northwestern Ontario* (Department of Ethnology, Royal Ontario Museum, Ministry of Natural Resources, Commercial Fish and Fur Branch, Division of Fish and Wildlife, 1972); R.W. Dunning, *Social and Economic Change among the Northern Ojibwa* (Toronto: University of Toronto Press, 1959).

³² Rogers 1972; Edward S. Rogers "Cultural Adaptations: The Northern Ojibwa of the Boreal Forest 1670-1980", in Theodore Steegmann, Jr., ed. *Boreal Forest Adaptations: The Northern Algonkians* (New York: Plenum Press, 1983): 94.

³³ Lytwyn 1992.

³⁴ Lytwyn 1990.

³⁵ Graham A. MacDonald, "The Ancient fishery at Sault Ste. Marie", *Canadian Geographical Journal* 94.2 (April/May 1977): 54-58; Charles E. Clelland, "The Inland Shore Fishery of the Northern Great Lakes: Its Development and Importance in Prehistory", *American Antiquity* 47.4 (1982): 761-1784.

³⁶ Erhard Rostlund, "Freshwater Fish and Fishing in Native North America," *University of California publications in Geography* 9 (1952): 1-313; McNab 1998.

³⁷ Tim E. Holzkamm, Victor Lytwyn, and Leo G. Waisberg, "Rainy River Sturgeon: An Ojibwa Resource in the Fur Trade Economy", *The Canadian Geographer* 32.3 (1988): 194-205; Van West 1990.

³⁸ Ray 1999.

³⁹ J. Michael Thoms, "Illegal Conservation: Two case studies of conflict between indigenous and state natural resource management paradigms", M.A. Thesis, Trent University, Peterborough Ontario, 1995.

⁴⁰ Charles A. Bishop, "The Emergence of the Hunting Territories Among the Northern Ojibwa", *Ethnology* 5.9 (January 1970): 1-15.

activities.⁴¹ The anthropologist, Charles Clelland, rejected this proposition with the observation that it is the rare primary record that does not contain a description of women's fisheries. Instead, he argued that his peers ignored Ojibwa fishing systems because of their "cultural predisposition to cast these fishermen in the roles of hunters, warriors, and fur traders."⁴² While some Ojibwa fisheries are now thoroughly documented, the Mississauga and Chippewa's traditional fisheries in south-central Ontario have not been purposely explored. This is a serious gap in the literature because their fishing grounds have been the subject of the oldest treaties and fishery laws in Upper Canada.

Ojibwa Conservation

In 1915, the anthropologist, Frank G. Speck, briefly conducted ethnographic research with the *Temí-Augami Anishnaabe*, a northern Ojibwa community. He found that these Ojibwa managed non-migratory animals through a system of family property claims over demarcated hunting grounds. Speck argued that the Ojibwa managed or conserved these animal resources because they had laws preventing trespass into another family's grounds and because each family had the ability and skill to perennially monitor their pressure on the local resources and adjust their use accordingly.⁴³ Speck's findings generated considerable controversy. While many scholars later concurred that they found evidence of property institutions among other Algonquin communities, they differed over whether these institutions were aboriginal, inspired by European missionaries and fur traders, or a response to the collapse of big game herds at the outset of the fur trade.⁴⁴

⁴¹ Brian J. Smith, "Historical and Archeological Evidence for the use of the fish as an alternative subsistence resource among Northern Plains bison hunters", in *Kerry Abel and Jan Friesen, Aboriginal resource use in Canada: historical and legal aspects* (Winnipeg: University of Manitoba Press, 1991): 42; Elizabeth Vibert, "Real men hunt buffalo: masculinity, race and class in British fur trade narratives", in Joy Parr and Mark Rosenfield, eds., *Gender and History in Canada* (Toronto: Copp Clark Ltd., 1996): 50-67.

⁴² Clelland: 1982: 762, 764.

⁴³ Frank G. Speck, "The Family Hunting Band as the Basis of Algonkian Social Organization," *American Anthropologist* 17 (1915): 5-6.

⁴⁴ In particular, see the work of Eleanor Leacock, "The Montagnais 'Hunting Territory' and the Fur Trade", *Memoirs of the American Anthropological Associations* 78 (1954): 1-71; Dunning 1959; H. Hickerson, "Land Tenure of the Rainy Lake Chippewa at the Beginning of the 19th Century", *Smithsonian Contributions to Anthropology* (Washington: Smithsonian Institute, 1967); Bishop 1970: 1-15; Adrian Tanner, "The New Hunting Territory Debate: An Introduction to Some Unresolved Issues", *Anthropologica* 28.1-2 (1986): 19-36; Shepard Krech III, *The Ecological Indian Myth and History* (New York: W.W. Norton & Company, 1999): 179-80, 182, 193, 195.

My research benefits from a tremendous set of data on Mississauga and Chippewa family hunting properties, their locations, their history, and their supporting laws that a law firm, Hunter & Hunter, collected with the Mississauga and Chippewa in 1903. The data predate Speck's work and thus contribute new information to the debate.⁴⁵

Recently, in *The Ecological Indian: myth and history*, the anthropologist, Shepard Krech, challenged the body of academic research and popular ideas that hold that natives sustainably managed natural resources. He asked how faithfully the modern concept of "conservation" reflects native cultural beliefs and harvesting practices over all time?⁴⁶ His book is controversial⁴⁷ and because it covers some of the same ground I intend to explore, requires some comment. At the core of his research, as I read him, Krech concluded that in the early 20th century, many aboriginal people borrowed or infused the concept of "conservation" with their current cultural identity to gain political advantage. In other cases, non-natives ascribed this identity to some to native groups.⁴⁸ In my MA thesis, I agreed that Europeans have replaced their romantic conception of natives as "noble savages" with the idea of the "sustainable savage" as a new allegory against which to critique western society.⁴⁹ Krech's caution to represent aboriginal cultures faithfully, free from an agenda to critique western values, is well received. The "conservationist" banner, however, must also be seen in its historical and political context. The environmental history literature that I review below is clear that, over time, different social interest groups, especially sportsmen, claimed to be the "true" conservationist in order to control or appropriate a resource from another user.⁵⁰ It is therefore necessary to

⁴⁵ PAO, F 4337, A.E Williams - United Indian Bands of the Chippewas and the Mississaugas collection.

⁴⁶ Krech 1999: 16.

⁴⁷ Colin G. Calloway, "Indians, Animals, and Other Beings", *Natural History* 108.8 (October 1999): 64-6; Kirkpatrick Sale, "Again, The Savage Indian", *Ecologist* 30.4 (June 2000): 52; Richard White, "Review of *The Ecological Indian* and *Jefferson and the Indians*," *New Republic* 222.4 (January 2000): 44-9; Eric Alden Smith and Mark Wishnie, "Conservation and Subsistence in Small-Scale Societies", *Annual Review of Anthropology* 29.1 (October 2000): 493-524; Adrian Tanner, "Review of Shepard Krech III. *The Ecological Indian. Myth and History*", H-AmIndian, H-Net Reviews, April 2001. Url: <http://www.h-net.msu.edu/reviews/showrev.cgi?path=23850987187740>; Andre C. Isenberg, "Review of Shepard Krech III. *The Ecological Indian*", *American Historical Review* 106.2 (April 2001): 526-35; Dan Flores, "Review of Shepard Krech III. *The Ecological Indian*", *The Journal of American History* 88.1 (June 2001): 177-8;

⁴⁸ Krech 1999: 195-6, 206.

⁴⁹ Thoms 1995: 26-28.

⁵⁰ T.L. Altherr, "The American Hunter-Naturalist and the Development of the Code of Sportsmanship", *Journal of Sports History* 5 (Spring 1978): 7-22; J.F. Reiger, *American Sportsmen and the Origins of Conservation* (Norman: University of Oklahoma Press, 1986), revised and expanded in 2000; N.S. Forkney, "Anglers, Fishers, and the St. Croix River: Conflict in a Canadian-American Borderland, 1867-

situate the history of group identification as “conservationists” within the context of a power struggle. I believe that the important question is not whether the western definition of conservation actually describes Ojibwa resource use patterns over time, but rather, when and why did the Ojibwa feel they had to engage in this western discourse? The work of the post-colonial theorist, Mary Louise Pratt, is useful here. She coined the term ‘auto-ethnography’ to describe situations in which colonized subjects appropriated the colonizer’s idioms, metaphors, and language in order to define and protect themselves.⁵¹ Is it possible that the Ojibwa appropriated the sportsmen’s concept of conservation to engage the colonizer in a powerful debate that had resource appropriation at its heart?

In terms of the Ojibwa’s property institutions that Speck first identified, Krech concurred with its existence and potential to conserve non-migratory animals. He also examined its history and argued that a Jesuit missionary inspired the systems.⁵² His finding is that Ojibwa property institutions, and hence the ability to conserve certain resources, deserve some European credit. Krech also reviewed a variety of aboriginal beliefs and harvesting practices to determine if they contained sustainable resource management concepts. In particular, he gave a significant amount of attention to aboriginal spiritual beliefs such as reincarnation or metaphysical ideas about animal biology.⁵³ As I read him, he scrutinized these beliefs against current knowledge in the ecological sciences and found that many native customs for wildlife use were unsound or based more in superstition than ecological knowledge.⁵⁴ In the case of Cherokee’s metaphysical thinking about the biology of white tailed deer, he wrote, “but their knowledge – their science – was cultural”.⁵⁵ While Krech examined the changes in native concepts of their relationship with nature, he does not historicize the western ecological sciences that he holds as a counter-point of objective knowledge. In short, he

1900”, *Forest and Conservation History* 37 (October 1993): 179-87; K.H. Jacoby, “Class and Environmental History: Lessons from the ‘War in the Adirondacks’”, *Environmental History* 2 (July 1997): 324-42; L.S. Warren, *The Hunter’s Game: Poachers and Conservationists in Twentieth-Century America* (New Haven: Yale University Press, 1997); Joseph E. Taylor III, *Making Salmon: An Environmental History of the Northwest Fisheries Crisis* (Seattle, University of Washington Press: 1999).

⁵¹ Mary Louise Pratt, *Imperial Eyes: Travel Writing and Transculturation* (New York: Routledge, 1992): 7.

⁵² Krech 1999: 179-182.

⁵³ Tanner 2001.

⁵⁴ Krech 1999: 22, 117, 170-1, 204.

⁵⁵ Krech 1999: 167.

did not approach modern western science as another cultural product. As I will explain below, the western ecological sciences, especially where they involve the management of sport fisheries, also need to have their basis in superstitions, cultural assumptions, myths, and metaphors exposed. The questions need to be asked: is modern ecological science an objective value-free source of knowledge against which to test aboriginal management systems? Or, did it evolve in a colonial negation of aboriginal systems and is thus inherently opposed to native practices?

So far, the literature on Ojibwa property institutions has been limited to terrestrial resources. In my study of the Nipigon River, I learned that the local Ojibwa community subdivided the length of the river into a series of family properties that enabled communities to control the allocation of the resource and monitor their pressure.⁵⁶ An important literature on Pacific slope aboriginal fishing cultures documents the existence and operation of aboriginal fishing properties there,⁵⁷ but whether family claims to fishing places were more universal among the Ojibwa needs to be tested. Dianne Newell's argument in *Tangled Webs of History* that Northwest Coast aboriginal societies' adaptation to aquatic resources "was as crucial as adaptation to land" and that in many cases when these people pinpointed the predictable location of fish, they organized their terrestrial harvesting strategies around their fishing, may also be tested for the Ojibwa.⁵⁸

The historiography of southern Ojibwa treaties

It is well known that between 1784 and 1788, the Mississauga and Chippewa agreed to a number of treaties involving the surrender of narrow strips of land along the shore of Lake Ontario from Kingston to Niagara. The substance of these first treaties is largely unknown because British officials failed to produce copies of them and then later proffered conflicting reports about their contents. The absence of this crucial information came to light almost immediately. In 1794, when Lieutenant-Governor John Graves Simcoe assumed his duty to settle the colony, he was astounded to learn that no reliable

⁵⁶ Thoms 1999.

⁵⁷ Arthur F. McEvoy, *The Fisherman's Problem: Ecology and the Law in the California Fisheries, 1850-1980* (Cambridge University Press, 1986); White 1995; Keith T. Carlson, "History Wars; Considering Contemporary Fishing Sites Disputes," Keith T. Carlson, ed. *A Stól:lō-Coast Salish Historical Atlas* (Vancouver: Douglas & McIntyre, 2001): 58-9; Thoms 2002.

⁵⁸ Newell 1993: 40.

treaty records were made.⁵⁹ More recently, in 1920, the chief archivist of Ontario confirmed that few records exist for the first Upper Canada treaties. He blamed the Indian Department, a branch of the military, that unlike the Crown Lands Department, kept few records: "scarcely a record or account book was used, the Deputy Paymaster was the only public accountant for monies, and there was not even a permanent clerk for correspondence."⁶⁰ In the 1980s, the historian Robert Surtees produced the first and only survey of the treaties that occurred in Upper Canada.⁶¹ He too had little to say about the first treaties made in the 1780s. In 1990, the historian, Leo Johnson, wrote that the pre-1805 treaty records are "fragmentary", "shrouded in obscurity", and "difficult to analyse accurately".⁶² Due to this absence of records, most historians, including Fraser, Surtees, Johnson, and Donald Smith, started their treaty researches with the 1805 *Toronto Purchase* and the 1806 purchase of the Burlington tract, for which there are more complete sets of colonial records.⁶³

It has not escaped the above historians' attention that by 1820, the Mississaugas were deprived of the vast majority of their lands in southern Ontario. Despite the absence of records, some historians have suggested possible explanations. Donald Smith articulated the explanation that the Mississauga's misfortune was caused by a lack of knowledge of the value of land.⁶⁴ The historical evidence, however, does not support this argument.⁶⁵ Alternatively, Johnson argued that British officials intoxicated the Mississauga to induce them to sign the treaties.⁶⁶ Neither argument attributes any agency to the Mississauga and Chippewa. Part of the problem is that none of these historians considered the recorded Ojibwa oral histories to be found in a variety of archival

⁵⁹ NAC, RG 10, vol. 8, Major E.B. Litterhales to Sir John Johnson, Superintendent of Indian Affairs, requesting that all records of the Toronto Purchase be sent to Lieutenant Governor Simcoe: pp. 8744-5.

⁶⁰ Fraser 1921: 219.

⁶¹ Surtees 1984, 1994.

⁶² Johnson 1990: 233.

⁶³ Fraser 1921; Surtees 1980; Smith 1981; Johnson 1990.

⁶⁴ Smith 1981: 67-87.

⁶⁵ In one example, in 1797, Justice William Dummer Powell expressed great irritation at the price the Mississauga demanded for their land. The Crown expected to buy the lands for less than their market value. William Dummer Powell, "Memoir", 1 November 1796, in E.A. Cruikshank, ed., *The Correspondence of the Honourable Peter Russell with Allied Documents Relating to his Administration of the Government of Upper Canada during the Official Terms of Lieut.-Governor J.G. Simcoe while on leave of absence*, vol. 2 (Toronto: Champlain Society, 1935): 21.

⁶⁶ Johnson 1990: 233.

sources.⁶⁷ I do not leave these recorded oral traditions to stand on their own, but scrutinize them against crown records and other sources that bear on their historical context. Together, the crown's records and the Ojibwa's oral traditions form a robust source of data that indicate the Ojibwa were tactful negotiators and had a sophisticated plan for their co-existence with the newcomers. What happened to the Ojibwa's negotiated plans becomes the ensuing question?

The historiography of Fisheries legislation/regulation

The history of western fishery laws, particularly their shifting objectives and the shifting grounds on which they were premised, are central to this study. Legislative authority over the Great Lakes and inland waters is relatively straightforward. The legislature of Upper Canada passed the first *Acts for the Preservation of Salmon* between 1807 and 1839, after which the colonial legislature of Canada (province) passed fishery laws until Confederation. Most significantly, in 1857, the colony passed the first comprehensive *Fisheries Act* and formed a Fisheries Branch ("Fisheries") under the Department of Crown Lands for the enforcement of the *Act*.⁶⁸ After Confederation, Canada controlled Ontario's Great Lakes and inland fisheries and formed the federal Department of Marine and Fisheries ("Fisheries"). In 1868, it passed a *Fisheries Act* based on the colonial *Act* of 1857.⁶⁹ Thus, Upper Canada's legislative history and struggle with Ojibwa treaty rights contributed directly to the first Canadian *Fisheries Act* and has implications for the study of fisheries law across the country. Canada retained control over the Great Lakes and its watersheds until 1898, after which Ontario acquired control at the conclusion of a protracted court battle.⁷⁰

Compared to the study of other staple products in Ontario's history (i.e. fur, timber, and minerals), there have been a limited number of studies on the province's

⁶⁷ Aside from the PAO's recent purchase of the Hunter & Hunter records (PAO F 4337), the NAC holds microfilmed copies of Mississauga council meeting minutes from 1825 to 1849 in which many oral histories are recorded (NAC, RG 10, vol. 1011, Chief George Paudash papers). In another example, the NAC holds the sworn oral statements of 73 elders before the 1923 Williams Commission (NAC, RG 10 volume 2332 file 67,0171-4C, Bound volume of Testimony to a Commission, Chaired by A.S. Williams, investigating claims, by the Chippewas & Mississaugas of the Province of Ontario, to compensation for land not surrendered by the Robinson Treaty of 1850, 1923).

⁶⁸ Canada (province), *The Fishery Act*. 20 *Vict.* (1857) c. 21.

⁶⁹ Canada. *Fisheries Act*. 32 *Vict.* (1868) c. 20.

⁷⁰ "Re. Provincial Fisheries," *Supreme Court of Canada Reports* 26 (1896): 526.

fisheries. It is likely that the destruction of Fisheries pre-1892 records in the West Block fire of that year is a significant contributing factor to the underdevelopment of the field. Within the research that has been done, scholars have not critically studied the earliest period of Upper Canada's fisheries management. Historians who have commented on the *Acts for the Preservation of Salmon* regarded them as rudimentary but enlightened steps towards the conservation of fish that formed the groundwork for the comprehensive *Fisheries Act* of 1857.⁷¹ These historians all approached their analysis from an environmental perspective: they tried to decipher how the *Acts* served to protect the fish. For example, R.W. Dunfield, in *The Atlantic Salmon in the History of North America*, found that the *Salmon Acts* were of little merit because spear fishing was sanctioned, revisions to the acts were sometimes contradictory, and the acts did not extend geographically to cover all the salmon spawning grounds in Upper Canada.⁷² Historians have not approached their analysis of the *Acts* from the question: for whom were the salmon protected? This approach opens up new insights into the social purpose of the first fishery laws in Upper Canada. This perspective is also consistent with the intent of English game and fish laws passed between 1671 and 1831 that 'preserved' game for a specific group, usually the landed gentry. In fact, the precedents for Upper Canada's *Salmon Acts* are found in 18th century England where identically styled laws were on the books to preserve the salmon for the elite. No historian, however, has examined the 18th century English fishery laws to locate the legal and social assumptions that informed Upper Canada's *Acts for the Preservation of Salmon*.

It is well known that 18th century English game laws protected game and fish for the landed gentry and were oppressive, often making it penal for a peasant to kill a hare in his own fields. A high quality scholarship starting with E.P. Thompson's classic work, *Whigs and Hunters*, Douglas Hay's, "Poaching and Game Laws in Cannock Chase", Richard H. Thomas', *The Politics of Hunting*, and P.B. Munsche's *Gentlemen and Poachers* reveal the social and ideological origins of the laws. They showed that the laws

⁷¹ Katherine MacFarlane Lizars, *The Valley of the Humber: 1615-1913* (Toronto: William Briggs, 1913): 115; Edwin C. Guillet, *Early Life in Upper Canada* (Toronto: University of Toronto Press, 1933): 267; Lambert 1967: 150-51; McCullough 1989: 19; Hansen 1991: 5-6; Wright 1994: 344; Margaret Beattie Bogue, *Fishing the Great Lakes: An Environmental History, 1783-1933* (Madison: The University of Wisconsin Press, 2001): 179.

were as much, if not more, about enforcing England's rigid social order as they were about the conservation of fish and game. They explained why the landed gentry argued that its game laws were in the best interest of English society and how they girded their laws with ideological justifications. On one hand, the gentry developed the argument that we now call the 'tragedy of the commons' to justify their exclusive property in game and fish to protect it from "ruin".⁷³ While this argument had a relationship to conservation, others justifications were solely concerned with the preservation of the English social order. Munsche explained, for example, that the statutory regime produced a blueprint of the desired social geography of rural England. The laws spelt out the appropriate vocations of each class and stratified England's ecological niches along class lines with peasants confined to their village commons and the elite accorded various degrees of exclusive rights over game and fish based on their wealth and social status. To bolster the laws, the elite argued that hunting and fishing was a vice that, if not restricted, could lead peasant farmers into sloth and immorality, thus causing them to neglect their proper calling and industrious labour.⁷⁴ In the words of one early 18th century English authority, fishing was "the mother of all vices".⁷⁵

These English laws and their social and moral assumption were not restricted to England. The Upper Canadian records are replete with colonial concerns about the moral effects of fishing on a settler society. While historians of Upper Canada all agree that British officials attempted to construct the colony into a stratified social geography based on the English model,⁷⁶ they have not considered whether Upper Canada's first fishery laws were part of this strategy. Similarly, environmental historians have not considered how moral concerns (and the perceived need for restraint) shaped the development of the

⁷² R.W. Dunfield, *The Atlantic Salmon in the History of North America* (Ottawa: Department of Fisheries and Oceans, 1985): 75, 107.

⁷³ Blackstone, Sir William, *Commentaries on the Laws of England*, vol. 2 (Oxford: Clarendon Press, 1765-69): c. 27: 412.

⁷⁴ P.B. Munsche, *Gentlemen and Poachers: The English Game Laws 1671-1831* (Cambridge: Cambridge University Press, 1981): 7.

⁷⁵ Anon., *The Game Laws or a Collection of the Laws and Statutes made for the preservation of game in this Kingdom*, 6th edition (London: Nutt, 1722): vii.

⁷⁶ Gilbert C. Paterson, "Land Settlement in Upper Canada", in Ontario Bureau of Archives, *Report* (Toronto: 1921); J.M. Bliss, "Governor Simcoe's plans for Upper Canada", in J.M. Bliss, ed., *Canadian History in Documents, 1763-1966* (Toronto: Ryerson Press, 1966): 34; Lillian F. Gates, *Land Policies of Upper Canada* (Toronto: University of Toronto Press, 1968); Leo A. Johnson, "Land Policy, Population Growth, and Social Structure", *Ontario History* 52.1 (1972).

Great Lakes fisheries.⁷⁷ Finally, historians of aboriginal rights have not considered how English fishery laws could have been used to protect exclusive Ojibwa fishing rights and improve their social standing in the settler society. A question I address throughout my research is: did the *Acts for the Preservation of Salmon* recognize the Ojibwa as the equivalent of English lords over the fisheries?

The English game law literature makes two other important contributions to the analysis of Ojibwa treaties and what happened to their fishing rights. First, the literature is clear that the concept of property in natural resources was different in 18th century England. At this time, many people could claim properties within a single plot of land: somebody might own the fruit trees, another the rushes, and another the fish in a pond. Only after parliament passed the “enclosure” acts in the late 18th century did all the possessable property within an area of soil become bundled as the property of one owner. The former concept of property in natural resources is the one to consider when interpreting the *Royal Proclamation of 1763* and the first treaties in Upper Canada.

Secondly, the literature also makes it clear that English peasants resisted the landed gentry’s game laws. In particular, E.P. Thompson demonstrated that peasants hired lawyers and founded a legal tradition of articulating their own “alternative definitions of property rights” to rebuke elite efforts to usurp their communal resources.⁷⁸ The significance for other English law jurisdictions is that these resisters made room in the common law for alternative definitions of communal property in natural resources. To understand how settlers and even some aboriginal communities in the British North American colonies resisted the Crown’s attempts to assert control over their fisheries, it is important to understand the realm of legal defenses that English peasants developed to protect their local control from state appropriation.

Historiography on Canada’s (province) 1858 Fishery Acts

There is a growing debate on the history and intent of Canada’s (province) *Fishery Acts* of 1857 and 1858. In 1857, the Canadian parliament (provincial) passed the

⁷⁷ McCullough 1989; Bogue 2001.

⁷⁸ E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (New York: Penguin Books, 1975): 264-9.

first comprehensive *Fisheries Act*.⁷⁹ In 1858, it revised the *Act* to contain clauses for the division of the Great Lakes and inland waters into a series of “fishing stations” to be leased to the highest bidder.⁸⁰ The *Act* gave the lessees the exclusive right over their fishing stations. The historical geographer, Victor Lytwynn, argued that Fisheries then re-allocated the better part of many Ojibwa communities’ fisheries to non-native commercial fishers. The Ontario legal historian, Roland Wright, concurred with this consequence, but argued that it was unintended. Instead, he argued that the 1858 *Fisheries Act* represented the first real time the Ojibwa had a legal opportunity to acquire exclusive control over a fishing ground.⁸¹ Wright’s arguments are a reification of the reasoning of a colonial solicitor general who, in 1866, held that under the terms of *Magna Carta* (1215), nobody could hold an exclusive right of fisheries in navigable waters unless expressly sanctioned by parliament.⁸² Both Wright and the solicitor general therefore argued that any crown “grant” of an exclusive Ojibwa fishing right in a treaty, without parliamentary sanction, was incompatible with English law. Wright’s argument has been persuasive in recent Canadian jurisprudence,⁸³ but is the subject of growing debate in the legal history literature.⁸⁴ I address the many failures of the solicitor general’s crucial justification for the re-allocation Ojibwa fisheries, and its recent scholarly revival, throughout my research.

The historiography on sport fishing lobbies

A growing literature provides important guidance on the role of sportsmen in the history of North American environmental politics. In 1981, James Tober, in *Who Owns the Wildlife*, challenged Nash’s altruistic interpretation of sportsmen’s contributions to the history of conservation with evidence that sportsmen were a powerful class of people who lobbied for restrictions on access to wildlife to benefit themselves, other elite social

⁷⁹ Canada (province), *The Fishery Act*. 20 Vict. (1857) c. 21.

⁸⁰ Canada (province). *The Fishery Act* 22 Vict. (1858) c.86.

⁸¹ Wright 1994.

⁸² NAC, RG 10, vol. 711, James Cockburn, Solicitor General, Crown Law Department, 6 March 1866.

⁸³ *R. v. Nikal*, *Supreme Court Reports* 1 (1996): 1013.

⁸⁴ Lytwyn 1994; Peggy J. Blair, “Solemn Promises and Solum Rights: The Saugeen Ojibwa Fishing Grounds and *R. v. Jones Nadjiwon*”, *Ottawa Law Review* 28.125 (1996-1997): 125; Mark D. Walters, “Aboriginal Rights, *Magna Carta* and Exclusive Rights to Fisheries in the Waters of Upper Canada”, *Queen’s Law Journal* 23 (1998): 301; Harris 2001: 29-30.

interests, and the manufacturers of firearms.⁸⁵ Numerous American studies followed in this vein.⁸⁶ Its influence is now noticeable in the Ontario literature.⁸⁷

The historiography suggests that sportsmen entered environmental politics around the turn of the 20th century. In his study, *American Sportsmen and the Origins of Conservation*, J.F. Reiger argued that eastern American anglers first expressed concerns about declining fishing population in the mid-19th century but did not possess sufficient power to influence fishery management ideas until 1870.⁸⁸ In *Making Salmon*, Joseph Taylor, argued that American west coast anglers seized control over the “the future” of pacific salmon fisheries management in 1908.⁸⁹ In the Canadian literature, A.B. McCullough argued in, *The Commercial Fisheries of the Great Lakes*, that “competition between commercial and sport fishers on the Great Lakes did not become a serious problem until the twentieth century”.⁹⁰ In *Fishing the Great Lakes*, the historian Margaret Beattie Bogue pushed this date back to the time when sportsmen organized into powerful lobbies composed of prominent political and business elites who seized control of Ontario’s first Game and Fish Commission in 1892.⁹¹ In both the American and Canadian literature, the consensus is that anglers represented a third and final epoch in the history of fisheries politics. Joseph Taylor, in *Making Salmon*, illustrated this standard organizational trope. He organized his text into the three conventional epochs. In the first epoch, aboriginal nations managed the northwest Pacific salmon fisheries then commercial fishers took control in the middle part of the nineteenth century, only to be ousted by sport fishers in the final epoch. Taylor reasoned that the anglers’ success in the early 20th century lay within the new dynamics of urbanization with its rapid social, cultural, and political change, where sportsmen consolidated sufficient power to

⁸⁵ James A. Tober, *Who Owns the Wildlife: The Political Economy of Conservation in Nineteenth-Century America* (Contributions in Economics and Economic History, Number 37, Westport, Connecticut: Greenwood Press, 1981): 49.

⁸⁶ Reiger 1986; K.H. Jacoby, “Class and Environmental History: Lessons from the ‘War in the Adirondacks’”, *Environmental History* 2 (July 1997): 324-42; P. Johnson, “Fish Free or Die: The Marlboro South Pond Case of 1896”, *Vermont History News* 43 (fall 1992): 43-46; Warren 1997.

⁸⁷ Frank Tough, “The Criminalization of Indian Hunting in Ontario, ca. 1892-1930”, a paper presented to the Commonwealth Geographical Bureau Land Rights Workshop, Wellington / Christchurch, New Zealand, February 2-8, 1992; Forkney 1993; Parenteau 1998.

⁸⁸ Reiger 1986: 105-125.

⁸⁹ Taylor III 1999: 188.

⁹⁰ McCullough 1989: 106.

⁹¹ Bogue 2001: 297-8.

appropriate the “conservationist banner” and accord priority to recreational use of the fisheries over food fisheries.⁹² Curiously though, Taylor noted that in the mid-19th century, the first proponents of fish hatchery programs, including the Canadian Samuel Wilmot and the American George Perkins Marsh, major subjects of his study, were anglers. The implications of their angling perspectives on the development of early fisheries management ideas go unexamined. While Reiger recently defended his conclusion that sportsmen were not an effective lobby group in the United States until 1870,⁹³ the possibility that Anglo-Canadian sportsmen have a different history and affected management ideas much earlier, requires investigation.

The history of fisheries science

A scholarly literature is showing that the years between 1860 and 1880 were the formative period for the development of fisheries science research in western countries, including Ontario’s Great Lakes. Tim Smith, in *Scaling Fisheries*, argued that in the 1860s, scientists began to establish the basic life histories of various commercial fishes to answer questions about abundance and fluctuations that affected commercial yields.⁹⁴ Stephen Bocking, a historian of aquatic ecology, considered the mid-1880s to be another period of significant change when scientists applied the concept of ecology to study the problems in Great Lakes fisheries management.⁹⁵ Various Canadian fisheries scientists have also contributed histories of their careers with a discussion of the shifts in knowledge that shaped the development of their field.⁹⁶

Science is often perceived as the quest for objective knowledge about nature and reality. In recent times, historians have joined others in questioning scientific authority. In the 1970s, the philosopher-historian, Michel Foucault, famously critiqued the

⁹² Taylor III 1999: 188.

⁹³ Reiger, Third edition, revised and expanded 2000:1-44.

⁹⁴ Tim. D. Smith, *Scaling Fisheries: the science of measuring the effects of fishing, 1855-1955* (Cambridge: Cambridge University Press, 1994).

⁹⁵ Stephen, Bocking, “Stephen Forbes, Jacob Reighard, and the Emergence of Aquatic Ecology in the Great Lakes Region,” *Journal of History of Biology* 23 (1990): 461-98; Stephen, Bocking “Visions of Nature and Society: A History of the Ecosystem Concept”, *Alternatives* 20 (1994): 12-18; Stephen, Bocking *Ecologists and Environmental Politics: A History of Contemporary Ecology* (New Haven: Yale University Press, 1997).

⁹⁶ J.R. Dymond, “Zoology in Canada”, in Frank Dawson Adams, ed., *A History of Science in Canada* (Toronto: The Ryerson Press 1939): 41-57; Kenneth Johnstone, *The Aquatic Explorers: A History of the Fisheries Research Board of Canada* (Toronto: University of Toronto Press, 1977).

emergence of science as a supposedly neutral and value-free authority and argued that science was not value-free but contained social control implications and links to power.⁹⁷ Foucault's work inspired the new fields of the sociology of knowledge and science and technology studies that examine the history of various sciences to understand the production of its knowledge base, its context, influences, and goals, and its relationship to power. In this endeavor, the sociologist of science, John Law, argued for the treatment of scientific knowledge "as culture like any other form of knowledge" and that the project is to see how science is "directed by social interests with corresponding social control implications". According to Law, case studies of the production of even the most "esoteric" forms of scientific knowledge "revealed that social interest may operate in arenas seemingly far from areas of class or political conflict".⁹⁸ Law's findings are in line with other contemporary science studies, including the guiding work of Bruno Latour in *Science in Action: How to follow scientists and engineers through society*.⁹⁹ Latour's main thesis is that scientific knowledge is socially produced, not discovered.¹⁰⁰ A feminist critique of science is equally if not more powerful, such as Donna Haraway's work in *Primate Visions*, where she argued that male primatologists approached their research on primate gender behaviour with patriarchal assumptions drawn from their own social milieu. Instead of creating new knowledge about ape behaviour, Haraway argued that these male primatologists affirmed their paternalistic cultural assumptions, which in turn, as a "science", gave greater authority to the same assumptions in the public debate about inherent gender differences in the human population.¹⁰¹

The critique of scientists' social assumptions has entered the study of the history of environmental sciences, including the history of fisheries science. In 1987, Elizabeth Ann Bird, in "The Social Construction of Nature", called to environmental historians to treat science "as any other aspect of social production" and encouraged "histories of

⁹⁷ Michel Foucault, *The Order of Things: The Archeology of the Human Science* (New York: Pantheon, 1970). See also, Michel Foucault, *Power/Knowledge: Selected Interviews & Other Writing, 1972-1977* (New York: Pantheon Books, 1980).

⁹⁸ John Law, ed., *Power, Action and Belief, A new sociology of knowledge* (London: Routledge, 1986): 2.

⁹⁹ Bruno Latour, *Science in Action: How to follow scientists and engineers through society* (Milton Keynes: Open University Press, 1987).

¹⁰⁰ Bruno Latour, *Laboratory Life: Social Construction of Scientific Facts* (Princeton, N.J.: Princeton University Press, 1979).

¹⁰¹ Donna Haraway, *Primate Visions: gender, race, and nature in the world of modern science* (New York: Routledge, 1989).

environmental problems that examine the social relations, structural conditions, cultural myths, metaphors and ethical presuppositions that constitute the social negotiations with nature and contribute to those problems".¹⁰² In the history of fishery science, Michel Callon contributed an important study on the role of "experts" in ideas for the social organization of French scallop fishers.¹⁰³ In "Science, Culture, and Politics", Arthur McEvoy incisively articulated the interaction between culture, ecology, production, and the law in his study of the California government's management of coastal fisheries. He challenged the common assumption about 'lawmakers' and 'science':

We tend to assume, first, that lawmaking goes on in isolation from that struggle for resources in the market place. And second, we frequently assume that the scientific information on which we base our regulation comes to us as "objective" truth, free of political charge either in its generation or in the way it gets used in lawmaking. Both of those assumptions belie the interactive nature of ecology, production, and regulation.¹⁰⁴

Dianne Newell's *Tangled Webs of History: Indians and the law in Canada's Pacific Coast Fisheries* shows how fishery regulations in British Columbia were similarly manipulated to make aboriginal coastal communities bear the brunt of the state's conservation objectives.¹⁰⁵

McEvoy's caution about treating fishery science as objective truth and free of political charge or social struggle underpinned the approach to my research. Bird's advice to examine cultural myths, metaphors, and ethical presuppositions that may have influenced the development of fisheries science also guided my approach. Whether the emergent 19th century fisheries science was value-free or influenced by the colonial struggle to control indigenous fishing needs study. I particularly explore the origins of the scientific arguments regarding fishing seasons, methods, and places, to determine if social interests such as sportsmen influenced the development of knowledge about what constituted correct times, methods, and places of fishing. If this science still contains

¹⁰² Elizabeth Ann Bird, "The Social Construction of Nature: Theoretical Approaches to the History of Environmental Problems", *Environmental History* 11.4 (winter 1987): 262.

¹⁰³ Michel Callon, "Some elements of a sociology of translation: domestication of the scallops and the fishermen of St. Brieuc Bay", *The Sociological Review Monograph* 32 (1986): 196-233.

¹⁰⁴ Arthur F. McEvoy, "Science, Culture, and Politics in U.S. Natural Resources Management", *Journal of the History of Biology*, vol. 25.3 (fall 1992): 478.

unexposed assumptions, myths, and ethical presuppositions developed in a colonial struggle over the fisheries, it may help explain why these scientific arguments continue to have the power to marginalize aboriginal fishing practices.

There is also a post-colonial critique of science that investigates how western scientists appropriated indigenous knowledge without acknowledgement and then denigrated and suppressed it as a non-science.¹⁰⁶ I draw on this field to determine how the colonizer may have appropriated Ojibwa knowledge of fish types, behaviour, classifications, and life histories, and then possibly denounced the legitimacy of indigenous knowledge when scientists and experts assumed the authority over the fisheries. I ask, do elements of indigenous fishery knowledge, nomenclature, or life histories still survive in the modern study of fisheries?

The historiography on “space”

It may be said that when Fisheries divided the Great Lakes and inland waters into a series of fishing stations and assigned a fisher to each one, it drew these environments into a series of “spaces”. It appears, therefore, instructive to consider what the new post-colonial literature about “space” contributes to an analysis of this management strategy. There are two important theoretical contributors to the recognition of the idea of space: Henri Lefebvre and Michel Foucault. Henri Lefebvre argued that spaces are never empty, but always filled with ideology and politics.¹⁰⁷ The geographers, Nick Blomley and David Harvey, argued that cadastral maps such as the one that Fisheries drew across the Great Lakes, “opened up a way to look upon space as open to appropriation and private uses.”¹⁰⁸ In *Post-Modern Wetlands*, Rod Gibblet conducted a major study of the colonization of the world’s wetlands and argued that the drawing of a gridded space over

¹⁰⁵ Newell 1993.

¹⁰⁶ Michael Adas, *Machines as the Measure of Men: Science, Technology and Ideologies of Western Dominance* (Ithaca: Cornell University Press, 1989); Deepak Kumar, *Science and Empire* (Delhi: Animika Prakashan, 1991); Sandra Harding, *Is Science Multi-Cultural?* (Bloomington: Indiana University Press, 1998).

¹⁰⁷ Henri Lefebvre, *The Production of Space* (Cambridge: Blackwell, 1991): 31. Originally published as *La production de l'espace* (Paris: Editions Anthropos, 1974).

¹⁰⁸ David Harvey, *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change* (Cambridge: Blackwell, 1990): 228.

a wetland was the primary “instrument of colonization”.¹⁰⁹ In effect, the grid turned water into a set of private spaces from which private wealth could be developed. Fishing stations were not the first “spaces” drawn in Upper Canada, but complemented a series of spaces that crown officials earlier surveyed on land that included settler land grants, Crown timber reserves, mineral reserves, clergy reserves, and Indian Reserves. It therefore appears that over time, the crown divided Ojibwa lands and waters into grids that re-conceptualized Ojibwa places as possessable and open for private appropriation and private uses. I do not leave this observation at a theoretical level, but ask how conscious crown officials were that it could use “space” to re-organize the Ojibwa’s lands and waterscapes.

On another level, many postmodern theorists argued that “space” had implications for social control. Foucault, for example, argued that certain spaces were designed as tools for the social engineering and surveillance of peoples, which he called “disciplinary spaces”.¹¹⁰ Crown records are clear that they felt their control over space was the means to build a hierarchal, stable, and moral settler society. Fisheries’ records are equally clear that they felt that space could be used to transform idle fishers into moral and industrious fishers. I ask how conscious Canadian authorities were about the potential of “space” to engineer certain forms of social behaviour and discipline transgressors. I then ask if these forms of social control still lie within Ontario’s modern system for the management of the fisheries.

Outline of the chapters

I considered the reconstruction of the traditional cultural ecology of the seven Chippewa and Mississauga communities to be a crucial first step in my study. Recent scholarship has developed the concept of “communal property regimes” (CPR) to demonstrate that a natural resource can be sustained if: 1) it is used by a well defined group, which has 2) a form of exclusivity over the resource, and 3) the user group has a set of rules for the use, distribution, and protection of the resource which all members of

¹⁰⁹ Rodney James Giblett, *Postmodern Wetlands: Culture, History, Ecology* (Edinburgh: Edinburgh University Press, 1996): 71.

the user group share and respect.¹¹¹ Peter Usher and Fikret Berkes applied the idea in Canada.¹¹² McEvoy, White, and Hodgins have used parallel models to illustrate the sustainable effects of aboriginal resource harvesting in some environments across North America.¹¹³ In chapter 1, I identify an excellent range of archival sources that document the Mississauga and Chippewa's traditional organization of their territories into a set of family properties. The data also describe the Ojibwa's laws of use and access over their natural resources. I therefore apply the CPR model to determine if the southern Ojibwa's system contained the components necessary for sustainable resource management. My objective in this first chapter is to reconstruct how the southern Ojibwa organized their territory into a demarcated and regulated landscape before British settlement of Ontario. This is the landscape of resource use and traditional laws that the Ojibwa sought to protect in their treaties and newcomers sought to replace with their systems.

In chapter 2, I review the game and fish law doctrines prevalent in 18th century England. The purpose is to identify the construction of English salmon preservation laws, the social ideologies and assumptions that girded them, and the forms of resistance peasants took to these laws. It is well known that game, fish, and their habitats were the private property of a lord and I focus my analysis on these articles in the 18th century English *Acts for the Preservation of Salmon* that became the blueprint for the first fishery laws in Upper Canada. I then trace the introduction of English fishery law doctrines into the British colony of New York. My first rationale for starting this component of my study in New York is that this colony was an early contact zone between English and

¹¹⁰ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1979). Originally published as *Surveiller et Punir: Naissance de la prison* (Paris: Editions Gallimard, 1975).

¹¹¹ Denis Stanley, "Communal Forest Management: The Honduran resin tappers," *Development and Change* 22 (1991): 757-79.

¹¹² F. Berkes, "The Common Property Resource Problem and the Creation of Limited Property", *Human Ecology* 13.2 (1985): 187-208; Berkes, *Common Property Resources: Ecology and Community-Based Sustainable Development* (London: Bellhaven Press, 1989); Peter J. Usher, "Property as the Basis of Inuit Hunting Rights", in Terry L. Anderson, ed. *Property Rights and Indian Economies: The Political Economy Forum*. Boston: Rowman and Littlefield, 1992: 45-66.

¹¹³ Usher 1992: 45-66; Peter J. Usher, "Aboriginal Property Systems in Land and Resources", In Garth Cant, John Overton, and Eric Pawson, eds., *Indigenous Land Rights in Commonwealth Countries: Dispossession, Negotiations, and Community Action: Proceedings of a Commonwealth Geographical Bureau Workshop*, Christchurch, February 1992 (Christchurch, New Zealand: Department of Geography, University of Canterbury and the Ngai Tahu Maori Trust Board for the Commonwealth Geographical Bureau, 1993): 43-50; Peter J. Usher, "Estimating Historical Sturgeon Harvests on the Nelson River,

aboriginal concepts of laws and properties over fishing places. It was here that many aboriginal groups resisted and in some cases appropriated certain British legal tactics to protect their fisheries. These cases and conflicts informed the *Royal Proclamation of 1763* that set down the law for the treaty making process that later followed in Upper Canada. After the American Revolution (1776-1783), many New York-based British officials moved to Upper Canada and were involved in the first treaties with the Ojibwa. For these reasons, 18th century England and colonial New York are important places to locate the precedents that informed the southern Ojibwa's treaty negotiations.

As stated, in chapter 1, I reconstruct the social, cultural, and ecological landscape of the Ojibwa and in chapter 2, I review how English game laws enforced the socially stratified landscape of rural Britain. In chapter 3, I then examine how British officials planned to graft the landscape of rural England on top of the existing Ojibwa landscape. The two cultures negotiated this overlap in three treaties that opened the door to the settlement of the northern shores of Lake Ontario: *The Crawford Purchase* (1783), *The Between-the-Lakes Treaty* (1784), and the *Gunshot Treaty* (1788). The contents of these treaties, however, are largely unknown because the crown failed to make deeds of the agreements, produce maps, or keep minutes of the negotiations. I therefore examine the contents of many recorded Ojibwa oral traditions about the three treaties which hold that they approached them with a common strategy: to reserve all wetlands, the productive habitats of game and fish, for their exclusive use, and surrender a strip of arable lands to settlers for agricultural purposes only. To determine if the claims can be corroborated, I cross-examine the oral data against surviving crown records (i.e. statements from: the administration, district land granting authorities, and crown surveyors). In addition to determining if the oral claims are valid, I examine the records for evidence as to why the crown did not fulfill the alleged treaty promises.

In chapter 4, I analyze the Ojibwa's claim that the parliament of Upper Canada protected their treaty right to fish in legislative acts. I start with an examination of Mississauga and Chippewa oral histories regarding their negotiations of a series of treaties between 1805 and 1820. I examine how the Ojibwa made treaty arguments that

fish and game must be reserved not only for their use but also for their conservation through their traditional laws. With the exception of two treaties negotiated in 1805 and 1806, the texts of the treaties are either silent on the Ojibwa reservation of their fishing rights or state that the treaties were made “without reservation”. Although the Ojibwa oral histories differ from the texts of the treaties on this key matter, the government’s minutes of the treaty negotiations reveal that the crown did agree to these reservations. If the crown agreed to these reservations, but did not make them explicit in the text of the treaties, I ask what efforts did the crown take to fulfill these promise? I then show that a clear echo of these treaty promises turns up in Upper Canada’s first fishery laws, *Acts for the Preservation of Salmon*, that the legislature passed after each Ojibwa treaty.

In chapter 5, I determine how the *Acts for the Preservation of Salmon* failed to protect the Ojibwa’s fisheries from settler trespasses. I noted in chapter 4 that the Ojibwa negotiated their treaty rights based on their aboriginal rights and concerns about conservation. In this chapter I show that in the 1820s that parliament, Methodist missionaries, and settlers raised new rhetorical challenges to the right to fish based in English moral values. In essence, the first argument against Ojibwa treaty rights was not whether they managed their resources, but rather, whether they were morally fit to fish. I examine how the Ojibwa responded in the colonizers’ own language and values with the counter-claim that they not only conserved the fisheries but used them morally. The role that moral ideology played in the development of the early Great Lakes commercial fisheries is critically studied. I examine how settlers used dominant moral ideologies to shape parliament’s laws for public use of the fisheries. At the same time, while settlers shifted claims to fishing privileges from one based in rights to one based in moral virtues, I also examine how settlers appropriated more Ojibwa fishing and hunting grounds with impunity during this time. Finally, the year 1856 marked a crucial transition point in the history of the Great Lakes when parliament decided to encourage the development of a non-native commercial fishery when it passed the first comprehensive *Fishery Act* in 1857.

It is generally held that the primary innovation of the 1857 *Fisheries Act* was to establish the regulations for the first commercial fisheries in the Great Lakes. In chapter 6, I reveal that the *Act* was written by a cabal of sportsmen who sought to control all

forms of settler and commercial fishing, ban aboriginal use, and privilege sport fishing systems around the colony. In particular, the personal records of Richard Nettle, the first Superintendent of Fisheries for Lower Canada (province) are instrumental in revealing the circle of social interests that wrote the 1857 *Fisheries Act*, and revised it in 1858 to contain the private leaseholds article.¹¹⁴ His papers reveal the names of an elite sportsmen's lobby that included members of parliament, parliament's librarian, military officers, and other influential office holders who wrote the *Acts* with the explicit intention to eliminate aboriginal fishing rights and control the non-native commercial fishery. The names of these men pointed to a vast and untapped sport fishing trade literature, generated between 1820 and 1860, in which they revealed their arguments for restricting Ojibwa fishing rights and enacting new laws.¹¹⁵ Of significance, this trade literature reveals how the sportsmen lobby constructed their moral beliefs and scientific assumptions upon a negation of aboriginal fishing systems and values.

In chapter 7, I explore why sportsmen revised the *Fishery Act* in 1858 to include the private leasehold clauses. I pay particular attention to how sportsmen and government intended the law as a measure for the social control and social engineering of fishers. I also demonstrate how the Department of Fisheries used the lease provisions to re-allocate Ojibwa fisheries to non-natives and push the Ojibwa to the margins of the commercial fisheries where they remain to this day. I also enter the debate between Victor Lytwyn and Roland Wright as to whether Fisheries deliberately intended to marginalize aboriginal fishing when it passed the 1858 *Act*.¹¹⁶

In chapter 8, I argue that the sportsmen's marginalization of Ojibwa fishing and control over the non-native commercial fishery was not a *fait accompli* with the implementation of the 1858 lease clauses. Both the Ojibwa and settlers resisted the usurpation of their communal resources. I argue that sportsmen solidified their designs for the moral and social control of fishers when they influenced the development of fisheries science in the Great Lakes between 1865 and 1898. In particular, I explore how

¹¹⁴ NAC, R2740-07-E, Richard Nettle fonds.

¹¹⁵ Sources include: *The American Turf Register and Sporting Magazine*, 1829-1845; *The New York Albion*, 1839-1843; *The Spirit of the Times & Life in New York*, 1831-1843.

¹¹⁶ Lytwyn 1992; Wright 1994.

sportsmen influenced fisheries science in Ontario to validate their fishing methods and times and secure key fishing grounds for their social interests.

I conclude that sportsmen's social, moral, and ideological interests as well as their racist beliefs and strategies for social control still lie within modern Ontario fisheries management science and law. It is for these reasons that Ontario's modern fisheries management science still has the power to marginalize Ojibwa fishing systems.

Chapter 1

Nind Onakonige (I make laws): Ojibwa management of southern Ontario's wetlands

Each family had its own hunting grounds, marked out by certain natural divisions, such as rivers, lakes, mountains, or ridges; and all the game within these bounds is considered their property as much as the cattle and fowl owned by a farmer on his own land. It is at the peril of an intruder to trespass on the hunting grounds of another.

1861, Peter Jones¹

Introduction

To understand the first Mississauga and Chippewa treaties, it is first necessary to reconstruct their society, laws, environmental relationships, and property institutions over fish and other resources. A variety of excellent archival data are available for this reconstruction. First, the Mississauga hereditary chief, George Paudash, kept records of Mississauga and Chippewa council meetings held between 1825 and 1842 that provide significant insights into their traditional and contemporaneous political organization and strategies to protect the integrity of their land use patterns.² Between 1866 and 1923, the Mississauga and Chippewa generated a tremendous amount of data on their traditional land use patterns when they articulated their claim to unsundered rights in the Muskoka and Haliburton regions.³ In 1903, J.W. Kerr, a lawyer, obtained sworn declarations from three Mississauga elders about their traditional territorial boundaries.⁴ Also in 1903, the law firm, Hunter & Hunter, collected a number of elders' statements about the existence and locations of their family hunting territories along with their laws of use and access.⁵ In 1911, another barrister, A.K. Goodman, obtained eight land use

¹ Peter Jones, *History of the Ojebway Indians: with Especial Reference to Their Conversion to Christianity* (London: 1861): 71.

² NAC, RG 10, vol. 1011, Chief George Paudash Papers.

³ NAC, RG 10, vol. 2329, file 67,071 part 1, Correspondence & Reports regarding claims by the Chippewas & Mississauga of the Province of Ontario, to compensation for land not surrendered by the Robinson Treaty of 1850, 1869-1904.

⁴ NAC, RG 10, vol. 2329, file 67,071 pt. 1B, Frank Pedley, barrister with J.W. Kerr, submission of statutory declarations of George Blaker, Thomas Marsden, and Peter Crow, to the Deputy Superintendent of Indian Affairs, 19 May 1903.

⁵ PAO, F 4337, A.E. Williams - United Indian Bands of the Chippewas and the Mississaugas collection, "statements by elderly First Nations people collected by G. Mills McClurg".

affidavits from Chippewa elders.⁶ In 1923, the governments of Canada and Ontario invoked a commission to investigate the southern Ojibwa's claims and took evidence under oath from 73 aboriginal witnesses on the location of their family hunting grounds and harvesting traditions.⁷ Together, these files hold southern Ojibwa memories that date back to the late 18th century and before.

In addition to the archival data, three prominent Ojibwa oral history holders from these communities published auto-ethnohistories of their people, starting with George Copway's *Traditional History and Characteristic Sketches of the Ojibway Nation* (1850), Peter Jones's *History of the Ojibway Indians* (1861), and Robert Paudash's "The Coming of the Mississaugas" published in the Ontario Historical Society's *Papers and Records* (1905).⁸ As well, in the 1880s, Alexander Chamberlain, a student of the famous anthropologist, Franz Boas, conducted ethnohistorical and linguistic research on the Mississauga.⁹ Finally, many early missionaries, European explorers, and settlers left descriptions of Mississauga and Chippewa cultural practices.

The data allow one to reconstruct the Chippewa and Mississauga's organization of southern Ontario into a system of marked and regulated territories at the time of contact with British settlers. The data also contribute new information to a number of debates in the Algonquin land use literature such as the origins of Ojibwa property institutions, whether it contributed to sustainable resources use, the role of *dodems* (clans or totems) in their society, and the place of fish in their economies. I start with a brief historical overview of the Mississauga and Chippewa's settlement of southern Ontario

⁶ NAC, RG 10, vol. 2329, file 67,071 part 2, Correspondence & Reports regarding claims by the Chippewas & Mississauga of the Province of Ontario, to compensation for land not surrendered by the Robinson Treaty of 1850, 1904-1925.

⁷ NAC, RG 10, vol. 2332, file 67,0171-4C, Bound volume of Testimony to a Commission, Chaired by A.S. Williams, investigating claims, by the Chippewas & Mississaugas of the Province of Ontario, to compensation for land not surrendered by the Robinson Treaty of 1850, 1923.

⁸ George Copway, *The Traditional History and Characteristics Sketches of the Ojibway Nation* (London: Gilpin, 1850); Jones 1861; Robert Paudash, "The Coming of the Mississaugas", *Ontario History* 6 (Toronto: Ontario Historical Society, 1905): 7-11.

⁹ Alexander F. Chamberlain, "Notes on the History, Customs, and Beliefs of the Mississauga Indians", *Journal of American Folklore* 1 (1888): 150-60; Alexander F. Chamberlain, "Algonkin Onomatology, with some comparison with Basque", in *Proceedings of the American Association for the Advancement of Science*, vol. 28 (1889): 351-2; Alexander F. Chamberlain, "Tales of the Mississaugas", *Journal of American Folklore* 2 (1889): 141-7; Alexander F. Chamberlain, *The Language of the Mississauga Indians of Skügog: A Contribution to the Linguistics of the Algonkian Tribes of Canada* (Philadelphia: MacCalla & Company, 1892).

from which they became firmly entrenched before British settlement and the crown recognized them as the aboriginal owners of the lands.

The southern Ojibwa's development of regulated territories in Ontario

There is no consensus in the literature on the origins of Ojibwa settlement of southern Ontario. Some Mississauga and Chippewa oral history holders that I have spoken to claim that their ancestors came from the east – that they migrated from the Atlantic seaboard to central Ontario sometime before contact with Europeans.¹⁰ Alternatively, George Copway and Robert Paudash recounted that their families emigrated from the west – that they came from the southwestern shores of Lake Superior to their present location around 1650.¹¹ When these stories are analyzed in conjunction with early Jesuit and French explorer records, the detailed historical mapping of the geographer Conrad Heidenreich, and the more extended migration history of William Warren in his *History of the Ojibway People* (1852) (first published in 1885), a cohesive picture of their settlement emerges.

Warren, the son of a Fond du Lac Ojibwa woman, listened attentively to oral history holders around Lake Superior and recorded their histories in 1852. Warren wrote that “when the earth was new”, all Algonquin peoples originated on the Atlantic seaboard.¹² During these earliest times, he asserted that the people were not divided into “tribes” but that the “principal division, and certainly the most ancient” was the division into *dodems*.¹³ Warren listed 21 *dodems*, each signified by an animal, through which people traced their descent through the male line. Marriage within *dodems* was forbidden.¹⁴ Warren held that over time, after the *dodems* migrated west and certain groups became isolated or quarreled, the separation into “tribes” occurred. Nicolas

¹⁰ J. Michael Thoms, informal interviews with Mississauga and Chippewa oral history holders, 2001-2002.

¹¹ Copway: 76; Paudash: 7-11.

¹² William W. Warren, *History of the Ojibway People* (St. Paul: Minnesota Historical Society Press, 1984): 41. First published in 1885 by the Minnesota Historical Society as Vol. 5 of the *Collections of the Minnesota Historical Society*.

¹³ Warren 1984: 34.

¹⁴ Warren 1984: 44-5; Copway described the Ojibwa *dodem* system in note #14 of his poem, “Ojibwa Conquest” (New York: 1850), reprinted in Edwin C. Guillet, *The Valley of the Trent* (Toronto: The Champlain Society for the Government of Ontario, 1967): 450.

Perrot, a mid-17th century Jesuit missionary recorded the same history.¹⁵ Despite Henry Schoolcraft and other early ethno-historians' focus on "tribes" (a trend that continues to this day), Warren considered, "the Totemic division as more important and worthy of consideration than has generally been accorded to it".¹⁶ The Ojibwa law professor, John Borrows, informed me that an appreciation of the role of the *dodems* is fundamental to an understanding of Ojibwa social organization and their worldview. This knowledge also forms a critical standpoint from which to interpret the first Ontario treaties.¹⁷ For these reasons, wherever possible, I attempt to include evidence of the Mississauga and Chippewa *dodems* that may bring more light into their history.

Warren recounted that around 1410 AD, the *dodems* departed the Atlantic seaboard and migrated up the St. Lawrence to their ultimate destination at the western end of Lake Superior.¹⁸ Over the course of this migration, various *dodems* separated and settled along the route. Warren described their choice of settlement environments as the mouths of clear water rivers where whitefish and trout were found and in close proximity to marshy or "muddy-bottomed lakes" where warmer water fish, small animals, and wild rice grew or could be sowed.¹⁹ Ideal shorelines included mixed hardwood forests with maples.²⁰ Many families that now compose the Mississauga and Chippewa appear to descend from the *dodems* that stopped and settled in these habitats in southern Ontario during this historic migration.²¹ I draw this conclusion from Warren's list of *dodems* that did not complete the migration to western Lake Superior, which included the Reindeer (*Addick*), Beaver (*Amik*), Goose (*Ne-kah*), Whitefish (*Atimék*), and Eagle (*Me-gizzee*).²² A variety of archival records reveal that the Mississauga and Chippewa of southern Ontario are composed of these *dodems* (except the Whitefish *dodem* who settled at

¹⁵ Nicolas Perrot, *Memoire sur les Moeurs, Coustumes et Religion des Sauvages de L'Amerique Septentrionale* par Nicolas Perrot, R.P.J. Tailhan, ed. (Paris: Librairies A. Franck, 1864): 6-8.

¹⁶ Warren 1984: 43.

¹⁷ Pers. com. March 2003.

¹⁸ Warren 1984: 76-94.

¹⁹ Warren 1984: 39, 87, 88, 97, 139, 156, 175, 186.

²⁰ Warren 1984: 39, 87, 88, 97, 139, 156, 175, 186.

²¹ Warren's history (1984) of the Ojibwa is primarily about the Ojibwa of western Lake Superior. He listed a number of *dodems* which "are not known to the tribe in general" because they did not make the full migration to the western Lake Superior,

²² Warren 1984: 41-53.

Manitoulin Island).²³ In addition, the southern Ojibwa are made up of the Pike (*Ouasce souanan*), Otter (*Niguic couasquidzi*), Snake (*Che-she-gwa*), and White Oak (*Missigomidzi*) *dodems* for whom Warren offers no history.²⁴

It is well known that the Iroquois invaded southern Ontario around 1600 and expelled the Huron in 1649 during an intensive fur trade rivalry.²⁵ It appears that before this time, some Mississauga *dodems* had settled among the many river mouths and wetlands along the Trent waterway. Thomas Need, an early settler, recorded an Ojibwa oral history that some *dodems* lived here before the Iroquois invasion: "the lake country of the district belonged of ancient right to the Chippewas but some time since a portion of it was invaded and apparently conquered by the Mohawks. The Chippewa then retired further back into the forest."²⁶ It appears that the *dodems* temporarily retired north to the lands between Lakes Simcoe and Nipissing. The first European sources are consistent with this account. The records of Jesuits priests written in the early 1600s confirm that a number of Algonquian groups wintered in the same lands as the Huron around the southeastern shores of Lake Huron.²⁷ In 1613 and 1615, Champlain described a number of Algonquian communities along the southeastern shores and islands of the Georgian Bay. He assigned them a confusing array of names that may prove to be his translations of their *dodem* names, but deciphering them is beyond the scope of this research.²⁸

²³ Chamberlain 1888: 152; NAC, RG 10, vol. 2332, file 67,0171-4C, sworn statement of John Bigwin (Reindeer *dodem*), 20 September 1923: 87; sworn statement of Mrs. Isaac Johnson (Otter *dodem*), 24 September 1923: 165; Canada, *Indian Treaties and Surrenders*, vol. 1 (Ottawa: Chamberlain 1891), "Treaty #20": 48; NAC, RG 10, vol. 662, Mississauga surrender of Islands in the Bay of Quinte, Lake Ontario... 19 June 1856; NAC, RG 10, vol. 662, Mississauga surrender of Islands in Rice Lake and all the Islands and mainland in Newcastle and Coborne Districts except the Reservations on the Shores of Rice, Mud and Skugog Lake, 24 June 1856.

²⁴ Chamberlain 1888: 152.

²⁵ Bruce Trigger, "The French Presence in Huronia: The Structure of Franco-Huron Relations in the First Half of the Seventeenth Century", *Canadian Historical Review* 49 (1968): 107-141; Bruce Trigger, *The Children of Aataentsic: A History of the Huron People to 1660* (Montreal: McGill-Queen's University Press, 1976); Conrad Heindenreich, *Huronia: A History and Geography of the Huron Indians 1600-1650* (Toronto: McClelland and Stewart, 1976).

²⁶ Thomas Need, *Six Years in the Bush* (London: Simpkins, Marshall, & Co., 1838): 94.

²⁷ Anon., "Of the Mission called the 'Holy Ghost,' to the Nipissiriniens," in Reubeu Gold Thwaites, ed., *The Jesuit Relations and Allied Documents: travels and Explorations of the Jesuit Missionaries in New France, 1610-1791* (Cleveland: Burrows, 1896-1901), vol. 21, c. 7: 238.

²⁸ Perrot (1864: 6) recorded that Ojibwa villages were *dodem*-based and known by their animal totem among the French in the 17th century. The ethno-historian, Harold Hickerson, also suggested that explorers recorded the names of Ojibwa *dodems* hence their dissimilarity to the current names of bands. Harold Hickerson, *The Chippewa and their Neighbors: A Study in Ethnohistory*, Brown, Jennifer S.H. and Laura L. Peers, eds., revised and expanded editions (Prospect Heights Illinois: Waveland Press, 1988): 37-50.

Champlain reported that they lived in environments similar to the ones Warren described as choice locations, principally around river mouths and wetlands and that they subsisted on fishing, small game hunting, gardening, and berry harvesting.²⁹ In a detailed plate in the *Historical Atlas of Canada*, Conrad Heidenreich demonstrated Algonquin occupation around the margins of the Huron settlement between 1600 and 1648.³⁰ In terms of the lakes and rivers of the Trent waterway, Champlain confirmed Needs' account of earlier Ojibwa occupation and dispersal: "all these tracts were in former times inhabited by savages, who were subsequently compelled to abandon them from fear of their enemies."³¹

The above evidence indicates that that the Ojibwa *dodems* who settled along the Trent waterway temporarily abandoned their villages around 1600 and moved to the region between Lakes Simcoe and Nipississing. In their histories, Copway, and Paudash recorded that about the same time, some Ojibwa *dodems* who had migrated to western Lake Superior retraced their steps back to the eastern shores of Lake Huron and Lake Nipissing to engage French traders at the start of the French fur trade.³² In his history, Warren recounted that these *dodems* met up with the *dodems* who had earlier settled the region during their historic migration.³³ These re-united *dodems* then attacked and dispersed the Iroquois from southern Ontario.³⁴ The historian, Peter Schalmz, documented this (re-)invasion at length in *The Ojibwa of Southern Ontario*.³⁵ No doubt, for some Ojibwa *dodems*, it was a re-invasion of lands they had earlier occupied.³⁶ For others families and *dodems*, the invasion likely brought them into a new territory. The Paudash family, who are Cranes (*Passinassi*), are likely among those who came from the west and united with the original *dodems* as Robert Paudash traced his ancestry to

²⁹ Samuel de Champlain, "Fourth Voyage of Sieur de Champlain made in the year 1613", and "Voyage of Sieur de Champlain to New France, made in the Year 1615", in W.L. Grant, ed. *Voyages of Samuel de Champlain, 1604-1618*, (New York, Charles Scribner's Sons, 1907): 237, 239, 238, 239, 242, 243, 247, 279, 280, 281, 282, 283.

³⁰ Conrad E. Heidenreich, "The Great Lakes Basin, 1600-1653", in R. Cole Harris, ed., *The Historical Atlas of Canada: From the Beginning to 1800* (Toronto: University of Toronto Press, 1987): plate #35.

³¹ Champlain 1615: 288.

³² Copway 1850: 76; Paudash 1905: 7.

³³ Warren 1984: 124.

³⁴ Copway 1850: 68-94; Paudash 1905.

³⁵ Peter S. Schmalz, *The Ojibwa of Southern Ontario* (Toronto: University of Toronto Press, 1991).

³⁶ Need 1838: 94.

western Lake Superior and Warren accounted for Cranes in both the west and southern Ontario.

The battles between the Ojibwa and the Iroquois ended at Mississauga Point in the Bay of Quinté around 1655 when the two groups agreed to a peace treaty. They recorded the contents of this treaty in a wampum belt that depicted four wigwams and two dishes with spoons arranged along a central white row. Much later, in 1840, the Chippewa and Mississauga invited the Six Nations to a council meeting to renew the treaty. The Chippewa hereditary chief, Yellowhead, produced the wampum and “explained the talk within it.” He elucidated that the two dishes with spoons symbolized the division of hunting territories and rights between the two nations: “that the right of hunting on the north side of the Lake [Ontario] was secured to the Ojebways, and that the Six Nations were not to hunt here.” In turn, the Iroquois agreed to withdraw their hunting to the south side of the lake. An Iroquois chief concurred with Yellowhead’s reading of the wampum.³⁷ This chief then explained that the four wigwams symbolized the major Ojibwa *dodems* that had defeated his ancestors and that the wampum identified where they settled: the Whitefish on Manitoulin Island, the Beaver on the islands off Penetanguishene, the Reindeer around Lake Simcoe, and the Eagle at the River Credit and western shores of Lake Ontario (see map 1.3).³⁸

After 1655, the Ojibwa *dodems* became the sole occupants of south central Ontario. Mississauga and Chippewa oral history holders recounted that their leaders then organized the region into a system of well-demarcated territories and applied a systems of laws for their use. I will first describe the locations and organization of these territories.

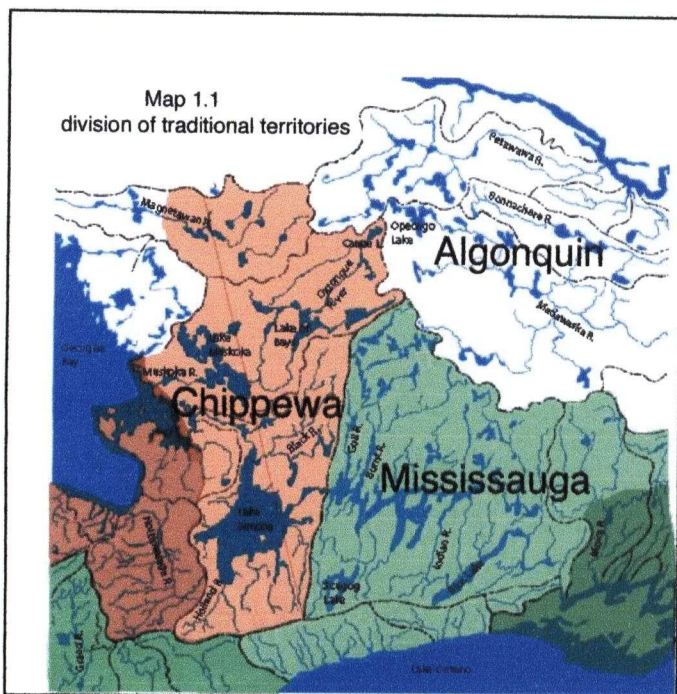
Mississauga and Chippewa property institutions

South central Ontario has three watersheds that divide at the southwestern corner of present day Algonquin Park with waters flowing to the Georgian Bay, the Ottawa River, and Lake Ontario. It was along the heights of land separating these watersheds that the Chippewa, Mississauga, and their Algonquin neighbours divided the region into three national territories. The Mississauga claimed ownership of the Lake Ontario

³⁷ NAC, RG 10, vol. 1011, minutes of a general Mississauga and Chippewa council meeting with chiefs of the Six Nations, 22 January 1840.

³⁸ NAC RG 10 vol. 1011, minutes of a general ... council meeting..., 22 January 1840.

watershed; the Chippewa occupied the Georgian Bay watershed, while the Algonquin occupied the Ottawa River watershed (map 1.1). The nations marked these boundaries with blazes on trees. For example, Solomon Mark Kewatin stated that at the height of lands between the Credit and Nottawasaga Rivers, a blazed tree marked the boundary between the Mississaugas of the Credit River and the Chippewas of Beausoleil Island.³⁹



Similarly, Chief Charles Big Canoe described a very large pine tree at the source of the Muskoka River system “which was blazed denoting the boundary there.”⁴⁰

Within the Mississauga and Chippewa’s national territories, various *dodems* or what became “bands” claimed specific areas of the national watershed as their territory. For example, the Mississauga of the Bay of Quinté and Kingston (later known as the

Alderville First Nation) occupied the watershed draining into Lake Ontario between the Ganonoque and Moira Rivers.⁴¹ The *dodems* that formed the Rama and Georgiana Island bands claimed the Muskoka and Lakes Simcoe watershed, both of which drained into the southeastern corner of Lake Huron.⁴² The Mississauga of the Credit River claimed the Lake Ontario watershed between the Rouge and Niagara Rivers as well as the Grand River Basin.⁴³

The next division of the Chippewa and Mississauga’s territories occurred at the level of the family. Families within each band claimed a watershed basin inside the

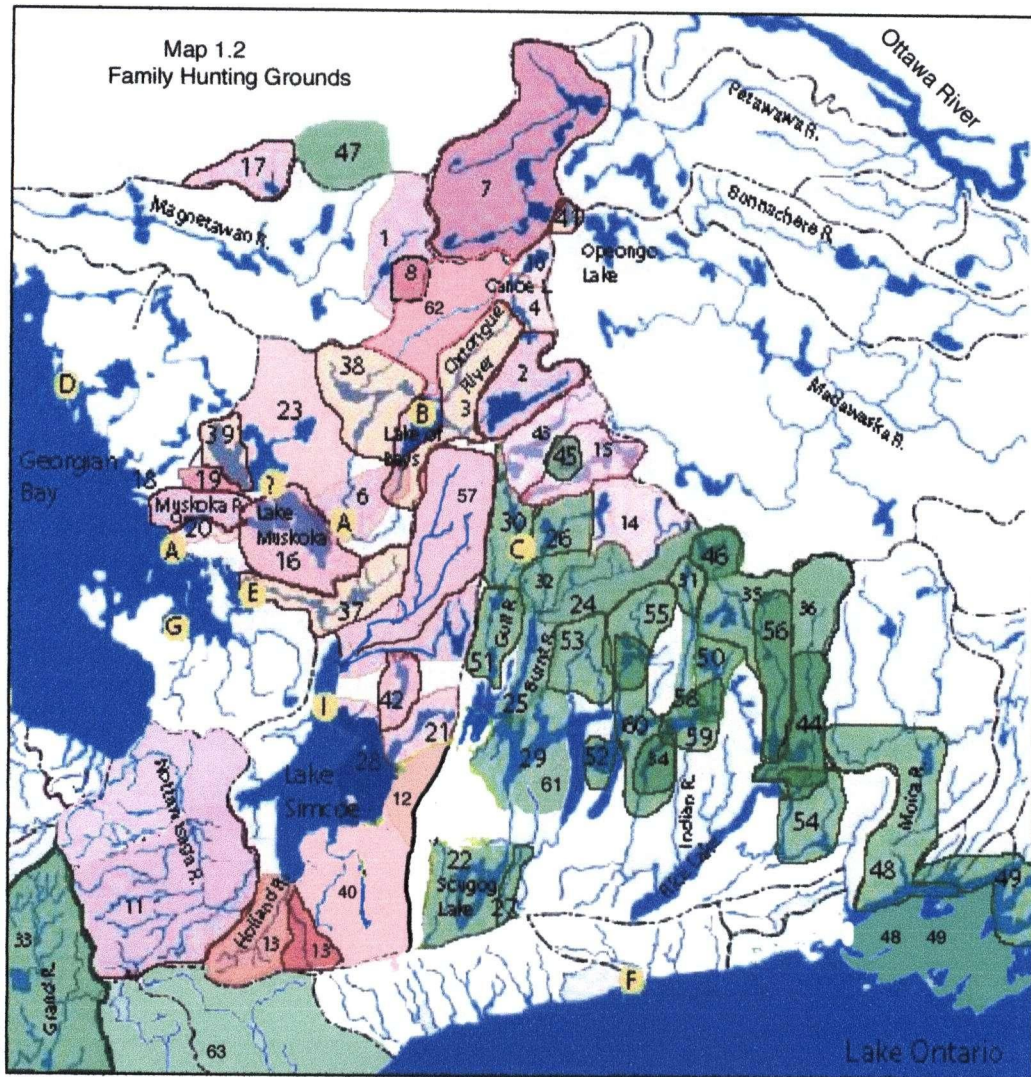
³⁹ NAC, RG 10 vol. 2329, file 67,071-2, affidavit of Solomon Mark Kewatin, 25 August 1911.

⁴⁰ NAC, RG 10 vol. 2329, file 67,071-2, affidavit of Chief Charles Bigcanoe, 20 October 1911.

⁴¹ NAC, RG 10 vol. 2332, file 67,071-4c, sworn testimonies to the Williams Commission, 27 September 1923: John Comego: 259; John Lake: 68; Jack Smoke: 270; NAC, RG 10, vol. 2329, file 67,071 pt. 1B, Frank Pedley, barrister, submission of statutory declarations of George Blaker, Thomas Marsden, and Peter Crow, to the Deputy Superintendent of Indian Affairs, 19 May 1903.

⁴² NAC, RG 10, vol. 2332, file 67,071-4c, sworn testimony of Sam Snake to the Williams Commission, 21 September 1923: 115.

band's territory as their exclusive hunting ground. They generally identified family hunting grounds as a "limit" centred on a lake or section of a river and defined its boundaries using natural landscape features such as watercourses. They also blazed trees to define the boundaries of their family's hunting ground. In map 1.2, I mapped the approximate location and range of family hunting grounds from the above data sources



(see appendix 1 for a list of the data). Because the data were primarily generated to document Mississauga and Chippewa use and occupation of the Haliburton and Muskoka regions, data on family hunting grounds to the south of this region were rarely collected. I filled some of this gap with data from other historical sources (see appendix 1).

⁴³ NAC, RG 10, vol. 1011, description of the Mississauga of the Credit's traditional territory, n.d., n.p.

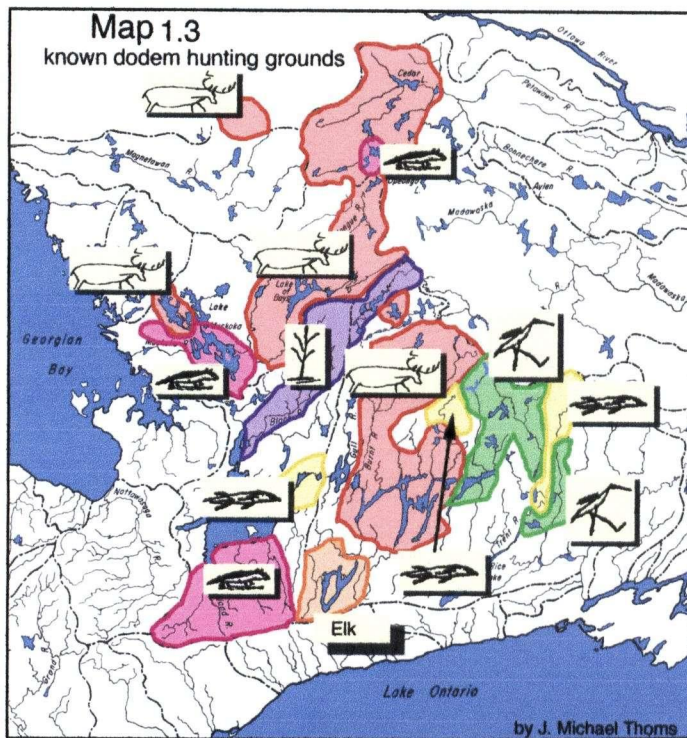
The evidence reveals that the Mississauga and Chippewa implemented this land use system after their expulsion of the Iroquois when stability returned to the region. For example, Peter Monague explained:

these boundaries for their hunting ground were fixed after the Chippewa Tribe chase[d] out all the Mohawk Tribes in Canada and all the hunting grounds was fixed to each family – after their children in their coming generation. This tribe of Chippewa made among themselves these boundaries for their hunting grounds between different bands.⁴⁴

Elders provided some evidence as to how their ancestors allocated family hunting grounds. Several elders credited the Ojibwa chief, Me-nah-do-nah-be (his dates are unknown), with implementing the first hunting ground boundaries.⁴⁵ John Bigwin explained that nine other chiefs (York, Kenice, Big Canoe, Young, Bigwin, Yellowhead, Wesley, Goose, and Nanishkung) assisted Me-nah-do-nah-be with the allocation of

lands.⁴⁶

John Bigwin suggested that these chiefs allocated family hunting grounds on the basis of *dodems* and that the Reideer took up the watershed around the Lake of Bays and that the White Oak held the Black River to *Ka-gah-sob-a-a-ge-wing* Lake.⁴⁷ This seems likely. I attempted to illustrate the spatial arrangement of family *dodems* in map 1.3. To produce the map, I cross-referenced male family names



⁴⁴ PAO, F 4337-6-0-3, A.E. Williams Papers, statement of Peter Monague, ca. 1903.

⁴⁵ NAC, RG 10, vol. 2332, file 67,0171-4C, sworn statements of Thomas Port, Sampson Ingersoll, David Simcoe, and Johnson Paudash to Williams Commission, 1923: 26, 102, 131, 253-4.

⁴⁶ NAC, RG 10, vol. 2332, file 67,0171-4C, sworn statement of John Bigwin to Williams Commission, 20 September 1923: 90.

⁴⁷ NAC, RG 10 vol. 2332, file 67,0171-4C, sworn statement of John Bigwin... 20 September 1923: 94-5.

with data on *dodems* from a variety of sources.⁴⁸ Unfortunately, I was only able to determine 48% of the families' *dodems* so the map is incomplete, but it does illustrate some clustering of *dodem* grounds that families may have subdivided over time while it also shows that most *dodems* are evenly represented across each major watershed. It also shows that several *dodems*' grounds crossed over the watershed boundary between the Mississauga and Chippewa. This partial evidence suggests that the Mississauga and Chippewa *dodems* claimed hunting grounds first and that bands formed later from the *dodems* that were located together in specific watershed basins. Because the hereditary chiefs of each *dodem*, not a leader of the "band", negotiated each of the early 19th century treaties with the British crown, this data will be used in chapter 4 for what it contributes to an understanding of these negotiations.

On a final note, scholars have debated whether Jesuits or European fur traders inspired Algonquin groups to devise a property-based land use system.⁴⁹ In this case, there is no evidence that Jesuits or fur traders provided the encouragement for this system. Rather, the evidence is that the Chippewa and Mississauga identified and allocated their valued ecosystem components among themselves. Or, as they said, "made it among themselves, these boundaries for their hunting grounds between different bands".⁵⁰ In effect, it appears that the Mississauga and Chippewa made their own strategic decisions about the environments they wanted to settle and organized them along lines consistent with their cultural worldview and environmental needs.

It is now important to describe how the Ojibwa property-institutions operated and determine how fishing figured into this system.

⁴⁸ Chamberlain 1888: 152; NAC, RG 10 vol. 2332 file 67,0171-4C, sworn statement of John Bigwin (Reindeer *dodem*), 20 September 1923: 87; sworn statement of Mrs. Isaac Johnson (Otter *dodem*), 24 September 1923: 165; Canada, *Indian Treaties and Surrenders*, "Treaty #20", vol. 1 (Ottawa: Chamberlain 1891): 48; NAC, RG 10, vol. 662, Mississauga surrender of Islands in the Bay of Quinte, Lake Ontario... 19 June 1856; NAC, RG 10, vol. 662, Mississauga surrender of Islands in Rice Lake and all the Islands and mainland in Newcastle and Coborne Districts except the Reservations on the Shores of Rice, Mud and Skugog Lake, 24 June 1856.

⁴⁹ Leacock 1954: 1-71; Dunning 1959; Hickerson 1967; Bishop 1970: 1-15, 1974; Tanner 1986; Krech 1999: 173-209.

⁵⁰ PAO, F 4337-6-0-3, A.E. Williams Papers, statement of Peter Monague, ca. 1903.

How it functioned -- Seasonal rounds

In pre-industrial Ontario, animal life was most abundant in the myriad wetlands and riparian zones of its mixed forest environment. These complex and narrow ecological corridors reached across Ontario in an intricate watershed network that was well known and organized by the Mississauga and Chippewa. I will show that islands, points of land, and river mouths were particularly important environments. In the words



figure 1.1 Ojibwa working a wetland by Caroline Daly, ca. 1870s. source: NAC W97

of one Chippewa man raised in the early 19th century, “we were brought up in the midst of marshes, where there were vast numbers of muskrats and catfish, sturgeon, beavers and otters, and lived on those animals.”⁵¹ Not all natural resources, however, were available or harvestable at all times or the same places during the year. For example, berries only ripened during

specific parts of the year at forest-edges and on exposed soils, rice was only yielded in the fall at certain lakes, and certain spawning fish (i.e. Atlantic salmon, trout, whitefish) could only be effectively caught at certain predictable times and places during the year. The result was that Mississauga and Chippewa families developed a schedule of seasonal travel to specific resource sites throughout the year based on their knowledge of animal distribution, abundance, and their ease of capture at certain times. The Mississauga and Chippewa families were therefore multi-modal: they moved between defined resources sites throughout the year. I will continue to show how they claimed these sites as their property and managed their productivity.

In my analysis, I pay attention to the Ojibwa language for what it reveals about how the Ojibwa organized their knowledge and relationships with their environment. For example, where experience taught the Ojibwa that certain fish could be expected at certain times of the year, they preserved this knowledge in the word *pagidawéwin*. The

⁵¹ Quoted in, Henry Baldwin, recorder, *Minutes of the General Council of Indian Chiefs and Principal Men Held at Orillia, Lake Simcoe Narrows, 30-31 July 1846* (Montreal: Canada Gazette Office, 1846): 18

word did not merely signify a fishing space, but included the temporal knowledge of when fish would be there. In large part, I rely on Chamberlain's dictionary (1892) of the Mississauga language for this analysis.⁵²

Fall fisheries

The historic fish complexes of Ontario have been completely altered through commercial fishing, the removal of "coarse" fishes, the introduction of exotic game fishes, pollution, and significant environmental change. In particular, the erection of milldams destroyed species that once ran rivers, of which the Atlantic salmon, once native to Lake Ontario, is particularly noteworthy. I therefore rely on the naturalist John Richardson's detailed documentation of fish species and life histories in Upper Canada in his famous *Fauna Boreali-Americana or the Zoology of the Northern Parts of British America: Part Third The Fish* (1836) for baseline data. Richardson's work is particularly reliable because he drew fish specimens and information from fur traders in the Mississauga and Chippewa's traditional territories at Penetanguishene, Toronto, and the Severn River.⁵³ Ojibwa fishers likely caught some of Richardson's specimens and he was careful to include the aboriginal names and other forms of indigenous knowledge about his specimens. His work therefore represented a form of indigenous accreditation that later disappeared in the work of fisheries scientists.

Three fall spawning species, the Atlantic salmon, lake trout, and whitefish were critical to the southern Ojibwa. I will examine each in the order that it spawned because this sequence of events helped shape the communities' organization of their fisheries.

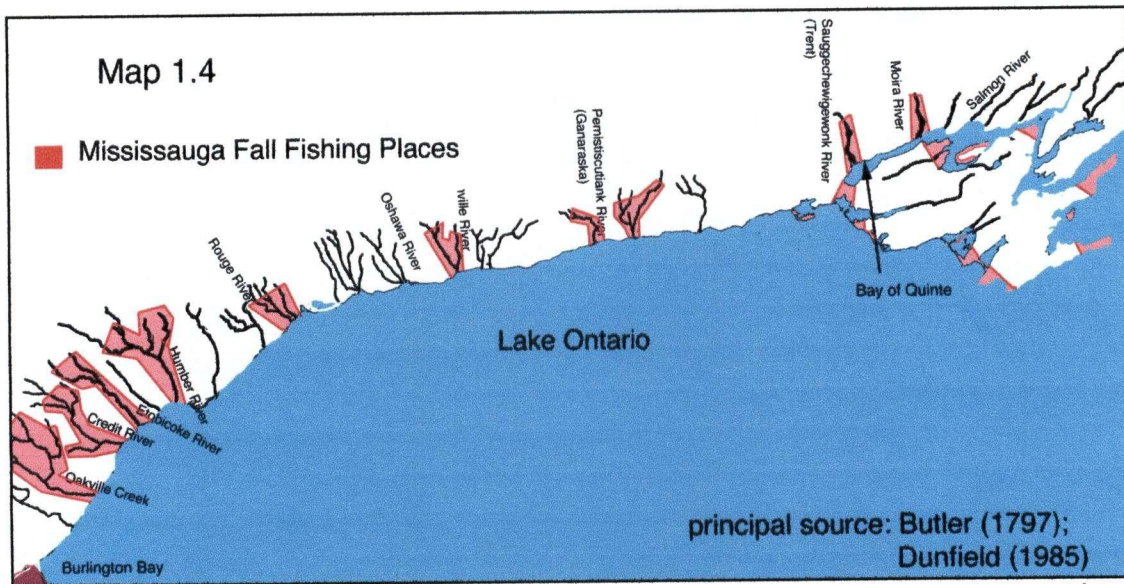
The Mississaugas were once a salmon fishing people. They knew the salmon as the *azaouamce*, while European taxonomists knew it as the *Salmo Salar*. Richardson recorded that it ran up rivers and creeks on the north shore of Lake Ontario from August to November, with the greatest runs occurring in September.⁵⁴ Mississauga families moved to these river mouths at this time to prosecute the salmon fishery. In the fall of 1779, a British officer, Walter Butler, observed Mississauga camps at most major river

⁵² Chamberlain 1892.

⁵³ John Richardson, *Fauna Boreali-Americana or the Zoology of the Northern Parts of British America, Part Third: The Fish* (London: Richard Bentley, 1836): x.

⁵⁴ Richardson 1836: 146.

mouths when he traveled the length of the Lake's shoreline.⁵⁵ In particular, members of the Mississauga of the Bay of Quinté arranged themselves along the Moira River. The Mississauga of Rice Lake fished the *Saugechewigewonk* (Trent) River, the *dodems* associated with Curve Lake fished the *Pemistiscutiank* (Ganaraska) River, while the Credit River Mississauga families fished at Burlington Bay, the 12 Mile (*Ashquasing*) and 16 Mile Creeks (*theahzahgenwagy*), and Credit River (*Mungenahegasebe*) (map 1.4).⁵⁶



Women were the primary fishers and principally captured the runs by spearing at night under torchlight.⁵⁷ Richardson recorded that they also set nets in the mouths of rivers.⁵⁸ A gender bias in the primary sources, however, often obscures women's contributions to the economy. For example, a mid-19th century historian, William Canniff, recorded that in the fall, men departed for their family hunting grounds and that "the women and children [stayed] in wigwams upon the plains near its mouth."⁵⁹ The

⁵⁵ Walter Butler, "Walter Butler's Journal of an Expedition Along the North Shore of Lake Ontario", Notes and Documents, *Canadian Historical Review* 1.4 (1920): 381-391.

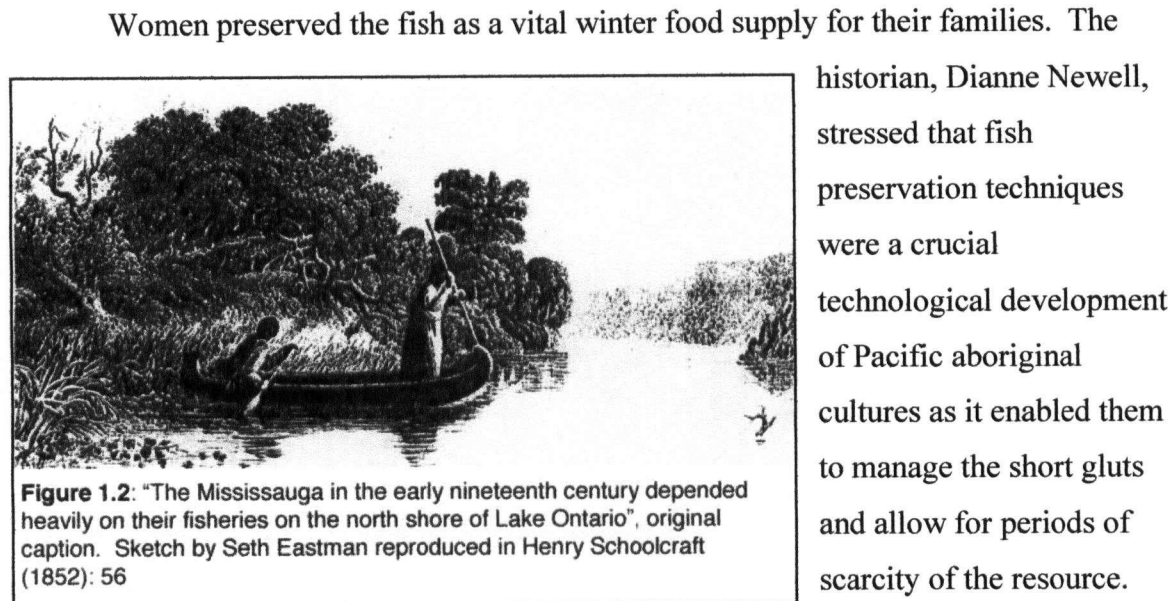
⁵⁶ NAC, RG 10, vol. 2332, file 67,0171-4C, sworn statement of Joseph Whetung to Williams Commission, 25 September 1923: 191; Enemikeese, *The Indian Chief: An account of the labours, losses, sufferings and oppressions of Ke-Zig-Koo-E-Ne-Ne (David Sawyer), a chief of the Ojibbeway Indians in Canada West* (London: Patterson Row, 1867): 24; NAC, RG 10, vol. 1011, petition of the Mississauga of the Credit to the Upper Canada House of Assembly, 31 January 1829.

⁵⁷ Chamberlain 1888: 154.

⁵⁸ Richardson 1836: 146.

⁵⁹ William Canniff, *History of the settlement of Upper Canada: with special reference to the Bay Quinté*. (Toronto: Dudley & Burns, Printers, 1869): 495.

women stayed, of course, to continue the fall fishery. One early colonial sketch captured this Mississauga women fishery (figure 1.2).



This activity also yielded a product for trade.⁶⁰ Similarly, the Ojibwa of Ontario managed fish gluts with various preservation technologies. During the fall fishery, women smoked most of their catch over a fire and then stored them in birch-bark containers, or pounded the dried fish into a powder to be eaten with berries.⁶¹ Fish caught at the end of the fishing season could be frozen in the snow and stored in caches.⁶² Drying racks are omnipresent in 19th century paintings and sketches of Ojibwa fall camps.⁶³ They testify to the importance of fish preservation and storage. It also tells us that harvesting was not geared solely to immediate need.

Mississauga bands and families claimed ownership over specific river mouths where they also built gardens, burial grounds, and managed maple sugar groves.⁶⁴ These modifications made river mouths permanent and important food and spiritual locations. As I will show in a later chapter, when British officials proposed that the Mississauga surrender the Lake Ontario shoreline, the women were thoroughly involved in the negotiations for the protection of their valued ecosystem components.

⁶⁰ Newell 1993: 38-40.

⁶¹ Alexander Henry, *Travels and Adventures in Canada and the Indian Territories Between the Years 1760 and 1770* (New York: I. Riley, 1809): 59.

⁶² Henry 1809: 62; Thoms 1999: 177.

⁶³ See for example, the paintings of William Armstrong: NAC C-011747, C-040293, C-010512, C-010505, and 011745. See also Martin Mower: NAC W213.

The next important fall spawning fish was the lake trout. No stocks of river running lake trout are known to exist in Lake Ontario today, but Richardson described a species that started to run up rivers around 10 October and spawned for three weeks.⁶⁵ It is likely that the erection of milldams extinguished these river-running stocks. The surviving stocks spawned on shoals around islands and points of land. For the Mississauga, these fish arrived after the major runs of salmon subsided. In places where they ran up rivers, families could have fished them when the salmon runs tapered off. In the eastern end of Lake Ontario, the evidence indicates that some families moved to islands and points of land around the Bay of Quinté to capture trout spawning on shoals (map 1.4).⁶⁶

Turning now to the Chippewa, lake trout represented their first major fall fishery because there were no Atlantic salmon in their territories. As Richardson stated, the runs began around 10 October and lasted for three weeks.⁶⁷ In late October 1837, an Indian agent confirmed this timing when he wrote that the Chippewa “are on the eve of their departure for the bleak shores of the Lake when the fish are coming in shoals to find them and where they while probably remain until the face of the earth becomes white.”⁶⁸ Because the runs were of short duration (as compared to salmon) and its timing and yield fluctuated due to weather, water temperature, storms, and other natural occurrences, the Chippewa needed to precisely anticipate their start. Several Ojibwa traditional knowledge holders explained in interviews with me that they observed changes in the local flora for signals of changing water temperatures. A Chippewa fisher from the Beausoleil First Nation, for example, informed me that the ripening of certain berries or changes in the colour of specific leaves signaled the start of certain fish runs.⁶⁹ When interviewed at his home in Michipicoten, a northern Ojibwa elder once informed me about the ecological knowledge he learnt from his mother. He pointed out his window at a meter tall plant with white floral strands and explained, “when that white stuff starts

⁶⁴ Butler 1779: 381-391; Canniff 1869: 495; Chamberlain 1888:154.

⁶⁵ Richardson 1836: 180.

⁶⁶ NAC, RG 10, vol. 414, a list of the Islands and lands claimed by the Alnwick [a.k.a. Alderville] Band, 19 June 1856.

⁶⁷ Richardson 1836: 180.

⁶⁸ NAC, RG 10, vol. 124, T.G. Anderson, Indian Agent, Coldwater, to S.P. Jarvis, Chief Superintendent of Indian Affairs, 30 September 1837.

fishing, and spend several weeks in the employment.”⁷³ Richardson also noted that Chippewa families fished on the shallow shoals between islands.⁷⁴

It is important to note how the Ojibwa classified their knowledge of trout. In particular, they recognized many different types of trout that varied by time and space. The Ojibwa word for the most common lake trout is *namégoss*, which Richardson preserved in the scientific name *Salvelinus Namaycush* in 1819.⁷⁵ It is a rare example of an indigenous name making its way into the ichthyologist’s nomenclature. The Ojibwa also recognized other types of trout, such as a lean lake trout that spawned inshore in September and October that they called *majamégoss*. Richardson held this trout to be a distinct species and gave it the name *Salmo Hoodi* after a British lieutenant.⁷⁶ The Ojibwa called a variety of lake trout favoured for its fat content the *siscowet*, which literally means, “cooks itself”.⁷⁷ The *siscowet* spawns in deep water and is difficult to catch.⁷⁸ Around the Pic River on Lake Superior, the Ojibwa knew a breed of fat lake trout they called *Macqua* and the local Hudson’s Bay Company (HBC) factor called *Salmo ursinus*.⁷⁹ Both words translate to “bear” in English but I can only speculate as to the nature of its association with bears. Nearby, the Ojibwa of the Nipigon River traveled each fall to the shores of Paysplatt to harvest a type of lake trout that only spawned there and that they called *Pugwashooāneg*.⁸⁰ Overall, the Ojibwa organized trout into a nomenclature based on the level of fat in their bodies and crucial differences in the time and place they could be caught. For example, the Ojibwa valued the fatter trout types as food for their dogs, differentiated trout that ran rivers from those that spawned on shoals, and held the time they spawned to be a key marker.⁸¹ The Ojibwa therefore had a culturally distinct set of criteria for classifying trout types. One key is that the Ojibwa

⁷³ Richardson 1836: 180.

⁷⁴ Richardson 1836: 180.

⁷⁵ Richardson 1836: 179.

⁷⁶ Richardson 1836: 173.

⁷⁷ Copway 1850: 41.

⁷⁸ J.L. Goodier, “Native Lake Trout (*Salvelinus namaycush*) stocks in the Canadian waters of Lake Superior prior to 1955”, *Canadian Journal of Fisheries and Aquatic Sciences* 36.12 (December 1981): 1735; Frederick H. Wooding, *Lake, River and Sea-Run Fishes of Canada* (Madeira Park, Harbour Publishing, 1994): 116.

⁷⁹ Goodier 1984: 347.

⁸⁰ W. Thomson, “A Trout Trip to St. Ignace Island”, in C.F. Orvis and A.N. Cheney, eds, *Fishing with the Fly: sketches by lovers of the art with illustrations of standard flies* (Rutland, Vermont: Charles E. Tuttle, 1883): 114.

developed and classified knowledge about trout during the times they spawned. Richardson also sampled spawning trout.⁸² For most of the 20th century, however, scientists sampled trout in deep water before they spawned, at a time and place where phenotypic differences are most subtle. This later generation of scientist thus decided that there were no variations in lake trout species, but merely a complex of discrete “stocks” separated by different spawning times and places.⁸³ As a result, they revised Richardson’s nomenclature and by 1948 eliminated the species that he and the Ojibwa observed and inflated the Ojibwa name *Namaycush* to describe all lake trout.⁸⁴ Then, in 1970, scientists decided that the *siscowet* was a distinct species after all and gave it the name *Salvelinus siscoet*, restoring part of the range of trout types the Ojibwa originally observed and named.⁸⁵

The third spawning species, and the one of greatest importance to the Chippewa, was the whitefish. Richardson noted that whitefish moved onto shallow island reefs, river mouths, and shallow bays around 25 October and returned to deeper waters on 10 November. He also noted a unique river-running stock of Whitefish that ran up the Severn River.⁸⁶ This run was of significance to the local Chippewa who speared and netted them along the river’s rapids and in Sparrow Lake. Other families fished them from islands in the Georgian Bay and Lake Simcoe (map 1.5). The whitefish’s timing allowed the Chippewa to prosecute it at about the time the trout runs tapered off.

In the Ojibwa language the word for whitefish is *Attihawmeg* which literally means “water caribou”. The name reflects the great importance the Chippewa placed on these runs and offers an idea of its historic abundance. In 1735, Carl Linneas, the Swedish naturalist who founded the modern system of biological classification, gave it the western scientific name, *Salmo Albus*.⁸⁷ It is significant that he classed it as a member of *salmonoidae* family, as did Richardson, for it then fell within the meaning of fish protected for the southern Ojibwa in Upper Canada’s *Acts for the Preservation of Salmon* (1807-1845). Although the whitefish had a western name when Richardson

⁸¹ Thoms 1999: 187.

⁸² Richardson 1836: 122.

⁸³ See Goodier 1981: 1724-1737.

⁸⁴ Goodier 1981: 1724-1737; Wooding 1994: 112-116.

⁸⁵ Wooding 1994: 116.

⁸⁶ Richardson 1836: 197.

published, he made a point to refer to it by its indigenous name *Attihawmeg* throughout his scientific treatise. He also stressed that *Attihawmeg* were the “principal” food source of many Ojibwa groups around the Great lakes and a fundamental staple in the fur trade.⁸⁸

Before departing their fishing islands, families burned them. The Ojibwa strategy was to make these Pre-Cambrian rock outcrops produce abundant berries in the fall when they returned and whitefish and lake trout again moved onto the adjacent shoals.⁸⁹ Families also used their fishing islands as burial grounds.⁹⁰ These seasonal fishing islands were therefore important food, socio-economic, and spiritual places for Chippewa families. Other families erected camps on points of land entering lakes or at the mouths of rivers. For example, the Kadegegwon family fished and built gardens on a point of land at present-day Collingwood⁹¹ and the Blackbird family built a garden and burial ground at Grassy Point on the Holland River.⁹² Thus islands, known as *miniss*, points of land, known as *neiâshi*, and river mouths, known as *sâgi*, were crucial places among the southern Ojibwa (a point that becomes important later when I examine the southern Ojibwa’s first treaty strategies with the British crown).

It is necessary here to comment on the spear as it is a largely misunderstood fishing technology. In his immense study of aboriginal fishing, the geographer Erhard Rostlund incorrectly stated that, “nowhere does the environment especially invite the exclusive use of spears in fishing.”⁹³ On the contrary, spear fishing was an expert technology the Ojibwa developed to catch spawning salmon, trout, and whitefish on honeycombed shoals where nets could not be set. The fact that the Ojibwa, but not settlers, possessed a technology to capture trout and whitefish in these honeycombed environments would later become a major source of contention between the Ojibwa and newcomers.

⁸⁷ Carl von Linne, *Systema naturae* (Lugduni Batavorum, apud T. Haak, 1735).

⁸⁸ Richardson 1836: 195.

⁸⁹ J. Stinson, letter to the editor, *Christian Guardian*, 7 September 1836: 174; Norma Martin, *Gore’s Landing and the Rice Lake Plains* (Bewdley, Ontario: Clay, 1995): chapter 1, n.p; Krech 1999: 106.

⁹⁰ NAC, RG 10, vol. 122, Chief Yellowhead to Lord Cathcart, Governor General, n.d.: 6007.

⁹¹ NAC, RG 10, vol. 2329, file 67,071-2 affidavit of Thomas Peter Kadegegwon, 25 August 1911.

⁹² NAC, RG 10, vol. 2332, file 67,071-4C, sworn statement of ex-Chief Charles Bigcanoe to Williams Commissions, 14 September 1923.

⁹³ Erhard Rostlund, “Freshwater Fish and Fishing in Native North America,” *University of California publications in Geography* 9 (1952): 105.

Because lake trout spawned at night and left their spawning grounds by morning, the Ojibwa developed a technique of fishing with a torchlight called *wasswewin*. The technique allowed the Ojibwa to see their prey and the light drew the fish to the surface where they could be more easily speared. Spearing technologies also allowed the Ojibwa to expand the range of time and places they could fish, such as through the ice, in small pools, and in shallow and swift rivers, all places where nets could not be effectively set. In 1860, the German ethnologist and writer, J.G. Kohl, enumerated many different spears that the Ojibwa designed for different fishing environments and stated that, "they all appeared to be very neatly made, and admirably adapted for the purpose."⁹⁴ These were expert technologies that linked the Ojibwa's cultural knowledge with their environments. Later, settlers would attempt to criminalize this link between their culture and environment.

Winter harvesting

The evidence suggests that men departed the fall fisheries and paddled canoes to their family's hunting ground, located to the north of their fishing villages, between mid-September and mid-October, after their family had preserved a sufficient supply of fish for their travel.⁹⁵ Women continued the fishing until the runs ended. Among the Mississaugas, after the autumn fisheries were complete, women moved to their spring fishing places around the Peterborough Lakes where many spent the winter with their children (map 1.7).⁹⁶ Among the Chippewa, women, children, and elders remained on their fishing islands and points of land in Lake Simcoe, Georgian Bay, and Lake Couchiching (map 1.5). Some of the primary evidence, however, suggests some women and children joined the male hunters in December to participate in the winter hunt.⁹⁷ It appears that families practiced both patterns depending on individual circumstances regarding available labour or other factors.

⁹⁴ J.G. Kohl, *Kitchi-Gami: Wanderings Round Lake Superior* (London: Chapman and Hall, 1860): 331.

⁹⁵ NAC, RG 10, vol. 1011, Peter Jones to Col. J. Givens, Credit River, 22 October 1833; NAC, RG 10, vol. 1011, minutes of a Mississauga council held at the River Credit, 10 October 1836; Copway 1850: 114.

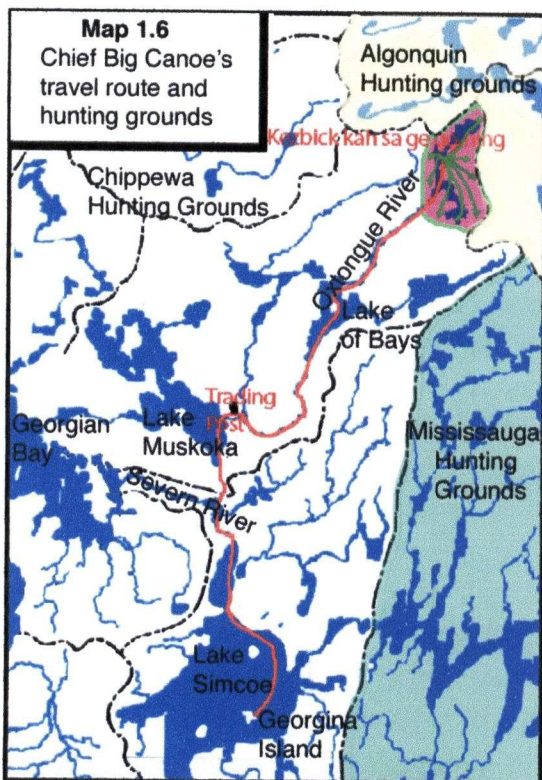
⁹⁶ Chamberlain 1888: 155; NAC, RG 10, vol. 122, petition of the Chippewa of Snake Island to the Governor General, 22 October 1845.

⁹⁷ NAC, RG 10, vol. 2332, file 67,071-4C, sworn statements of Thomas Port (page 29), Miss Mary Ann Young (page 80), and Sampson Fawn (page 209) to the Williams Commission, 14 to 21 September 1923.

Men's travel to winter hunting grounds can be illustrated with the example that Chief Big Canoe provided to his lawyers in 1903, when he was 68 years old. Big Canoe, explained that he learned from his father how to travel upstream for five days from Georgina Island to their family hunting ground around Canoe Lake in present-day Algonquin Park (map 1.6). The bands defined each family's hunting ground precisely. For example, Big Canoe stated:

our hunting ground extend up the river this [Oxtougue] River till we Reach Kezbick kah sa ge go ning now called Island Lake. This Lake lieth about the Heights of land -- we portage hear till we stroke the waters that runs to Ottawa the lake was we Hunted in those waters is called Kech se ge kah me gong our hunting ground do not go any further -- this is the division line -- the other Indians own the ground from this place.⁹⁸

Family harvesting was systematic. Big Canoe explained:



we put up a very large wigwam this is our station we meet hear every Saturday stayed over Sunday this is the place where we dry our skins or furs -- we leave our station every Monday to our various places where we hunted.⁹⁹

The families reported that they trapped beaver, otter, mink, muskrat, fisher, and marten principally along the shores of their hunting limits.¹⁰⁰ Fishing was important here too as trappers used fish to bait their traps. After freeze-up, the principal method was to spear through a hole in the ice, often using bait or a lure on a string.¹⁰¹ Richardson stated that pike formed "an important resource to the

⁹⁸ PAO, F 4337-6-0-3, statement of Charles Big Canoe, dated 12 October 1903.

⁹⁹ PAO, F 4337-6-0-3, statement of Charles Big Canoe, dated 12 October 1903.

¹⁰⁰ See also Copway's (1850) chapter, "Their Wild Game": 25-41.

¹⁰¹ NAC, RG 10, vol. 2332, file 67,071-4C, sworn statements of Thomas Port: 29; J.B. Stinson: 100; Thomas Marsden: 274; Gilbert Williams: 147.

Indian hunter in the depth of winter” because it took bait under the ice more readily than other fish.¹⁰² The Ojibwa knew the pike as *ke-no-zhay*, while Carl Linneaus had earlier named his European samples *Esox Lucius*. Chamberlain recorded the ice fishing methods of the Mississauga:

In the winter the Indian of Rice and Mud (or Chemong) lakes obtained fish in the following manner: with his tomahawk the Indian cut a hole in the ice, threw a blanket over him, and stood or knelt for hours beside the hole. In one hand he held his fish-spear, in the other a string, to which he attached a decoy-fish of wood serving to attract the prey. Their skill in this sort of fishing was remarkable, two hundred pounds of fish being frequently the reward of a day’s labour.¹⁰³

This is another example of the spear as an expert technology. The “blanket” that men used to cover themselves and shield light from the hole was typically a buffalo robe traded from European fur traders.¹⁰⁴

It is important to briefly comment on deer hunting as I will later touch on Upper Canada’s *Acts for the Preservation of Deer*, which was intended to protect deer for the Ojibwa at the time they hunted. Before the freeze-up, men hunted deer from canoes using torch lights to draw deer to the littoral.¹⁰⁵ After the snow fell, the conditions for Ojibwa deer hunting were ideal as the animals had difficulty traveling in deep snow and thus trenched distinct trails and trampled out “yards” in clearings where they herded. Copway recorded that hunters set snares and spikes along deer trails.¹⁰⁶ Most importantly, hunters conducted a major hunt in the late spring after a brief thaw that formed a thin crust of ice on the snow that greatly impeded a deer’s flight. At this time, hunters chased deer down and killed them with various objects.¹⁰⁷

In the spring, the hunters prepared garden sites at their central campground to produce corn, beans, and pumpkins for harvest upon their return in the fall. These places

¹⁰² Richardson 1836: 124.

¹⁰³ Chamberlain 1888: 154

¹⁰⁴ Head 1829: 201-2; HBCA B.134/b.20, E.M. Hopkins, Montreal, to Robert Crawford, Lindsay, 9 December 1863: 41; HBA B.134/c/92, Robert Crawford, Lindsay, to Edward Hopkings, HBC office, Montreal, 21 December 1863: 439.

¹⁰⁵ Copway 1850: 25-41.

¹⁰⁶ Copway 1850: 25-41.

¹⁰⁷ Copway 1850: 26-7.

were often on islands and river mouths across the Muskoka-Haliburton region.¹⁰⁸ The same places were also used as family burial grounds. For example James Nanigishkung reported, “my people had a clearance at Trading Lake where we raised our corn, potatoes and pumpkins at this camp and some of our people died here and was [sic] buried at this point.”¹⁰⁹ The Bigwin family used Bigwin Island in the Lake of Bays as a garden and burial ground.¹¹⁰ Joe Cousin stated that his family buried their ancestors at a point of land on the east side of Keeh shah gah we gah mog Lake.¹¹¹ D.J. Assance identified his family burial grounds at the outlet of the Rousseau River.¹¹² Thus, within their northern hunting grounds, islands, points of land, and river mouths, were also crucial economic, social, and spiritual places among the Mississaugas and Chippewas.

In the spring, families returned to their southern fishing environments, stopping at fur trade posts that Europeans erected along the Chippewa and Mississauga’s travel

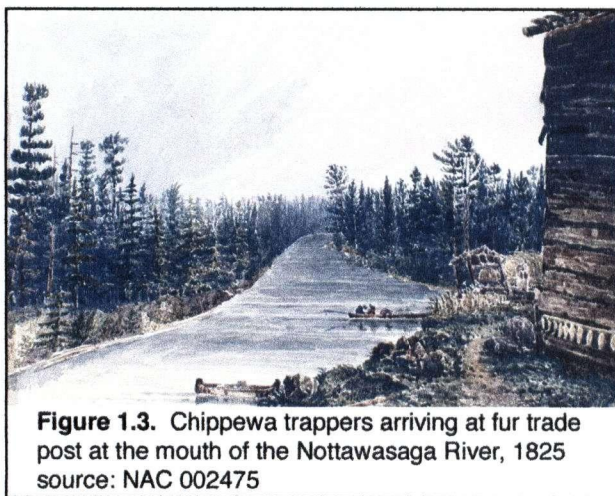


Figure 1.3. Chippewa trappers arriving at fur trade post at the mouth of the Nottawasaga River, 1825
source: NAC 002475

routes. In their various statements, elders identified many of these traders by name.¹¹³ My review of Hudson’s Bay Company (HBC) archival material reveals that most of the men were independent traders and likely operated before the HBC moved into the region in the 1860s.¹¹⁴ One independent trader built a post at the outlet of the

¹⁰⁸ NAC, RG 10, vol. 2329, file 67,071 pt. 1B, Frank Pedley, barrister with J.W. Kerr, submission of statutory declarations of George Blaker, Thomas Marsden, and Peter Crow, to the Deputy Superintendent of Indian Affairs, 19 May 1903.

¹⁰⁹ NAC, RG 10, vol. 2329, file 67,071-2, sworn affidavit of James B. Nanigishkung, 13 September 1911.

¹¹⁰ PAO, F 4337-6-03, anonymous description of Chippewa hunting grounds, ca. 1903; See also NAC, RG 10, vol. 2332, file 67,071-4C, John Bigwin’s sworn statement to the William Commission, 20 September 1923: 92; NAC, RG 10, vol. 2329, file 67,071 pt. 1B, Frank Pedley, barrister with J.W. Kerr, submission of statutory declarations of George Blaker, Thomas Marsden, and Peter Crow, to the Deputy Superintendent of Indian Affairs, 19 May 1903.

¹¹¹ PAO, F 4337, A.E Williams - United Indian Bands of the Chippewas and the Mississaugas collection, “statements by elderly First Nations people collected by G. Mills McClurg”.

¹¹² PAO, F 4337, A.E Williams - United Indian Bands of the Chippewas and the Mississaugas collection, “statements by elderly First Nations people collected by G. Mills McClurg”.

¹¹³ NAC, RG 10, vol. 2329 file 67,071 part 2, sworn statements of Peter Kadegewon 1911; Solomon Mark 1911; Joe Cousin 1911, St. Germain 1911; Henry Simon 1911, Nanigishkung 1911, Yellowhead 1911.

¹¹⁴ Provincial Archives of Manitoba, Hudson’s Bay Company Archives, B.134, Montreal, correspondence books, 1858-1861.

Oxtongue River on Muskoka Lake (today Bracebridge), where families passed during their descent of the Muskoka and Lake of Bays watersheds. It was a strategic location that reveals the trader's knowledge of where to integrate into the Chippewa's cultural geography. Another trader camped at the outlet of Gull Lake, where Mississauga trappers could stop on their descent from their hunting grounds. Other independent traders built similarly well-situated posts at river outlets and points of land on the Georgian Bay and around Lake Ontario (yellow dots in map 1.3, see appendix 2 for data)

Spring and Summer fisheries

The spring fisheries were more varied than those of the fall. Five spring spawning species, the pickerel, maskinongè, suckers, black bass, and sturgeon were critical to the southern Ojibwa. I will examine each in the order that it spawned. These fish arrived at a good time for the Ojibwa because the late winter and early spring was a period when food was most scarce and families generally relied on supplies they had preserved the previous fall, most notably dried fish, (wild) rice, and fish frozen in caches.

Ojibwa families observed the passage of time through lunar cycles and each phase of the moon had a name that reflected the families' harvesting schedule. Among the southern Ojibwa, the moon of March was known as *ziisbaakdoke-giizis*, literally meaning the "sugaring moon".¹¹⁵ As this moon began to rise, southern Ojibwa families began to return to their spring fishing and maple sugar camps where the women who wintered there began tapping sugar maple trees at sugaries known as *sisibâkwatokân*. The sugaries were a women's exclusive property and trespass was prohibited.¹¹⁶ Many sugar bushes were intricately tied to the fisheries. For example, one elder reported that at his spring campground, "I use to live there and I use to farm there. I had a garden I planted potatoes and corn and I made sugar there in the spring."¹¹⁷

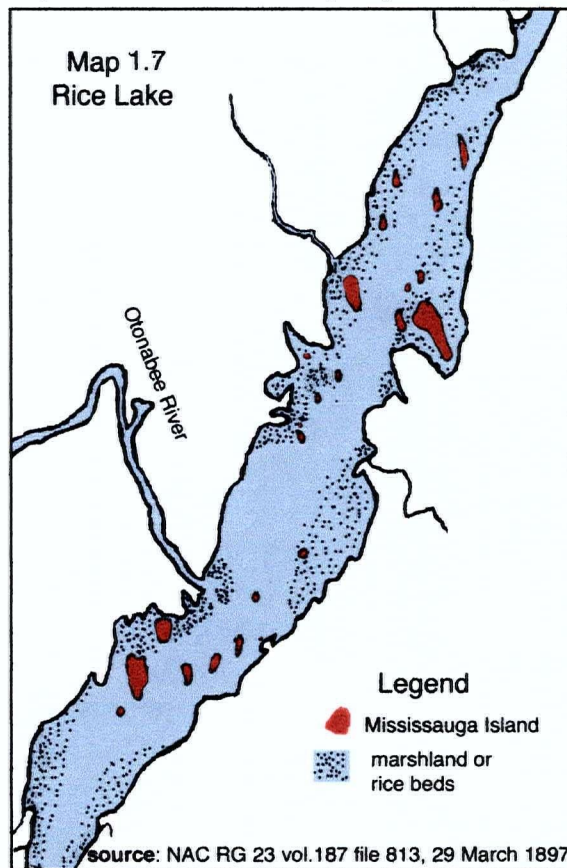
When women finished the manufacture of sugar they then collected the inner bark of cedar and willows for later use in making nets, baskets, and mats as the bark could

¹¹⁵ Richard A. Rhodes, *Eastern Ojibwa-Chippewa-Ottawa Dictionary* (New York, Mouton Publishers, 1985).

¹¹⁶ Chamberlain 1888: 155.

¹¹⁷ PAO, F 4337-6-0-3, written statement of Louis Corbier, ca. 1903.

only be harvested in the spring.¹¹⁸ They used women used the willow' inner strands to



manufacture nets that that called *sibiwasab* (literally meaning a small net for a river or stream). Richardson stated that pickerel were the first species to run when the ice started to retreat. The Chippewa of Georgiana and Snake Islands moved to creek mouths in Cooks Bay and along the eastern shore of Lake Simcoe to set their *sibiwasab* for pickerel (map 1.5).¹¹⁹ The largest run of pickerel passed through the “narrows” between Lakes Simcoe and Couchiching where the Chippewa of Rama netted them (map 1.5). Other Chippewa families moved to the extensive wetlands around the Holland River. In Rice, Chemong, and Balsam Lakes, pickerel

collected in the dense weed beds around the littoral and off the points on the lakes’ many islands (maps 1.7). To prosecute this fishery, the four Mississauga bands on these lakes developed elongated village settlements composed of family camps on islands, points of land, and river mouths.¹²⁰ It appears that the camps were close enough to allow families to visit, socialize, and engage in games.¹²¹ These social opportunities were important as the nation’s families were dispersed over the winter and communication was not practical.¹²²

¹¹⁸ Richardson 1836: 10-11.

¹¹⁹ Chamberlain 1892: 60.

¹²⁰ Anon, “Rice Lake”, *Third Annual Report of the Canada Conference Missionary Society* (York, printed by William Lyon Mackenzie, 1827): 8; Catherine Parr Traill, *The Backwoods of Canada: Being Letters from the Wife of an Emigrant Officer, Illustrative of the Domestic Economy of British America* (London: C. Knight, 1836): 162-3.

¹²¹ Copway 1850: 142.

¹²² Thoms 1999: 172.

In 1817, George Cuvier, a French comparative anatomist, named the pickerel *Lucio-Perca Americana*.¹²³ The Mississauga called it *ōká*. Richardson examined a sample of the Mississauga's *ōká* and held out the possibility that it was a separate species and thus classified it under the name *Okow*. Scientists later placed the *Okow* under Cuvier's classification and thus the potential uniqueness of this fish was erased in favour of a more general global category.

Maskinongè were the next species to spawn in the spring. Richardson's specimen collector informed him that the small streams that run into Lake Simcoe formed a major maskinongè fishery.¹²⁴ Here, Chippewa families prosecuted this fishery after the pickerel runs tapered off (map 1.5). Similarly, the Mississauga fished the rivulets entering the Peterborough lakes. While the Algonquian name *maskinongè* (variously spelt) survives as the fish's common Canadian name, the French taxonomist Le Sueur named the fish *Esox Estor*.¹²⁵

Richardson studied a fish that he called the Grey-Sucking carp, fur traders called the Grey sucker, and the Algonquins called *Namypeeth*. It inhabited all the fresh waters of the fur trade country, particularly shallow grassy lakes with muddy bottoms. In the late spring, Richardson stated that it could be seen forcing its way up rocky streams to spawn in rocky rivulets.¹²⁶ Several Mississauga women informed me that changes in terrestrial ecology, namely the blossoming of pussy willows, were one indicator of the time to fish suckers. "In the spring, when the pussy willows come out, start to bloom, that's when the elders say the mudcats start biting."¹²⁷ In addition, the moon of April was known as *nmebin-giizis* and referred to the period when suckers ran.

The summer brought on another set of harvesting strategies. The southern Ojibwa referred to the moon in June as the "planting moon". The moon of July (*miskwimiginisiss*) signaled the emergence of raspberries. Mid-summer was also the time to fish for what Cuvier termed *Perca Nigricans*, the Mississauga called *ácigen*, and settlers on Lake Huron named the black bass. Richardson referred to it as the "Huron".¹²⁸ Only the

¹²³ George Cuvier, *Le Règne Animal distribué d'après son Organisation* (Paris: Fortin, Masson, 1817): 122.

¹²⁴ Richardson 1836: 127.

¹²⁵ Cuvier 1817: 282.

¹²⁶ Richardson 1836: 116.

¹²⁷ Informal oral history interview by J. Michael Thoms with three Mississauga women.

¹²⁸ Richardson 1836: 4-5.

settlers' name survives today in common usage. The final summer fishery was for sturgeon. Richardson stated, "August is termed the sturgeon month by the Canadian Indians, on account of the productiveness of the fishery at that period".¹²⁹ The Mississauga caught sturgeon with grapples around Lakes Ontario and Huron.¹³⁰

In 1655, the Jesuit priests, fathers Chaumon and Claude Dablon, visited a Mississauga village on a river entering Lake Ontario near Fort Frontenac (Kingston). They succinctly described these Mississauga's knowledge and adaptation to the yearly cycle of spawning fish runs:

[the river] flows through meadows, which fertilizes and cuts up into many islands, high and low, all suitable for raising grain. Such is the richness of this stream that it yields at all seasons various kinds of fish. In the spring, as soon as the snow melts, it is full of gold-colored fish [pickerel known as doré among French Canadians]; next come carp [suckers], and finally the *achigen* [black bass]. The latter is a flat fish, half a foot long and of very fine flavor. Then comes brill; and at the end of May, when strawberries are ripe, sturgeon are killed with hatchets. All the of the rest of the year until winter, the salmon furnishes food to the Village of Onontaté. We made our bed last night on the shore of a Lake where the natives, toward the end of winter, break the ice and catch fish, -- or rather draw them up by the bucketful.¹³¹

In September, both northern and southern Ojibwa families began the seasonal harvest of natural (wild) rice. These rice fields were often located adjacent to their fisheries. One of the most celebrated Ojibwa rice fields in southern Ontario was that of Rice Lake (map 1.7).¹³² Throughout the Great Lakes region, the Ojibwa preserved their rice for winter consumption.¹³³ Once the rice was harvested and preserved, the families moved to their fall fishing places and they continued their seasonal schedule anew.

¹²⁹ Richardson 1836: 285.

¹³⁰ Richardson 1836: 285; Henry 1829: 35.

¹³¹ Joseph Chaumont and Claude Dablon, "Journey of Fathers Joseph Chaumont and Claude Dablon to Onontagué a country of the Upper Iroquois", in *JR* 42: chapter III: 69-71.

¹³² Martin 1995: chapter 1, n.p.

¹³³ See Anon, "Concerning the Mission to the Outaouax and the Saintly death of Father Rénard, as well as that of his companion", *JR* vol. 48 chapter VIII: 119-121; Jacques Marquette, "letter to the Reverend Father Superior of the Mission", *JR* vol. 54 chapter XI: 199.

Final notes on the southern Ojibwa organization of fisheries knowledge

In *Tangled Webs of History*, Dianne Newell argued that in the case of Northwest Coast aboriginal societies, their adaptation to aquatic resources “was as crucial as adaptation to land” and that in many cases when these people pinpointed the predictable location of fish, they organized their society, economy, and range of terrestrial harvesting strategies around their fishing.¹³⁴ The same appears to be true for the southern Ojibwa. Fishing places were the hubs of the Mississauga and Chippewa’s seasonal rounds from which routes to all other resources sites flowed. It appears that the Ojibwa early identified reliable fishing sites in southern Ontario and from these bases preserved additional fish to enable a variety of terrestrial harvesting strategies for other periods of time in other places. The result of this adaptive strategy was a schedule of resource harvesting at a variety of known and community-allocated resource sites throughout the year, each of which the Ojibwa claimed as a form of property. Clearly, from all the evidence reviewed, the fisheries were of great social, cultural, and economic significance to the southern Ojibwa.

In terms of the interface between the Ojibwa naming of fish and the work of early taxonomists who executed the project set by Linneaus, the post-colonial theorist, Mary Louise Pratt, argued that the work of early taxonomists was to create a universal but limited set of categories for fauna that erased its indigenous organization, making all fauna known in a western system of knowledge.¹³⁵ It appears that Richardson was on the cusp of a trend to move away from indigenous knowledge of fishes and replace them with western concepts. In some cases, Richardson valued indigenous insights and preserved Algonquian words for certain fish, in other cases, he disregarded the Algonquian names for certain species and honoured the names of imperial officers. Perhaps more serious, Pratt and other theorist argued that in *Systems Naturae*, Linneaus introduced the concept that all fauna existed on a hierarchy of life forms and that part of the work of taxonomists who rode on the gunboats of British explorers was to identify new fauna and rank its place in a world of hierarchies controlled by the colonizer. It is here, some argue, that the origins of scientific racism may be found. As I will show in

¹³⁴ Newell 1993: 40.

¹³⁵ Pratt 1992: 15-37.

later chapters, many of the first fisheries "scientists" in Canada were also sport fishers and not only did they rank fish in terms of their cultural values, they ranked themselves and their fishing methods above Ojibwa methods with their western concepts of moral and intellectual superiority. Thus, as Europeans came to know the Ojibwa's fisheries, they approached it with a sense that it required order, and in their ordering they placed their preferred fish type, the *salmonoidae* at the top of a global fish hierarchy, and in an attempt to justify their control of these fisheries, enlisted the ideological apparatus of western science to argue that their intelligence, morals, and fishing methods ranked above the Ojibwa.

Ojibwa management of their natural resources

Recent scholarship has developed the concept of "communal property regimes" (CPR) to demonstrate that a natural resource can be sustained if: 1) it is used by a well defined group, which has 2) a form of exclusivity over the resource, and 3) the user group has a set of rules for the use, distribution, and protection of the resource which all members of the user group share and respect.¹³⁶ Peter Usher and Fikret Berkes applied the idea in Canada.¹³⁷ McEvoy, White, and Hodgins have used parallel models to illustrate the sustainable effects of aboriginal resource harvesting in some environments across North America.¹³⁸ The model is applied here to draw out the components necessary for sustainable resource management as found in the Ojibwa system.

It is striking that in most cases when the Ojibwa described their resource use system, they almost always touched on what can be interpreted as parallels of the three tenets of the CPR model. For example, in 1850, Copway stated, "the hunting grounds of the Indians were secured by right, a law and custom among themselves. No one was allowed to hunt on another's land, without invitation or permission."¹³⁹ The statement perfectly embodies the three criteria of CPR management: a specific group was recognized to use a defined resource area over which they held a form of exclusivity and the overall community shared a series of laws preventing unauthorized use. Note that in

¹³⁶ Stanley 1991: 757-79.

¹³⁷ Berkes 1985: 187-208, 1989; Usher 1992: 45-66.

¹³⁸ McEvoy 1986; Hodgins and Benidickson 1989; White 1995.

¹³⁹ Copway 1850: 20.

his effort to represent his people's land use system in terms recognizable to colonists, Copway drew on the western word "law" to describe his cultural system. I will first describe the laws the Ojibwa developed to manage their resources.

Many Europeans commented on the strength of Ojibwa legal codes. In 1867, a missionary explained Chippewa laws this way:

They have no written laws. Custom handed down from generation to generation, have been the only laws to guide them. To act differently from custom brings the censure of the tribe. This fear of the tribe's censure is a mighty inducement binding all in a social compact.¹⁴⁰

The laws against trespassing on another's hunting or fishing grounds were of particular importance. In 1850, Copway explained the Ojibwa sanctions imposed on trespassers. For a first offense, a trespasser could expect, "all the things were taken from him, except a hand full of shot, powder sufficient to serve him in going *straight* home, a gun, a tomahawak, and a knife; all the fur and other things were taken from him." For a second offense, "all his things were taken away from him, except food sufficient to subsist on while going home." For a third offense, "his nation, or tribe, are then informed of it, who takes up his case. If still he disobeys, he is banished from the tribe."¹⁴¹ Clearly, community censure operated as a powerful form of law enforcement.

Charles Big Canoe provided an example of the operation of these laws, even between nations, when he told government commissioners:

I remember, a long time ago, I was with the old chief and some others, and we were in our Hunting Ground. The old Chief, my father-in-law, and us – we were in his big canoe on Canoe Lake (that's call after me like I told you) and he see, long piece off, a little canoe and one man, not of our people, and we bring the big canoe 'long side the one-man canoe, and we see in the bottom of it three beaver taken from our Hunting Grounds, and the old Chief, he don't say nothing, he reach over and take the biggest one of all, and he put it in our canoe, and the Algonquin he say 'Take them all, for I have do very wrong to come to your Hunting Ground' and the old Chief he say 'No, I am honest I will take my due. You have killed these three beaver, two small and one big one, but I take only the big one because it is my right, for you have hunted on my Hunting Ground' and

¹⁴⁰ Enemikeese 1867: 7-8.

¹⁴¹ Copway 1847: 19-20.

the Algonquin he go away and he hunt no more there, and he have admitted to the old Chief that the land was his.¹⁴²

The Ojibwa laws against trespass appear to have been well respected. In 1923, Gilbert Williams told the government commissioners, "My father told me not to go over the boundary, this west boundary, and I never went over it, I just went near there and come back into Lake Joseph and Rosseau Lake and Skeleton Lake."¹⁴³ In 1903, Chief Isaac Johnson reported an even more serious sanction against trespass: "Each family had a hunting ground and no body else could hunt there. I always heard them say that they could not go beyond the height of land for if any Indian found the Mississauga hunting on their grounds they would kill them on the spot."¹⁴⁴ In 1923, government commissioners were skeptical that that the Ojibwa and their aboriginal neighbours still respected these laws and hunting boundaries. John Bigwin insisted, "the other Indians, if I go over their line will punish me, and they come, I punish them." The commissioner interjected, "oh not now – nothing would happen now", and Bigwin responded, "yes, sure it would. We make things happen."¹⁴⁵

In spite of these measures, resources could plummet in a family's hunting grounds because of natural catastrophes. Elders and the secondary literature make it clear that when a family detected that the animals in their hunting grounds declined to unsustainable levels, they reduced their pressure by rotating their use to another area of the hunting ground, or they abandoned the grounds temporarily and sought permission to hunt on another family's grounds.¹⁴⁶ In 1911, Henry Simon recalled a time when the Dokis family applied to use his father's hunting grounds, "paying my father so much per every season".¹⁴⁷

The archival data that the southern Ojibwa and their lawyers generated as part of their claim to the Haliburton and Muskoka regions contains limited information on

¹⁴² NAC, RG 10, vol. 2332, file 67,071-4C, sworn statement of Charles Big Canoe to the Williams Commission, 1923: 33

¹⁴³ NAC, RG 10, vol. 2332, file 67,071-4c, sworn statement of Gilbert Williams to the Williams Commission, 1923: 144.

¹⁴⁴ PAO, A.E. F 4337-6-0-3, statement of Chief Isaac Johnson, Scugog, 19 October 1903.

¹⁴⁵ NAC, RG 10, vol. 2332, file 67,071-4c, sworn statement of John Bigwin to the Williams Commission, 1923: 93.

¹⁴⁶ Speck 1915: 5-6; Hodgins 1989: 140-5; Thoms 1995: 51.

Mississauga and Chippewa property claims and laws covering fishing places. This gap is likely due to the male lawyers and government officials' bias to acquiring affidavits from male Ojibwa informants. Nevertheless, there is significant evidence in other sources to show that the southern Ojibwa applied the same property and legal principals to their fishing places. Prior to his death in 1832, Jack Cow claimed an exclusive right over fish as well as game in his hunting grounds around Jack Lake. In 1884, an early historian of Peterborough County, Pelham Mulvany, explained that the Lake was named after Cow, "who claimed all the streams and lands in this locality as his fishing and hunting grounds." Mulvany added that Cow, "was most tenacious of his rights, and would destroy all the traps of the white men he found on his streams." Cow did, however, when asked, grant permission to settlers to fish in his waters.¹⁴⁸ Mulvany also recorded that the Taunchay family held the Clear Lake basin as their fishing grounds and that the Irons family asserted exclusive rights over the fishery in Massossaga and Kitchoum Lake.¹⁴⁹ In the first part of the 19th century, Mississauga leaders leased what they perceived as their exclusive fishing rights around islands in the Bay of Quinté to some settlers.¹⁵⁰ In a series of events I describe in a later chapter, in the 1860s, the Chippewa of Beausoleil Island actively protected their fisheries from settler trespasses and seized non-native nets. Other Ojibwa on the Saugeen Peninsula and Manitoulin Island also asserted property rights over their fishing places and actively protected them from trespasses.¹⁵¹ These laws applied to both settlers and other aboriginal groups. For example, in 1867, a missionary reported that Chippewa families from Lake Simcoe had to apply to the Saugeen Chippewa to fish on their grounds.¹⁵² Most significantly, the federal Department of Fisheries ("Fisheries") was aware of the Ojibwa laws and assertions of property over their fisheries. In 1863, the Commissioner of Fisheries reported:

¹⁴⁷ NAC, RG 10, vol. 2329, file 67,071-2, sworn declaration of Henry Simon, Christian Island, 25 August 1911.

¹⁴⁸ Pelham Mulvany et. al, *History of the County of Peterborough* (Toronto: 1884), reprinted in Guillet 1967: 23.

¹⁴⁹ Mulvany 1884: 25.

¹⁵⁰ NAC, RG 10, vol. 414, letter by Chiefs John Sunday, John Sampson, Captain Irons, 4 principal warriors, and 9 warriors, dated Alnwick 21 June 1847; NAC, RG 10, series 2, vol. 2: 444-5.

¹⁵¹ William Gibbard, "Report of William Gibbard, Esq., on the Fisheries of Lakes Huron and Superior", CSP no. 11 (Quebec 1862): n.p.

¹⁵² Enemikeese 1867: 95.

In all that is related to soil and fisheries they [Ojibwa] conceive themselves sovereign proprietors, and as much, not amenable to the laws and usages which govern subjects of the realm. They make and administer their own laws. Whosoever would occupy their lands, reside within their jurisdiction and use 'their fisheries' must conform to tribal orders and decrees.¹⁵³

Ojibwa laws of inheritance of fishing and hunting grounds were critical to the maintenance of their property allocation system.¹⁵⁴ All the Ojibwa sources emphasize this point. For example, Chief Thomas Peter Kadegegwon stated in 1911, "my father the late Mr. Peter Kadegegwon who had a hunting limit of his own and upon his death he gave the limit to his sons, viz, late William Peter Kadegegwon and myself".¹⁵⁵ These laws assured the orderly and predictable passage of hunting and fishing grounds between generations. The evidence indicates that marriage was exogamous between *dodems* and that women moved to the man's band.

"Law" was not the only term the southern Ojibwa borrowed from the English lexicon. In the mid-19th century, the words "conservation" and "management" were not yet used. Instead, it appears fur traders and others used the metaphors of "nursing" and "farming", drawing the analogies between agrarian animal husbandry and wildlife management.¹⁵⁶ Some Ojibwa drew on these dominant metaphors to explain their people's conservation practices. For example, in 1861, Peter Jones used the analogy of "farming" to explain how his people husbanded their animal resources: "each family had its own hunting grounds, marked out by certain natural divisions, such as rivers, lakes, mountains, or ridges; and all the game within these bounds is considered their property as much as the cattle and fowl owned by a farmer on his own land."¹⁵⁷ The Ojibwa continued to use the same analogy in the early 20th century. In 1923, John Bigwin told government commissioners, "we don't go over the lines like you people do, we keep our

¹⁵³ W.F. Whitcher, *CSP* no. 18 (Ottawa: 1863): n.p.

¹⁵⁴ The anthropologist Frank G. Speck recorded the importance of the law on inheritance among Algonquian groups. See especially Speck 1915.

¹⁵⁵ NAC, RG 10, volume 2329, file 67,071-2, affidavit of Chief Thomas Peter Kadegegwon, 25 August 1911.

¹⁵⁶ For examples of the language of conservation used by the HBC between 1820 and 1850, see Arthur J. Ray, "Some Conservation Schemes of the Hudson's Bay Company, 1821-50: An Examination of the Problems of Resource Management in the Fur Trade", *Journal of Historical Geography* 1 (1975): 49-68; and Charles Bishop, *Northern Ojibwa and the Fur Trade: An Historical and Ecological Study* (Toronto: Holt, Rinehart & Winston Canada, 1974): 124-28, 184, 210-11, 245-49, 284.

¹⁵⁷ Jones 1861: 71.

hunting grounds. With our hunting grounds we are like farmers with their fences, we would not think of going over our boundary any more than they would pull up another fellow's field."¹⁵⁸ Similarly, Big Canoe told the commissioners, "They were very attentive of keeping their limits, like a farmer would be. They don't want anyone to hunt in their grounds."¹⁵⁹ In effect, these Ojibwa succinctly stated that their communities "conserved" their natural resources through property concepts with controls on trespass and the careful husbandry of wildlife within their boundaries. The effect was to allow each family to perennially monitor their resources without having to factor in unknown external pressures. They could then adjust the intensity of their resource use accordingly.

The spiritual dimension

The Ojibwa credited a Great Spirit with the creation of the abundance of fish, game, and other resources in their territories.¹⁶⁰ They also credited the Creator with teaching their ancestors a "code of moral laws" and a "path" to follow that would result in "a long and prosperous life."¹⁶¹ For the Ojibwa, the Ontario environment was also a landscape filled with spirits that included a "god of fish".¹⁶² Many Ojibwa traditional knowledge holders have described in detail this spirit world with its water, land, forests, mountain, and other environmental spirits.¹⁶³ As Copway explained, the spirits connected the Ojibwa harvesters, their environment, and their ancestors, with the creator in one "chain connecting heaven with earth."¹⁶⁴ The Ojibwa therefore believed that the spirits of various environments played a role in the maintenance of this chain and could grant or withdraw catches to a fisher or hunter. The great Ojibwa fear was that this chain could be broken. One Ojibwa goal, therefore, was to avoid upsetting the spirits in each environment because such a breach could bring ruin to a system that served the interests

¹⁵⁸ NAC, RG 10, vol. 2332, file 67,071-4C, sworn statement of John Bigwin to the Williams Commission 1923: 88-9.

¹⁵⁹ NAC, RG 10, vol. 2332, file 67,071-4C, sworn statement of Charles Big Canoe to Williams Commission, 1923: 12.

¹⁶⁰ Head 1829: 44; Copway 1850: 170.

¹⁶¹ Copway 1850: 132.

¹⁶² Copway 1850: 151, 164.

¹⁶³ See for example, Norval Morriseau, *Legends of my people: The Great Ojibway* (Toronto: Ryerson Press, 1965); or the many works of Basil Johnston, such as *Tales of the Anishinaubae: Mermaid and medicine women: native myths and legends* (Toronto: Royal Ontario Museum, 1998).

¹⁶⁴ Copway 1850: 130.

of their ancestors, the living, the spirits, the fish, and the wildlife. In essence, the Ojibwa developed a sense of a "chain" between themselves, their environment, their past, their ancestors, and their creator and believed that if they faithfully followed their ancestor's traditional resource use customs, which had proven successful through long practice, that the lakes would continue to abound in fish, and the forests retain plenty of game. One Ojibwa practice aimed to prevent upsetting the spirits of fish and animals involved giving gifts to these spirits before they were hunted and fished. For example, the Ojibwa offered gifts to water spirits before fishing.¹⁶⁵ In the 1820s, when Christian missionaries began their efforts to convert the Ojibwa, some Ojibwa refused to participate for fear that doing so would upset their chain of balance. For example, in 1836, Ojibwa residing on the St. Clair River refused missionary advances, arguing that their spirits "would be angry with us for abandoning our own ways."¹⁶⁶ On the Credit River, the Mississauga paid respect to a spirit that lived in a deep water hole where he was heard to sing and beat his drum. The Mississauga reported that, "when the white man became a too frequent visitor in the neighborhood, the spirit raised a great flood, and departed down the river into the lake." The Mississauga believed that the link between the spirit world and the world of the living had been broken. In sum, Ojibwa spiritual beliefs had a conservative influence in which the Ojibwa sought to avoid upsetting a sense of balance or chain that they had developed with their environment and understood to produce sustainable yields.

Stories and ceremonies were the Ojibwa's conventional means of transferring their beliefs. Copway explained that elders told their stories over the winter to the young as a form of instruction.¹⁶⁷ As the education scholar, Michael Marker, has argued, fish are "a central category of meaning" in both native and non-native cultures and because stories are an integral part of aboriginal pedagogy, these stories reveal "the rudimentary disjunctures between Indian and white views of the resource, relationships, and

¹⁶⁵ Regarding Mississauga gifting to spirits, see Chamberlain 1888: 157. In terms of the northern Ojibwa making offerings prior to fishing, see Thoms 1999: 176. In terms of Mississauga water spirits, see Copway 1850: 134.

¹⁶⁶ Anonymous Ojibwa person, quoted by D. Coates, in *The British Parliamentary Papers: Correspondence and other papers relating to Aboriginal Tribes in British possessions, 1834* (Irish University Press: Shannon 1968-71): 526.

¹⁶⁷ Copway 1850: 95-7.

responsibilities to the land.”¹⁶⁸ Some researchers have examined these stories for potential revelations about Ojibwa ecological knowledge.¹⁶⁹ There is, however, a danger that scholars can take these Ojibwa stories out of context when they examine the stories solely for their ecological messages. Shepard Krech, for example, has examined a host of aboriginal stories to argue that the stories are not compatible with modern ecological knowledge and that supernatural sanctions were unenforceable.¹⁷⁰ These stories, however, held more than just ecological knowledge, but must be interpreted within the broad context of a chain of relationships that they explained and reinforced. As I will continue to show in later chapters, the Ojibwa belief in environmental spirits did not blind them to ecological changes.

Conclusion

My purpose in reconstructing the Ojibwa communal property system is to illustrate how the southern Ojibwa nations organized their territory based on their intimate understanding of local ecological patterns. This provides the essential background for understanding the events that will be explored in the following chapters. The key point to make here is that when British officials decided to settle Ontario, the region was not a vast unmarked wilderness and the Ojibwa were not nomadic peoples who used fisheries and other resources haphazardly. Rather, the Ojibwa had divided it into national territories that were further subdivided into a sophisticated system of band and family territories. A system of laws governed access to these sites, provided for inheritance, and facilitated the management of the natural resources within them. These Ojibwa property lines and laws were not invisible and I will show in the next chapters that the first British officials who entered the region knew about them. This information provides the base for my examination of how the British and the Ojibwa attempted to negotiate treaties spelling out a way for their two cultures to co-exist. For the Ojibwa, keeping control over their valued ecosystem components at river mouths, points of land, and islands would be critical. As well, an understanding of the timing and duration of the *salmonoidae* runs

¹⁶⁸ Michael Marker, “Stories of Fish and People: Oral Tradition and the Environmental Crisis”, *BC Studies* 129 (Spring 2001): 79-85.

¹⁶⁹ Lytwyn 1994: 14-28; Thoms 1999.

¹⁷⁰ Krech 1999: 195.

that the Ojibwa fished is important to interpreting the effectiveness of the “seasons” that the Upper Canada parliament closed to non-natives in the *Acts for the Preservation of Salmon*. First, I will look at how the English conceptualized property in fishing places in the 18th century and what happened when settlers brought these doctrines into contact with aboriginal concepts of fishing properties in colonial New York.

Chapter 2

Lords and Fisheries: The coming of English game laws, exclusive fishing rights, and the *Royal Proclamation of 1763*

[The Hudson's Bay Company owners] *were true and absolute Lordes and Proprietors of this vast territory, and they were to hold it... in free and common socage, on the same terms as the Manor of East Greenwich.*¹

E.E. Rich's description of HBC charter rights

"the Indians [are] the lords of the islands, of all the rivers, and of the fish that swim therein."²
John MacTaggart British civil engineer, 1829

In the previous chapter, I reviewed Ojibwa concepts of property in fishing places. For the British officials who negotiated the first treaties with the southern Ojibwa, the concept of exclusive property in fishing places would not have been foreign. In England, a series of early 18th century *Acts for the Preservation of Salmon* vested the lords of manors and other owners of fisheries with their exclusive use. An understanding of English fishery law doctrines prevalent in the 18th century is therefore fundamental to an analysis of the realm of possible approaches that British officials may have used in treaties to protect Ojibwa properties in fishing places. It also forms the foundation of knowledge necessary for an interpretation of Upper Canada's *Acts for the Preservation of Salmon*. It is equally important to understand why England's landed gentry claimed that its stringent game laws were in the best interest of their society and how they justified their monopoly on fish and game. These justifications contained social control strategies that would play an important role in the development of Upper Canada's fisheries laws.

After my review of English fishery law doctrines, I move to colonial New York where aboriginal and British concepts of property in fisheries first made contact. Here, I locate a history of encounters between the different cultural groups that British officials

¹ E.E. Rich, *Hudson's Bay Company, 1670-1870*, vol. 1 (Toronto: McClelland and Stewart, 1960): 53.

² John MacTaggart, *Three Years in Canada: An Account of the Actual State of the Country in 1826-7-8. Comprehending its Resources, Productions, Improvements, and Capabilities, and Including Sketches of the State of Society, Advice to Immigrants, &c.*, vol. 1 (London: Henry Colburn, 1829): 172.

and aboriginal chiefs resolved in the *Royal Proclamation of 1763* that established the law and procedures for the treaties that would follow in Upper Canada.

The development of 18th century English game law doctrines

I begin my synthesis of English game and fish laws before King John issued the *Magna Carta* in 1215 because some legal authorities claim that decrees made at Runnymede bear directly on aboriginal fishing rights.³ Generally, the history of English game and fish laws is traced to the Norman Conquest of 1066, after which William II declared himself the absolute owner of all wildlife in the country. To build his kingdom, he granted rights over these resources to his supporters in exchange for their allegiance and other favours. In terms of animals, William II and his successors granted aspects of their hunting prerogative in such forms as a park, a chase, or a warren, all of which involved property in the animals and their habitats.⁴ In terms of fisheries, they granted "free-fisheries" (read monopoly) that gave a noble the exclusive property over fish in a particular body of water, regardless of who owned the adjacent land, or a "several fishery, that gave a lord the exclusive property over the fish within the waters on his estate. These royal grants were called franchises, profits, hereditaments, or tenements, and they were attached to a lord's estate and passed on to his heirs. (The terms later turned up in Ontario treaties because British officials recognized that Aboriginal people could also possess all these possible titles by virtue of their aboriginal title.) The rising nobility eagerly sought these franchises as a marker of their social status and thus the allocation of rights over wildlife contributed to the construction of the English social hierarchy. To protect the value of his grants, William II introduced a system of stringent forest laws that were enforced through special courts, foresters, and wardens.⁵

³ NAC, RG 10, vol. 711, James Cockburn, Solicitor General, Crown Law Department, 6 March 1866; Wright 1994.

⁴ E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (New York: Penguin Books, 1975): 31-2; P.B. Munsche, *Gentlemen and Poachers: The English Game Laws 1671-1831* (Cambridge: Cambridge University Press, 1981); Richard H. Thomas, *The Politics of Hunting* (Gower Publishing Company, 1983): 1-19; Michael J. Bean, *The Evolution of National Wildlife Law* (New York, Praeger Publishers, 1983): 11.

⁵ Sir William Blackstone stated that, "the most horrid tyrannies and oppressions [occurred] under colour of forest law", *Commentaries on the Laws of England*, first edition, vol. II (Oxford: Clarendon Press, 1765-69): chapter 27: 416.

Some historians argue that nobles excluded from royal franchises were on the verge of revolt when King John reduced his powers in the *Magna Carta*.⁶ Among other things, the king curtailed his power to grant fish and game franchises. Clause 47 stated: "All forests created in our reign shall be immediately disafforested, and similarly river banks which we have reserved for our sport... shall be again thrown open."⁷ The charter, however, did not arrest a process that had become fundamental to the landed gentry's construction of their prestige.

After 1215, instead of turning to the king, the landed gentry generally used its control of parliament to allocate the exclusive control over game and fish to themselves. The statutes were generally styled as acts "for the preservation" of game or fish. Of particular importance to this research is the 1705 *Act for the Increase and better Preservation of Salmon and other fish, in the Rivers within the Counties of Southampton and Wilts*⁸ that became the blueprint for Upper Canada's *Acts for the Preservation of Salmon*. The English Act limited fishing rights to the "Lords of Manors and other Owners and Occupiers of Fisheries". Its title and preamble, as well as those of other "preservation" acts, were not explicit about their objective to preserve the fisheries for a

Table 2.1

Date	Statute	Proviso
1558	<i>An Act for the Preservation of Spawn</i> (1 Eliz. c. 17)	s. 12. "saving always to all and every person or persons, bodies politick and corporate, and every of them, all such right, title, interest, claim, privilege ... as they or any of them lawfully have and enjoy, or rights out to have and enjoy, by any manner of means..."
1705	<i>An Act for the Increase and better Preservation of Salmon and other fish, in the Rivers within the Counties of Southampton and Wilts</i> (4 Anne c. 21)	s.1 described persons qualified to fish as "the Lords of Manor, and other Owners and Occupiers of Fisheries in the said County of Southampton and Southern parts of Wiltshire". s. 2 described the balance of the population as "not being by law duly qualified".
1710	<i>An Act for the Preservation and Improvement of the Fishery within the River Thames and for regulating the governing the Company of Fishermen on the said River</i> (9 Anne. C. 26)	s. 8. "Provided always... that this Act, or anything herein contained shall not extend, to prejudice or derogate from the rights, privileges, or authorities of the City of London, exercised by the Lord of the said City..."

⁶ Thomas 1983: 16; Bean 1983: 11.

⁷ *Magna Carta*, 1215, s. 33.

⁸ England, *An Act for the Increase and better Preservation of Salmon and other fish, in the Rivers within the Counties of Southampton and Wilts*, 4 Anne (1705) c. 21.

specific group. Instead, this key article was contained in a *proviso* or what was called a “qualification” clause that limited who could hunt and fish based on wealth, property, ancient royal grants, or other rights, titles, and privileges.⁹ In table 2.1, I list the various qualification clauses and *provisos* in England's *Salmon Preservation Acts*.

The effect of these *provisos* was to “preserve” or “reserve” Atlantic salmon and other fish for the landed gentry and encumber the vast peasant majority with the burden of the conservation restrictions. P.B. Munsche, a scholar dedicated to studying the class restrictions in English game laws, emphasized that the word “preservation” in the acts should be read as a “reservation” of the resource for the landed gentry. In other words, “preservation” had a fundamentally different meaning before the late 19th century: it had a social, not conservational meaning as the acts preserved class privileges over access to fish and game. In subsequent chapters, I will show that the words “reservation” and “preservation” were also interchangeable in Upper Canada when it came to aboriginal lands and resources.

Table 2.2

date	Statute	Free passage of fish	Protection for spawn /or size restrictions	Gear restrictions	Closed seasons	Limits on commercial use	Overseers	penalty
1558	<i>Act for the Preservation of Spawn</i> (1 Eliz. c. 17)		✓					20 s
1705	<i>Act for the Increase and better ...</i> (4 Anne. c. 21)	✓		✓	✓	✓	✓	<£5
1710	<i>Act for the better Preservation...</i> (9 Anne. c 26)		✓		✓	✓		<£10

By 1710, English fishery laws contained most of what we recognize as the modern principals for the conservation of fish: gear restrictions, closed seasons, prohibitions on commercial use, bans on the obstruction of streams, protections for

⁹ Thomas A. Lund, “British Wildlife Law Before the American Revolution: Lessons from the Past”, *Michigan Law Review* 74 (1975): 55-60; Thompson 1975: 21-24; Thomas A. Lund, “Early American Wildlife Law”, *New York University Law Review* 51.5 (1976): 703-5; Thomas 1983: 16-17; Munsche 1981: 8-27.

spawning grounds, size limitations, and the appointment of fishery overseers (table 2.2). The acts gave fishery overseers the power to apprehend offenders, search their properties, destroy their fishing gear, and issue penalties ranging from fines to imprisonment. For enforcement, parliament encouraged members of the public to inform against offenders by rewarding them with half of the fine collected; the other half was awarded to the poor of the local parish. The 1705 *Act* also contained a strategy for control based in local fish ecologies. To ensure river-running salmon would reach a lord's property, the laws prohibited peasants from erecting weirs, setting nets, building other riverine obstructions, or fishing by any other means during the time Atlantic salmon were in freshwaters. Hence, the season when fish were spawning was "open" to the owners of the fisheries and "closed" to everybody else. Later, I will argue that this construction was also applied in Upper Canada and prohibited settlers from fishing during the time the Ojibwa traditionally fished.

In 1722, parliament enacted its most severe penalties in the *Black Act* (Geo. 1 cap. 22) that was designed to eradicate poachers who blackened their faces or wore other disguises. Among other things, the *Act* made it a capital offense to "unlawfully steal or take away any fish out of any river or pond" and completely denied the labouring poor and yeomen farmers any rights to game.¹⁰ E.P. Thompson made peasant resistance to the *Act* the focus of his famous study *Whigs and Hunters*. Of crucial importance, he concluded that peasant resistance not only took the form of subterfuge and violence, but also took the form of successful legal challenges based on their alternative concepts of what constituted property in natural resources. In doing so, Thompson challenged the general assumption most forcefully expressed by Garret Hardin in the "Tragedy of the Commons" (1968) that peasant resources were fields and forests of unregulated harvesting susceptible to individual greed, overexploitation, and ruin.¹¹ Thompson presented historical evidence that English parishes and pastures were covered with an intricate system of invisible property lines and unwritten communal laws stored in the long memories of the villagers about who had access to specific natural resources, such

¹⁰ Thompson 1975: 104.

¹¹ Garret Hardin, "The Tragedy of the Commons", *Science* 162 (1968): 1243-8.

as pastures, ponds, reeds, honey hives, etc., that were intermingled in the same local.¹² In Thompson's words, these villagers had, "a rich and tenacious tradition of memories as to rights and customs (who could fish this pond and who could cut those turfs)."¹³ Unlike the elite who defined game in concepts of recreation, he found that rural peasants defined game in terms of their agrarian mode of production and from this paradigm held the "sense that they, and not the rich interlopers, owned the forest".¹⁴

Most importantly for considering the application of English game laws elsewhere in British common law jurisdictions, Thompson argued that peasants founded a legal tradition of articulating their own "alternative definitions of property rights" to protect their properties from elite efforts to usurp them.¹⁵ This body of law became known as customary law. When the elite attempted to afforest peasant places, for example, counsel for the peasants, if they could afford the costs of a lawyer, could argue that according to customary law, his clients owned a specific resource. Lawyers grounded the peasant claims in their long use of a resource since "time out of mind" over which they prevented others from using it. Thompson showed these customary legal claims worked in many court cases to protect peasant's claims to their traditional harvesting sites. The significance is that English law contained room for alternative definitions and claims to communal property in natural resources. I will show that in the British North American colonies, settlers and aboriginal peoples alike used this approach to protect their fishing places from colonial re-allocation to outside interests.

The other aspect of E.P. Thompson's work that needs emphasis here is that multiple titles could apply to one piece of land: somebody might own the soil, another the game or fishery (fisheries were further divisible into the ownership of specific species), another the rights to a beehive, another the rights to reeds, and another the rights to pass through the property to access resources on the other side.¹⁶ In other words, the bundle of rights in an area of land was parceled out at this time. Later, when the English parliament began to pass a series of *Enclosure Acts* in the late 18th century, these rights were bundled

¹² Thompson 1975: 261.

¹³ Thompson 1975: 113.

¹⁴ Thompson 1975: 113.

¹⁵ Thompson 1975: 264-9.

¹⁶ Thompson 1975: 53.

together and created singular ownership in all that existed within the enclosed lot.¹⁷ Prior to these *Acts*, settlers brought to North America the notion that multiple and unbundled titles applied to the same plot of land.

It is also important to consider how the landed gentry justified their stringent laws. An important source here is William Blackstone's *Commentaries on the Laws of England* (1765-69) in which this highly influential jurist devoted several sections of his work to an explanation of the game laws and their elite justifications. Legal historians have repeatedly shown that Blackstone influenced Anglo-American and Canadian colonial law more than any other source.¹⁸ It is important, therefore, to quote Blackstone's summary of English game and fish law to demonstrate the extent to which similar wordings and justifications for the laws were used contemporaneously in North America. First, Blackstone located the rationale for the king's radical title over all fish and animal resource in the argument that he was its "original" owner. As a consequence, the king was vested with "sole" and "exclusive" rights over fish and game.¹⁹ Later, I will show that British officials repeatedly described the Mississauga and Chippewa as the "original" owners of the lands and resources in Upper Canada with "sole" and "exclusive" rights over the fisheries.

Blackstone also explained the landed gentry's four principal "reasons" why restrictive game laws were in the best interest of English society.²⁰ First, he iterated the belief that wildlife could only be protected when a single man held "custody" of it "with the sole and exclusive power of killing it himself, provided he prevented others".²¹ In essence, Blackstone articulated the concept that natural resources could only be managed when defined as private property and vested in a singular owner. Without this private property principle, Blackstone argued that fish and game, "would soon be extirpated by a general liberty."²² Once again, this is the notion that Hardin expressed as "the tragedy of the commons" and Thompson rejected as inapplicable to most villagers' resources. Blackstone's other three rationales for the common good of restrictive game laws

¹⁷ Thompson 1975: 108, 133-4, 134, 171, 179; Munsche 1981: 4-5.

¹⁸ Lund 1976: 706-7; Bean 1983: 10.

¹⁹ Blackstone 1765-69, II c. 27: 409, 415.

²⁰ Blackstone 1765-69, II c. 27: 411.

²¹ Blackstone 1765-69, II c. 27: 417.

²² Blackstone 1765-69, II c. 27: 412.

emphasized the utility of the laws for the social control and engineering of the peasant population. He upheld the argument that the restrictions prevented the working classes from developing a reliance on wildlife food sources that would cause them to ignore their vocations and lapse into “idleness”. Hence, these laws were in the peasantries’ best interest.²³ This had long been the argument of parliament and the elite. The game laws, they argued, ensured peasant energies would be focused on their natural “callings” and forced them to contribute to an “industrious society”. This rationalization is evident in the 1705 explanation by a legal commentator who suggested that, “inferior tradesmen, apprentices, and such like do a double injury in using these diversions... First they injure the Lords of Manors and Royalties... And secondly, they injure themselves by this means neglecting their honest callings and proper way of livelihood, wasting their time not only unprofitably, but wrongfully.”²⁴ In his study of English game laws from 1671 to 1871, the Munsche argued that “country gentlemen believed that the game laws were concerned with more than just securing adequate sport to themselves and their friends. Society, they argued, was the true beneficiary of the laws since they kept the poor from developing habits of idleness”.²⁵ The concept of “idleness” and its opposite “industry” were very significant. In chapter 5, I will show that these powerful discourses informed the development of colonial policies regarding Ojibwa fishing rights.

Third and related, Blackstone held that the laws were “for the encouragement of agriculture and improvement of lands, by giving every man an exclusive dominion over his own soil.”²⁶ Basically, Blackstone repeated the elite logic that England’s class hierarchy should be enforced through the reservation of a hierarchy of physical spaces, whereby the place for the rural poor was in their parish commons that they could manage in their own interests, while the habitats of wildlife were reserved for the elite. In effect, the English game laws enforced the social geography of England that delineated the occupations and rural spaces considered appropriate and accessible for each class. This

²³ Blackstone 1765-69, II c. 27: 412.

²⁴ Anon, *The game law, or A collection of the laws and statutes made for the preservation of the game of this kingdom drawn into a short and easy method, for the information of all gentlemen, and caution of others* (London: Printed by E. and R. Nutt, and R. Gosling, for S. Butler, 1722): iv-vii. The English author is referring to the *Game Act*, 13 Richard II c. 13.

²⁵ Munsche 1983: 7.

²⁶ Blackstone 1765-69, II c. 27: 411-12.

function became so important that according to Munsche, country gentlemen resisted reforms to the game laws in the early 19th century on the grounds that “the question, in their view, was less the preservation of game than the preservation of the social order”.²⁷

Finally, Blackstone argued that a ban on lower class hunting suppressed the population’s ability for “popular insurrections and resistance to the government” as it gave them no legitimate reason to own firearms or assemble in the woods or along creeks where they could not be supervised by the lords or the parish clergy.²⁸ There is a large literature about the ‘right to bear arms’. On the other hand, the second component of Blackstone’s statement, that the game laws could be used for the surveillance of villagers, is understudied. The churches of England were among the first to lobby for restraints against peasants gathering at fishing and hunting places where they could not be supervised and might engage in immoral activities or discuss subversive subjects.²⁹ As we will see, in Upper Canada, Methodist missionaries resurrected the same concerns regarding the Mississauga and Chippewa.

Finally, it must be emphasized that nowhere in the development of English law regarding fisheries between 1215 and the colonial settlement of North America was there a discussion to make access to fisheries open and unregulated. Rather, the whole body of English law, whether elite, statutory, or customary, was about exclusive property rights in fishing places. These laws and the social struggle around them were carried whole to North America.

English game laws and the Thirteen Colonies

In the 17th century, the king of England granted charters for the establishment of colonies in North America as though they were a mere extension of the Manor of East Greenwich, complete with the grant of exclusive rights over fish and wildlife. For example, in 1622, when the king granted all rights to land, soil, and minerals to Sir Ferdinando Gorges and John Mason in the charter for the province of Maine, he also granted an exclusive franchise over “fishing, hunting, hawking, fowling” and

²⁷ Munsche 1983: 7.

²⁸ Blackstone 1765-69, II c. 27: 412.

²⁹ The English *Game Act* 13 R. (1389) 2 cap. 13; see also Munsche 1983: 11.

“marshes”.³⁰ Similarly, in 1702, the king granted the Duke of York the singular right over “marshes, waters, lakes, fishings, hawking, hunting, fowling, and all other royalties, profits and hereditaments to the several islands, lands, and premises” in New England.³¹ Clearly, the 47th clause of *Magna Carta* was irrelevant as the king granted monopolies in both tidal and navigable fisheries. In 1606, the king granted the Virginia Company a monopoly over the fisheries along the colony’s shores and in 1629, granted a fishing monopoly to the Massachusetts Bay Company.³² In 1670, Charles II granted the Hudson’s Bay Company (HBC) a monopoly on “the Fishing of all Sortes of Fish Whales Sturgions and all other Royall Fishes in the Seas Bays Islets and Rivers within the premisses and the Fish therein taken together with the Royalty of the Sea upon the Coastes”.³³

The late and distinguished HBC historian, E.E. Rich, pointed out that the HBC’s charter made the shareholders the “true and absolute Lordes and Proprietors of this vast territory, and they were to hold it... in free and common socage, on the same terms as the Manor of East Greenwich”.³⁴ The intent, in theory, of these colonial charters was to replicate the legal structure and social geography of England in North America. In theory, these arrangements would have made the colonies hierarchal and stable. Thus, in North America, as in England, all wetlands and fisheries were to have a lord. It is most significant to this research, however, that that by the late 18th century, English officials started to describe the Ojibwa (not English charter holders) as the lords Upper Canada’s fish and game. For example, in 1793, Captain Charles Stevenson, a British military

³⁰ “A Grant of the Province of Maine to Sir Ferdinando Gorges and John Mason, esq., 10th of August, 1622”, in *The Federal and State Constitutions Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, compiled and edited under the Act of Congress of June 30, 1906 by Francis Newton Thorp (Washington, DC: Government Printing Office, 1909).

³¹ “Surrender from the Proprietors of East and West New Jersey, of their Pretended Right of Government to Her Majesty; 1702”, in *The Federal and State Constitutions Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, compiled and edited under the Act of Congress of June 30, 1906 by Francis Newton Thorp (Washington, DC: Government Printing Office, 1909).

³² See “The First Charter of Virginia; April 10, 1606”, in *Hening’s Statutes of Virginia*, I, 57-66; and “The Charter of Massachusetts Bay, 1691” in *The Charters and General Laws of the Colony and Province of Massachusetts Bay* (Boston, T. B. Wait and Co., 1814): 18.

³³ The clause read: “with the Fishing of all Sortes of Fish Whales Sturgions and all other Royall Fishes in the Seas Bays Islets and Rivers within the premisses and the Fish therein taken together with the Royalty of the Sea upon the Coastes with the Lymittes aforesaid.” *Hudson’s Bay Company Charter*, 2 May 1670.

³⁴ Rich 1960: 53.

officer who attended the early Ojibwa treaties, reported that “the Indians are acknowledged by treaty to be the Lords of the Soil”.³⁵ In 1829, a British civil engineer stationed in Canada between 1826 and 1828 recorded that “the Indians [are] the lords of the islands, of all the rivers, and of the fish that swim therein.”³⁶ This recognition occurred at the highest level when the governor-general of Upper Canada, Sir Francis Bond Head, described the Ojibwa in 1839 as, “the lord of the manor” in the course of explaining their hunting and fishing rights.³⁷ The question I will explore is how did the Ojibwa come to be recognized as the lords of Upper Canada’s fish and game over the recipients of crown grants and charters? The best place to start is in colonial New York where the intent of its royal charters were re-worked and new precedents were set that had direct applicability to Upper Canada.

There can be little doubt that English legal concepts of private property in fishing places operated in colonial North America. An academic authority on American game law, Thomas Lund, has concluded that English game law restrictions were transported *in toto* to colonial America.³⁸ In addition to the king’s grants of wildlife monopolies in colonial charters, the colony’s local assembly also issued exclusive grants. In 1726, for example the Legislative Council of New York granted a settler, “the sole fishing of porpoises in the Province of New York during the term of Ten years.”³⁹ The assembly also re-worked the class qualifications in English game laws to preclude access to fisheries along racial lines. For example, in 1715, New York legislators passed An *Act for Preserving of Oysters*, that was consistent with English “preservation” of salmon laws. It treated private property as the means to preserve the oyster resources for a defined group and disqualified “any Negro, Indian, or Maletto Slave” from holding

³⁵ Letter from Charles Stevenson to Henry Dundas, 31 July 1793, in E.A. Cruikshank, *The Correspondence of Lieut. Governor John Graves Simcoe*, vol. I (Toronto: Ontario Historical Society, 1923): 413.

³⁶ MacTaggart 1829: 172.

³⁷ Head 1837: 3

³⁸ Lund: 1975: 40-60; Thomas Lund, “The 1837 and 1855 Chippewa Treaties in the Context of Early American Wildlife Law”, in James M. McClurken, compiler, *Fish in the Lakes, Wild Rice, and Game in Abundance: Testimony on Behalf of Mille Lacs Ojibwe Hunting and Fishing Rights* (East Lansing: Michigan State University Press, 2000): 486-513.

³⁹ S.L. Mereshon, *English Crown Grants* (New York: The Law and History Club Publishers, 1918): 99; See Margaret Beattie Bogue for a review of colonial legislation in the Thirteen Colonies, “In the Shadow of the Union Jack: British Legacies and Great Lakes Fishery Policy”, *Environmental Review* 11.1 (spring 1987): 22-28.

harvesting rights.⁴⁰ In this way, the colonial assembly of New York placed English style game laws on the books with the addition of race-based parameters.

It is therefore clear that English monarchs and colonial assemblies issued fishing monopolies without regard to aboriginal claims to the fisheries. Many historians have explored the grounds upon which British authorities asserted their sovereignty over aboriginal lands and resources.⁴¹ In her recent study, *John Locke and America: the defense of English colonialism*, Barbara Arneil, showed that the question was, as one colonial writer put it, “by what right can we enter into the land of these Savages, take away their rightful inheritance from them, and plant ourselves in their place?” This debate dominated colonial affairs in the 17th century.⁴² In reply, colonial interests answered that North America was *vacuum domicilium* or vacant land. In this case, pursuant to English law, they argued that there were no signs of private property such as enclosed fields of intensive agriculture among aboriginals and thus it was vacant and could be appropriated.⁴³ As explained, English law only contemplated a claim to property in resources where the owners held royal franchises, were protected by statute, or could make customary claims based on long and undisturbed ancestral use and occupation of a resource. European lawmakers regarded aboriginals as “nomadic” peoples that could not develop titles.⁴⁴ In a justification that echoed the same moral language embedded in England’s game laws, the right to land was linked to “industry” over “idleness”.⁴⁵ Natives were viewed as idle and neglectful while Europeans saw themselves as industrious. From these assumptions, John Locke formulated his powerful defense of colonialism in his *Two Treaties of Government* (1690): that one’s labour transformed vacant lands into private property. Locke further justified his treatise with

⁴⁰ New York (colony), *An Act for Preserving Oysters* (1715) para. I and II, reprinted in *The Colonial Laws of New York from the Year 1664 to the Revolution* (Albany: James B. Lyon, State Printer, 1894): 845.

⁴¹ For a discussion on the European claims that North America was a *terra nullius*, see Patricia Seed, *Ceremonies of Possession in Europe’s Conquest of the New World, 1492-1640* (Cambridge: Cambridge University Press, 1995); Daniel Clayton, *Islands of Truth: The Imperial refashioning of Vancouver Island* (Vancouver: UBC Press, 2000); Harris 2002: xv-xvi; Mershon 1918: 91.

⁴² Barbara Arneil, *John Locke and America: the defense of English colonialism* (Oxford: Clarendon Press, 1998): 109. The quotation is from Robert Gray, the first pamphleteer to promote English settlement of Virginia in, *A Good Speed to Virginia* (New York: Scholars and Facsimiles Reprints, 1937), as quoted in Arneil 1998: 109.

⁴³ Arneil 1998: 109.

⁴⁴ Mershon 1918: 93.

⁴⁵ For more discussion on the link between industry and idleness, see Arneil 1998: 124, 202-6.

the social assumption that nations existed on a spectrum with idle natives who did not possess art or science at one end and industrious and civilized Europeans at the other.⁴⁶ In his estimation, God bequeathed the earth to those who possessed industry and could bring arts and science to its replenishment.⁴⁷ In later chapters, I will show that sportsmen in Canada later espoused the same assumptions and argued that their fishing methods (angling and fly fishing) were an art and a science while aboriginal methods lacked any of these refinements and hence any claims to legitimacy. The assumption that aboriginal peoples lacked any recognizable concept of property may have been the convenient view of thinkers situated afar, but British officials and colonists on the ground had to deal with a different reality.

In his important study of English crown grants in colonial New York, the legal historian, S.L. Mershon, found that early English settlers and authorities found that aboriginal communities tenaciously held claims to properties in aquatic resources and acted to exclude others. Similar to my findings regarding how the Mississauga and Chippewa organized their territory into a series of family property-like claims over a communal watershed, Mershon unearthed a series of early 17th century records revealing that the aboriginal communities along coastal New York established clear territorial boundaries (often water boundaries) between themselves and other groups and did not trespass on the hunting and fishing grounds of others. Mershon confirmed that aquatic resources were particularly important as they were predictable and generally unailing and cited many examples where the interpretations of native place names revealed ancestral property claims.⁴⁸ He also located evidence of aboriginal properties in fishing places and aquatic boundaries as described through the lens of English legal authorities. For example, in 1665, the New York Book of Deeds recorded that the aboriginally defined boundary between the Unchechauke and Shinnecock nations was the Apaucock Creek, "but that either nation may cut flaggs for their use on either side of the river without molestation or breach of the Limetts agreed."⁴⁹ In 1667, an interesting case occurred where two New York towns situated on opposite banks of a river, purchased

⁴⁶ Arneil 1998: 115.

⁴⁷ Arneil 1998: 115.

⁴⁸ Mershon 1918: 136, 141.

⁴⁹ Office of the Secretary of State, Book of Deeds, vol. 1:125 (Albany, New York, n.d.), cited by Mershon 1918: 100.

title to their lands from two separate aboriginal nations, but brought legal action over the location of their mutual boundary. Only the aboriginal sellers could know the precise location of such boundaries and witnesses from both nations were called. The witnesses provided evidence of property boundaries in terms that were intelligible to the English court. They identified where they had blazed trees on the littoral and once, when a dead bear was found floating down the river, the witnesses recalled that it was divided between the two nations.⁵⁰

There is also evidence of the similar types of legal encounters in New France. In 1664, for example, a surveyor described at length the great quantity of sea-going and freshwater fish of the St. Lawrence: "the abundance of all these fishes passes belief ... a very considerable commerce can be carried on." He reported, however, that the Iroquois claimed ownership of these fisheries and disallowed French settlers from developing them.⁵¹ He also credited Iroquois laws with the abundance of fish around Montreal:

They [islands] merge into one another, and form labyrinths of such surprising beauty and so rich in fish. Otters, Beavers, and Muskrats, as almost to surpass belief. The Iroquois cause this abundance by preventing our Algonquins from hunting in these beautiful regions.⁵²

The statement is consistent with the harvesting rights and boundaries that the southern Ojibwa and the Iroquois agreed to in the wampum of peace that concluded their war in the 1650s.⁵³

In New York, Mershon found that in numerous cases, when settlers discovered that aboriginal communities owned specific aquatic resources, they acknowledged the aboriginal peoples as "hereditary" or "original" owners and then proposed surrenders through a variety of instruments.⁵⁴ In 1670, for example, when the English decided to purchase Staten Island, the deed of conveyance recognized, "The very true, sole and lawful Indians owners of ye said island" and that the aboriginal right was "derived to

⁵⁰ Mershon 1918: 100-101.

⁵¹ Anon, "Journey from the Entrance to the Gulf of Saint Lawrence up to Montreal", in *JR* volume 48 cap. IX: 173.

⁵² Anon, "Journey from the Entrance to the Gulf of Saint Lawrence up to Montreal", *JR* 48 chapter IX: 165.

⁵³ See chapter 1 of this study regarding Chief Yellowhead's reading of the wampum that described the peace treaty between his nation and the Six Nations ca. 1650s: NAC RG 10 vol. 1011, minutes of General Mississauga and Chippewa council meeting with chiefs of the Six Nations, 22 January 1840.

⁵⁴ Arneil 1998 showed that similar practices occurred in Virginia: 78-9, 81-2, 122, 129, 138.

them by their ancestors”.⁵⁵ This language echoed Blackstone’s later description of the king’s source of radical title over lands and wildlife.

Most relevant to this study, Mershon demonstrated that in many cases, when British officials or settlers recognized aboriginal properties, they sought to extinguish or purchase the aboriginal title to the arable grounds but specifically agreed to leave the aboriginal owners in possession of the plot’s wetlands and aquatic resources. For example, in 1657, the chief of the Montauk nation granted a settler the right of herbage on Staten Island but reserved his people’s rights to “the whales that shall be cast up” on its shores.⁵⁶ In 1726, the chiefs of the Seneca, Cayuga, and Onondaga nations surrendered a portion of their traditional lands in the Mohawk Valley but reserved “all the Rivers, Creeks, and Lakes within the said limits”.⁵⁷ In short, the Iroquois chiefs reserved their rights over the wetlands where their people harvested critical wildlife and fish resources but ceded the arable uplands. In the 1760s, the Caunaughwas surrendered lands adjoining Lake Champlain in which the crown obtained title to the land and the Caunaughwas retained their right over a “free fishery” (meaning a monopoly on the lake’s fishery independent from the ownership of the adjacent land).⁵⁸ These agreements respected the distinct ecological interests of each cultural group by severing arable lands from aquatic resources. In a day when English law recognized a multitude of possible property claims on a single space of land, this was a perfectly reasonable legal arrangement. It also demonstrates that precedence existed for the Ojibwa’s claim that they reserved Upper Canada’s wetlands while agreeing to surrender the uplands. It was these types of severances and reservations of valued ecosystem components between the two cultural groups that aboriginal peoples considered a viable means to co-exist with newcomers.

Despite the evidence that some colonists recognized aboriginal ownership of aquatic resources and purchased or accommodated the aboriginal prerogative in formal

⁵⁵ Cited by Mershon 1918: 28.

⁵⁶ Cited by Mershon 1918: 140

⁵⁷ “Deed in Trust from Three of the Five Nations of Indians to the King, 1726”, reprinted in E.B. O’Callaghan ed., *Documents Relating to the Colonial History of the State of New York* volume V (Albany, New York: Weed Parsons, 1856): 800-01.

⁵⁸ Daniel Claus to Wm. Johnson, 3 July 1773, in New York State Historian, *The Papers of Sir William Johnson*, vol. XII (Albany: The University of the State of New York, 1921-1965): 1027.

and very specific deeds, not everything went well. In 1762, soldiers at Fort Brewertown attempted to appropriate a nearby aboriginal fishery; in response, the natives destroyed the fort's vegetable garden. An English officer at the fort drew from the language of English game law to report that the natives complained that they were "debarred liberty of fishing at their fishing place."⁵⁹ These records are found in the papers of Sir William Johnson who was appointed Superintendent of Northern Indian Affairs in 1755 and later negotiated the *Royal Proclamation* in 1763. Johnson was well situated to understand English property law and these customary issues. Before immigrating to New York, he acted as a rent collector for his uncle, an Irish landlord.⁶⁰ In the Mohawk valley, he established himself as a landlord and his personal papers are replete with finely executed deeds involving rents, water rights, titles, and other property issues.⁶¹ In 1762, he personally heard from the Iroquois that British officials had appropriated a native fishing weir on Lake Oneida that they described as, "one of the best fishing places".⁶²

Significantly, this Iroquois community turned to western legal aid to make their grievance and assert their claims. The natives retained lawyers who questioned the authority of the English officers to bar natives access to their fishery. Consistent with English customary law, counsel articulated the Iroquois' case as a customary property right derived from their long and undisturbed use of the site since "time out of mind".⁶³

Retaining English lawyers to press their case was not uncommon. Johnson's papers reveal that again, in 1765, the Naraganset hired a lawyer to contest a settler's use of a recent private property purchase that debarred them access to their traditional saltwater fishery. Again, making recourse to customary English law, these lawyers argued that, "by Selling away their Meadows they are deprived of getting to the Salt Water for fishing, the Wayes they had ever used time out of mine".⁶⁴ Evidently, the Naraganset intended to cede the arable upland meadows to the settler, but felt they had retained their right to cross the lands to access their fishery. Once again, the evidence is

⁵⁹ Major Duncan to Hugh Wallace, 21 September 1762, New York State Historian 1921-61, III: 882.

⁶⁰ Edith Mead Fox, "William Johnson's Early Career as a Frontier Landlord and Trader" (unpublished M.A. Thesis, Cornell University Department of History, 1945): 16-27.

⁶¹ Fox 1945: 27-83, 88.

⁶² An Indian Conference, September 10, 1762, New York State Historian 1921-61, X: 507.

⁶³ An Indian Conference, September 10, 1762, New York State Historian 1921-61, X: 507.

⁶⁴ Matthew Robinson to Wm. Johnson, dated Kingston Rhode Island, March 20, 1765, New York State Historian 1921-61, XI: 641.

that various types of rights of access and uses over a singular plot of land were unbundled at this time.

The lawyers' use of English customary law, curious at first, makes sense. Colonists were using English property law to appropriate and control native fisheries and an English legal defense already existed in the form of customary law that made an allowance for alternative claims and definitions of property. The space for alternative property definitions under English customary law, albeit a western concept, fit the aboriginal circumstances of their fishery use because the Iroquois were a semi-agarian peoples who systematically used specific fishing places. Under English law, long customary use of a fishing place could be argued to stop an interloper's pretension to appropriate the site. These English customary claims were compatible, at least in the lawyers' views, with alternative aboriginal use and concepts of ownership of their fishing places.⁶⁵

In 1761, to drive the point home to Johnson that native peoples were not nomadic, but held definite claims to property recognizable in English law, Warren Johnson clearly informed his superior, "the Indians have particular Hunting Ground for Each Tribe, & never intrude upon One another's Places."⁶⁶ In turn, in 1764, Johnson felt it necessary to correct the assumption of his overseas superiors that aboriginal people were all nomadic bands with no sense of territory or property girding the erroneous assumption that North America was *vacuum domicilium*. He wrote:

That it is a difficult matter to discover the true owner of any lands among the Indians is a gross error, which must arise from ignorance of the matter or from a cause which does not require explanation.

Each nation is perfectly well acquainted with its exact original bounds; the same is again divided into due proportions for each tribe and afterwards subdivided into shares to each family, with all which they are most particularly acquainted. Neither do they infringe upon one another or invade their neighbors' hunting grounds.⁶⁷

⁶⁵ Others have noted that the English common law was compatible with aboriginal law. Mershon 1918 wrote, "it is an interesting fact, and worthy of note, that in many respect the Indian common law was strangely analogous to the English common law": 96. Richard Dale Pesklevits, a University of British Columbia law student, argued the same in, "Customary Law, the Crown and the Common Law: Ancient Legal Islands in the Post-Colonial Stream," unpublished MA Thesis, Faculty of Law, UBC, March 2002.

⁶⁶ Journal of Warren Johnson, January 3, 1761, New York State Historian 1921-61, XIII: 197.

⁶⁷ Sir William Johnson to the Lords of Trade, 1764, New York State Historian 1921-61, XIII: 197.

This text, written the same year that Johnson ratified the *Royal Proclamation* with aboriginal leaders at Niagara, signaled that Johnson had departed from the colonial defense that natives did not meet the qualifications to claim property in land and resources. The *Proclamation* therefore, was intended to end the era of *vacuum domicilium* and initiate a new era of treaty making in which aboriginal properties to land, fishing places, berry sites, wetlands, etc. were recognized and formal rules of surrender had to be followed. These new rules set the framework for the first treaties with the Ojibwa twenty years later, and its noteworthy that Johnson's text (above) perfectly described the Mississauga and Chippewa land use systems with their well-defined territorial, band, and family boundaries, properties, and laws against trespass.

The Royal Proclamation of 1763

The *Royal Proclamation of 1763* must be placed in its broad context. It followed the conclusion of the Seven Years' War when Britain secured military control over all access points to the interior of North America, including the Ojibwa homelands north of the Great Lakes. At this point, Britain moved to lay down a new system of governance for this vast territory. At the same time, as noted, aboriginal people in eastern parts of the colonies were agitating for legal recognition of their property-like claims in hunting and fishing grounds and sought British protections from settler usurpations. At the same time, to the west, Pontiac led an aboriginal uprising to block westward colonial expansion. In terms of fisheries and other ancestral harvesting sites, it appears that aboriginal people wanted clear British recognition of their property in these resources, protection from settler usurpation, and the ability to grant aspects of their title on the same grounds as the English crown, while reserving other valued ecosystem components across their domain. Johnson's personal papers confirm this argument. A record located in the files of the British Colonial Office, London, England, indicates that in 1760, the Mississauga and Chippewa agreed to leave their alliance with the French and join the

English during the Seven Years War in consequence of Johnson's "promises that all their lands, hunting, and fishing will be protected."⁶⁸

Johnson's fulfilled his promises in the *Royal Proclamation*. Its aboriginal provisions forbid non-native settlement on aboriginal lands west of a line drawn along the Ottawa River with the key phrase, "that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds". The *Proclamation* also installed the British crown as the only party authorized to negotiate land surrenders with aboriginal authorities.⁶⁹

The *Proclamation's* phrase that aboriginal territories were "reserved" under British sovereignty makes aboriginal sovereignty over their lands and resources unclear. The meaning of this clause has prompted significant debate and some have argued that the British unilaterally asserted sovereignty over aboriginal lands and then proceeded to reserve these lands "for" the aboriginal nations.⁷⁰ The legal scholar, John Borrows, addressed this assumption by arguing that the *Proclamation* contains some double-speak as it was written for home consumption and that its spirit and intent can only be inferred when read in conjunction with a treaty held the next year at Niagara where it was ratified by as many as two thousand aboriginal chiefs. Borrows asserted that when the First Nation perspective and records of the *Treaty of Niagara* are taken into account jointly, vague or contradictory language in the text of 1763 is clarified.⁷¹ Records of the *Treaty of Niagara* tell us that the *Royal Proclamation* was supposed to provide a means by which First Nations and British peoples could co-exist. The principal of co-existence between the two groups was expressed in speeches and symbolized in a two-row wampum belt: on which one row symbolized the First Nations, the other British peoples. Each row portrayed a vessel traveling abreast in a river, but one never interfered with the

⁶⁸ PAO, F 4337-2-0-11, "extracts from the British Public Records Office".

⁶⁹ *The Royal Proclamation of 1763*.

⁷⁰ For a discussion of this debate, see John Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government", in Michael Asch, ed., *Aboriginal and Treaty Rights in Canada: Essays on Law, Equity, and Respect for Difference* (Vancouver, University of British Columbia Press, 1997): 155-6 and see notes #4 and #5 at 256-7.

⁷¹ Borrows 1997: 156-7, 161-172.

course of the other. It conveyed the notion that the laws of each group would remain intact and not impinge on the other. For example, the *Royal Proclamation of 1763* says that British law applies to British citizens committing offences on aboriginal lands, but not to aboriginal people on those lands. Further, Burrows points to Johnson's own evidence that that the *Royal Proclamation of 1763* did not place First Nations people or their territories under the British dominion or any other form of "subjugation".⁷² It is important here to quote in full Johnson's analysis of a treaty made two years after the *Proclamation*:

These people subscribed to a Treaty with me at Niagara in August last, but by the present Treaty I find, they make expressions of subjection, which must either have arisen from ignorance of the Interpreter, or from some mistake; for I am well convinced, they never mean or intend anything like it, and they can not be brought under our laws, for some centuries, neither have they any word which can convey the most distant idea of subjection, and should it be fully explained to them, and the nature of subordination punishment ettc [sic] defined, it might produce infinite harm... and I dread its consequences, as I recollect that some attempts towards Sovereignty not long ago, was one of the principal causes of all our trouble.⁷³

It is clear that Johnson intended no assertion of British sovereignty over aboriginal territories, but rather, recognized aboriginal sovereignty over all their territories west of line drawn north-south from the mouth of Lake Nipississing. Both parties expected that future treaties would be conducted in the spirit of ensuring legal and social co-existence; not bring one party under the laws of the other. Borrows also noted that Johnson used the metaphor of an eternal sun, ever flowing rivers, and constantly growing grass, to emphasize that the legal arrangements would endure in perpetuity.⁷⁴ I will show that his successors used the same metaphor in the first treaties with the southern Ojibwa.

Records of Johnson's actions following the *Proclamation* reveal that he intended it to affirm aboriginal ownership of their lands and resources, equivalent to that of an English sovereign, and establish a process whereby aboriginal nations could surrender certain titles in specific areas, while reserving other titles within the same habitat. For example, in 1764, Johnson confirmed that the source of aboriginal title over their lands

⁷² Borrows 1997: 164-5.

⁷³ Cited by Borrows 1997: 164.

⁷⁴ Borrows 1997: 161-2 and note #59 at page 262.

lay in their “original” ownership of it. In a treaty with the Huron in 1764, he reported that “the said Indians shall enjoy all their Original Rights and Privileges; Lands, Hunting, Fishing, &c.”⁷⁵ This language of “original” rights echoed Blackstone’s rationale for the English King’s radical title over all English land and wildlife. In 1774, in a memorandum to his officers, Johnson explained that under the *Royal Proclamation*, aboriginal nations were recognized to hold the “sole use and benefit” of their resources. Once again, this language echoed those of Blackstone’s description of the radical title of the English monarch. As well, I will show that the language of “sole use” would later turn up in the first recorded treaties in Upper Canada.

On a final point, Blackstone was clear that only the king, based on his original title, could “grant” aspects of his prerogatives to others. Whether Johnson intended to recognize aboriginal nations as analogous to an English sovereign with the sole and exclusive prerogative over natural resources that only they could grant can be answered in a final test: after the *Proclamation*, did aboriginal people “grant” land and fishing rights to settlers or did the English “grant” these rights to aboriginals. In the first recorded treaties in Upper Canada, the evidence is that the Mississauga “granted” lands to the English.⁷⁶ More immediately, Johnson’s intention that only aboriginal nations held the sole rights to fisheries and that it was up to them to grant fishing rights to settlers becomes clear in Johnson’s most important personal project: his construction of a baron’s manor in the Mohawk Valley, New York, complete with an exclusive fishery.

A 19th century biographer of the first American sport hunters and fishers, Jephtha Simms, investigated Johnson’s sporting pursuits from written and oral history sources and claimed that Johnson chose to locate his estate in Johnstown, “partly on account of the greater facilities it would afford him for hunting and fishing about the Sacondaga river.”⁷⁷ This section of the Sacondaga River was surrounded by a massive 13000 acres (5261 hectares) marsh and the high water table around the vlaie encouraged the growth of extensive grasslands. According to a 19th century geologist, the wetland was once the habitat of “thousands upon thousands of ducks and wild geese” and was “one of the

⁷⁵ PAO, F 4337-2-0-17, British Colonial Office Records, originally cited as Brit. M.S. Add. 35910, F231.

⁷⁶ Canada 1891, Surrender # 13: 34-35.

⁷⁷ Jephtha Simms, *Trappers of New York, or, a biography of Nicholas Stoner & Nathaniel Foster: together with anecdotes of other celebrated hunters, and some account of Sir William Johnson and his style of living* (Albany, New York, 1850): 30.

richest landscapes in this part of the [New York] state.”⁷⁸ The centre of the river was deep and cold and supported speckled trout. Johnson, like most nobles of his time, wanted to secure the exclusive right over this wetland and fishery as a marker of his prestige and status and as a means to control the local fishery. But, Johnson did not turn to the king of England to request a royal franchise for his manor. Instead, he turned to the Iroquois. In May 1769, in a manner consistent with the process established in the *Royal Proclamation*, Johnson called a meeting with the Iroquois to negotiate a deal for the purchase of his estate lands complete with the exclusive right to hunt and fish thereon. After some negotiation, Johnson drafted a formal deed in which the Iroquois chiefs “granted” Johnson the “sole use” of the estate for an agreed sum of monies. The grant was specific about the extent of land as well as the prerogatives the Iroquois granted over its natural resources. It specifically stated that, “to prevent any dispute”, the Iroquois’ grant included a multitude of possible aboriginal prerogatives, including “meadows marshes swamps pond pools ways passages water watercourse rivers rivulets and streams of water”.⁷⁹ The character of this grant, executed between Johnson and an aboriginal party to the *Royal Proclamation*, should be read to reflect the spirit, intent, and realm of possible aboriginal reservations or grants contemplated in the *Proclamation* (i.e. wetlands, wayes, and streams). In this case, the aboriginal party agreed to cede their title over wetland resources. In other cases, they reserved this title and only granted to settlers the rights over arable lands. Thus a process was set that later guided Johnson’s son and his officers when they attempted to negotiate treaties with the Mississauga and Chippewa for the settlement in Upper Canada.

On a final note, it may be mentioned that in 1770, after the Iroquois granted Johnson the exclusive right over the wetlands on his estate, Johnson built an elaborate fish house along his private fishing river. In a manner that would impress an overseas baron, Johnson managed the aesthetics of the marsh by cutting away shoreline bushes and trees that interfered with casting a fishing rod and kept the margins of the stream clean.⁸⁰

⁷⁸ Lardner Vanuxem, *The Geology of New York* (Albany: Carol & Cook, Printers to the Assembly, 1842-43), cited in Simms 1850: 31.

⁷⁹ “Draft of a Grant”, 22 May 1769, *New York State Historian* 1921-61, VI (1928): 770-773.

⁸⁰ Simms 1850: 39. Johnson’s last will and testament reveals that he fished with a rod and reel and tackle, see: “An inventory of Johnson’s possessions at his death listed: An inventory and Appraisement, of the

Along its shores, Johnson hosted fishing parties with many British elite and his private papers are replete with stories of trout adventures to be had there.⁸¹ In the development of this private fishery, Johnson directly obtained a grant to its exclusive use from its original aboriginal owners. This would not always be case in the subsequent history of settler development of the Great Lakes-St. Lawrence watershed basin.

Conclusion

The facts important to the legal foundation upon which the British and Ojibwa would make treaties by the end of the 18th century are clear. The English common law prevalent in the 18th century recognized an exclusive right to fisheries vested in original owners, whom the Crown recognized to be aboriginal people in the *Royal Proclamation*. Equally important, English law recognized a multitude of possible properties or prerogatives in natural habitats, including wetlands, streams, rivers, fishing places, oysters sites, berry sites, meadows, marshes, and all sorts of other resources. As “original” owners of the resources, the British affirmed that aboriginal nations could grant some aspects of their title to the English crown and severe and reserve others. These grants were perfectly recognizable and supported in the English law doctrines prevalent at the time. In several cases, aboriginal nations in colonial New York decided to grant title to arable lands and meadows to settlers and reserved their exclusive title over wetland resources. The next chapter explains how the Mississauga and Chippewa pursued this same strategy.

It must also be noted that English fishery law traditions, which carried to New York, contained many key features that emerged in the history of fishing in Upper Canada. First, it is noted that the English elite had already developed the concept of “closed seasons” by the 17th century. These laws were not based in ecological science, nor were they intended for conservation purposes. Instead, they were designed to protect fish for the lords of manors at the only time the fish were inland and available to be

Furniture, farming Utensils and Crop of the late Sir. Wm. Johnson Bart. &ca.”, New York State Historian 1921-61, XIII: 662, 665.

⁸¹ Journal of Warren Johnson, January 3, 1761, New York State Historian XIII: 197. See also, Mead 1945: 13-14.

captured. How the idea emerged that “seasons” are biologically informed remains to be explored below.

English law also carried with it a series of ideas about improving and controlling the lower classes. Central was the idea that areas of land should be defined where each class was permitted to pursue its supposed natural calling. In this way, the intention of English game laws was not only to reserve fisheries for the elite, but preserve England’s social order. In the next chapters, I explore how British officials sought to replicate the hierarchal society of rural England in Upper Canada. Where the Ojibwas fit into this imposed landscape and how officials came to describe them as the “lords” of the fisheries will be determined.

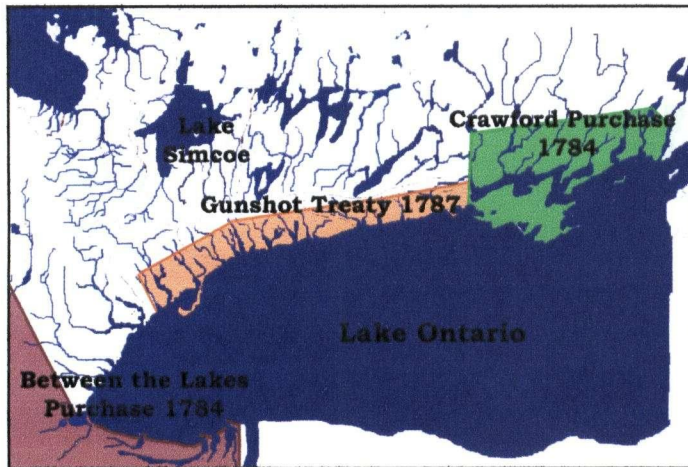
Chapter 3

Negotiating Treaties of Co-Existence: Breaking grounds for a post-Royal Proclamation society, 1763-1798

Any portion of lands ceded by them [the Mississauga] held as a Reservation must and shall be fully protected, as well as rights reserved on certain Streams and Lakes for fishing and hunting privileges.¹

John Graves Simcoe, 1792

After the defeat of British forces in the American Revolution (1775-83), crown officials looked north for new lands for the resettlement of United Empire Loyalists. These officials were closely connected to Sir William Johnson and included Walter Butler, a long-time captain of the Indian Department, and Johnson's son, Sir John



Map 3.1. supposed boundaries of the first treaties

Johnson, who was appointed Superintendent General of Indian Affairs in 1782. It is well known that these officials negotiated the first three treaties with the Mississauga that opened the door to Loyalist settlement on the north shore of Lake Ontario (map 3.1). The treaties are of great significance as they determined

the original disposition of land and resources on the eve of British settlement in what is now Ontario, but the officers produced no copies of the treaties, maps, or minutes of the proceedings. Many historians have tried to reveal the contents of the treaties from colonial records, but were frustrated by the limited number of documents that survive.²

¹ PAO, F 4337-2-0-11, John Graves Simcoe to the Lords of Trade, Quebec 28 April 1792.

² Leo A. Johnson, "The Mississauga-Lake Ontario Land Surrender of 1805," *Ontario History* 83.3 (September 1990): 233. For Robert Surtees' discussion of the lack of sources, see, *Indian Land Surrenders in Ontario 1763-1867* (Indian and Northern Affairs, Research Branch, Corporate Policy, Canada: 1984): 37-46. For other attempts to explain the treaties, see Donald B. Smith, "Who are the Mississauga", *Ontario History* 67 (1975): 211-223; Donald B. Smith, "The Dispossession of the Mississauga Indians: A Missing

Fortunately, the Mississauga left several accounts of these treaties in a variety of recorded oral traditions. Of particular significance, these documents reveal that all Mississauga bands pursued a common strategy in each treaty: they allegedly reserved all the points of land, river mouths, and islands for their exclusive hunting and fishing and only agreed to surrender sections of arable uplands to the British. It is the Mississaugas' claim that British officials stated that their subjects were tillers of the soil and that they only wanted the arable lands while the Mississaugas could retain their exclusive rights over their valued ecosystem components. In essence, the Mississaugas claim that they protected the integrity of their cultural ecology and its supporting systems of laws in these treaties.

In this chapter, my first objective is to determine if the Mississaugas' claims can be corroborated in the crown's records. The next important question is: if the crown made these treaty agreements, how did it act to protect the Mississauga's fishing places when it began to survey and allot lands to settlers and build the colony?

In chapter 1, I reconstructed the social, cultural, and ecological landscape of the Ojibwa. In chapter 2, I reviewed how English game laws enforced the socially stratified landscape of rural Britain. In this chapter, I will show that British officials planned to replicate their English social landscape in Upper Canada. How British officials planned to graft this landscape on top of the existing Ojibwa landscape is the second part of this chapter. In the latter analysis, I pay attention to the crown's detailed plans for the settlement of Upper Canada. In particular, the *Royal Proclamation of 1763* not only established a new treaty process to be followed in Canada, but also spelt out how British officials were to settle non-natives in newly ceded lands. The question is how did the British attempted to fit their social landscape within the arrangements they agreed to in the first treaties?

The *Royal Proclamation* and British preparations for the Upper Canada treaties

The traditional lands of the Mississaugas and the Chippewas were west of the line established in the *Royal Proclamation of 1763* and both the Ojibwa and British colonial office in London expected that any settlement of this region would follow its procedures.

The Mississauga certainly understood the contents of the *Proclamation* as they attended its ratification at Niagara in 1764. Later, they reminded William Johnson about his commitments made at Niagara.³ In 1793, a Mississauga chief signed a petition indicating his specific knowledge of the contents of the *Proclamation*.⁴ It is therefore valid to imply Mississauga knowledge of the spirit and intent of the *Proclamation* in their negotiations with the crown.⁵

British officials were certainly aware of their duties under the *Proclamation* as imperial authorities repeated its contents to them in "instructions" issued to each new Governor of Quebec in 1763,⁶ 1774,⁷ 1775,⁸ 1783,⁹ 1786,¹⁰ and 1787.¹¹ These instructions described both the treaty process to be followed as well as the subsequent process for allocating land to settlers. I will first address its treaty instructions. Most significantly, the instructions made it clear that there would be no presumption that Ojibwa lands were a *vacuum domicilium*. Rather, the colonial office now assumed that aboriginal nations had laws and claims to property and instructed the governor "to inform yourself ... of the manner of their [aboriginal] lives, and the rules and constitutions by which they are governed or regulated."¹² In terms of property, the instructions required officials to acknowledge the "property in lands belonging to the Indians",¹³ and that

³ PAO, F4337-2-0-11, A.E. Williams Papers, McClurg cited this "extracts from the Public Record Office", Boquet's collection, book 71, 655.

⁴ Message from the Western Indians to the Commissioners of the United States, dated 13 August 1793, in E.A. Cruikshank (ed.), *The Correspondence of Lieut. Governor John Graves Simcoe, with Allied Documents Relating to His Administration of Upper Canada*, vol. 2, (Toronto: Ontario Historical Society, 1924): 19.

⁵ Borrows 1997: 169.

⁶ Instructions to Guy Carleton, Esquire, Captain General and Governor in Chief, 3 January 1775, reprinted in Alexander Fraser, *Third Report of the Bureau of Archives for the Province of Ontario*, 1905 (Toronto: 1906). lxi-lxii.

⁷ Haldimand's Proclamation, 10 March 1774, in A.C. Flick, ed. *The Papers of Sir William Johnson*, vol. 8 (Albany: New York, 1933): 1074-76.

⁸ Instructions to Guy Carleton, Esquire, Captain General and Governor in Chief, 3 January 1775, reprinted in Fraser 1906: lxi-lxii

⁹ Additional Instructions to Frederick Haldimand, Esquire, Captain-General and Governor in Council-in-Chief, 16 July 1783, reprinted in Fraser 1906: lxii-lxiv.

¹⁰ Instructions to Guy, Lord Dorchester, Captain-General and Governor in Chief, 23 August 1786, reprinted in Fraser 1906: lxiv-lxvii.

¹¹ NAC, RG 10, vol. 789, Instructions from Lord Dorchester, Governor in Chief, to Sir John Johnson, 27 March 1787: 6759-65.

¹² Instructions to the Governor-General Concerning land, 7 December 1763, section 61, reprinted in Fraser 1906: lx.

¹³ Instructions to Guy Carleton, section 41, 3 January 1775, reprinted in Fraser 1906: lxii.

treaties were to be pursued with aboriginal leaders “claiming a property in such lands”.¹⁴ When British officials decided to enter into a treaty for aboriginal lands, the instructions required that before any surveying could commence, they call a general meeting with all the principal chiefs of the nation.¹⁵ After a purchase, they instructed officials to survey the tract in the presence of “a person deputed by the Indians to attend such survey”.¹⁶ Afterwards, they directed the surveyor to make an accurate map of the tract and enter it into the public record with the deed of conveyance.¹⁷ The instructions also contemplated that natives would reserve physical areas of land within the ceded tracts and thus called for “proper measures be taken, with the Consent and Concurrence of the Indians to ascertain and define the precise and exact Boundary and Limits of the Lands, which it may be proper to reserve to them.”¹⁸ The instructions were clear that “no settlement whatever shall be allowed” on these reserves.¹⁹ As I will show, officials failed to meet most of these requirements in their first three treaties with the Ojibwa.

Finally, the instruction directed the Governors of Quebec not to expand settlement into Ojibwa lands west of the line established in the *Proclamation* (more or less along the Ottawa River).²⁰ Governor Haldimand upheld this directive until the end of the American Revolution (1783) when Britain’s Iroquois allies identified Mississauga lands at the Bay of Quinté for settlement and a group of non-natives identified lands around Kingston as their preference. Consistent with his instructions, Haldimand acknowledged that the Mississauga were the “proprietors”²¹ of the territory and ordered John Johnson and William Butler to call general meetings with the principal chiefs of the Mississauga and negotiate a series of treaties.

¹⁴ Instructions to Guy Carleton, section 43, 3 January 1775, reprinted in Fraser 1906: lxii.

¹⁵ Instructions to Guy Carleton, section 43, 3 January 1775, reprinted in Fraser 1906: lxii.

¹⁶ Instructions to Guy Carleton, section 43, 3 January 1775, reprinted in Fraser 1906: lxii.

¹⁷ Instructions to Guy Carleton, section 43, 3 January 1775, reprinted in Fraser 1906: lxii.

¹⁸ Instructions to Guy Carleton, section 42, 3 January 1775, reprinted in Fraser 1906: lxii.

¹⁹ Instructions to Guy Carleton, section 42, 3 January 1775, reprinted in Fraser 1906: lxii.

²⁰ Instructions to Governor-General Concerning Land, section 62, 7 December 1763, reprinted in Fraser 1906: lx.

²¹ “Substance of Captain Brant’s wishes respecting a settlement of the Mohawk and others of the Six Nations upon the Grand River”, undated, in E.A. Cruikshank, ed., *The Settlement of The United Empire Loyalists on the Upper St. Lawrence and Bay of Quinté in 1784: a Documentary Record* (Toronto: Ontario Historical Society, 1934): 32-3.

The Crawford Purchase, 1783

The surviving colonial records reveal that in 1783, Haldimand ordered John Johnson to approach the Mississauga between Kingston and the Bay of Quinté to negotiate a surrender.²² Johnson initiated several meetings with the Mississauga while they prepared for their fall fishery. Johnson later reported to Haldimand that the Mississauga were agreeable to some non-native settlement, but “say that if their Brothers the Six Nations come there, they are so Numerous they will overrun their hunting grounds, and oblige them to Retire to new and distant grounds not so good or convenient to them.”²³ Clearly, the Mississauga had not forgotten their old antagonisms with the Iroquois and held the security and integrity of their hunting grounds to be a substantive issue to be resolved in the negotiations. In response, Haldimand instructed Johnson to follow the imperial government’s “instructions” and negotiate a treaty that would “satisfy” the Mississaugas’ concerns and cost the government as little as possible.²⁴ This was Johnson’s only contemporaneous account of the treaty negotiations as he left the final proceedings to William Crawford, a captain in the Indian Department. By the end of the Mississauga’s prosecution of their fall fishery, Crawford claimed that he had purchased the region.²⁵ Crawford, however, in contravention of his instructions did not produce a deed of conveyance, a map of the tract, or record any Mississauga reservations. In addition, when British officials later pressed Crawford and other officers who were present at the treaty about its contents, they provided, in the words of the late historian, Robert Surtees, only “sketchy accounts of the agreements”.²⁶

Although British accounts of the *Crawford Purchase* are “sketchy”, Mississauga oral history holders left more substantive accounts. In these oral histories that were written down at various times, the Mississauga claimed that they reserved the region’s islands, river mouths, and points of land. For example, in 1828, Chief John Sunday

²² Letter from Sir John Johnson to General Haldimand, 11 August 1783, in Cruikshank 1934: 4.

²³ NAC, MG 21, Add. Mss. 21775, letter from John Johnson to General Haldimand, dated Montreal 11 August 1783: 138-9.

²⁴ NAC, MG 21, Add. Mss. 21775, letter from General Haldimand to John Johnson, dated Quebec 1 September 1783.

²⁵ NAC, MG 21, add. Mss. 21818, Captain William Redford Crawford to Sir John Johnson, Superintendent of Indian Affairs, 9 October 1783.

²⁶ Surtees 1984: 22.

stated that his ancestors reserved their title to all the islands in the region.²⁷ In 1845, he informed the governor general that his ancestors “made sundry reservations in the Bay of Quinte and elsewhere.”²⁸ In 1847, he explained that these reserves principally involved the mouths of rivers, points of land, and all islands in the district.²⁹ To substantiate his claim, he listed the riverine reserves, many points of land, and over 70 islands around the Bay of Quinte. As I explained in chapter 1, the Mississauga developed these island environments into fishing grounds, gardens, hunting sites, and burial grounds, and thus their reservation makes sense from the perspective of their cultural ecology. As well, the Mississauga reservation of these places would likely have satisfied their principal concern that their hunting and fishing grounds be recognized and protected from the new pressures arising from Mohawk settlement.

Below, I will show that the Mississauga claims can be easily verified in the records of the Surveyor General’s office and the records of the Department of Indian Affairs (DIA). At this point, the most sufficient proof is that in 1856, the DIA confirmed that the Mississauga reserved these places and drafted a new treaty to obtain crown title to these “islands... points, and parcels of land”.³⁰

The Between the Lakes Treaty, 1784

Although a group of Mohawks under the leadership of Chief Deseronto settled on lands at the Bay of Quinte, another group of Iroquois under Chief Joseph Brant disapproved of the land selection and indicated their preference to settle along the Grand River valley. A Mississauga band, to be known as the Mississauga of the Credit, owned the Grand River watershed and its basin as far west as Long Point on Lake Erie. To the east, they owned the adjoining watershed of Lake Ontario between the Rouge River and Niagara Falls.³¹ Much later, during a council meeting in 1847, chiefs of the Mississaugas of the Credit and the Six Nations recalled that Brant had first approached the Mississauga

²⁷ NAC, RG 10, vol. 791, Chief John Sunday, minutes of a council held at the Post of York on 30 January 1828: 102.

²⁸ NAC, RG 10, vol. 121, Chief John Sunday and 23 others, Alnwick [Alderville], to Charles Metcalfe, Governor General, 31 May 1845.

²⁹ NAC, RG 10, vol. 414, letter by Chiefs John Sunday, John Sampson, Captain Irons, 4 principal warriors, and 9 warriors, dated Alnwick 21 June 1847.

³⁰ Canada 1891, Treaties Nos. 77 and 78 (signed 19 June 1856): 205-8.

to discuss their ancient treaty that concluded their war in the 1650s and proposed they renew it and that the Mississauga transfer lands along the Grand River to the Iroquois. Both groups agreed before Brant spoke with British officials.³² Colonial records support this version of events. In the winter of 1782-3, Brant informed General Haldimand of his plans and the Mississauga similarly conveyed their approval.³³ In response, Haldimand ordered Colonel John Butler to purchase a large tract of the Mississauga's territory between Long Point and the western watershed of Lake Ontario and transfer the Grand River valley at its centre to the Six Nations (see map 3.1).³⁴ In March 1784, Butler reported that he could "purchase the Right of the Land from the Messsagues for a very trifling sum."³⁵ In the fall, he claimed to have purchased the lands in a treaty that is generally known as the *Between the Lakes Treaty* (1784).³⁶ Once again, however, this British officer failed to produce a copy of the treaty or a map of the tract.

In their recorded oral histories, the Mississauga of the Credit provided greater details about the treaty. For example, in 1829, they informed the legislative assembly of Upper Canada: "We sold a great deal of land to our great father the King, for very little... [but] We reserved all the hunting and fishing."³⁷ In the fall of 1837, their leadership discussed the "Reserves [that] have been made by our forefathers at the different Rivers, creeks, & points, along the shore of Lake Ontario."³⁸ In 1860, they wrote to the Duke of Newcastle that, "Burlington Beach and a portion of Burlington Heights and broken fronts along the shores of Lake Ontario between Burlington Beach and Niagara these with considerable points jutting out into the Lake were always considered unsundered Indian land."³⁹

³¹ NAC, RG 10, vol. 1011, Chief George Paudash Papers, undated folio, n.p., description of the Mississauga of the Credit River's traditional territory.

³² NAC, RG 10, vol. 1011, minutes of a council meeting between the Mississauga of the Credit and Six Nations at the River Credit, 6 February 1847.

³³ Charles M. Johnson, ed., *The Valley of the Six Nations: a collection of documents on the Indian Lands of the Grand River* (Toronto: Champlain Society, 1964): 46-7.

³⁴ "Substance of Captain Brant's wishes respecting a settlement of the Mohawk and others of the Six Nation Indians upon the Grand River", undated, Cruikshank 1934: 32.

³⁵ Letter from Haldimand to Sir John Johnson, 15 March 1784, in Cruikshank 1934: 62.

³⁶ Surtees 1984: 26.

³⁷ NAC, RG 10, vol. 1011, petition of the Mississauga of the Credit to the Upper Canada House of Assembly, 31 January 1829.

³⁸ NAC, RG 10, vol. 1011, minutes of a Mississauga council held at the Credit River, 25 September 1837.

³⁹ NAC, Colonial Office Records [hereafter C.O.] 42,623, Memorial to the Duke of Newcastle of the New Credit Band, 17 September 1860: 458-460.

One lesson in these various oral sources is clear, the Mississauga alleged that their bargaining position in the first two treaties was the reservation of points of land, river mouths, and islands. It is a position that the Mississauga of the Peterborough Lakes claimed to have negotiated in 1787-8 when Johnson and Butler approached for a surrender of the unceded lands between the first two treaties (see map 3.1).

The Gunshot Treaty, 1788

In March 1787, Governor Dorchester issued a set of instructions to Johnson regarding the management of the Indian Department. In what appears to be a response to his officers' failure to provide records of their treaty negotiations, Dorchester instructed Johnson to keep minutes of all his council meetings with native peoples.⁴⁰ Johnson soon failed this instruction, again leaving the Mississauga without a crucial written record of their treaty agreements. In July 1787, Dorchester ordered Johnson and Butler to hold meetings with the Mississauga to purchase the central territory between the Bay of Quinté and Burlington Bay.⁴¹ In late September, when the salmon were running up the Trent and Moira Rivers, Johnson met six hereditary Mississauga chiefs in the Bay of Quinté and distributed some presents.⁴² When the salmon started to run the next year, he met the chiefs at the mouth of the Pemetashwotiang (Ganaraska) River. Afterwards, he claimed that the Mississaugas were pliant negotiators and that he obtained a surrender of all the land between the Bay of Quinté and the Etobicoke River to a depth of 10 miles.⁴³ He failed, however, to obtain a surrender of the lands between the Etobicoke River and Burlington Bay from the Mississaugas of the Credit (see map 3.1). According to Johnson, the Mississauga of the Peterborough Lakes only requested that their lands at the mouth of the Pemetashwotiang River be transferred to their local fur trader and that they obtain presents that included fishing spears.⁴⁴ For a third time, however, this crown official failed to back up his report with minutes of the proceedings, a map, or a copy of

⁴⁰ NAC, RG 10, vol. 789, Instructions from Lord Dorchester, Governor in Chief, to Sir John Johnson, 27 March 1787, section 5: 6760.

⁴¹ Lord Dorchester to John Collins, 19 July 1787, reprinted in Fraser 1906: 453.

⁴² NAC, RG 10, vol. 10029, return of a list of arms, ammunition, etc., distributed to 7 Mississauga chiefs and their followers at the Bay of Quinté, 23 September 1787: 45-6. See also: NAC, MG 19, vol. 4, letter from Sir John Johnson to Daniel Claus, dated Montreal 19 October 1787.

⁴³ NAC, RG 10, vol. 9, letter from John Johnson reporting on a meeting at Pemetashwotiang landing, dated 28 August 1788: 8944-8946.

the treaty. Confounding this confusion, when Dorchester pressed the other British officials present at the treaty to report on its contents, they provided contradictory details about its size and made no descriptions of the rights or lands reserved.⁴⁵

Once again, the Mississauga maintained more detailed accounts of the treaty in their oral histories that they set down in writing at various points in time. The most comprehensive history may be found in the legal files of Hunter & Hunter. Around 1847, the hereditary chiefs George Paudash, Nott, Cow, and Crowe wrote down the following account and submitted it to the Crown.⁴⁶ I quote it in full so that I may test the reliability of its overall contents.

First council that we are sure of, between our great Grand Fathers was held at Port Hope. The Governor or Superintendent General had come to make a treaty with my grandfather. And the promise that he gave to my Grand father was very sweet. Of course, this was before our time. And my belief is that you have everything down or everything that took place at that time in your minute book. When the Government first asked our Indian people to surrender their land, he said my dear children, I want to ask to surrender your land to me. As you have already heard what I said or promised before. As long as you see the sun in the sky, as long as the Rivers flow, and as long as the grass grows, the Reserve shall be yours, whatever you will Reserve. And my Grand Father did not wait long. He got up and said Great Father, I do agree to surrender my land to you as your promise is very sweet & the blessing that I will enjoy and my children after me as long as they live forever. I will surrender on the mainland. viz – we shall make a bee line from as far as you can hear a shot gun (from the shore up) this line shall leave me part of the main land. all the points. Islands and all the mouths of Rivers, this shall be reserved for my hunting and fishing ground and my children after me or the rising generation as long as they live.⁴⁷

In short, this Mississauga version of the treaty agreement is that they agreed to the surrender of a shoreline tract to the depth a gunshot could be heard but reserved all the points of land, river mouths, and island for their hunting and fishing.

⁴⁴ NAC, RG 10, vol. 9, letter from John Johnson, 28 August 1788: 8944-8946.

⁴⁵ NAC, RG 10, vol. 9, Joseph Chew's account of the 1788 treaty, ca. 1788-9: 8944; NAC, RG 10, vol. 9, Nathaniel Lines account of the treaty, 9 June 1795: 8946-7.

⁴⁶ I estimate the year 1847 from the fact that Johnson Paudash, the grandson of Chief Paudash, produced a document for the Williams Commission created by his grandfather in 1847. That document appears to be a copy of this one. NAC, RG 10, vol. 2332, file 67,071 sworn statement of Johnson Paudash to the Williams Commission, 36 September 1923: 239.

⁴⁷ PAO, F 4337-11-0-8, recorded tradition regarding the *Gunshot Treaty*.

Although Paudash, Nott, Cow, and Crowe's oral history is the most comprehensive, it is not the only Mississauga record of the treaty.⁴⁸ At other points in time, many Mississauga elders recounted that their ancestors explicitly reserved the lands north of the ceded shoreline tract to protect their family hunting grounds that ranged up the watersheds to present-day Algonquin Park.⁴⁹ Other oral history holders made it clear that their ancestors reserved their wetland environments within the ceded tract to protect their valued ecosystem components while they surrendered the arable land to the crown.⁵⁰ In one example, in 1923, George Paudash's son, Robert, informed a government commission that his ancestors and British officials agreed: "The white man have the dry land, but we have the wetland."⁵¹ Curiously, however, Paudash claimed that Lieutenant-Governor John Graves Simcoe was involved in this *Gunshot Treaty* promise. This is not the only account that closely associated Simcoe with the *Gunshot Treaty*.⁵² In another example, Alex Knott submitted the following historical document to a government commission investigating the Mississauga's rights.

When King George III sent out Simcoe as his representative to Govern Canada he made a treaty with the Indians at the Bay of Quinte called the Gun Shot Treaty. Thousands of Indians were present including all the principal chiefs of the different Tribes. The Governor stated although the Govt. wanted the land it was not intended that the fish or game rights be interfered with as these belong to the

⁴⁸ RG 10, vol. 2405, file 84,041 part 1, petition of Joseph Irons, Chief of Mud Lake, Robert Paudash, Chief of Rice Lake, and George Goose, Chief of Scugog, to Superintendent General of Indian Affairs, 1 January 1901; NAC, RG 10, vol., 2332, file 67, 071, sworn testimony of John Comego, Alderville, 27 September 1923: 259, Moses Smoke 27 September 1923: 276, Chief Daniel Whetung 25 September 1923: 214.

⁴⁹ NAC, RG 10, vol. 2329, file 67,071 pt. 1B, J. W. Kerr, barrister, Cobourg, submission of three Mississauga traditional land use affidavits to Frank Pedley, Deputy Superintendent of Indian Affairs, 19 May 1903. See Blaker's affidavit about the deliberate reservation of the northern hunting grounds.

⁵⁰ NAC, RG 10, vol. 2332, file 67, 071, sworn testimony of Moses Smoke to the Williams Commission, 27 September 1923: 275-7.

⁵¹ NAC, RG 10, vol. 2332, file 67, 071, sworn testimony of Robert Paudash to the Williams Commission, 26 September 1923: 229.

⁵² For example, Mrs. Isaac Johnson (Scugog Island) precisely described an area of land, reporting that "these were reserved as hunting grounds granted by Governor Simcoe (NAC RG 10, volume 2332, file 67, 071, sworn testimony of Mrs. Isaac Johnson to the Williams Commission, 24 September 1923: 170). Robert Paudash also stated this land area was "reserved in Treaty with Simcoe" (NAC RG 10, volume 2332, file 67, 071, sworn testimony of Robert Paudash to the Williams Commission, 25 September 1923: 230). On the same matter, Johnson Paudash identified an area on a map that he called, "the western hunting grounds reserved for the Indians in 1792 by Governor Simcoe" (NAC RG 10, volume 2332, file 67, 071, sworn testimony of Johnson Paudash to the Williams Commission, 25 September 1923: 235).

Indians who derived their living from thence. These promise were to hold good as long as grass grows and water runs.⁵³

It is clear that a researcher with the law firm, Hunter & Hunter, transcribed this document from the Colonial Records Office in London, England, in 1903.⁵⁴ It is an important document in many respects. First, it is credited to the provincial legislature of Canada and suggests that parliament was familiar with the Mississauga's reservation of their exclusive right to fish and hunt in the *Gunshot Treaty* and that non-natives were not to hinder the exercise of these rights. I will discuss the legislature's role in the protection of these rights in my next chapter. Secondly, the record was generated in 1866. In chapter 7 of this research, I show that the year was a pivotal time for aboriginal fishing rights in Canada when a provincial law clerk opined that the Ojibwa did not reserve the exclusive right to fisheries in their treaties. For these reasons, I will turn to this document again in my research. This government document also identified Lieutenant-Governor John Graves Simcoe as the negotiator of the *Gunshot Treaty*. Simcoe, however, did not negotiate this treaty nor was he in Upper Canada until 1792. Mississauga oral histories, however, closely link Simcoe with the *Gunshot Treaty*. It is therefore important to consider how the Mississauga came to associate Simcoe with the treaty.

At this point, the consistent elements in the Mississauga oral traditions about the *Gunshot Treaty* may be noted. First, the oral history holder recalled that their ancestors reserved their right to hunt and fish. Second, they reserved wetland environments for their exclusive use, which included islands, river mouths, and points of land. Third, British official only sought a right for settlers to farm the ceded tracts. Fourth, the Mississauga reserved their lands north of the ceded tract to protect the integrity of their hunting grounds. Fifth, non-natives were not to interfere with the exercise of the Mississaugas' fishing rights. Sixth, the British offered to protect these rights. Seventh, the treaty was supposed to endure "as long as grass grows and water runs". And finally, Simcoe was somehow involved in these promises. I will begin my attempt to corroborate

⁵³ NAC, RG 10, vol. 2332, file 67, 071, sworn testimony of Alex Knott to the Williams Commission, 25 September 1923: 219.

⁵⁴ The same record is found in Hunter and Hunters' legal files, PAO, F 4337-2-0-11, extracts from the Public Records Office, London England. G. Mill McClurg transcribed it in 1903.

these oral histories from the perspective of cultural ecology, economy, and political organization of the Mississauga.

First, it may be noted that George Paudash was the principal holder of the 1847 oral history account. He was a hereditary chief active between 1811 and 1856, the son of Chief Chenebeesh (1765-1869), and the grandson of Chief Gemoaghpenasse (dates unknown).⁵⁵ It appears that his grandfather, Gemoaghpenasse, negotiated the *Gunshot Treaty*. As a hereditary chief, one of Paudash's responsibilities was to maintain the memory of his ancestors' negotiations. Given his public responsibilities, it is not surprising that Paudash possessed his community's memory of the treaty. It may be easily shown that Paudash correctly recalled indisputable facts about the treaty. For example, he correctly recalled that the negotiations occurred at Port Hope and that the Superintendent General of Indian Affairs (John Johnson) attended the negotiations.

It is important to consider Paudash and other Mississauga's recollection that Johnson used the phraseology that the treaty will last "as long as you see the sun in the sky as long as the Rivers flow and as long as grass grows." This was the phraseology that Johnson's father, William Johnson, used in the 1760s to speak of a "mutual" co-existence with the aboriginal nations in New York. For example, in 1761 William Johnson agreed to a treaty with the Iroquois that would "link us together in mutual friendship and mutual affection, which I hope, will continue inviolable and sacred, as long as the sun shines, or the rivers continue to water the earth."⁵⁶ It is also the metaphor William Johnson voiced at the *Treaty of Niagara* in 1764.⁵⁷ In effect, the *Gunshot Treaty* language recalled by the Mississauga is consistent with the philosophy of mutual and long co-existence agreed to in the *Royal Proclamation*.⁵⁸ It is therefore likely that this

⁵⁵ Paudash 1905: 7.

⁵⁶ *An Account of Conferences held and Treaties made Between Major-general Sir William Johnson and the Chief Sachems and Warriors of the Mohawks, Oneidas, Onondagas, Cayugas, Senekas, Tuskaroras, Aughqueys, Skaniadaragighronos, Chugnuts, Mahickanders, Kanuskagos, Toderighronos, and Oghquagoes, Indian Nations in North America* (London: printed for A. Millar, in the Strand, 1761): 32.

⁵⁷ Borrows 1997: 166, and notes 59, 96.

⁵⁸ This phraseology was often used in Canadian treaty negotiations, but it is surprising to learn from a digital search of Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories including the Negotiations on which they were based, and other information relating thereto* (Toronto: 1880) (*Early Canadiana Online* (<http://www.canadiana.org/eco/english/index.html>) that the phrase does not actually appear in any final text of a Canadian treaty. The phraseology "as long as the sun shines and the rivers flow" was used in the negotiation of the Qu'Appelle Treaty (Treaty #4) and the treaties at Forts Carleton and Pitt, but did not appear in the final texts of the treaties, see Morris 1880. The

language and philosophy of co-existence underpinned the *Gunshot Treaty* negotiations as both Johnson and the Mississauga were familiar with the spirit and intent of the *Royal Proclamation*.

In terms of the environment, it may be noted that the alleged agreement makes sense from the perspective of the cultural ecology of both the Mississauga and settlers. In the 18th century, animal life was most abundant in the myriad wetlands and riparian zones of Ontario's mixed forest environment. As we have already seen, these complex and narrow ecological corridors surrounded islands, points of land, and river mouths, and reached across Ontario in an intricate watershed network known to the Mississauga. Mississauga resource sites and family properties were predominantly located in these wetland environments. By reserving the points of land, islands, and river mouths for their use, the Mississauga would have protected their shore-based fisheries and the habitat of fur bearing animals (as well as the periodic habitat of moose and deer) where their laws recognized family and band properties. By reserving the land north of Lake Ontario beyond the distance of a gunshot, they protected their family hunting grounds that ranged up the watersheds to present-day Algonquin Park. While the Mississauga used the products of the forest to manufacture maple sugar, medicine, tools, and fuel, perhaps they felt they could surrender these valuable southern forest uplands to accommodate British agrarian interests while protecting their key southern ecosystems and all of their northern hunting grounds from settlement. From the environmental perspective of the British crown, these mixed southern forestlands with a rich undersoil were the lands most needed to build an agricultural settlement. In addition, British officials may have had another environmental reason to disregard any interest in the region's wetlands as colonial records indicate that officers were concerned that wetlands were "the obvious sources of bad air" that could cause sickness (namely malaria) among settlers.⁵⁹

In terms of this strategy for ecological co-existence, I showed in my previous chapter that precedents already existed in colonial New York whereby settlers purchased arable lands and the aboriginal proprietors reserved the tract's wetlands. Most

phraseology was also used in the 1921 Treaty #11, but did not appear in the text of the treaty, see René Fumoleau, *OMI, As Long as This Land Shall Last* (Toronto: McClelland and Stewart, n.d.).

⁵⁹ Dorchester to J.G. Simcoe, dated Quebec 21 January 1795, in Cruikshank 1925, III: 261.

importantly, as I will discuss below, the royal “instructions” to British treaty makers held that settlers would only be allowed to work the soil and not exploit other natural resources. For this reason, the Mississauga’s recollection that the British claimed to be only interested in obtaining the right to allow settlers to till the soil is consistent with the crown’s economic and social agenda.

Finally, the fact that Johnson reported that he issued spears to the Mississauga as part of their treaty presents indicates that in the very least, the crown agreed to facilitate Mississauga fishing, not arrest it.⁶⁰

In his oral history, Paudash erred when he assumed that the British possessed records with which to corroborate his version of events. As I will now show, Johnson’s failure to make a record of the treaty and produce a map led to prolonged problems as the crown failed to honour its promises. In addition, British officials deliberately kept their complete lack of information about the *Gunshot Treaty* from the Mississauga for over a century.

The Royal Proclamation and instructions for the settlement of non-natives

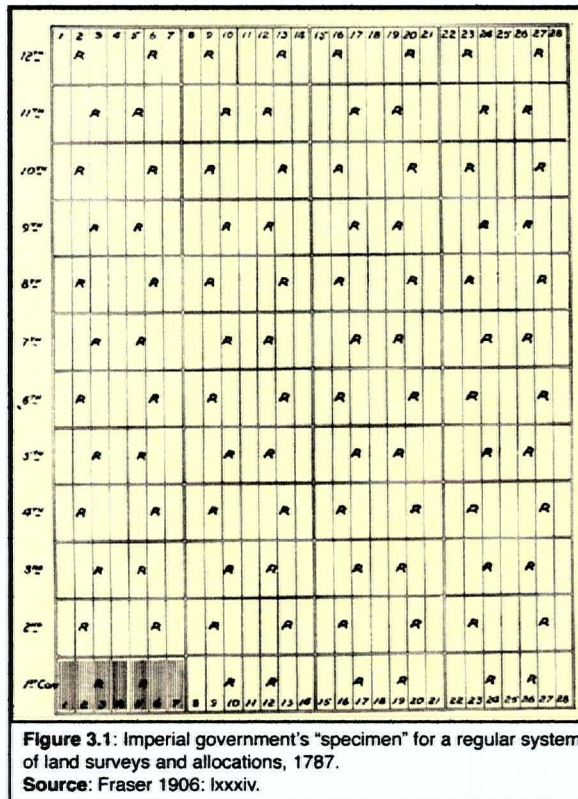
The series of “instructions” that the imperial government issued to the Governor of Quebec not only outlined how aboriginal lands were to be ceded, but also pre-determined the shape of the non-native settlement to follow. The instructions reveal that the settlement of Upper Canada was to be highly structured. In the words of the Canadian historian Michael Bliss, the administrators of Upper Canada were “determined to create a carbon copy of English society in the North American wilderness”.⁶¹ The instructions reveal that London felt that it could build a hierarchal, industrious, and moral agrarian settler society from scratch if its officials surveyed ceded aboriginal territories into a gridiron. They therefore provided the “specimen” in figure 3.1 as a model.

It is noteworthy that the instructions conceived the survey, creation, and allocation of uniform “spaces” as the blocks for building a new society on the model of England. The instructions bear out the ideas of many postmodern theorists about how

⁶⁰ NAC, RG 10, vol. 9, letter from John Johnson reporting on a meeting at Pemetashwotiang landing, dated 28 August 1788: 8944-8946.

⁶¹ J.M. Bliss, “Governor Simcoe’s plans for Upper Canada”, in J.M. Bliss, ed., *Canadian History in Documents, 1763-1966* (Toronto, Ryerson Press: 1966): 34.

colonizers used space as a tool for the repossession of lands.⁶² First, as many theorists have argued, cadastral maps such as the one in figure 3.1 transformed the Ojibwa social



landscape into the appearance that it was empty and therefore "open to appropriation and private uses."⁶³ On another level, many postmodern theorists argued that "space" had implications for social control. Foucault, for example, argued that certain spaces were designed as tools for the social engineering and surveillance of peoples, which he called "disciplinary spaces".⁶⁴ Crown records are clear that they felt their control over space was the means to build a hierarchal, stable, moral, and "industrious" settler society.⁶⁵

First, London instructed surveyors to survey the land and position various types of reserves around the colony to protect key assets such as pineries for the navy, military sites, mill sites, and mineral locations.⁶⁶ Next, the instructions called for prospective settlers to establish their "industry and morals" in front of land boards.⁶⁷ The boards were ordered to ensure that settlers were in

⁶² Lefebvre, 1974; Foucault 1979; Harvey 1990; Gibblet 1996.

⁶³ Harvey 1990: 228.

⁶⁴ Foucault 1979.

⁶⁵ Instructions to Lord Dorchester, Captain General and Governor in Chief, 23 August 1787, reprinted in Fraser 1906: lxix-lxx; Meeting of the Land Board of the County of Essex and Kent, 5 December 1794, reprinted in Fraser 1906: 259; Hugh Finlay, surveyor, letter to John Collins, 26 January 1791, reprinted in Fraser 1906: 411; J.G. Simcoe to the Duke of Portland, 23 October 1794, in Cruikshank 1923, III: 143; J.G. Simcoe to the Committee of the Privy Council for Trade and Plantations, 20 December 1794, in Cruikshank 1923, III: 228; J.G. Simcoe to the Duke of Portland, 17 February 1795, in Cruikshank 1923, III: 302.

⁶⁶ Instructions to Guy, Lord Dorchester, Captain and General Governor in Chief, 23 August 1786, section 8, reprinted in Fraser 1906: lxxi.

⁶⁷ Instructions to Guy, Lord Dorchester, Captain General and Governor in Chief, 23 August 1786, reprinted in Fraser 1906: lxiv-lxix; Minutes of the Executive Council Chamber of the Province of Upper Canada, 6 November 1794, reprinted in Fraser 1906: cix; Lieutenant-Governor John Graves Simcoe, order passed on 6 November 1794, reprinted in Fraser 1906: cviii-cix.

a “condition” to cultivate land and make certain that their “intention” was to farm.⁶⁸ The boards then allotted the smallest amounts of land to common settlers on the stipulation that it was for agricultural purposes only.⁶⁹ The crown then expected settlers to clear a stipulated amount of forestland or drain a specified acreage of swampland each year. In addition, the crown imposed a system of surveillance to observe settler commitments and would re-allocate their land to “others more industrious” if they failed to meet the terms of their grants.⁷⁰ In turn, the imperial government instructed the land boards to allot larger land grants to upper class settlers and provided a formula for the calculation of the size of their grants. Of particular significance, London instructed the boards to award land fronting lakes and navigable rivers to upper class settlers.⁷¹

One major question is where did the allocation of rights over fish and game fit into the imperial designs for the construction of this structured, hierarchal, moral, and agrarian society based on the blueprint of rural England where legal divisions in game rights already existed? The “instructions” are silent about fish and game rights. Most importantly, while the instructions contemplated that natives would select lands for “reserves” and that these were off bounds to settlement, they did not contemplate that aboriginal people would reserve all riparian and wetlands. Rather, the instructions placed a critical importance on waterfront lands and expected that they would be granted to the upper classes to facilitate their access to navigation and commerce and promote their easy assembly in times of military need. The instructions also contemplated that the crown would reserve all rivers and streams suitable for mill seats and common settlers would drain swamplands. The instructions did not contemplate that aboriginal people would reserve all these wetland environments as a condition of non-native settlement.

It is now important to determine how these instructions played out on the ground. Fortunately, the Archives of Ontario preserved many of the records of the first colonial land boards which reveal the crown’s decision-making processes during for the first allotments of land in the ceded tracts. I will now examine the minutiae of these records

⁶⁸ Instructions to Guy, Lord Dorchester, Captain General and Governor in Chief, 23 August 1786, reprinted in Fraser 1906: lvii

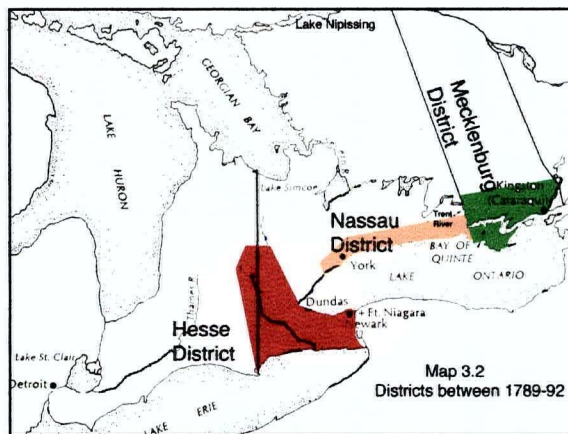
⁶⁹ Copy of certificate of the acting surveyor for a single lot with clauses of rules and regulations, 17 February 1789, reprinted in Fraser 1906: lxxiii-lxxv.

⁷⁰ Instructions of 1763 s. 51, reprinted in Fraser 1906: lvii.

to determine what the lands boards knew about crown's treaty agreements and how the boards addressed the contradictions in their instructions that waterfront lands be granted to upper class settlers, reserved as mill seats, or drained, while the Mississauga had already reserved these environments.

The settlement of Mecklenburg, 1788-1792

In 1788, Lord Dorchester divided the western part of Quebec into three districts that approximated the boundaries of the three Mississauga treaties (map 3.2).⁷² The



District of Mecklenburg covered the *Crawford Purchase* and the District of Nassau covered the *Gunshot* and *Between the Lakes* treaty lands. The district of Hesse covered the lands between Long Point and the Detroit River, an area of lands to be subject to treaties in the 1790s. In February 1789, Dorchester established a

land board for each district and issued them a set of instructions consistent with the imperial instructions reviewed above.⁷³

The surviving records of the Mecklenburg land board, responsible for allotting lands in the *Crawford Purchase* area, start in November 1789. It is clear that the board never received a copy of the *Purchase* that was directly relevant to its land allotment proceedings.⁷⁴ Nevertheless, a survey map of the district made in 1790 bears a resemblance to the Mississauga treaty (figure 3.3). As stated above, the instructions of 1775 informed surveyors not to survey unceded aboriginal lands.⁷⁵ The map of 1790

⁷¹ Instructions to Guy, Lord Dorchester, Captain General and Governor in Chief, 23 August 1786, reprinted in Fraser 1906: lxiv-lxix.

⁷² Governor Dorchester, Proclamation, 24 July 1788, reprinted in Fraser 1905: appendix VIII: 184.

⁷³ Governor Dorchester's Instructions to Land Boards, 17 February 1789, reprinted in Fraser 1906: lxx-lxxiii

⁷⁴ On 10 March 1791, the Land Board reported that it did not have a copy of the Crawford purchase, "which deed, it seems by Sir John's letter of 25 Ma. 1791, is still in the hands of Captain Crawford", reprinted in Fraser 1906: 406. On 25 March 1791, John Johnson responded to the Board, "I never received any Deed from Carwford of the Purchase he made about Kingston and the Bay of Quinte", reprinted in Fraser 1906: 455.

⁷⁵ Instructions to Guy, Lord Dorchester, Captain General and Governor in Chief, 23 August 1786, reprinted in Fraser 1906: lxiv-lxix.

reveals that surveyors did not survey and lay into lots the islands, most points of land, and many river mouths in the district (coloured red in figure 3.3). Therefore, these lands were not open to settlement. Additionally, the governor issued further instructions to the board that bore a resemblance to the Mississauga treaty. For example, in 1789, Governor

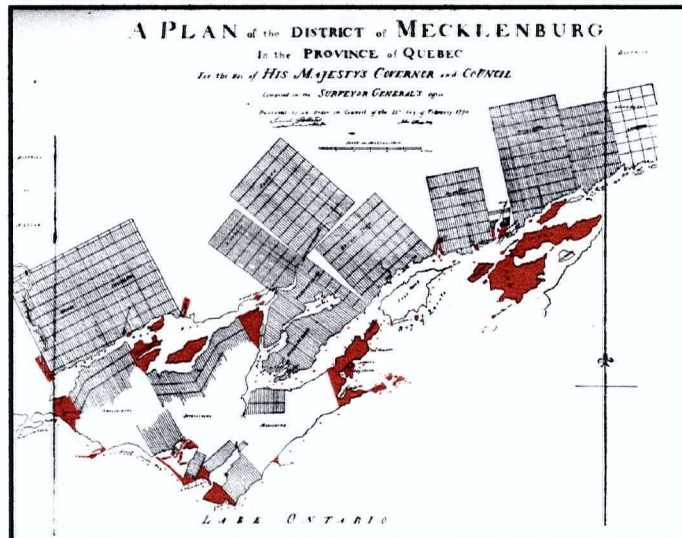


Figure 3.3. Survey of Mecklenburg District, 1790. Red areas indicate unsurveyed lands that correspond to areas claimed by the Mississauga in 1828 and 1847.
sources: map from Fraser 1906; ci: NAC, RG 10, vol. 791, Chief John Sunday, minutes of a council held at the Post of York on 30 January 1828: 102; NAC, RG 10, vol. 414, letter by Chiefs John Sunday, et al., dated Alnwick 21 June 1847.

Haldimand issued an order-in-council that informed boards that islands “were reserved” and could not be settled.⁷⁶ He did not specify why. As a result, the Mecklenburg land board repeatedly turned down applications for islands in the district, including prayers from upper class officials. In 1800, the Surveyor General’s office assembled a table of all the petitions for leases in the

colony.⁷⁷ The records indicate that between 1787 and 1800, many settlers repeatedly petitioned for the leases of islands, but the crown consistently declined these applications on the ground that they were not surveyed and therefore not subject to allotment.⁷⁸

The minutes of the Mecklenburg land board also reveal that many settlers petitioned for points of land in the district (i.e. Sandbanks, Baldhead Point at Weller’s Bay, Cape Vescey, and Green Point).⁷⁹ The board declined these applications, but it is clear they did not understand that the intention might have been to protect Mississauga reserves. For example, in 1790, when a settler applied for the unsurveyed marsh and

⁷⁶ Minutes of council grants of lands in Upper Canada, 8 October 1790, reprinted in Alexander Fraser, “Grants of Lands in Upper Canada, 1787-1791”, *Seventeenth Report of the Department of Public Records and Archives of Ontario*. Toronto: 1929: 129.

⁷⁷ PAO, RG 1, A-I-1, vol. 54 (old no. 6) Schedule of Petitions for Leases, September 1797: 2014

⁷⁸ Quoted in Victor Lytwyn, *Final Report: Historical Research Report on British Policy Regarding the Granting of Islands in the Context of Bois Blanc (Boblo) Island in the Detroit River*. Indian Claims Commission, Walpole Island First Nation Boblo Island Inquiry, 5 March 1999, exhibit 14.: 75. Cited as Minutes of a weekly meeting of the Land Committee, Quebec, 25 June 1790, PRO, CO 42, vol. 69: 176-179.

⁷⁹ PAO, RG 1, A-I-1, vol. 54 (old no. 6) Schedule of Petitions for Leases, September 1797: 2014.

points of land at the head of the Bay of Quinté,⁸⁰ the surveyor responded negatively on the grounds that the lands “are to be reserved for public use.”⁸¹ The same occurred in respect to some rivers. For example, the minutes of a board meeting in 1792 reveal that when a settler applied for a mill seat, the board declined, “having reference to their Instructions, find they are restrained from granting Mill Seats”.⁸² The board had no knowledge of the reason behind the reservations, but speculated, “[we] are of the opinion that the creeks falling into that part are valuable for fishing, etc., therefore, direct that they shall not become private property, whereby this natural advantage might be destroyed.”⁸³ In effect, the board believed these lands were preserved for a public fishery.

In terms of the region’s fisheries, it is clear that soldiers and settlers at Kingston were in dire need of fresh foods, including fish when they began to settle the district. In 1784, Baron De Reitzenstein reported to Dorchester that the civilian population around the garrison had a large demand for Mississauga salmon and that merchants outbid the military for the limited number of fish that the Mississauga brought in. At the same time, soldiers found that despite intensive efforts over the course of entire nights, they could not catch enough fish to “fill a plate”. The thrust of Reitzenstein’s letter was that it was in the garrison’s best interest that the Mississauga enlarged their catches so that the garrison could purchase some of their supply.⁸⁴

In sum, it is clear that the local military did not feel restrained from fishing, but could not fish well and thus hoped the Mississauga would enlarge their commercial fish trade. At the same time, the Mecklenburg land board preserved many of the Mississauga’s reserves around islands, points of land, and river mouths from settlement. It is clear, however, that the land board had no knowledge of why and even assumed its land reservations were in the interest of the public. This situation led to problems. Starting as early as 1811, Mississauga chiefs had to explain to the crown that the islands, points of land, and many rivers in the region were unsettled because they were

⁸⁰ John Ferguson, land applicant, letter in the Surveyor General Department, dated 22 July 1792, reprinted in Fraser 1906: 330-1.

⁸¹ Augustus Jones, Surveyor General, to John Ferguson, 6 November 1792, reprinted in Fraser 1906: 333-4.

⁸² Minutes of the Land Board of Lennox, 9 February 1792, reprinted in Fraser 1906: 305-6.

⁸³ Minutes of the Land Board of Lennox, 9 February 1792, reprinted in Fraser 1906: 305-6.

⁸⁴ From Baron De Reitzenstein to General Haldimand, 1 April 1784, reprinted in Cruikshank 1934: 146.

Mississauga reserve lands.⁸⁵ It took some time, but the crown eventually agreed that this was the case.⁸⁶ However, I will show in chapter 5 of this study, that the crown never acted to protect these Mississauga reserves from non-native fishing. Further, I will demonstrate that their vacancy (at least in terms of non-native settlement) played a major role in the development of a non-native commercial fishery in the region in the 1840s.

The settlement of Nassau, 1788-1792

Whereas the settlement of the District of Mecklenburg occurred in a fashion that preserved the Mississauga reservations in the *Crawford Purchase*, the same did not occur

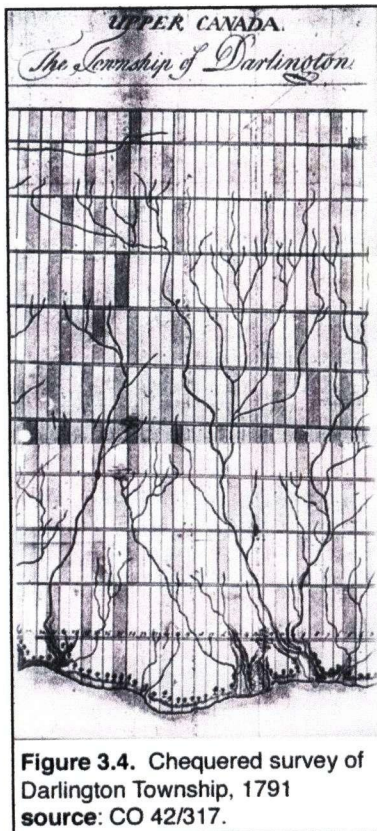


Figure 3.4. Chequered survey of Darlington Township, 1791
source: CO 42/317.

in the District of Nassau that included the *Between the Lakes* and *Gunshot Treaty* areas. In 1790 surveyors began to lay out the *Gunshot Treaty* tract and decided that it extended to the depth of one township from the shore of Lake Ontario. Things began to go awry for the Mississauga when the surveyors laid out the entire district, including its river and lakefront lands, into lots without any reservations for the Mississauga (see for example the survey of Darlington Township illustrated in figure 3.4). Most significantly, however, in the spring of 1791, just as it began its work, the land board paused and attempted to learn whether there were any Mississauga reserves in the district. They therefore questioned John Johnson on the matter. Johnson replied, however, that the Mississauga made no reserves in their treaties and that the only Indian reserve in the district involved the Six Nation lands along the Grand River.⁸⁷ After

receiving this response, the Nassau land board started to grant riverine and lakefront lots

⁸⁵ NAC, RG 10 volume 791, Chief John Sunday, minutes of a council held at the Post of York on 30 January 1828: 102; NAC, RG 10, vol. 121, Chief John Sunday and 23 others, Alnwick [Alderville], to Charles Metcalfe, Governor General, 31 May 1845; NAC, RG 10, vol. 414, letter by Chiefs John Sunday, John Sampson, Captain Irons, 4 principal warriors, and 9 warriors, dated Alnwick 21 June 1847.

⁸⁶ Canada 1891, Treaties # 77 and 78, signed 19 June 1856: 205-8.

⁸⁷ John Johnson, Superintendent of Indian Affairs, to John Collins, Crown Surveyor, 25 March 1791, reprinted in Fraser 1906: 455.

in the two treaty tracts. These included grants of land along Lake Ontario, the Ganaraska, Trent, Salmon, Etobicoke and other rivers.⁸⁸

The evidence shows that settlers immediately made recourse to the fisheries adjoining their land grants. For example, a York lawyer reported that settlers caught salmon in most of the creeks across the district and that this "abundance of fish affords great assistance to the inhabitants, more especially the new settlers, who at first may be supported scantily, provided with beef, pork, etc."⁸⁹ He added that settlers captured about eight barrels for their family's winter subsistence. In addition to these subsistence fisheries, the British upper classes with land grants on rivers and lakes began to sport fish. For example, in 1793, Peter Russell reported on the sporting potential of his new environment when he informed a friend, "close to the Town [Toronto] on the East runs the River Don – abounding with Trout, Bass, Salmon & many other excellent fish."⁹⁰

It is clear that the Mississauga were not silent about the re-allocation of their littoral environments or in regards to settler fishing. The records show that they protested that settlers ploughed farms in their riverine environments that disturbed their gardens ancient burial sites. They also protested settler use of their fisheries and clearly stated that these acts violated their treaty agreements.⁹¹ As well, the Mississauga of the Credit protested that they had not been properly paid for their surrender in the *Between the Lakes Treaty*⁹² and the Chippewa of Matchedash openly questioned the wisdom of their loyalty to Britain.⁹³

It is clear that Johnson misrepresented the truth in his statement to the Nassau land board that the Mississauga made no reservations in the *Gunshot* and *Between the Lakes Treaties*. His statement had a profound impact on the events to follow. When

⁸⁸ See the District of Nassaus' register of lots issued in the district up to 1795, reprinted in Fraser 1906: 337-43.

⁸⁹ D'Arcy Boulton, *Sketch of His Majesty's Province of Upper Canada* (London: 1805): 50.

⁹⁰ Peter Russell to John Gray, Montreal, dated Niagara 16 September 1793, reprinted in Edith G. Firth, *The Town of York, 1815-1834: a further collection of documents of early Toronto* (Toronto: University of Toronto Press, 1966): 17.

⁹¹ I draw these statements of protest from two sources. In 1797, President Peter Russell described the nature of the Mississauga complaints during this period in a *Proclamation to Protect Mississauga Burial and Fishing Grounds*, reprinted in *Fourth Report of Ontario Bureau of Archives* (Toronto: L.K. Cameron, 1905): 193. In addition, in 1805, the Mississauga articulated their hardships experienced after the conclusion of the *Between the Lakes Treaty* (1784): NAC, RG 10, vol. 1 proceedings of a meeting with the Mississaugas at the River Credit, 1 August 1805.

⁹² J.G. Simcoe to Henry Dundas, 20 September 1793, Cruikshank 1924, II: 68.

Lieutenant Governor Simcoe entered the colony one year later, he rejected Johnson's statement and agreed that the Mississauga had reserved fishing places in the district. Simcoe, however, was now faced with the administrative dilemma that settlers were developing many of the key environments that the Mississauga reserved.

The arrival of Simcoe and his efforts at accommodation, 1791-1795

In 1791, King George III divided Quebec into two colonies, creating Upper Canada.⁹⁴ In September 1791, he appointed John Graves Simcoe to be the first Lieutenant-Governor of Upper Canada.⁹⁵ Simcoe arrived at Quebec City in November 1791 where he found himself winter bound and unable to travel to Niagara until the spring of 1792.⁹⁶ Nevertheless, from an office in Quebec, he set out his plans for his new administration of Upper Canada.

In March 1792, Simcoe wrote to Henry Dundas and ordered a report on the Indian Affairs. In addition, he informed Dundas about his Indian policy: "the new government of Upper Canada will not suffer any encroachment to be made upon the Land which they have not sold, but which will be preserved for their comfort & satisfaction."⁹⁷ Dundas' response has not survived. It appears, however, that Dundas appraised Simcoe that the Mississaugas complained that settlers encroached on their fishing grounds in violation of their treaty agreements. In an important series of responses, Simcoe then informed his superiors, the Lords of Trade, that: "Any portion of lands ceded by them [Mississauga] held as a Reservation must and shall be fully protected, as well as rights reserved on certain Streams and Lakes for fishing and hunting privileges."⁹⁸ It is a crucial record. On the same day, Simcoe informed Dundas that his Indian policy would be based on the *Royal Proclamation* and that he understood the aboriginal nations in Upper Canada and

⁹³ J.G. Simcoe to Henry Dundas, marked "private", 20 September 1793, Cruikshank 1924, II: 55..

⁹⁴ England. *Constitution Act (Canada Act)* 31 George III (1791) c. 31.

⁹⁵ The appointment of John Graves Simcoe, to be Lieutenant Governor of Upper Canada, reprinted in Alexander Fraser, "Executive Council grants of Crown Lands in Upper Canada, 1792-1796", *Eighteenth Report of the Department of Public Records and Archives of Ontario*. (Toronto 1929b), appendix 1: 178.

⁹⁶ J.G. Simcoe to Sir George Yonge, 12 November 1791, reprinted in Fraser 1929b: appendix II: 179.

⁹⁷ J.G. Simcoe to Henry Dundas, one of his Majesty's principal Secretaries of State, 10 March 1792 in Cruikshank 1923, I: 118. It is significant that Simcoe chose to describe Indian reserved lands as lands "preserved", clearly indicating that the words "preservation" and "reservation" were to be interchangeable in Upper Canada as they were in the laws of England.

⁹⁸ PAO, F 4337-2-0-11, John Graves Simcoe to the Lords of Trade, Quebec 28 April 1792.

the United States to be "Independent Nations."⁹⁹ He also indicated that he distrusted John Johnson and the Indian Department and desired a greater role for his civil government in the management of Indian affairs.¹⁰⁰ These officials' connection to the United States was one reason that Simcoe had misgivings about them.¹⁰¹

These are important records. Not only did Simcoe affirm the Mississauga's reservation of fishing rights on rivers and lakes, but set his administration on a course to implement these reserved rights. Simcoe's statement to the Lords of Trade, however, contains a crucial distinction that needs to be highlighted: he believed that lands "held as a reservation" were distinguishable from "rights reserved" for fishing. In other words, Simcoe signaled his position that he would not displace existing settlers and create physical Mississauga fishing reserves in the south, but sever the Mississauga's fishing rights from ownership of lands. This objective was consistent with the English law of a "free fishery" in which one group could hold the rights to a fishery independent of who owned the adjoining land. In terms of Mississauga lands "held as a reservation", Simcoe signaled that he understood these lands to be the Mississauga's northern hunting grounds, north of the treaty boundaries, and that he would prevent settlers from entering these lands.¹⁰² I will now show that Simcoe failed in these plans to prevent settlers from interfering with the Mississauga's fishing rights or enter their northern hunting grounds.

Upon his arrival in Upper Canada in 1792, Simcoe began to implement his plans when he issued a proclamation on 16 July. The primary purpose of the proclamation was to establish a new system of districts and townships for the colony.¹⁰³ Of particular note, his new districts corresponded perfectly to the boundaries of the three Mississauga treaties: the Midland District conformed to the boundaries of the third *Crawford Purchase* while the Home district respected the eastern and western boundaries of the *Gunshot Treaty* (map 3.4). He also confirmed that the *Gunshot Treaty* extended to the depth of one township from the shore of Lake Ontario, two in the case of the *Crawford Purchase*. Simcoe then used his proclamation as an opportunity to inform the public about the "boundary" between the Mississauga and the crown's lands when he

⁹⁹ NAC, C.O., vol. 42, no. 316, Simcoe to Dundas, dated Quebec, 28 April 1792: 80.

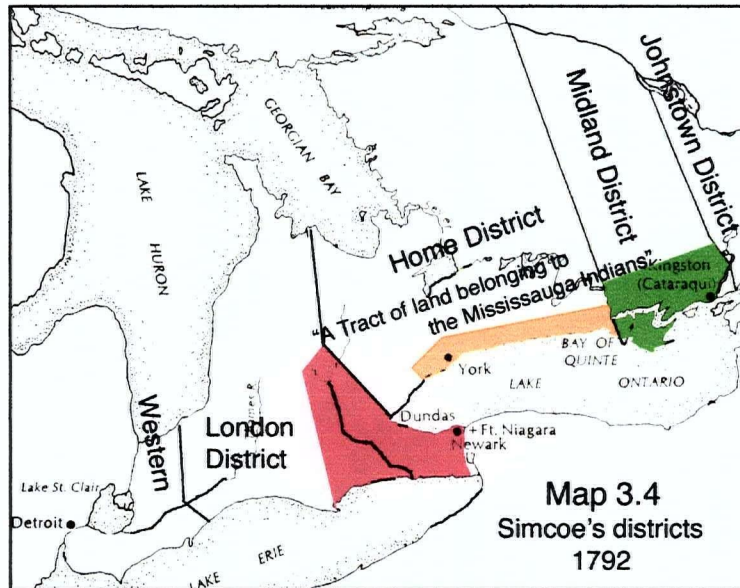
¹⁰⁰ NAC, C.O., vol. 42, no. 316, Simcoe to Dundas, dated Quebec, 28 April 1792: 80.

¹⁰¹ Pers. comm., Arthur J. Ray, 29 October 2003.

¹⁰² NAC, C.O., vol. 42, no. 316, Simcoe to Dundas, dated Quebec, 28 April 1792: 80.

proclaimed that all territory around these townships was “a tract of land belonging to the Mississauga Indians.”¹⁰⁴

The fact that Simcoe chose to create civil administration boundaries that respected



the boundaries of the first three treaties is significant. From the outset of his administration, he was determined to let civil decision makers play a larger role in the protection of aboriginal rights and reserves.¹⁰⁵ Future treaties with the Mississauga followed these civil

boundaries and I will show in my next chapter that when the colonial legislature enacted laws to protect the Mississauga's fisheries, it made these laws to conform with the district/ treaty boundaries.

On 8 July 1792, Simcoe took up his position as the head of Upper Canada's executive council. Among other business, the council heard settler petitions for lands and then passed them to district land boards for allotment. The Archives of Ontario preserved its minute books.¹⁰⁶ The minutes reveal that at its first meeting, Simcoe confirmed his instructions to reserve waterfront lands for upper class settlers and ensure that common settlers understood that their grants were for the purposes of farming only.¹⁰⁷ The imperial instructions also reveal that the governor could alter and modify the instructions if it was to the “advantage or security” of the colony.¹⁰⁸ The ensuing council minutes reveal that Simcoe assiduously attended to the granting of lands across his new districts.

¹⁰³ NAC, C.O., vol. 42, no. 316, Simcoe Proclamation of 16 July 1792: 143-150.

¹⁰⁴ NAC, C.O., vol. 42, no. 316, Simcoe Proclamation of 16 July 1792: 146-7.

¹⁰⁵ NAC, C.O., vol. 42, no. 316, Simcoe to Dundas, dated Quebec, 28 April 1792: 80.

¹⁰⁶ Fraser 1929b.

¹⁰⁷ Executive Council Meeting, Kingston, 9 July 1792, reprinted in Fraser 1929b: 1-7.

¹⁰⁸ Executive Council Meeting, Kingston, 9 July 1792, reprinted in Fraser 1929b: 7.

They also reveal that Simcoe sanctioned grants of lands along the Trent River,¹⁰⁹ Black Creek,¹¹⁰ the 15 Mile Creek,¹¹¹ the 30 Mile Creek,¹¹² the Etobicoke River,¹¹³ and broken waterfront lots along Lake Ontario.¹¹⁴ These waterfront lands went to upper class settlers. For example, in September 1793, the council created a waterfront community of judges when it granted waterfront lands to Chief Justice William Osgoode, Justice Powell, and reserved a third waterfront parcel for a yet unappointed judge.¹¹⁵ On the same day, it awarded all its executive members with waterfront lots at York.¹¹⁶ It appears clear that Simcoe had no intention to reserve these littoral lands for the Mississauga, but did he reserve their rights over fish in the waters fronting these settler grants?

The records reveal that Simcoe's plan was to protect Mississaugas' rights to their fisheries independent from the ownership of the land. For example, in 1795, during the purchase of Mississauga lands for Joseph Brant, Simcoe ordered that that, "it will be proper Captain Brant should understand the Messessague Indians should retain their customary use of the Beach."¹¹⁷ Simcoe therefore treated the Mississauga right as a "customary right". Consistent with English law, Simcoe recognized that the purchase of the land did not necessarily convey rights over the fishery to the new proprietor, but could be severed and retained by the people recognized to be the original or customary proprietors of the resource. A major problem for the Mississauga, however, is that Simcoe did not request that this very important condition be written into the deed. Rather, it appears that this condition was to be communicated verbally, and in all such cases where this verbal practice occurred, it left the Mississauga without written recognition of their customary rights over beaches fronting land grants.

¹⁰⁹ Executive Council Meeting, Navy Hall, 16 April 1793, reprinted in Fraser 1929b: 28; Executive Council Meeting, Newark, 7 June 1794, reprinted in Fraser 1929b: 67; Executive Council Meeting, Navy Hall, 28 June 1794, reprinted in Fraser 1929b: 78.

¹¹⁰ Executive Council Meeting, Navy Hall, 20 May 1793, reprinted in Fraser 1929b: 31; Executive Council Meeting, York, 28 June 1794, reprinted in Fraser 1929b: 78.

¹¹¹ Executive Council Meeting, Navy Hall, 22 June 1793, reprinted in Fraser 1929b: 36.

¹¹² Executive Council Meeting, Newark, 27 May 1794, reprinted in Fraser 1929b: 63.

¹¹³ Executive Council Meeting, York, 5 September 1793, reprinted in Fraser 1929: 56

¹¹⁴ Executive Council Meeting, Navy Hall, 22 June 1793, reprinted in Fraser 1929b: 36; Executive Council Meeting, Newark, 27 May 1794, reprinted in Fraser 1929b: 63; Executive Council Meeting, Newark, 3 June 1794, reprinted in Fraser 1929b: 66.

¹¹⁵ Executive Council Meeting, York, 4 September 1793, reprinted in Fraser 1929b: 49.

¹¹⁶ Executive Council Meeting, York, 4 September 1793, reprinted in Fraser 1929b: 49.

¹¹⁷ J.G. Simcoe to John Butler, dated Navy Hall 20 October 1795, in Cruikshank 1926, IV: 106.

It is also clear that Simcoe had no immediate plans to stop settlers from fishing because the resource was crucial to the genesis of the new settler colony. In a report to the secretary of state, Simcoe explained that it would be years before settlers could produce viable crops and that if were not for the abundant fisheries, the crown would have to supply food relief to the colonists.¹¹⁸ For their part, settlers reported that fishing was easy: “the salmon appear in very large quantities in the fall of the year and penetrate up all the waters that run into the lake, so high that they are often thrown out with the hand”.¹¹⁹ It is clear, therefore, that Simcoe encouraged settlers to draw on the fisheries to save the government from the costs of relief.¹²⁰

It is also clear that Simcoe oversaw his officers’ construction of an elite hunting and fishing preserve in Burlington Bay Lake, Lake Ontario’s most productive wetland and waterfowl gathering place.¹²¹ In June 1793, the Executive Council granted one of its members, Peter Russell, waterfront lands on the north side of Burlington Bay¹²² and the



Figure 3.5. Men angling in Coote's Paradise. By John Herbert Caddy, 1860. Because the executive council did not grant many lands around the wetland, the area remains undeveloped to this day. **Source:** NAC W112.

¹¹⁸ J.G. Simcoe to Henry Dundas, dated London, 12 August 1791, in Cruikshank 1923, I: 48; J.G. Simcoe to the Committee of the Privy Council for Trade and Plantations, dated Navy Hall 1 September 1794, in Cruikshank 1923, III: 56.

¹¹⁹ Quoted in Katherine MacFarlane Lizars, *The Valley of the Humber, 1615-1913* (Toronto: William Briggs, 1913): 115.

¹²⁰ J.G. Simcoe to the Committee of the Privy Council for Trade and Plantations, dated Navy Hall 1 September 1794, in Cruikshank 1925, III: 56.

¹²¹ Mrs. Dick-Lauder, *Pen and Pencil Sketches of Wentworth Landmarks* (Hamilton: Spectator Printing Company: 1897): 109.

next month granted him further lands around Morden's Creek, a salmon stream that entered the marsh.¹²³ As already indicated, Russell was a sportsman, and along with another officer, Captain Cootes, they turned the marsh into a sportsman's haven they named "Coote's Paradise" (figure 3.5).¹²⁴ In an apparent move to protect their paradise, in the summer of 1794, Russell and his fellow council members ordered that no further lands be granted around the marsh.¹²⁵ The council then rejected settler applications to the marsh,¹²⁶ but made an exception in the fall of 1794 for a high ranking naval officer and granted him 800 acres of marshlands along a salmon stream at its head.¹²⁷ The council records indicate that they also preserved the productive waterfowl haunt at Long Point on Lake Erie for elite military men.¹²⁸ In chapter 6 of my study, I will show that officers in Quebec developed similar sport-fishing havens around their garrisons and at the governor's mansion on the Montmorency River.

In the fall of 1792, Simcoe made an effort to protect the salmon fisheries when he requested a list of all the mills and its locations across the colony.¹²⁹ As the upper classes of England already knew, any obstruction on a salmon stream would block the fishes' access to spawning beds and lead to its extinction. A month later, his officials revealed that settlers had erected mills on a multitude of streams across the colony in contravention of the condition in their grants that the land was for "husbandry only".¹³⁰ Simcoe decided to let the illegal mills stand but, in order to protect the salmon fisheries, he passed a resolution in council making it a condition of settler grants that millers "not obstruct the Passage of Fish in those waters, where they usually resort."¹³¹ This was

¹²² Executive Council Meeting, Navy Hall, 22 June 1793, reprinted in Fraser 1929b: 36.

¹²³ Executive Council Meeting, Navy Hall, 23 July 1793, reprinted in Fraser 1929b: 49.

¹²⁴ John Howison, *Sketches of Upper Canada* (Edinburgh, Oliver & Boyd: 1821): 141. Dick-Lauder 1897: 109.

¹²⁵ Executive Council Meeting, Newark, 3 June 1794, reprinted in Fraser 1929b: 65.

¹²⁶ Executive Council Meeting, Newark, 28 June 1794, reprinted in Fraser 1929b: 76.

¹²⁷ Executive Council Meeting, Newark, 3 June 1794, reprinted in Fraser 1929b: 65.

¹²⁸ Executive Council Meeting, Newark, 3 June 1794, reprinted in Fraser 1929b: 65; Executive Council Meeting, Navy Hall, 30 May 1793, reprinted in Fraser 1929b: 33.

¹²⁹ D.W. Smith, Surveyor General, to Augustus Jones, Deputy Surveyor, 26 October 1792, reprinted in Fraser 1906: 333.

¹³⁰ Augustus Jones, Deputy Surveyor, District of Nassau, to D.W. Smith, Surveyor General, 7 November 1792, reprinted in Fraser 1906: 334-5.

¹³¹ NAC, C.O. 42/317, "Council Chamber, 16 April 1793", *Upper Canada Gazette* 8, 6 June 1793; Circular of John Small, C.E.C, reporting on the Resolution of His Excellency Lieutenant-Governor in Council, relative to granting permission to inhabitants of this Province to erect Mill Seats, 20 May 1793, reprinted in Fraser 1906: 229.

Simcoe's first effort to preserve the fisheries, albeit not explicitly for the Mississauga. The only aspect of Simcoe's land granting policies that specifically echo the Mississaugas' treaty reservations is that he informed the council to reject all petitions for islands. In a vague statement, he termed such grants "inexpedient".¹³²

In the fall of 1793, Simcoe began to look north of the *Gunshot Treaty* lands and informed Dundas about his plans to build a communication route between York and the Georgian Bay. This was unsundered Chippewa territory, but Simcoe ordered that it be surveyed and that settlers be granted lots along the route to facilitate its development.¹³³ True to his plan, on the same day that he wrote Dundas, Simcoe began to grant lands between York and Lake Simcoe.¹³⁴

In sum, a close review of the minutes of the executive council's land granting proceedings reveal that they laid the foundations for a colonial society based on the English blueprint. The upper classes obtained large land grants, often on lakes and rivers, and some members preserved key wetlands for their recreation in a manner that was consistent with the ambitions of the landed gentry of England. Meanwhile, the lower classes obtained smaller land grants in the rear of the elite's lands. Most significantly, Simcoe's land board accomplished this objective by ignoring the Mississaugas' reservation of the rivers, creeks, waterfront, and wetlands around the southern front of the colony. In addition, Simcoe encouraged the lower classes to draw on the fisheries to avoid the expense of their relief. The Mississaugas were "astonished" by what they witnessed and experienced and they immediately protested.¹³⁵

First, the Mississauga made it clear that Simcoe's plan to protect their fisheries as customary rights independent from physical land reserves was a complete failure. Mississauga witnesses from the period explained that Colonel Butler had assured them that settlers would purchase salmon from them and create markets for their other products. Instead, when the Mississauga attempted to camp on the shores of private

¹³² Executive Council Meeting, Navy Hall, 17 October 1792, reprinted in Fraser 1929b: 16; Executive Council Meeting, Newark, 3 June 1794, reprinted in Fraser 1929b: 65.

¹³³ J.G. Simcoe to H. Dundas, 16 September 1793, read in the Executive council minutes, 6 April 1796, reprinted in Fraser 1929: 151.

¹³⁴ Executive Council Meeting, York, 16 September 1793, reprinted in Fraser 1929b: 152; Executive Council Meeting, Navy Hall, 6 September 1794, reprinted in Fraser 1929b: 92.

¹³⁵ PAO, F 4337-11-0-8, Chief George Paudash's tradition regarding the *Gunshot Treaty*.

lands, the settlers drove them off, shot their dogs, and even threatened to shoot them. Their precise words are worth repeating:

Father, while Colonel Butler was our Father we were told our Father the King wanted some Land for his people. It was some time before we sold it, but when we found it was much wanted by our King to settle his people on it, whom we were told would be of great use to us, we granted it accordingly. We have not found this to be so, as the inhabitants drive us away instead of helping us, and we want to know why we are served in this manner. Colonel Butler told us the Farmers would help us, but instead of doing so when we camp on the shore they drive us off and shoot our Dogs and never give us any assistance as was promised to our old Chiefs. The Farmers call us Dogs and threaten to shoot us in the same manner when we go on their land.¹³⁶

In the spring of 1795, a "disaffected" group of Mississaugas from Rice Lake took direct action when they harassed settlers in the Bay of Quinté whom they considered to be in violation of their treaty agreement. In response, the settlers petitioned the government for protection.¹³⁷

In terms of Simcoe's plans to survey and settle the lands between York and Lake Simcoe, the Chippewa intercepted his survey party in the spring of 1794. The Chippewa clearly knew the contents of the *Royal Proclamation* and lectured the surveyors about their aboriginal rights. Afterwards, they damaged the estate of a land agent on Younge Street, 32 kilometers north of Toronto.¹³⁸ The action accomplished its intended objective when the land agent wrote to Simcoe and threatened to use the power of his associates to cut off immigration to the colony.¹³⁹

As a result of the Mississauga protests, Simcoe decided to examine all documents and records pertaining to the *Gunshot Treaty*.¹⁴⁰ To his surprise, in January 1795, Lord Dorchester informed him that only a "blank" copy of the *Gunshot Treaty* existed in which Johnson did not describe the boundaries of the surrender or any Mississauga reservations. Dorchester therefore pronounced the *Gunshot Treaty* invalid. In what was now becoming a pattern of deception, Dorchester instructed Simcoe not to reveal its invalidity to the

¹³⁶ NAC, RG 10, vol. 1 proceedings of a meeting with the Mississaugas at the River Credit, 1 August 1805.

¹³⁷ Cruikshank 1926, IV: 2; Cruikshank 1926, IV: 8.

¹³⁸ William Chewett to E.B. Littlehales, dated Newark 31 August 1794, in Cruikshank 1925, III: 24.

¹³⁹ William Chewett to E.B. Littlehales, dated Newark 31 August 1794, in Cruikshank 1925, III: 24.

¹⁴⁰ Joseph Chew to Thomas Aston Coffin, dated Montreal 5 January 1795, in Cruikshank 1925, III: 254.

Mississauga as much of the land in question was being developed, including the town of York. Dorchester wrote that he feared any Mississauga knowledge of the treaty's invalidity would place the government in a precarious position. He added that he had had enough with the "different disorders" of the Indian Department and replaced Johnson with the appointment of a deputy superintendent general of Indian Affairs for Upper Canada.¹⁴¹ Most significantly, Dorchester instructed Simcoe to negotiate a renewal of the *Gunshot Treaty* or re-purchase the lands and "in the mean time suffer no Lands in dispute to be occupied until the Indians are perfectly satisfied".¹⁴² This explains Simcoe's link to the *Gunshot Treaty* and validates the Mississauga oral history claims that associate him with the treaty.

After receiving Dorchester's instructions, Simcoe again informed his subordinates about Ojibwa rights: they are "a free and Independent people" and the survey of their lands was invalid until a treaty was executed "as we can not give what is not our own".¹⁴³ Simcoe concluded that the Mississauga "must enjoy whatever rights they were entitled to, and that have not been expressly given away since."¹⁴⁴ This included the fisheries that the Mississauga had not expressly given away.¹⁴⁵ Simcoe then prepared to meet the Chippewa and Mississauga to find a means to validate the *Gunshot Treaty*. In November 1794, he informed his superiors that he would personally "confirm the Old Indian purchases made in this country."¹⁴⁶ A month later, he informed Dorchester that he was arranging meetings with the Chippewa and Mississauga for the spring of 1795.¹⁴⁷

In March 1795, as Simcoe prepared for his meetings, he instructed his new Superintendent General of Indian Affairs "to devise such measures as may remove all difficulties respecting former purchases."¹⁴⁸ Simcoe's meetings occurred in the middle of May. Unfortunately no records of the proceedings and agreements survive. It is clear,

¹⁴¹ Lord Dorchester to J.G. Simcoe, dated Quebec 22 September 1794, in Cruikshank 1925, III: 104.

¹⁴² Lord Dorchester to J.G. Simcoe, dated Quebec 22 September 1794, in Cruikshank, 1925, III: 104.

¹⁴³ Lt. Governor John Graves Simcoe to the Lords of the Committee of the Privy Council for Trade of Foreign Plantations, 11 September 1794, in Cruikshank 1925, III: 52.

¹⁴⁴ Lt. Governor John Graves Simcoe to the Lords of the Committee of the Privy Council for Trade of Foreign Plantations, 11 September 1794, in Cruikshank 1925, III: 52.

¹⁴⁵ J.G. Simcoe to the Committee of the Privy Council for Trade and Plantations, dated Navy Hall 1 September 1794, in Cruikshank 1923, III: 56.

¹⁴⁶ J.G. Simcoe to Duke of Portland, 10 November 1794, in Cruikshank 1925, III: 179

¹⁴⁷ J.G. Simcoe to Lord Dorchester, dated Kingston 18 December 1794, in Cruikshank 1925, III: 224.

¹⁴⁸ J.G. Simcoe to Alexander McKee, dated Kingston 10 May 1795, in Cruikshank 1931, V: 141.

however, that Simcoe held the meetings and Mississauga and Chippewa oral histories concur that a mutual agreement was reached. The Ojibwa oral histories described above provide at least one insight into the agreement reached: that Simcoe affirmed their reservation of the fisheries in the *Gunshot Treaty* area and promised to protect these rights. Simcoe, however, left the colony in the spring of 1797 before taking action.

In the spring of 1797, Peter Russell assumed authority over the government of Upper Canada and the Mississauga of Rice Lake and the Credit River immediately confronted him with Simcoe's promise to protect their fishing grounds from settler intrusions.¹⁴⁹ In a repeat move, Russell requested a copy of the *Gunshot Treaty* only to learn, in turn, that it was "blank" and "totally invalid".¹⁵⁰ In response, Russell decided to address the problem head on and issued a "*Proclamation to Protect the Fishing Places and Burying Grounds of the Mississagas*". In it, he specifically prohibited settlers from interfering with the Mississauga fisheries.

Whereas, many heavy and grievous complaints have of late been made by the Mississaga Indians, of depredations committed by some of His Majesty's subjects and others upon their fisheries and burial places, and of other annoyances suffered by them by uncivil treatment, in violation of the friendship existing between His Majesty and the Mississaga Indians, as well as in violation of decency and good order: Be it known, therefore, that if any complaint shall hereafter be made of injuries done to fisheries and to the burial places of said Indians, or either of them, and the persons can be ascertained who misbehaved himself or themselves in manner aforesaid, such person or persons shall be proceeded against with the utmost severity, and a proper example made of any herein offending.¹⁵¹

Finally, the Mississauga had a written document that recognized their exclusive fishing rights with a government commitment to prosecute settlers for trespassing on their fisheries.

¹⁴⁹ NAC, RG 10, vol. 2330, file 67071 pt. 2, Robert Prescott to Peter Russell, dated Quebec 21 October 1797.

¹⁵⁰ NAC, RG 10, vol. 2330, file 67071 pt. 2, Robert Prescott to Peter Russell, dated Quebec 21 October 1797.

¹⁵¹ Proclamation of Peter Russell, President, Administering the government, 14 December 1797, Cruikshank 1935, II: 41.

Conclusions

The Mississauga and Chippewa claimed in their oral histories that their ancestors reserved the exclusive right to hunt and fish over points of land, river mouths, and islands in their first treaties with the crown and agreed to only to cede the arable uplands to the British. These oral traditions are confirmed in a number of colonial documents, including Simcoe's 1792 categorical affirmation of their rights reserved on streams, the Lieutenant-Governors actions during the purchase of Brant's lands in 1795, and Russell's "Proclamation to Protect the Fishing Places and Burying Grounds of the Mississauga" in 1797.

Crown records reveal that military officials failed to keep any records, deeds, or maps that described the treaty agreements. John Johnson then misled the executive council about the Mississauga's reservations in the treaties. It appears that the Mississauga's reservation of their wetlands was incompatible with colonial intentions to replicate the social geography of rural England in Upper Canada. As a result of the military's failings and the crown's rigid settlement plans, the colonial administration surveyed and allotted the Mississauga's valued ecosystem components that they reserved in the *Gunshot Treaty*. The exception appears to the Midland District where surveyors did not open the Mississauga's islands, points of land, and some river mouths to settlement

The Mississauga and Chippewa immediately protested against the locations and shape of the non-native settlement that was occurring across their traditional lands. In particular, it is clear that the crown consciously encouraged settlers to draw on the fisheries although Simcoe affirmed in 1792 that the Mississauga had reserved them. It appears that the crown first opted to protect the Mississauga fisheries as a "customary" or "free fishery" right independent from the ownership of the riverbed. The plan failed as settlers took to driving the Mississauga off their waterfronts. It was not until 1797 that Russell finally acted to prohibit settler use of the Mississauga fisheries, but by this point, the basic shape of the settler economy and their settlement of wetlands had taken form. In the next chapter, I will analyze how the Mississauga and Chippewa determined to redress these problems and avoid repeats of the crown's failures when they negotiated a series of new treaties between 1805 and 1820.

Chapter 4

Ojibwa Lords of the Fisheries: 1794-1821

In the first place, the encroachment made upon Indian lands & the abuses of Indian Traders are or must be guarded against by colonial laws... and care in this respect devolves upon the legislature.

John Graves Simcoe, 1794¹

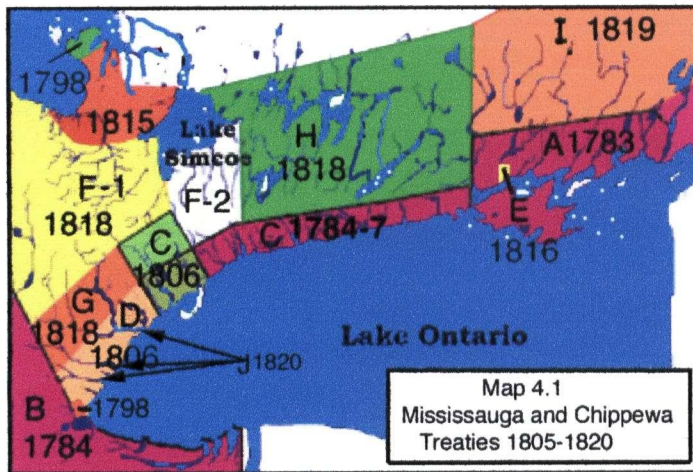
In the previous chapter, I reviewed how Governor Simcoe stepped into the first colonial administration's failure to incorporate the Mississaugas' reservation of exclusive fishing rights into the colony's settlement framework. In turn, Simcoe contributed to the failure when he granted more riparian lands to settlers. Here, I will demonstrate that before Simcoe departed Upper Canada, he left his successors with instructions to pass parliamentary laws to protect the Ojibwa treaty fishing rights independent from the ownership of the adjoining land. The model for Upper Canada's legislation was England's 1705 *Act for the Preservation of Salmon* that reserved the fisheries for the "Lords of Manors and other Owners and Occupiers of Fisheries".² I will argue that through the adaptation of this statute, Upper Canada's parliament recognized the Ojibwa to be the lords of the colony's fisheries and forced the settler population to bear the burden of the *Act's* conservation restrictions. Admittedly, such an interpretation has not been advanced to date as studies on Canadian Indian treaties have not identified an act of parliament that restricted public use of a natural resource specifically to fulfill a treaty promise.³ Demonstrating a link could open new interpretations of parliament's early efforts, perhaps half-hearted, to make the public abide by treaty provisions.

¹ NAC, C.O., 42/318, J.G. Simcoe to the Lords of Trade, 11 September 1794: 230.

² England, *An Act for the Increase and better Preservation of Salmon and other fish, in the Rivers within the Counties of Southampton and Wilts*, 4 Ann (1705) c. 21.

³ There is one exception, historians have noted that in 1829, the Upper Canada parliament passed an act to protect the treaty fishing rights of the Mississauga of the Credit: *An Act to protect the Mississauga tribes, living on the Indian reserve of the river Credit, in the exclusive right of fishing and hunting therein* 10 Geo. IV (1829) c. 3. For different interpretations of this statute, see Hansen 1991: 3; and Wright 1994: 337.

The period between 1806 and 1850 witnessed many treaties as the crown sought to expand its title over most of the Great Lakes basin (map 4.1). It started in 1805-6 when the Crown purchased the Toronto tract ("C") and ended in 1850 when, at the



insistence of the northern Ojibwa and Métis, the crown negotiated the *Robinson Treaties* covering the northern shores of Lakes Huron and Superior.⁴ The first treaty and the last speak categorically to the Ojibwa reservation of their fishing rights. On the other hand, the

treaties signed with the southern Ojibwa between these dates are silent on the reservation of hunting and fishing rights or state that the surrenders were made "without reservation". The affected Ojibwa, however, hold that they negotiated the reservation of their fishing places and rights in these treaties. In this chapter, I examine Mississauga and Chippewa recorded oral traditions that raise doubts that the texts of these treaties reflect the full contents of the agreements. I also show that the crown's minutes of the proceedings corroborate the Ojibwa claims. I then examine the possibility that the crown enacted some of its missing promises in parliamentary fish and game laws.

A review of the Mississauga Treaties between 1805 and 1820

The failed *Mississauga Tract* purchase, 1798

In the spring of 1798, Peter Russell met the Mississauga of the Credit River and proposed they surrender their lands between the Etobicoke River and Burlington Bay (known as the "Mississauga Tract", area "D" on map 3.1). The Mississauga retained Joseph Brant to assist them and placed the protection of their riverine fisheries at the centre of the negotiations. Evidently, the Mississauga were not satisfied with the vague

⁴ Canada 1891, *Treaty #13* ("Toronto Purchase"), signed 1 August 1805, vol. 1: 34-5; Canada 1891, *Treaty #60* ("Robinson-Superior Treaty"), signed 1 September 1850, vol. 1: 147-9; Canada 1891, *Treaty #61* ("Robinson-Huron Treaty"), signed 9 September 1850, vol. 1: 149-52.

protections and geographical references in Russell's *Proclamation to Protect the Fishing Places and Burying Grounds of the Mississagas* (1797). In order to make the location of their fishing places perfectly clear, they drafted a map that marked the boundaries of the riverine properties they intended to reserve. Joseph Brant explained:

I have marked it with a pencil a Mile to the West of the 12 Mile Creek to extent 3 miles from the Lake and then a Strait line till it strikes the line of the River of Credit 3 Miles from the Lake, by that means the fisheries of all the Rivers will be reserved, and otherwise it would be impossible, for if the mouths of the Creeks should be settled it would certainly spoil the fishery.⁵

While they reserved riparian lands in their treaties, it appears the Mississauga were no longer content with crown's lesser commitment to protect their customary rights to their fisheries. As I showed in the previous chapter, settlers failed to respect these customary legal rights and chased the Mississauga off their fishing places. Now, the Mississauga wanted their riparian buffer lands clearly reserved as well.

Brant's passage also speaks to aboriginal knowledge of negative ecological impacts. In "Conservation and Subsistence in Small-Scale Societies", Eric Smith and Mark Wishnie defined indigenous conservation with the qualification that "any action or practice must not only prevent or mitigate resource overharvesting or environmental damage, it must also be designed to do so."⁶ Their definition is a response to a literature that mounts many examples of native spiritual and environmental relationships but does not demonstrate that these beliefs, while environmentally sensitive, contained the intention to prevent negative environmental impacts. In *The Ecological Indian*, Krech focused a significant portion of his study on native spiritual concepts to argue that these beliefs had no apparent connection to animal conservation and if anything, suggest that the native beliefs in reincarnation obviated concerns about the long-term effects of overharvesting.⁷ While there is widespread evidence that the Mississauga believed that water and fish spirits played a vital role in fish abundance, it is also clear that these

⁵ NAC, RG 10, vol. 1, Joseph Brant, Chief, Six Nations, to William Claus, Superintendent, Fort George, 5 April 1798.

⁶ Eric Alden Smith and Mark Wishnie. "Conservation and Subsistence in Small-Scale Societies", *Annual Review of Anthropology* 29.1 (October 2000): 493.

⁷ Krech 1999: 22, 117, 170-1, 204. See also Tanner's review of this component of Krech's work: Tanner 2001.

beliefs did not blind them from observing ecological relationships and negative impacts. In Brant's passage above, it is clear that the Mississauga understood that non-native development of river mouths (i.e. channelization through sand bars, mill dams, etc.,) would negatively affect their fisheries. Hence, the Mississauga made the strategic decision to protect the mouths of their rivers to control settlers from fishing and/or altering the environment in order to conserve the resource that sustained their society. In essence, the Mississauga advanced a strategic plan to conserve the fisheries and preserve their rights.

Russell ended his negotiations when he balked at the price the Mississauga demanded for their land.⁸ The crown then left the negotiations in abeyance until 1805.

The Toronto Purchase, 1805

In 1805, the Crown returned its attention to validating the *Gunshot Treaty* and especially crown title to the lands below York. At the beginning of the fall salmon fishery, William Claus, the Superintendent General of Indian Affairs, called a meeting with three Mississauga chiefs who had signed the *Gunshot Treaty* (1787-8). Two were now dead, including Wabukanyne (Pike *dodem*) of the Credit River who was murdered when a British soldier raped his sister-in-law. At the time, they were selling salmon at York.⁹ The surviving chief, Pakquan, was not a member of the Credit River, but a representative of the Reindeer *dodem*, likely from Rice Lake. George Paudash' grandfather, Gemoagpenasse also attended. The crown's minutes of the proceedings reveal that Claus opened with a statement that the *Gunshot Treaty*'s borders were vague and proposed they draft a "fresh deed".¹⁰ Quinepenon, the leading man of the Pike *dodem* who replaced Wabukanyne, spoke on behalf of the other chiefs who represented the Eagle and Reindeer *dodems*. Quinepenon did not contest the validity of the *Gunshot Treaty* but reiterated Colonel Butler and John Johnson's original proposition, "We do not

⁸ Joseph Brant, Chief, Six Nations to James Givens, Superintendent, York, 24 July 1798, Cruikshank, *Russell Correspondence*, II: 233.

⁹ Minutes of a Council with the Mississaugas, 26 September 1796, Cruikshank 1935, I: 44-5.

¹⁰ NAC, RG 10, vol. 1, Proceedings of a Meeting with the Mississaugas, 31 July 1805: 289-292.

want the Water, we want the Land.”¹¹ He recalled that in 1787, his father declined to surrender their land between Burlington Bay and the Etobicoke River and that they reserved the fishery in the Etobicoke River boundary: “all our old Chiefs at the same time particularly reserved the fishery of the River to our Nation”.¹² Once again, the evidence, this time preserved by the crown, is clear that Johnson and Butler only sought land in the *Gunshot Treaty* and that the chiefs of the Mississauga of Credit reserved a riverine fishery for their community.

After some discussion, Quinepenon negotiated the surrender of the lands specifically below York. This time, he sought greater protections and insisted that his exclusive fishery reservation be put in writing and that he receive a copy of the treaty.¹³ The next morning, Claus tabled a treaty that categorically stated that the Mississauga “granted” their Indian title over their lands, “save and except the fishery in the said River Etobicoke, which they the said Chiefs, Warriors and people expressly reserve for the sole use of themselves and the Mississauga Nation.”¹⁴ The treaty shows that the crown did not “grant” fishing rights to the Mississauga. Rather, the Mississauga “reserved” their original or aboriginal rights over the fishery and “granted” their land to the crown. On this note, the legal scholar, Roland Wright, recently erred when he argued that the crown had no constitutional authority to “grant” exclusive treaty fishing rights to the Ojibwa.¹⁵ It is clear that Wright failed to see that the Ojibwa owned the fisheries and other titles and it was up to them, not the crown, to grant aspects of their propertied prerogatives and reserve others.

It is clear that the crown’s failure to protect the Mississauga’s riverine fisheries along the whole northern shoreline of Lake Ontario, as promised in the *Gunshot Treaty*, was part of these negotiations. Chief Pakquan or Gemoagpenasse may have raised these failures on behalf of their people located within the eastern portion of the invalid treaty area. The treaty purports to address the invalidity of these *Gunshot Treaty* and is prefaced with the need to define the contents of the “blank” deed. While the crown

¹¹ This wording of the recollection of Colonel Butler’s speech coincides with words in the oral history statements made by the chiefs of the Mississauga of Rice, Curve, and Balsam lakes around 1847 and located in the Hunter & Hunter files, see chapter 3 of this study.

¹² NAC, RG 10, vol. 1, Proceedings of a Meeting with the Mississaugas, 31 July 1805: 289-292.

¹³ NAC, RG 10, vol. 1, Proceedings of a Meeting with the Mississaugas, 31 July 1805: 289-292.

¹⁴ Canada 1891, Surrender 13, vol. 1: 34-35.

attached a blank deed to the treaty, it again left its boundaries and key contents empty. In the end, the treaty deeds only described lands below York as the subject of the surrender. Although the 1805 surrender did nothing to validate Crown title over the remaining *Gunshot Treaty* lands, the crown must have agreed in these 1805 negotiations to clarify the fact that the eastern Mississauga had reserved their fisheries east of York in the *Gunshot Treaty* because they titled it: *Mississauga Indians re: Treaty of 1787 made at Carrying Place, made clearer Fishing rights on creeks reserved for Indians*.¹⁶ Evidently, the 1805 treaty signed by the eastern Mississauga leader Gemoagpenasse involved new promises to make “clearer” his peoples’ reservations of their fisheries.¹⁷ In the second half of this chapter, I will show that after parliament ratified the *Toronto Purchase*, it passed *An Act for the Preservation of Salmon* that protected the Mississauga fisheries over the mentioned geography between the Bay of Quinté and Burlington Bay.

The Burlington Tract

On 1 August 1805, moments after Quinepenon, Pakquan, and the other chiefs signed the *Toronto Purchase*, Claus proposed that they also surrender the “Mississauga tract”.¹⁸ The minutes of the proceedings reveal that Quinepenon delayed the meeting until the next morning when he again voiced the hardships caused by the government’s failure to protect the Mississauga riverine fisheries. The women who managed and controlled the fisheries and flora of these ecosystems apparently had much to say to Quinepenon who reported their objections: “they have found fault with so much having been sold before it is true we are poor, & the Women say we will be worse, if we part with any more”.¹⁹ Quinepenon proposed the surrender of a smaller amount of land and then produced a map, perhaps the same map used in the failed 1798 negotiations. On it, Quinepenon illustrated his demand for a mile wide reservation on both banks of the Credit River, a half a mile on each bank of the 16 Mile and 12 Mile Creeks, and the

¹⁵ Wright 1994.

¹⁶ PAO, RG 1, A-VII vol. 11, Indians Inspector made an indenture *re. Mississauga Indians re. Treaty of 1787 made at Carrying Place, made clearer Fishing rights on creeks reserved for Indians*. The file contains a copy of the 1805 treaty for York.

¹⁷ In the Mississauga language the word *Gimaa*, alternatively spelt *Gemoag and Okema*, means chief. Therefore the name Gemoagpenasse can be read in English as Chief Pennasse. In the 1805 Treaty, Pennasse’s name appears as Okemapennesse

¹⁸ NAC, RG 10, vol. 1, Proceedings of a Meeting with the Mississaugas at the River Credit, 2 August 1805.

beach along the Lake Ontario shoreline, two or three chains wide. He also indicated a maple sugar bush (a women's private property) that required protection.²⁰ Together, the fishing places, the riverine gardens, and adjoining sugar bush on the uplands represented the Mississauga's valued ecosystem components.

Quinepenon evidently proposed the land reservations around the three rivers to protect the Mississauga's valued ecosystem components. Experience had taught him that protecting his people's access to the Lake Ontario beaches was another critical matter, therefore, he sought a written assurance that his people's rights of access and use of the lakeshore beaches would be protected from settler interference: "that [we] may not be subject to be driven off."²¹ The crown, however, sought more land and the negotiations ended for the night.²²

When the two parties next met, the Mississauga agreed to the surrender of a larger area of land but the issue of their secure access to beaches remained a stumbling block. Further negotiations led to the Mississauga's acceptance of a government promise to protect their customary right to camp on the beaches, but not a written treaty promise.²³ In terms of the riverine environments, Quinepenon again related the women's concerns about the surrender, especially the surrender of rivers, and insisted on the reservation of the Credit River and 16 and 12 Mile Creeks, "together with our huts & cornfields & the flats or bottoms along the creeks."²⁴ At the end of the day, the Mississauga signed a provisional agreement with the wording that they "granted" the land to the Crown while, "reserving to ourselves and the Mississauga Nation the sole right of the fisheries in the Twelve Mile Creek, the Sixteen Mile Creek, the Etobicoke River, together with the flats or low grounds on said creeks and river, which we have heretofore cultivated and where we have our camps."²⁵ They finalized the treaty the in 1806.²⁶ Once again, the Mississauga "granted" one aspect of their original title (land) and reserved others (sole right of fisheries, "low grounds", the river solum, and river buffer lands). The language

¹⁹ NAC, RG 10, vol. 1, Proceedings of a Meeting with the Mississaugas at the River Credit, 2 August 1805.

²⁰ NAC, RG 10, vol. 1, Proceedings of a Meeting with the Mississaugas at the River Credit, 2 August 1805.

²¹ NAC, RG 10, vol. 1, Proceedings of a Meeting with the Mississaugas at the River Credit, 1 August 1805.

²² NAC, RG 10, vol. 1, Proceedings of a Meeting with the Mississaugas at the River Credit, 1 August 1805.

²³ NAC, RG 10, vol. 1, Proceedings of a Meeting with the Mississaugas at the River Credit, 1 August 1805.

²⁴ NAC, RG 10, vol. 1, Proceedings of a Meeting with the Mississaugas at the River Credit, 2 August 1805.

²⁵ Canada 1891, Treaty 13a, signed 2 August 1805, vol. 1: 35-6.

²⁶ Canada 1891, Treaty 14, vol. 1: 37-39.

of a “sole” right of fisheries was part of Blackstone’s definition of the package of original rights belonging to a sovereign.

Once again, the minutes of the negotiations reveal that the Mississauga had a strategic plan for the conservation of their valued ecosystem components. A major tenet of their resource management system, as I outlined in chapter 1, was the ability to monitor and control outside pressures on their resources. The treaty provisions that recognized their exclusive use and control of their riverine fishing environments provided them, at least in western law, with the continued ability to prevent settler access and use of their resources which they regulated with their internal laws. In essence, the Mississauga negotiated a treaty that gave outside force to their internal laws. Below, I will show that the issue of settler access to their beaches was an outstanding matter that parliament addressed it in its next session when it passed an *Act for the Preservation of Salmon*.²⁷

The Moira River, Midland District

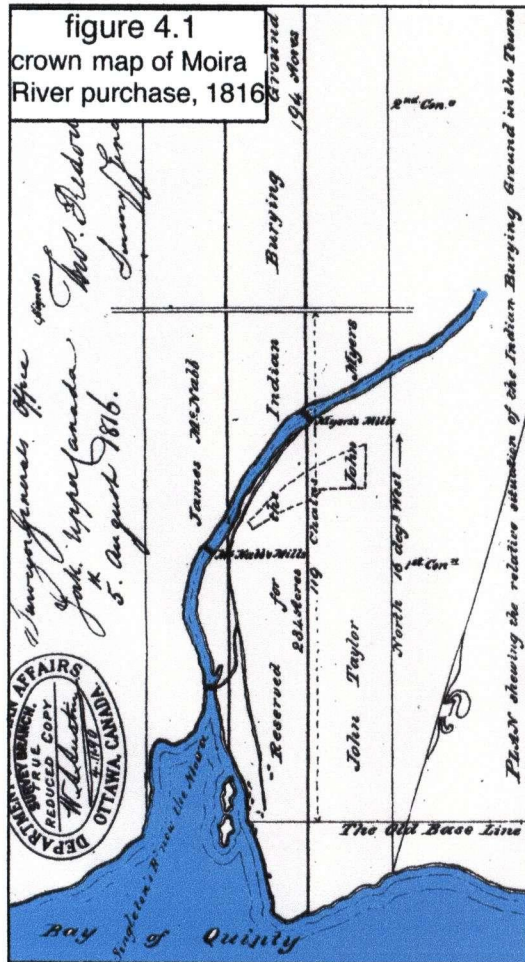
In 1811, British officials began to actively encourage immigration to the colony and turned their attention to purchasing the Moira River to establish a new town-site (present-day Belleville). In late July, just before the fall fishery, the Superintendent of Indian Affairs, James Givens, called a meeting at the mouth of the *Pemetashwotiang* Creek (Port Hope).²⁸ Chief George Paudash attended the treaty negotiations and in 1847, recorded his personal memory of the event. He recalled that Givens found him at his fishing grounds and called him to the assembly. At the meeting, according to Paudash, Givens explained through an interpreter, Jean Baptiste Cadotte, that the king’s people were starving in Europe and that the crown desired lands for their settlement in Upper Canada. Paudash claimed that he and the other chiefs agreed on condition that the crown reserve their rivers, islands, and points of land in the region for their hunting and fishing.

²⁷ Upper Canada, *An Act for the Preservation of Salmon*, 47 Geo. III (1807) c.12

²⁸ NAC, MG 11, Q series, vol. 314, Proceedings of a meeting with the Mississague Indians of the River Moira at Smith’s Creek, 24 July 1811: 166.

They also demanded monies and presents.²⁹ Givens, however, executed a treaty that makes no mention of such reservations.³⁰

Fortunately, the crown recorded the proceedings in five pages of minutes that corroborate Paudash's memory of the events.³¹ The minutes begin with Givens'



introductory remarks after which he tabled a map of the proposed purchase area (figure 4.1).³² The map illustrates several important facts. First, it demonstrates the cultural ecology of the Mississauga and why they originally reserved the river in the *Crawford Purchase*: it was a productive salmon fishing ground, some Mississauga families erected a village at its mouth in the fall; and due to their perenial use of the place, it was used as a burial ground. The map also reveals that settlers had intruded upon this reserve and altered its aquatic environment. For instance, one settler erected a mill dam across the salmon stream and staked a property on the reserve. Another settler (James McNabb) appears to have obtained a crown grant to the lower reaches and mouth of the river. As

well, the local settlers erected a bridge across the mouth of the river. These actions were likely the types of settler incursions that prompted a group of "disaffected" Mississaugas from Rice Lake to harrass the region's settlers in 1795.³³

Three Mississauga chiefs were present and agreed to Claus' proposal but made some conditions. First, an unnamed Mississauga speaker protested that the crown was

²⁹ PAO, F 4337-11-0-8, recorded tradition regarding the *Gunshot Treaty*.

³⁰ Canada 1891, Treaty # 17, signed 5 August 1816, vol. 1: 45-6.

³¹ NAC, MG 11, Q series, vol. 314, Proceedings of a meeting with the Mississague Indians of the River Moira at Smith's Creek, 24 July 1811: 166.

³² Canada 1891, Treaty # 17, signed 5 August 1816, vol. 1: 45-6.

³³ Cruikshank 1926: IV: 2; Cruikshank 1926, IV: 8.

allowing settlers to squat on their reserved islands in the Bay of Quinté. He thus stated: "We wish to reserve these Islands for our corn grounds." Further, he wanted the reservation in writing so that they could take action against the settlers: "we wish you would now give us a writing to show these people that they may be sent off".³⁴ Evidently, these Mississauga were as concerned as the people at the Credit River that their agreement be documented. As well, this component of the minutes corroborates Paudash's memory that they affirmed the reservation of their islands in the treaty. In this case, the Mississauga reported that they used the islands for gardening, another critical component of their cultural ecology. The minutes further reveal that the Mississauga informed Givens that settlers were cutting timber on Rice Lake "without our consent" and that they desired the government's assistance in "luring these white people away".³⁵ Evidently, the Mississauga held that these forest resources were north of the *Gunshot Treaty* boundary and unceded. Finally, the minutes reveal that the Mississauga demanded monetary payment plus axes, hoes, and spears. The first two articles would have facilitated their island gardening, and the latter is an acknowledgement that they would continue their practice of spear fishing in these environments.³⁶

Givens did not commit to placing the Mississauga conditions in the treaty and in fact, he did not. Rather, Givens replied that he would place these conditions before the Deputy Superintendent General of Indian Affairs, William Claus, with the explicit assurance: "I have no doubt that you will in a very short time receive a favorable answer as it is their particular care to do every Justice to all their Indian Children."³⁷ Givens' assurance make it clear why the Mississauga understood that the Crown agreed to their reservation of their islands. The question is thus: if the crown acted honourably, how did it fulfill these promises of protection and "justice"?

³⁴ NAC, MG 11, Q series, vol. 314, Proceedings of a meeting with the Mississague Indians of the River Moira at Smith's Creek, 24 July 1811: 169.

³⁵ NAC, MG 11, Q series, vol. 314, Proceedings of a meeting with the Mississague Indians of the River Moira at Smith's Creek, 24 July 1811: 169.

³⁶ NAC, MG 11, Q series, vol. 314, Proceedings of a meeting with the Mississague Indians of the River Moira at Smith's Creek, 24 July 1811: 169.

³⁷ NAC, MG 11, Q series, vol. 314, Proceedings of a meeting with the Mississague Indians of the River Moira at Smith's Creek, 24 July 1811: 169-70.

Before the Mississauga and the crown ratified the treaty, the war of 1812 broke out and the crown diverted the treaty monies and presents to the war effort. As a result, the parties did not sign the treaty until 1817.³⁸

The Nottawasaga Treaty, 17 October 1818

After the war of 1812, the crown decided to expand its agricultural settlement frontier north of the lands involved in the *Gunshot, Crawford, and Mississauga Tract* treaties (see map 4.1). The decision led to three treaties all signed during the fall fish run of 1818 (areas F,G, and H in map 4.1). It started in 1817 when the crown directed the Deputy Superintendent General of Indian Affairs, William Claus, "to ascertain under what terms the Indians claiming lands in these places were disposed to surrender them."³⁹ Claus apparently realized that the Chippewa claimed the lands draining into Lake Simcoe and that the Mississauga claimed the territory draining into Lake Ontario. He therefore, approached each proprietor in separate meetings.

Claus decided to first meet the Chippewa and called a meeting at the York garrison where he proposed they surrender the Nottawasaga River watershed and lands draining into Lake Simcoe (area F on map 4.1).⁴⁰ The next year, he met the Chippewa leaders a second time during their fall fishery at the mouth of the Holland River where he obtained a surrender.⁴¹ Claus executed a treaty that states that the Chippewa surrendered the land, "without reservation or limitation in perpetuity".⁴² The Chippewa, however, hold in their oral histories that they reserved their right to hunt and fish over the ceded territory. For example, in 1858, when the federal Department of Marine and Fisheries ("Fisheries") initiated its plans to lease the Chippewa's fishing grounds in Lake Simcoe and Georgian Bay, the Chippewa immediately protested that the re-allocations violated

³⁸ Canada 1891, Treaty # 17, signed 5 August 1816, vol. 1: 45-6.

³⁹ NAC, RG 10, vol. 782, letter from Richmond to the Earl of Bathurst, dated Quebec 19 December 1818: 162-3.

⁴⁰ NAC, RG 10, vol. 34, Minutes of a Council held at the Garrison of York on Saturday the 7 of June 1817 with the Rain Deer, Otter, and Cat Fish & Pike Tribes of the Chippewas Nations from the vicinity of Lake Huron: 19881-83.

⁴¹ NAC, MG 19 F1, Claus Papers, vol. 11, Minutes of an Indian Council held in the house of Nathaniel Gamble, in the Township of King, near the Holland River, on Thursday the 17th October 1818 with Musquakie, or the Yellowhead, Tkaqueticum, or the Snake, Muskigonce, or the Swamp, Manitonobe, or the Male Devil, and Manitobinince, or the Devil's Bird, Chiefs and Principal Men of the Chippewa Nations: 104.

⁴² Canada 1891, Treaty #18 (Nottawasa Treaty), signed 17 October 1818, vol. 1: 47.

their treaty rights to the fisheries.⁴³ In 1896, the Indian Agent attached to these communities explained the Chippewa's memory that their ancestors reserved the exclusive right over their fisheries, without being subject to legislative restrictions:

the Indians of Rama, Georgina and Snake Islands contend that they have special privileges contained in a certain treaty made with the Government which gives them the right to catch fish for their own use as long as the grass grows and they further state that it is not prescribed in the Treaty how the fish is to be caught or at what season.⁴⁴

The minutes of Claus' negotiations with the Chippewa at the York garrison in 1817 corroborate the Chippewas' accounts.⁴⁵ At this meeting, Chief Yellowhead represented the Reindeer *dodem*, Kaqueticum the Cat Fish, Maskigonce the Otter, and Manitonobe the Pike. The minutes of the meeting reveal that the Chippewa *dodem* leaders made the surrender conditional upon several stipulations. First, they declined to surrender all their lands around Lake Simcoe and demanded that the south and eastern shores of Lake Simcoe be reserved for their hunting and fishing (area F-2 on map 4.1).⁴⁶ From the Chippewa's social and environmental perspective, this demand makes perfect sense. In map 1.5, I showed that this region contains many productive subwatersheds. Many of these watersheds emptied directly into Lake Simcoe in front of the Chippewa island communities at Thorah, Georgina, and Snake islands, and hence these river mouths acted as direct off-shore corridors to prime hunting and spring fishing grounds. Secondly, in map 1.3, I showed that the Otter, White Oak, Reindeer and possibly as many as three other *dodems* claimed watershed properties in this basin. The leaders of these *dodems* may have assigned special importance to these productive and multiply-owned subwatersheds and therefore demanded its reservation. Claus agreed to the reservation,

⁴³ NAC, RG 10, vol. 549, 190, Petition from the Chiefs and Warriors belonging to Beausoleil and Christian Island to William Bartlett, Visiting Superintendent of Indian Affairs, dated Beausoleil Island, 21 July 1859, quoted in Lytwyn 1992: 97.

⁴⁴ NAC, RG 10, vol. 2405 file 84,041, Indian Agent McPhee to the Superintendent General of Indian Affairs, 4 November 1896.

⁴⁵ NAC, RG 10, vol. 34, Minutes of a Council held at the Garrison of York on Saturday the 7 of June 1817 with the Rein Deer, Otter, and Cat Fish & Pike Tribes of the Chippewas Nations from the vicinity of Lake Huron: 19881.

⁴⁶ NAC, RG 10, vol. 123, Chippewa of Rama, petition to the Earl of Elgin, Governor General of Canada, 1 February 1848: 6199-6202; NAC, RG 10, vol. 2332 file 67,0171-4C, sworn statement of Robert Paudash 1923: 230-5.

but instead of explicitly naming the region as a Chippewa reserve, he simply left the area out of the surrender.⁴⁷

Secondly, the Chippewa articulated a treaty strategy for their conservation of beaver. They informed Claus that the non-natives "inhabitants are in the habit of destroying the Beaver when they happen to meet with their huts."⁴⁸ Chippewa families claimed specific beaver lodges as their property and spared a select number of females and males when they harvested it each year.⁴⁹ It was the family's secure tenure that gave them the ability to selectively harvest the members of the lodge and sustain its population. The non-native actions, however, not only deprived the Chippewa of their beaver catches, but either wiped out the lodge or created uncertain levels of extraction that undermined a family's ability to know the pressures on the population and adjust their harvest accordingly. In a strategic move to bolster their internal laws for the management of beaver, the Chippewa demanded to "reserve to ourselves the right of Beaver hunting".⁵⁰ They also demanded the reservation of their right of "hunting generally throughout the extent of the land which we relinquish to you."⁵¹ The latter right may be seen in English law as a customary right or franchise over game regardless of who owned the soil where it was killed.

In terms of the fisheries, the Chippewa explained that non-natives stole fish from their fishers. They further explained that these actions deprived them of their commerce in fish with non-natives. Thus, they demanded protection of their fishers and their commercial enterprises.⁵² The crown's minutes also reveal that the Chippewa demanded

⁴⁷ Canada 1891, Treaty #18 (Nottawasaga Treaty), signed 17 October 1818, vol. 1: 47.

⁴⁸ NAC, RG 10, vol. 34, Minutes of a Council held at the Garrison of York on Saturday the 7 of June 1817 with the Rein Deer, Otter, and Cat Fish & Pike Tribes of the Chippewas Nations from the vicinity of Lake Huron: 19883.

⁴⁹ George Heriot, *Travels through the Canadas, containing a description of the picturesque scenery on some of the river and lakes with an account of the productions, commerce, and inhabitants of those provinces to which is subjoined a comparative view of the manners and customs of the several Indian Nations of North and South America* (London: Richard Phillips, 1807): 501.

⁵⁰ NAC, RG 10, vol. 34, Minutes of a Council held at the Garrison of York on Saturday the 7 of June 1817 with the Rein Deer, Otter, and Cat Fish & Pike Tribes of the Chippewas Nations from the vicinity of Lake Huron: 19883.

⁵¹ NAC, RG 10, vol. 34, Minutes of a Council held at the Garrison of York on Saturday the 7 of June 1817 with the Rein Deer, Otter, and Cat Fish & Pike Tribes of the Chippewas Nations from the vicinity of Lake Huron: 19883.

⁵² NAC, RG 10, vol. 34, Minutes of a Council held at the Garrison of York on Saturday the 7 of June 1817 with the Rein Deer, Otter, and Cat Fish & Pike Tribes of the Chippewas Nations from the vicinity of Lake Huron: 19884.

seines and fishhooks as part of their payment, which is an obvious indication that they intended to continue, if not intensify, their fishing practices.⁵³

Claus concluded the negotiations with the assurance that he would place the Chippewa's terms before the Governor.⁵⁴ In short, the crown's minutes corroborate the Chippewa's oral history claims that they negotiated the reservation of their exclusive hunting rights, sought protection of their fishers from non-native interference, and reserved their watersheds east of Lake Simcoe. The next fall, Claus and the Mississauga signed a treaty at the mouth of the Holland River.⁵⁵

Why Claus executed a treaty that stated there were "no reservations" in the surrender is unexplainable in the context of the crown's own records.⁵⁶ Below, I will discuss how parliament acted to protect the Chippewa's fisheries when it amended the *Act for the Preservation of Salmon* in 1820. At the same time, parliament also enacted, *An Act for the Preservation of Deer* that protected Chippewa deer hunting from non-native interference. These actions may explain how the crown intended to fulfill these promises absent in the text of the treaty.

Adjutant surrender, 28 October 1818

Eleven days after Claus executed the *Nottawasaga Treaty*, he met the Mississaugas of the Credit River during their fall fishery and proposed they surrender their lands north of the tract they ceded in 1805-6 and directly south of the *Nottawasaga* surrender (area "G" in map 4.1).⁵⁷ The negotiations occurred over three days. Afterwards, Claus executed a treaty that states that the Mississauga surrendered the land "without reservation or limitation in perpetuity".⁵⁸ Once again, these Mississaugas hold

⁵³ NAC, RG 10, vol. 34, Minutes of a Council held at the Garrison of York on Saturday the 7 of June 1817 with the Rein Deer, Otter, and Cat Fish & Pike Tribes of the Chippewas Nations from the vicinity of Lake Huron: 19883.

⁵⁴ NAC, RG 10, vol. 34, Minutes of a Council held at the Garrison of York on Saturday the 7 of June 1817 with the Rein Deer, Otter, and Cat Fish & Pike Tribes of the Chippewas Nations from the vicinity of Lake Huron: 19884.

⁵⁵ Canada 1891, Treaty #18 (Nottawasa Treaty), signed 17 October 1818, vol. 1: 47.

⁵⁶ Canada 1891, Treaty #18 (Nottawasa Treaty), signed 17 October 1818, vol. 1: 47.

⁵⁷ NAC, RG 10, vol. 790, Minutes of the proceedings of a Council held at the Reserve on Credit, on the 27th, 28, 29th of October, with Adjutant, Chief of the Eagle Tribe, Weggishgomin of the Eagle Tribe, Cabinonike of the Otter Tribe, Pagiitaniquatoibe of the Otter Tribe, and Kawahtahaquibe of the Otter Tribe, principal men of the Mississauga Nation of Indians: 7025-7028.

⁵⁸ Canada 1891, Treaty # 19 ("Adjutant" Treaty), signed 28 October 1818, vol. 1: 47-48.

in their oral histories that the surrender was conditional upon the reservation of their exclusive hunting and fishing rights across the ceded territory. In 1844, for example, they informed the Governor General:

At the last bargain and sale of our lands we objected to selling our lands on account that we would have no place to hunt and fish. The persons making the bargain on behalf of the government, stated that their people were tillers of the ground, and no[t] hunters, that they wanted the lands to till, and not to game and to fish [sic]; the game and fish should still be the property of the Indians. With the above assurance we consented and the Government settled an annuity of ... and now in many parts of our country our people are driven away by the white people for taking what we consider our own.⁵⁹

This Mississauga account fits with other Mississauga oral histories discussed above: that the crown only sought the region's soil resources and that both parties agreed to a form of ecological co-existence whereby the Mississauga reserved their exclusive rights over fish and game and the crown obtained title on condition that settlers restricted their activities to agriculture. This form of agreement makes perfect sense from the perspective of the cultural ecology, economies, and agendas of both groups. It also corresponds to the Mississauga's successful bargaining position in their 1805-6 surrenders. The account also makes it clear that the crown efforts to protect the Mississauga's customary fishing rights was a complete failure as they were still "driven away by the white people"⁶⁰

For its part, the crown recorded the treaty proceedings in 3.5 pages of minutes, which appear short in light of the fact that the negotiations occurred over 3 days. The minutes reveal only one Mississauga condition: that their existing river reserves in the 1805-6 treaties be protected. The balance of the minutes reflect two speeches by Claus in which he stated, from personal observation, that non-natives were invading the Mississauga's three riverine reserves made in 1805-6 and using alcohol to extract property from the Mississauga. Clause twice told the Mississauga to act "like men" and "drive them from your River".⁶¹ The minutes do not, however, reflect any negotiations

⁵⁹ NAC, RG 10, vol. 1011, Chiefs Joseph Sawyer and John Jones, petition to Governor General, dated Credit River, 5 December 1844.

⁶⁰ NAC, RG 10, vol. 1011, Chiefs Joseph Sawyer and John Jones, petition to Governor General, dated Credit River, 5 December 1844.

⁶¹ NAC, RG 10, vol. 790, Minutes of the proceedings of a Council held at the Reserve on the Credit, on the 27th, 28, 29th of October, with Adjutant, Chief of the Eagle Tribe, Weggishgomin of the Eagle Tribe,

over the protection of the Mississauga's aboriginal rights to hunt and fish in the new treaty tract.

The Rice Lake Treaty, 5 November 1818

One week after Claus executed the *Adjutant Treaty*, he met the Mississauga of the Peterborough Lakes and proposed that they surrender their lake district to the north of the *Gunshot Treaty* surrender (area "H" in map 4.1). The government planned to canalize the ancient aboriginal canoe route from the Trent River to a point on Lake Simcoe to provide the military with a water route between Lake Ontario and the upper Great Lakes that would allow it to bypass the American guns at Niagara and Detroit. To enhance the security of the canal the government planned to settle its shores with loyal settlers.

Claus called a meeting with Mississauga chiefs who represented the Eagle, Rein Deer, Crane, Snake, and White Oak *dodems*, all of whom had hunting grounds in the proposed treaty area (map 1.5). They met at the *Pemetashwotiang* Creek during the late stages of the salmon fishery and the negotiations lasted one day. In the end, Claus executed a treaty similar to the two former ones that states the Mississauga surrendered a large tract of land centered around Rice Lake "without reservation in perpetuity" (area "H" in map 4.1).⁶²

Once again, Mississauga's recorded oral traditions differ from the text of the treaty. For example, Chief George Paudash, a signatory to the *Rice Lake Treaty*, recorded:

We all agreed to grant this request and we said Hurrah. Lets us surrender our land to our great father. and again I remember the promise the Govnt. made with my Grand father. which was very sweet and we again decided to make the same agreement with him – to reserve a part of the mainland the Points and mouths of Rivers and Islands. And this is what the Governor said, your great father is very glad. And I thank you very much. And I promise that these Islands, points, mouths or rivers and parts of the mainland shall be reserved for your hunting and fishing purposes...⁶³

Cabinonike of the Otter Tribe, Pagiitaniquatoibe of the Otter Tribe, and Kawahtahaquibe of the Otter Tribe, principal men of the Mississauga Nation of Indians: 7025-7028.

⁶² Canada 1891, Treaty #20 (*Rice Lake Treaty*), signed 5 November 1818, vol. 1: 48-9.

⁶³ PAO, F 4337-11-0-8, Chief George Paudash's recorded tradition regarding the *Gunshot Treaty*.

Again, this statement reveals a strategic decision to reserve islands, points of land, and river mouths to protect these productive environments where families claimed and managed fish and game. Paudash was not the only Mississauga witness to preserve knowledge of the treaty negotiations. In the 1850s, several other Mississauga witnesses to the *Rice Lake Treaty* informed parliament that Claus opened with the statement that: "the King wishes his red children to surrender to him a portion of their country for the use of his white children who are destitute in their country." They recorded that they then retired in council and afterwards agreed to the surrender on condition that all their islands in the tract be reserved. They also stated that Clause "pledged the Crown to protect for the Indians all the Island so by them reserved."⁶⁴ The *Rice Lake Treaty*, however, specifically states that all lands, and specifically the island, were surrendered.⁶⁵

The crown's minutes of the *Rice Lake Treaty* negotiations corroborate the Mississaugas' oral claims. First, the minutes reveal that by 1818, the crown had begun to survey the region around Rice Lake in an area that the Mississauga considered reserved lands north of the *Gunshot Treaty*.⁶⁶ In response, the Mississauga tore up the surveyors' posts and threw them in the lakes. The crown's minutes reveal that Claus opened the treaty negotiations by admonishing the Mississauga for their actions. But, he himself could not have known the actual northern boundary of the *Gunshot Treaty* (in 1805 conceded that the treaty's boundaries were "vague").⁶⁷ Instead of revealing his ignorance, Claus deceptively asked the Mississauga to reveal its northern boundary on a map.⁶⁸ He then stated that the crown wanted the land to its north because:

⁶⁴ PAO, F 4337-11-0-10, copy of a letter to the Legislative Assembly of the Province of Canada, ca. 1850s.

⁶⁵ Canada 1891, Treaty #20 (*Rice Lake Treaty*), signed 5 November 1818, vol. 1: 48-9. This clause became an increasingly acute problem for the Mississauga when non-native farmers began to placard the regions' wetlands to prevent trapping and other trespasses after 1890 (NAC, RG 10, volume 2405 file 84,041 part 2, petition of 25 Mississauga of Alderville to the Governor General of Canada, 28 February 1917; RG 10 volume 2405 file 84,041 part 2, General Council of the Rice Lake Band at Hiawatha to the Assistant Deputy and Secretary of Indian Affairs, 12 march 1917).

⁶⁶ As stated above, in their Moira River treaty negotiations, they asked the crown to stop the lumbering around Rice Lake.

⁶⁷ NAC, RG 10, vol. 1, Proceedings of a Meeting with the Mississaugas, 31 July 1805: 289-292.

⁶⁸ NAC, RG 10, vol. 790, Minutes of a Council held at Smith's Creek in the Township of Hope on Thursday the 5th of November 1818 with the Chippewa [sic] Nation of Indians inhabiting and claiming a Tract of Land situate between the Western boundary Line of the Midland District & the Eastern Boundary of the Home District, extending Northerly to a Bay at the Northern Entrance of Lake Simcoe in the Home District: 7029.

you must perceive the number of your Great Father's children about him have no home & out of pity for them he wishes to acquire land to give to them. He is charitable to all, does not like to see his children in distress. Your land is not all that he has been purchasing, he has looked to the setting of the sun, as well as the rising, for places to put his children.⁶⁹

The record corresponds with the Mississauga's memory that Claus asked for the lands for the king's "destitute" children.⁷⁰

The crown's minutes then reveal that a young chief, Buckquaquet, of the Eagle *dodem*, spoke on behalf of other *dodem* chiefs. These minutes are clear that Buckquaquet stipulated that all island be reserved in the treaty: "that the islands may be left for them [women and children] that when we try to scratch the earth, as our Brethren the farmers do, & put anything in that it may come up to help our women and children."⁷¹ The crown minutes corroborate the Mississauga's oral history claims about the reservation of islands. The record also reveals the first part of the Mississauga's strategy to protect their southern fishing islands and gardening grounds where women, children, and elders spent the winters. Buckquaquet also held that the families' hunting and fishing grounds be protected: "We hope that we shall not be prevented from the right of Fishing, the use of the Waters, & hunting where we can find game."⁷² In this statement, Buckquaquet demanded more than just the right to hunt and fish, but sought the assurance that settlers would not interfere "where" the Mississauga hunted and fished. The word "where" is subtle and may have been the translator or transcriber's truncation of Buckquaquet's request that wetlands around islands, mouths or rivers, and points of land be reserved as their hunting and fishing grounds. Nevertheless, the word "where" remains crucial evidence that the Mississauga demanded the reservation of their harvesting places which not opportunistic but defined family sites.

⁶⁹ NAC, RG 10, vol. 790, Minutes of a Council held at Smith's Creek in the Township of Hope on Thursday the 5th of November 1818 with the Chippewa [sic] Nation of Indians inhabiting and claiming a Tract of Land situate between the Western boundary Line of the Midland District & the Eastern Boundary of the Home District, extending Northerly to a Bay at the Northern Entrance of Lake Simcoe in the Home District: 7030.

⁷⁰ PAO, F 4337-11-0-10, copy of letter to the Legislative Assembly of the Province of Canada, ca. 1850s.

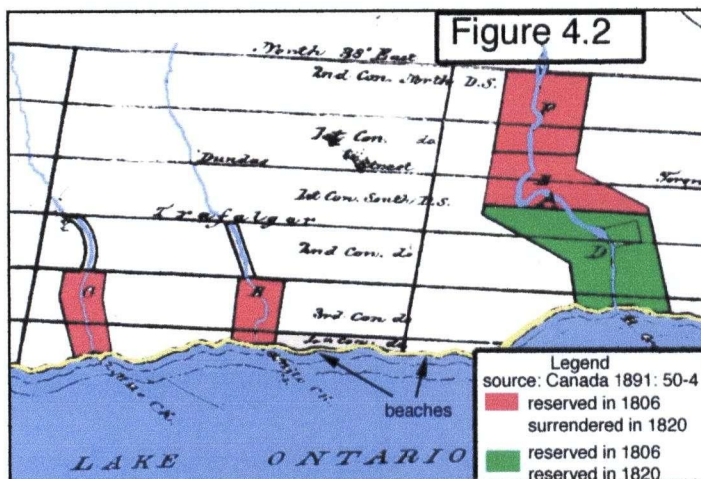
⁷¹ NAC, RG 10, vol. 790, Minutes of a Council held at Smith's Creek in the Township of Hope on Thursday the 5th of November 1818 with the Chippewa [sic] Nation of Indians inhabiting and claiming a Tract of Land situate between the Western boundary Line of the Midland District & the Eastern Boundary of the Home District, extending Northerly to a Bay at the Northern Entrance of Lake Simcoe in the Home District: 7031.

Claus concluded the meeting with the explicit assurance that he would place the Mississauga's demands in front of the governor and that the islands would be reserved: "your words shall be communicated to him. The request for islands, I shall also inform him of, I have no doubt that he will accede to your wish." Nevertheless, Claus immediately executed a treaty that included the islands in the surrender.⁷³ He also stated that he hoped that non-native settlers entering the region would be "kind" and "charitable" and not interfere with Mississauga harvesting, but he placed no conditions on settler actions in the treaty.⁷⁴

In sum, the Mississauga's oral memory about the reservation of the places where they fished, trapped, and hunted, especially islands, is corroborated in the crown's minutes of the proceedings. Claus, however, drafted a treaty that had the opposite objective. It is also important to note that the treaty specifically states that the surrender involved lands within the Midland and Newcastle districts. Below, I will examine whether the crown acted to honour these agreements when parliament amended its *Act for the Preservation of Salmon* in 1820.

Treaties #22 and #23, 1820

In 1820, the crown sought one final set of surrenders to complete its purchases of



the arable lands in southern Upper Canada. In 1820, Claus asked the Mississauga of the River Credit to surrender their riverine reserves on the 12 Mile and 16 Mile Creeks and the Credit River.⁷⁵ After some negotiations, Claus executed two treaties. The first states that

⁷² NAC, RG 10, vol. 790, Minutes of a Council held at Smith's Creek...1818: 7031.

⁷³ Canada 1891, Treaty #20 (*Rice Lake Treaty*), signed 5 November 1818, vol. 1: 48-9.

⁷⁴ NAC, RG 10, vol. 790, Minutes of a Council held at Smith's Creek in the Township of Hope on Thursday the 5th of November 1818 ...: 7032.

⁷⁵ NAC, RG 10, vol. 37, Minutes of a Council held with the Mississaugue Nation of Indians at the Garrison of York, 28 February 1820: 21056-7.

the Mississauga agreed to surrender the upper portion of their Credit River reserve (figure 4.2).⁷⁶ The second treaty states that they agreed to surrender the two creeks (figure 4.2).⁷⁷ In their recorded oral traditions, however, the Mississaugas claimed that they had no intentions to surrender these last remaining hunting and fishing environments. In 1829, they petitioned Lieutenant Governor John Colborne that:

Several years ago we owned land on the twelve mile creek, the sixteen, and the 'Credit'. On these we had good hunting and fishing, and we did not mean to sell the land but keep it for our children for ever. Our great father (by Col. Claus) sent to us and said, the White people are getting thick around you and we are afraid they or the Yankees will cheat you out of your land. You had better put it in the hands of your great father the King to keep for you till you want to settle and he will appropriate it for you good & he will take good care of it, and will take you under his wing, and keep you under his arm, & give you schools & build houses for you when you want to settle. Some of these words we thought good, but we did not like to give up all the lands as some were afraid that our great father would keep our land. But our great father has always been very good to us, & we believed all his words & always had great confidence in him so we said, "yes, keep our land for us". Our great father then thinking it would be best for us sold all our land on the twelve, the sixteen & the Upper part of the Credit to some white men. This made us very sorry for we did not wish to sell it.⁷⁸

Evidently, the Mississauga of the Credit held that they had negotiated an entirely different agreement in which the crown agreed to protect and preserve their last remaining hunting and fishing reserves in their interest. The crown produced a record that purports to be minutes of the negotiations; however, it is only a record of Claus's closing words after the negotiations were over.⁷⁹ These so-called minutes therefore do not serve as a record with which to verify the Mississauga's claims.

On a final note, I will show below that when these two treaties were placed on the books, parliament amended its *Act for the Preservation of Salmon* to allow settlers into the 12 Mile and 16 Mile Creeks but prohibited settler fishing in the area of the Credit

⁷⁶ Canada 1891, Treaty # 22, signed 28 February 1820, vol. 1: 50-3.

⁷⁷ Canada 1891, Treaty # 23, signed 28 February 1820, vol. 1: 53-4.

⁷⁸ NAC, RG 10, vol. 1011, Chief Joseph Sawyer, petition to Sir John Colborne, Lieutenant Governor of Upper Canada, dated Credit River, 3 April 1829.

⁷⁹ NAC, RG 10, vol. 37, Minutes of a Council held with the Mississauga Nation on Indians at the Garrison of York, 28 february 1820.

River in a manner that perfectly mirrored the new public geography established in the treaty.

Making Laws

Simcoe's plans to protect aboriginal rights through acts of parliament

At this point, I need to step back in time to explain the plans Simcoe left his successors for the protection of Ojibwa lands and treaty rights through colonial acts and briefly review some of the evidence in previous chapters. In 1792, when Simcoe entered Upper Canada, he informed his superiors, the Lords of Trade, that: "Any portion of lands ceded by them [Mississauga] held as a Reservation must and shall be fully protected, as well as rights reserved on certain Streams and Lakes for fishing and hunting privileges."⁸⁰ He also informed the secretary of state that his "new government of Upper Canada will not suffer any encroachment to be made upon the Land which they have not sold, but which will be preserved for their comfort & satisfaction."⁸¹ It is significant that Simcoe choose to describe Mississauga rights as something to be "preserved". As I showed in chapter 2, the English parliament "preserved" the hunting and fishing rights of the landed gentry in a variety of fish and game statutes. In the same series of correspondence, Simcoe expressed his distrust of the Indian Department and stated that he would create a greater role for his civil government in the management of Indian affairs.⁸² In chapter 3, I reviewed evidence that Simcoe decided to protect Ojibwa fishing rights as rights held independent from the ownership of land (a "free fishery" or customary rights). This arrangement failed as settlers invaded the Mississauga fisheries with impunity. By the fall of 1794, it appears that Simcoe decided that it was time to restrain settlers through laws when he wrote his superiors, "in the first place, the encroachment made upon Indian land & the abuses of Indian Traders are or must be guarded against by colonial laws." He added, "care in this respect devolves on the Legislature."⁸³ Evidently, he was prepared

⁸⁰ PAO, F 4337-2-0-11, John Graves Simcoe to the Lords of Trade, Quebec 28 April 1792.

⁸¹ J.G. Simcoe to Henry Dundas, one of his Majesty's principal Secretaries of State, 10 March 1792, in Cruikshank 1923 I: 118. It is significant that Simcoe chose to describe Indian reserved lands as lands "preserved", clearly indicating that the words "preservation" and "reservation" were to be interchangeable in Upper Canada as they were in the laws of England.

⁸² NAC, C.O., vol. 42, no. 316, Simcoe to Dundas, dated Quebec, 28 April 1792: 80.

⁸³ NAC, C.O. 42/318, J.G. Simcoe to the Lords of Trade, 11 September 1794: 230.

to pass colonial laws to protect the Mississauga and Chippewa's reserved lands and resources.

In the spring of 1795, Simcoe continued to advise his superiors that colonial laws were necessary to restrain settler encroachments on aboriginal lands. In another letter, he advised the secretary of state that he had misgivings about the integrity of officials in the Indian Department. Simcoe now firmly believed that the Upper Canada legislature was the "only" branch of government that could prevent settler trespasses on aboriginal lands.⁸⁴ He wrote, "the Legislature... can alone prevent improper Encroachments being made upon the Lands of the Indians". In his mind, the legislature was the proper authority to carry out the principles in the *Royal Proclamation*: "the legislature alone can give due efficacy to those General Principles of Policy which his Majesty shall think proper to adopt in respect to the Indians".⁸⁵ It is not clear if Simcoe attempted to table any such statutes as the records of the Upper Canada legislature are missing for the year 1795 and 1796. Simcoe did, however, leave one piece of advice to his successors. He understood that the legislative assembly (elected lower house) would resist the passage of laws that restricted their constituents' resource use and that it was therefore the responsibility of the executive assembly (appointed upper house) to "temper and guide to the public Interest every important Law."⁸⁶ Simcoe suggested that the Lieutenant-Governor or other leader of the executive council use "his influence with the other Branches of the Legislature" to guide the bills for aboriginal protections into law. Simcoe then left the colony in 1796.

In 1797, Russell took up Simcoe's advice when he used the Executive Council to issue a *Proclamation to Protect the Fishing Places and Burying Grounds of the Mississagas* (1797). It was the first of many civil laws with the intention to restrict public access to fisheries to protect a treaty promise.

Simcoe did not identify a legal model for the protection of Ojibwa fishing rights. Many models, however, existed in North America. For example, in 1796, the United States Congress passed *An Act to regulate trade and Intercourse with the Indian Tribes*,

⁸⁴ J.G. Simcoe to Lord Dorchester, dated Kingston 9 March 1795, in Cruikshank 1925, III: 320.

⁸⁵ J.G. Simcoe to Lord Dorchester, dated Kingston 9 March 1795, in Cruikshank 1925, III: 320.

⁸⁶ J.G. Simcoe to Lord Dorchester, dated Kingston 9 March 1795, in Cruikshank 1925, III: 320.

and to Preserve Peace on the Frontiers.⁸⁷ The *Act* drew a line along a river and asserted non-native title to all lands and resources on its eastern side, but stated that if any citizen crossed over the line “to hunt, or in any wise destroy the game”, he was liable to a \$100 fine or six months in jail.⁸⁸ While this American law prohibited settlers from crossing a frontier line, the legal and cultural geography of Upper Canada was much different. In Upper Canada, the Mississauga did not retreat from Euro-Canadian settlement (nor were they expected to) but attempted to live inside the settlement areas by reserving their rights over river mouths, shorelines, and islands. These negotiated agreements created many pockets of aboriginal lands and rights. Therefore, in Upper Canada, the delineation of laws and rights to natural resources was not as simple as drawing a single line.

The socio-cultural geography of Upper Canada was similar (by design) to rural England where parliament already preserved the landed gentry’s rights to fisheries in rivers and ponds scattered across the Kingdom. I will show that these “preservation” laws became the Upper Canada model for the protection of Ojibwa fishing rights. Upper Canada, however, was not the first colonial assembly to modify England’s *Salmon Preservation* laws to fit their local social context. In 1763, Nova Scotia passed a fishery law and New Brunswick followed suit in 1786. The two legislatures drew their model from England’s 1710 act for the *Preservation of Fish*. Most importantly, the colonial legislatures kept the *proviso* that identified an owner of the fisheries but modified it to fit their local situation (table 4.1).

For example, in 1786, New Brunswick passed a fishery law with a *proviso* that recognized the officials of the City of Saint John to be the owners of the harbour fisheries.⁸⁹ They drew the wording of their *proviso* almost exactly from the 1710 English *Act* that recognized the lords and majors of London to be the owners of the Thames River fishery (table 4.1).⁹⁰ In this case, the colonial legislature recognized the mayors and officials of St. Johns to own the harbour fisheries; the local townspeople and others excluded from the franchise had no rights to fish there. A settler record from St. John

⁸⁷ United States, *An Act to regulate trade and Intercourse with the Indian Tribes, and to Preserve Peace on the Frontiers*, 19 May 1796.

⁸⁸ United States, *An Act to regulate trade and Intercourse with the Indian Tribes...* 1796: s. 2.

⁸⁹ New Brunswick (colony), *An Act to prevent Nuisances by Hedges, Wears, and other Incumbrances, obstructing the passage of Fish in the Rivers, Coves and Creeks of this Province*. 26 Geo. III c.31. s.5.

⁹⁰ England, *An Act for the better Preservation and Improvement of the Fishery* 9 Ann (1710) c. 26. s. 8

confirmed that the river and harbour fisheries were vested in a group of owners and that public access was prohibited.⁹¹ In the same year, the legislature of Nova Scotia passed a similar law that recognized riparian owners to hold the sole rights to riverine fisheries.⁹²

Table 4.1

Date	Juris-diction	Statute	Proviso
1705	England	<i>An Act for the Increase and better Preservation of Salmon and other fish, in the Rivers within the Counties of Southampton and Wilts</i> (4 Anne c. 21)	s.1 described persons qualified to fish as "the Lords of Manor, and other Owners and Occupiers of Fisheries in the said County of Southampton and Southern parts of Wiltshire". s. 2 described the balance of the population as "not being by law duly qualified".
1710	England	<i>An Act for the Preservation and Improvement of the Fishery within the River Thames and for regulating the governing the Company of Fishermen on the said River</i> (9 Anne. c. 26)	s. 8. "Provided always... that this Act, or anything herein contained shall not extend, to prejudice or derogate from the rights, privileges, or authorities of the City of London, exercised by the Lord of the said City... or any Lords of Manors, Proprietors, Owners or Occupiers of any Rivers, Creeks, Streams or Fisheries, adjacent to, or within any part of the said Limits..."
1786	New Brunswick	<i>An Act to prevent Nuisances by Hedges, Wears, and other Incumbrances, obstructing the passage of Fish in the Rivers, Coves and Creeks of this Province.</i> 26 Geo. III c.31.	"provided that nothing in this act ... shall extend or be construed to extend to abridge, diminish, or interfere with the rights of fishery... given or granted to the mayor, alderman and commonality of, or to the freemen and inhabitants of the city of St. John".
1786	Nova Scotia	<i>An Act in addition to, and amendment of ... An Act to prevent Nuisance by Hedges, Wears, and other Incumbrances, obstructing the passage of Fish in the Rivers in this Province.</i> 26 Geo. III c.7, s.6.	"Provided nevertheless and it is hereby declared and enacted, that this Act or anything therein contained shall not extend, or be construed to extend to... the owners or proprietors of the soil of such rivers."
1821	Upper Canada	<i>An Act for the Preservation of Salmon.</i> 2 Geo. IV c.10. s.8	"that nothing in this act contained shall extend, or be construed to extend, to prevent the Indians fishing as heretofore when and where they please".

⁹¹ Patrick Campbell, *Travels in the interior inhabited parts of North America in the years 1791 and 1792*, (Toronto : Champlain Society, 1937): 26.

⁹² Nova Scotia (colony), *An Act in addition to, and amendment of ... An Act to prevent Nuisance by Hedges, Wears, and other Incumbrances, obstructing the passage of Fish in the Rivers in this Province*, 26 Geo. III (1786) c. 7, s. 6.

It too modeled its *proviso* on England's 1710 *Act*. In this case, the legislature softened the *proviso* to allow settler-farmers a limited subsistence access to the fishery so long as it did not inconvenience the fisheries' owners and proprietors.⁹³

In sum, by the late 18th century, colonial legislators replicated English game laws and its *provisos* that restricted public access and preserved the fisheries for certain proprietors. These laws acquired force when Nova Scotia and New Brunswick appointed fishery overseers to enforce their laws in 1786. Unlike the American law that drew a frontier line, the 1710 English *Acts* fit the social and environmental context of the British colonies. These statutes did not draw a boundary line, but preserved the fishing rights of certain selected groups over aquatic pockets in the colonies.

Upper Canada followed suit

In 1807, Upper Canada followed suit and passed *An Act for the Preservation of Salmon*. The 1821 and 1823 versions of the *Act* contained the *proviso*: "that nothing in this act contained shall extend, or be construed to extend, to prevent the Indians fishing as heretofore when and where they please".⁹⁴ Identically, Upper Canada's *Acts for the Preservation of Deer* passed in 1821, 1839, 1843, and 1851 contained the *proviso*: "That nothing in this act contained shall extend or be construed to extend, to any individual or individuals of the nations of Indians now or hereafter to be resident within the limits of this province."⁹⁵ A reading of the Upper Canada *Acts for the Preservation of Salmon* and *Acts for the Preservation of Deer* in the context of the English and colonial fishery laws discussed above indicates that they were intended to preserve or reserve the fisheries and

⁹³ Nova Scotia (colony), *An Act in addition to, and amendment of ... An Act to prevent Nuisance by Hedges, Wears, and other Incumbrances, obstructing the passage of Fish in the Rivers in this Province*, 26 Geo. III (1786) c. 7, s. 6.

⁹⁴ Upper Canada, *An Act to repeal the Laws now in force relative to the Preservation of Salmon, and to make further provisions respecting the Fisheries in certain parts of this Province; and also to prevent accidents by fire from persons fishing by torch or fire light*, 2 Geo. IV (1821). c. 10 s.8; Upper Canada, *An Act to repeal part of, and to amend and extend the Provisions of an Act passed in the second year of the Reign of His present Majesty, intituled, "An Act to repeal the Laws now in force relative to the Preservation of Salmon, and to make further provisions respecting the Fisheries in certain parts of this Province; and also to prevent accidents by fire from persons fishing by torch or fire light"*, 4 Geo. IV (1823) c.20 (section 8 of 2 Geo IV c.10 not repealed).

⁹⁵ Upper Canada, *An Act for the Preservation of Deer within this Province*. 2 Geo. IV (1821). c. 27. s. 2; Upper Canada, *An Act passed in the fourth year of the reign of His late Majesty King George the Fourth, intituled, 'An Act for the Preservation of Deer within this Province,' and to extend the provisions of the same; and to prohibit Hunting and Shooting on the Lord's Day*, 2 Victoria (1839) c. 12 s. 12.

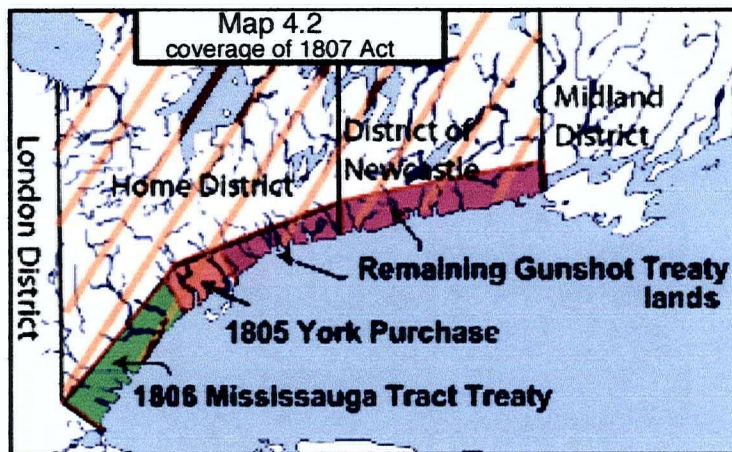
deer for the Ojibwa while the burden of conservation restrictions fell on settlers. This conclusion is consistent with the construction of all the fishery laws in England, New Brunswick, and Nova Scotia that used *provisos* to identify the social group for whom the resource was being reserved.

In the remainder of this chapter, I demonstrate that the Upper Canada parliament passed and then amended the *Act for the Preservation of Salmon* in the context of each new treaty with the Mississauga and Chippewa between 1805-6 and 1820.

Treaties and Upper Canada's Parliament

The 1807 *Act for the Preservation of Salmon*

Although the crown completed the *Toronto Purchase* in 1805, Peter Russell did not present it to his fellow Executive Council members until the summer of 1806.⁹⁶ A few months later, he tabled the *Mississauga Tract Purchase*.⁹⁷ The legislature of Upper



Canada was not in session at this time.⁹⁸ When it did open in 1807, it promptly passed the first *Act for the Preservation of Salmon*.⁹⁹ The *Act* applied to the Home and Newcastle districts, which in 1807 precisely covered the *Gunshot Treaty*

region and the “Mississauga Tract” and the unceded Ojibwa hunting grounds to its north. It was not a perfect measure to protect the Ojibwa’s exclusive rights over the fisheries that they negotiated in their treaties. The social objectives of the *Act*, however, are clear. First, Russell was a documented angler and the statute did not restrict him or his fellow anglers from sport fishing. Settlers could only spear fish and the *Act* had no bearing on

⁹⁶ Canada 1891, Peter Russell, 18 June 1806, vol. 1: 35.

⁹⁷ Canada 1891, Wm. Hatton to President Russell, 12 September 1806, vol. 1:36.

⁹⁸ Alexander Fraser, ed., “The Journals of the Legislative Assembly for the year 1806”, in *The Eighth Report of the Bureau of Archives for the Province of Ontario* (Toronto, 1912): 55-117.

the Ojibwa. It thus protected the Ojibwa fisheries to some extent by restricting settlers to a basic subsistence level of fishing by banning their use of obstructive nets or other apparatus. When the act is read in conjunction with the Mississauga treaties of 1805-6 treaties, the two show that the Ojibwa held the rights to the fisheries, that settlers were restricted to spearing, and that the upper classes protected their angling pursuits.

By comparison to other colonial acts, the Upper Canadian act was weak. The fine for violators was for the same amount the English parliament decreed over a hundred years earlier and the penal time for default of payment was reduced from three months to one month in a common jail. There was no closed season and the fine was half the amount imposed forty years earlier in Nova Scotia, New York, and New Brunswick; it was a tenth of the amount established in Nova Scotia in 1786. Most importantly, while the legislatures of England, New York, Nova Scotia, and New Brunswick all appointed fishery overseers by 1786, the legislators of Upper Canada did not appoint any until 1857.¹⁰⁰ Given this context, Upper Canada's commitment to the legislation raises fundamental questions.

The journals of the legislative assembly and of the executive council reveal how the *Act* came into being and the source of its weaknesses. The journals show that Mr. Justice Thorpe, a puisne judge of the Court of the King's Bench and elected member of the assembly, drafted the *Act* and tabled it in the lower house.¹⁰¹ The Solicitor General seconded the motion and helped Thorpe push the bill through the assembly. It is significant that Thorpe was a judge trained in Ireland and conversant in English constitutional law. It is probably also significant that he was a close friend of Peter Russell.¹⁰² The latter fact suggests that Russell may have followed Simcoe's advice to use his "influence with the other Branches of the Legislature" to guide aboriginal protection bills into law. The journals of the legislative assembly do reveal that Simcoe was correct that the legislative assembly, an elected lower house that represented settlers' interests, would resist the passage of laws that restricted their constituents' resource use. In particular, the journals reveal that Thorpe's original draft of the *Act* contained a closed

⁹⁹ Upper Canada, *An Act for the Preservation of Salmon*, 47 Geo. III c. 12.

¹⁰⁰ Canada (province), *The Fishery Act*, 20 Victoria (1857) c. 21 s. 4.

¹⁰¹ Journals of the Legislative Assembly, 4 March 1807, reprinted in Fraser 1912: 167.

season from 1 September to the end of November. This clause would have effectively prevented all settler fishing during the time the salmon ran. This measure would have been consistent with the 1705 English *Salmon Act* that “closed” the fishery to peasants at the only time the fish were available while keeping it “open” to the lords and other owners and proprietors of the fisheries, or in this case, the Ojibwa. The elected assembly, however, forced Thorpe to remove the closed season clause from the *Act*.¹⁰³ In sum, the records reveal the difficulty inherent in using an elected body of settlers to enact laws to protect aboriginal rights.

Subsequent amendments to the 1807 *Act* illustrate that it continued to have a temporal and spatial relationship to the Mississauga treaties that followed (table 4.3).

Table 4.3

Treaty	Date	Treaty area	Date	Preservation of Salmon” Statute, Bill, or proclamation	Affected area
Failed negotiations for the Mississauga Tract	1797-1798		1798	<i>Proclamation to Protect the Fishing Places and Burying Grounds of the Mississagas</i>	No specified territory
Toronto purchase, Treaty #13a	1806	Trenton to Burlington Bay	1807	<i>Act for the Preservation of Salmon</i> 47 Geo 3 c. 12	<i>Act</i> covered Home and Newcastle Districts. The lands from Trenton to Etobicoke River (the <i>Gun Shot Treaty</i> area)
Treaty # 18	1818	Home District	1821	<i>An Act to Repeal the laws now in force for the preservation of Salmon, and to make further provisions respecting the fisheries in certain parts of this province...</i> 2 Geo 4 c. 10	The <i>Act</i> created no-fishing zones at the mouths of rivers and creeks in the Home District.
Treaty # 19	1818	Home District	<i>Ibid.</i>	<i>Ibid.</i>	The <i>Act</i> created no-fishing zones at the mouths of rivers and creeks in the Home District.

¹⁰² G.H. Patterson, “Thorpe, Robert”, *Dictionary of Canadian Biography* [hereafter *DCB*] vol. 7 (Toronto: University of Toronto Press, 1988): 864.

¹⁰³ Journals of the Legislative Assembly, 6 March 1807, reprinted in Fraser 1912: 172.

Treaty # 20	1818	Newcastle District	<i>Ibid.</i>	<i>Ibid.</i>	The <i>Act</i> created no-fishing zones at the mouths of rivers and creeks in the Newcastle District.
Treaties # 22 and 23	1820	Surrender of sole fishing rights in 16 Mile and 12 Mile Creeks in Gore District. Reserved sole fishing rights on a section of Credit River, in the Home District	<i>Ibid.</i>	<i>Ibid.</i>	The <i>Act</i> included provisions for the Credit Rivers, 16 Mile and 12 Mile Creeks.

1810, Amendments to the *Act for the Preservation of Salmon*

Because the Upper Canada *Act for the Preservation of Salmon* contained no closed season or provisions for fishery overseers, unlike its British model and other colonial copies, the Mississauga had no access to the power and surveillance possessed by other proprietors of fisheries in English law jurisdictions. The fines under the *Act* were also weak and the records examined above (and others in the next chapter) show that settlers regarded the fines as a mere tax on fishing. The records also show that settlers used alcohol to persuade the Mississauga of the Credit River to grant them access to the fishery and in some cases, forced the Mississauga to fish for them. Thus, the settler incursion into the Mississauga salmon fisheries continued unabated after 1807. After the opening of the legislature in 1810, the attorney General, Thomas Gough, tabled a bill to restore the closed season article to the *Act*.¹⁰⁴ The assembly did not treat the bill lightly and subjected it to several amendments in committee that, unfortunately, are not recorded.¹⁰⁵ When the assembly passed the bill up to the legislative council, the upper house spent considerable time amending it in committee.¹⁰⁶ In the end, the bill passed. It described the 1807 *Salmon Act* as “inadequate” and amended it to include a closed

¹⁰⁴ Journals of the Legislative Assembly, 17 February 1807, reprinted in Fraser 1912: 320

¹⁰⁵ Journals of the Legislative Assembly, 21, 23, February, 1, 2 March 1807, reprinted in Fraser 1912: 327-8, 333, 343, 347,

¹⁰⁶ Journals Legislative Council, 24, 26, 27, 28 February 1807, reprinted in Alexander Fraser, “The Journals of the Legislative Council of Upper Canada for the years 1792, 1793, 1794, 1798, 1799, 1800, 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1810, 1811, 1812, 1814, 1819”, *Seventh Report of the Bureau of Archives for the Province of Ontario* (Toronto: L.K. Cameron, 1911): 351-4,

season from 25 October to 1 January.¹⁰⁷ Its adequacy, however, may also be questioned. It did not close settler fishing from 1 September to the end of November as Thorpe originally intended in 1807. The effect of the amendment was to diminish settlers' access to the fisheries during part of its productive run, but as the salmon were known to start running in late August and peak in September, the season still allowed settlers two months to spear the fish runs.

In the fall of 1810, William Claus traveled to the Credit River to observe the Mississauga prosecution of the salmon fishery and spoke to Quinepenon with whom he had negotiated the surrenders in 1805-6.¹⁰⁸ Quinepenon informed Claus that settlers still invaded their fishery and that these actions circumvented their plans to develop a commercial fishery. Quinepenon wanted active government surveillance and protection of his community's fisheries and threatened that if the settlers would not respect their fishing rights, the Mississauga would resort to aggressive measures.

Father. We wish you to help us and prevent them from fishing. We will kill the fish and sell them to whites, we have told them so, but they do not mind us. We are strong enough to drive them away, but we do not wish to hurt any of our Father's people; but if they persist we must take care of our property and strike them.¹⁰⁹

Claus advised the Mississauga "not to use personal violence" and informed them of their English law rights; "you have a right to cut their Boats and destroy their Liquor -- they have no right to go into your Country if you do not wish it."¹¹⁰ Claus' focus was on the unlawfulness of settler fishing and he received the clear message that nothing short of physical surveillance would fulfill the crown's promise of protection. In the words of Quinepenon, "we wish you to help us and prevent them from fishing."¹¹¹ It was not until 1829, however, that parliament responded and provided these Mississauga with the powers to arrest and hold non-native offenders (see next chapter).

¹⁰⁷ Upper Canada, *An Act to extend the provisions of an Act passed in the forty-seventh year of His majesty's Reign, intituled "An Act for the Preservation of Salmon"*, 50 George III (1810) c. 3 s. 1-2.

¹⁰⁸ NAC, RG 10, vol. 27, 3 October 1810, proceeding of a meeting with the Mississauga Indians at the River Credit.

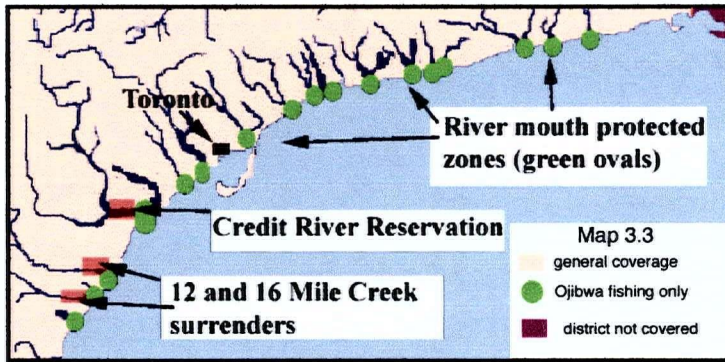
¹⁰⁹ NAC, RG 10, vol. 27, 3 October 1810, proceeding of a meeting... at the River Credit.

¹¹⁰ NAC, RG 10, vol. 27, 3 October 1810, proceeding of a meeting... at the River Credit.

¹¹¹ NAC, RG 10, vol. 27, 3 October 1810, proceeding of a meeting... at the River Credit.

The 1821 Act for the Preservation of Salmon

In 1821, parliament passed a revised *Act for the Preservation of Salmon* that contained new measures reflecting the five treaties made between 1818 and 1820.¹¹² As stated above, Chief Paudash recalled that in the *Rice Lake Treaty*, the crown agreed to



reserve all river mouths, islands, and points of land for the Mississauga. The other Mississauga and Chippewa communities hold similar accounts of their treaty agreements made in 1818. The

1821 *Act* bears a clear echo of these promises as the Crown placed a 183 by 45 meter protected zone around each river mouth along Lake Ontario. This area was off-limits to settler fishing. Because the Credit River Mississauga maintained a reserve on the Credit River, the *Act* defined a larger oval around the mouth of this river where the reach of settler fishing was further restricted. These river mouth conservation areas were the most productive areas of the Lake Ontario fisheries and the only areas easily worked by the Ojibwa fishing technologies of the day.¹¹³ The records of the legislative council reveal that it was the upper house that ensured that settlers could only employ hand-held technologies in the rivers.¹¹⁴ A *proviso* in the *Act* explicitly permitted the Mississauga to fish in these zones, and thus settlers bore the burden of the conservation restrictions (table 4.1).¹¹⁵ In addition, because two townships at the end of the Home District (and correspondingly the western end of the *Mississauga Tract Treaty*) were apportioned to the new District of Gore in 1816, the *Act* stipulated that the Mississauga's protections

¹¹² Upper Canada, *An Act to repeal the laws now in force relative to the preservation of salmon, and to make further provisions respecting the fisheries in certain parts of this province and also to prevent accidents by fire, from persons fishing by torch or fire light*, 2 George IV (1821) c.10.

¹¹³ Upper Canada, *An Act to repeal the laws now in force relative to the preservation of salmon, and to make further provisions respecting the fisheries in certain parts of this province and also to prevent accidents by fire, from persons fishing by torch or fire light*, 2 George IV (1821) c.10.

¹¹⁴ Journals of the Legislative Assembly of Upper Canada, 8 February to 9 April 1821, reprinted in Alexander Fraser, "The Journals of the Legislative Assembly of Upper Canada for the years 1818, 1819, 1820, 1821", *Tenth Report of the Bureau of Archives for the Province of Ontario* (Toronto: L.K. Cameron 1913): 286, 325, 333, 334, 357, 360, 362, 380, 386, 388, 390, 467, 510.

¹¹⁵ The *Proviso* read: "that nothing in this act contained shall extend, or be construed to extend, to prevent the Indians fishing as heretofore when and where they please", 2 George IV (1821) c.10, s. 8.

included rivers within these two Gore townships. In sum, the *Act* bears a perfect imprint of the treaty geography of the day: 1) it now allowed settler fishing closer to the 12 and 16 Mile Creeks, but prohibited it in a large area around the Credit River as a result of the two Mississauga surrenders in 1820, 2) it included two townships in the Gore district to protect the boundaries of the 1806 treaty, 3) it protected Mississauga fishing in the mouths of all rivers in the *Gunshot Treaty* lands, and 4) it protected all Mississauga and Chippewa fishing inland and over their northern hunting grounds from settler nets, weirs, and other devices, and only allowed settler to spear during part of the time the Ojibwa fished.

In 1821, parliament also passed its first “game” act, *An Act for the Preservation of Deer within this Province*. The *Act* set a closed season for all settler hunting between 10 January and 1 July. This was the period when deer herded in the snow and Ojibwa hunters could easily capture them by chasing and impounding the herds. A *proviso* in the *Act* made it clear that its intent was to preserve deer for the Ojibwa, stating: “That nothing in this act contained shall extend or be construed to extend, to any individual or individuals of the nations of Indians now or hereafter to be resident within the limits of this province.” The *Act* applied to the whole province. It echoed the Mississauga and Chippewa demands in their treaty negotiations between 1818 and 1820 that their rights to game over the ceded tracts be reserved. The effect of the *Act* was to prohibit non-natives from hunting at the time the Ojibwa pursued deer during their seasonal rounds.

In sum, the effect of the revised Upper Canadian *Act for the Preservation of Salmon* (1821) was to preserve exclusive Ojibwa fishing in the river mouths of the *Gunshot Treaty* area and the inland lakes and rivers of the new treaty areas. Meanwhile, the *Act for the Preservation of Deer* (1821) preserved deer for the exclusive use of the Ojibwa by restricting settler hunting at the time the Ojibwa traditionally hunted.¹¹⁶ Although both acts were deficient in the area of surveillance and enforcement, both embodied clear echoes of the treaty promises that the Mississauga recalled in their oral histories and crown minutes of the negotiations confirm.

¹¹⁶ Upper Canada, *An Act for the Preservation of Deer within this Province*, 2 Geo IV (1821) c. 17, s. 2.

Conclusion

The Mississauga and Chippewa claim in their recorded oral traditions that they reserved their rights over the fisheries and fishing places in their treaties with the crown between 1805 and 1820. With the exception of the first two treaties in 1805-06, the texts of the treaties are either silent on the matter or state that the surrenders were made “without reservation”. Crown records of the treaty negotiations, however, corroborate the Ojibwa claims in almost every case. The question thus arises, if the crown committed to the Ojibwa reservation of their fisheries as a condition for the surrender of their land, why did it not make these reservations explicit in the texts of the treaties? In this chapter, I explored the possibility that the crown acted on its treaty commitments through the passage of parliament’s first fishery laws. These acts bear a clear temporal and spatial relationship to the series of Ojibwa treaties signed between 1806 and 1820. When their *provisos* are read in the context of English *Salmon Acts* and other colonial models, it is clear that its intention was to restrict public access and protect the fisheries for their owners and proprietors: the Ojibwa.

The *Salmon Acts* were not perfect measures to protect the Ojibwa’s exclusive rights over the fisheries that they negotiated in their treaties. Without ever obtaining an Ojibwa surrender of their title to the fisheries, parliament sanctioned angling and settler spearing in their waters. This action, in contravention of the treaty agreements that started in 1784 and continued between 1805 and 1820, opened the regulatory door to settler and sport fishing.

Did the Ojibwa’s treaty rights and the *Salmon Acts* make them the lords of the fisheries? Certainly, the articles in the *Upper Canada Acts* are near identical to the wording in the English *Acts* that reserved the fisheries for the lords and proprietors of England’s sport fisheries. As stated earlier, at least two high-ranking British officials felt this to be the case. In 1829, a British civil engineer, John MacTaggart, stationed in Canada between 1826 and 1828, recorded that “the Indians [are] the lords of the islands, of all the rivers, and of the fish that swim therein.”¹¹⁷ He added that by a “law” in Upper Canada, “the Indians are allowed to retain all the islands in the great rivers.”¹¹⁸ Clearly,

¹¹⁷ MacTaggart 1829: 172.

¹¹⁸ MacTaggart 1829: 277.

this official understood the Ojibwa to be “lords” of the fish. In 1837 Sir Francis Bond Head described the Ojibwa as, “the lord of the manor” in the course of explaining their hunting and fishing rights.¹¹⁹ In 1844, a select committee of parliament also confirmed that the intention of the *Acts* for was the “most rigid preservation for their [Ojibwa] use” and that the Ojibwa were at liberty to hunt and fish across settler properties but that settlers did not possess the same privileges.¹²⁰ In my next chapter, I will explain how MacTaggart and Bond Head felt settlers were usurping the Ojibwas’ resources and how “this law is often broken through by settlers”.¹²¹ I also examine the select committee of parliament’s opinion that game should not be preserved for the Ojibwa but that its extermination would be in the aboriginal best interest. Then in chapter 6 I examine how sportsmen emerged to challenge Ojibwa fishing rights and legal protections.

It must be kept in mind that between 1798 and 1820, the Ojibwa had conservation measures in mind when they negotiated the reservation of river mouths, beaver lodges, and their aquatic environments. In effect, as early as 1798, the Ojibwa articulated “conservation” rationales while making claims to their resources. While the Ojibwa negotiated their treaty rights on the basis of their aboriginal title and concerns for conservation, in the next chapter, I examine how settlers raised western morality concepts to challenge the Ojibwa’s treaty rights. Settlers shifted the issue of the right to fish away from the ability to conserve to one about the moral fitness to fish.

¹¹⁹ Head 1837: 3

¹²⁰ “Report on the Affairs of the Indians in Canada, 1844”, printed in *Journals of the Legislative Assembly for 1847*, appendix T, sub-appendix 34: n.p.

¹²¹ MacTaggart 1829: 277.

Chapter 5

Shifting Grounds: Trespass and the combined discourse of conservation and morality, 1817-1856

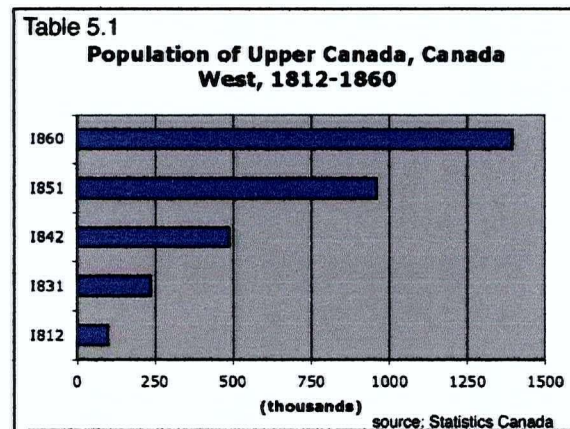
I think that such a prohibition of the white fishermen and the preservation of the right of fishing to the Indians along the borders of their own reserve absolutely necessary to their moral, religious and domestic improvement.

Reverend Egerton Ryerson, 1829¹

As to the preservation of game, they considered that its entire extinction or disappearance might be ultimately more beneficial to the Indians than its most rigid preservation for their use.

Report of Commissioners Investigating Indian Affairs, 1844²

From 1798 to 1818, the Chippewa and Mississauga negotiated treaties to protect their valued ecosystem components and preserve their internal system of laws for the conservation of fish and animals. In turn, parliament prohibited settlers from fishing and



hunting at the times the Ojibwa harvested and protected the Ojibwa's traditional methods. Settlers, however, did not let these laws stand unchallenged or go unmodified. Between 1815 and 1830, the settle population doubled. It then multiplied many times over before 1860 (table 5.1). During this time, settlers

stepped up their invasion of the Ojibwas' reserved hunting and fishing grounds. In response, the Ojibwa lobbied parliament to add methods of enforcement and strengthen the laws for the preservation of their rights and resources.

¹ Evidence of Reverend Ryerson, "Report of the Select Committee to which was referred the Petition of the Indians residing on the river Credit", *Journal of the House of Assembly, Upper Canada*, 5 March 1829 (York: Upper Canada: Francis Collins, 1829): appendix 17: 32.

² "Report on the Affairs of the Indians in Canada, 1844", printed in *Journals of the Legislative Assembly for 1847*, appendix T, sub-appendix 34: n.p.

In the previous chapter, I showed that the Ojibwa originally negotiated their treaty rights on the basis of their aboriginal rights and concerns for conservation. In this chapter, I will show that after 1818, in order to defend their rights and appeal for greater legal protections, they had to engage the colonizer in a new set of terms and discourses. In particular, Upper Canadian officials started to express the ancient English concern that fishing was a source of moral decline and could cause underdevelopment of the colony. At the same time, Methodist missionaries entered the Ojibwa communities with the objective to “civilize” them. While Shepard Krech in the *Ecological Indian* argued that the Ojibwa appropriated the “conservationist” identity to level the discursive playing field with Anglo-Canadians in the late 19th century, it must be noted that the first non-native rhetorical challenge to Ojibwa fishing rights was not about whether the Ojibwa were conservationists. Rather, it was about whether the Ojibwa were morally fit to fish. In this chapter, I examine a crucial period of time in which the Ojibwa attempted to maintain their fishing rights and the integrity of their cultural ecology while new outside forces and ideologies defined what was best for them. I will show that the Ojibwas’ response was to engage the colonizer on his terms and they strategically combined their conservation issues with the colonizer’s concerns about morality.

Western morality and fishing

In his *Commentaries on the Laws of England*, Blackstone provided four reasons why the preservation of game for lords was for “supposed benefit of the state”.³ Only one of his reasons addressed measures for the conservation of fish, while the others reflected the use of game laws as instruments for the social control and social engineering of the peasant population. These social control doctrines showed up in many early 19th century publications about Upper Canada. These writers argued for the moral regulation of fishing, hunting, and trapping in the colony and the promotion of agricultural pursuits by using the catchwords of “idleness” and “vice” versus “industry” and being “useful members of society”. For example, in 1820, a social commentator on the moral and religious behaviour of Canadians reported that participation in the fur trade caused “a thousand persons” to “contract habits of idleness in the midst of hardships, and become

³ Blackstone 1765-69, c. 27: 411.

so attached to a wandering and useless life, that they rarely establish themselves in society".⁴ In 1822, the population statistician and travel writer, Robert Gourlay, had only negative things to say about settlers who attempted to live entirely from the profits of fishing. At Grindstone and Grand Isle in the upper St. Lawrence River, he reported upon, "a poor and shiftless set of people, spending too much of their time in fishing and hunting during those seasons of the year when they ought to be cultivating the land."⁵ Note that both writers believed that hunting and fishing promoted nomadism: that hunters and fishers did not apply their labour to the development of a fixed place. The second writer also pointed to a key ecological issue, that the fishing "season" coincided with the agricultural harvest and that the latter took social priority. In 1830, a popular travel tale set in Lower Canada described two upper class hunters discussing English game laws and their observation that "most of the settler's principles, if acted up to, would be subversive of all order and decency, and tend to dissolve the bonds of society."⁶ In 1853, the famous English upper-class writer-commentator, Susanna Moodie, thought it was necessary to caution prospective settlers that commercial hunting and fishing, as charming as it may sound, would lead a settler to immorality and poverty. In *Life in the Clearings versus the Bush*, she painted a picture of wrecklessness:

Many young men are attracted to the Backwoods by the facilities they present for hunting and fishing. The wild, free life of the hunter, has for the ardent and romantic temperament an inexpressible charm. But hunting and fishing, however fascinating as a wholesome relaxation from labour, will not win bread, or clothe a wife and shivering little ones; and those who give themselves entirely up to such pursuits, soon add to these profitless accomplishments the bush vices of smoking and drinking, and quickly throw off those moral restraints upon which their respectability and future welfare mainly depend.⁷

⁴ Joseph Sansom, *Travels in Lower Canada: with the author's recollections of the soil, and aspect, the morals, habits, and religious institutions of that country*, (London : Printed for Sir Richard Phillips and Co., 1820): 62.

⁵ Robert Gourlay, *Statistical account of Upper Canada: compiled with a view to a grand system of emigration* (London: Simpkin & Marshall, 1822): 514.

⁶ Edward Lane, *The Fugitives or A trip to Canada an interesting tale, chiefly founded on facts interspersed with observations on the manners, customs, &c. of the colonists and Indians* (London: Effingham Wilson, 1830): 173.

⁷ Susanna Moodie, *Life in the Clearings versus the Bush* (London, Richard Bentley: 1853): x.

Many settlers expressed these moral concerns in petitions to parliament to call for a general ban on commercial fishing so that the fisheries could be conserved as an adjunct to their agricultural production. The first example occurred in 1817 when settlers along the Trent River informed parliament that this major salmon river crisscrossed the boundaries of the Newcastle and Home districts with the problem that the non-native use of nets and weirs was only prohibited in the former district. The settlers strategically constructed their petition. First, they presented themselves as farmers who used the fishery as “a very material source of supply”. On the other hand, they represented non-native commercial fishers as other “characters” that were “unprincipled” and “taking advantage” of the gap in the law’s reach. Specifically, they reported that these so-called “characters” were also liars, cheaters, and a threat to the fishery because they made “weirs and dams across the river under the pretence of catching eels and whitefish, and do almost totally obstruct the passage of the salmon up the same and when the waters of the river are very low (as was the case last season) few or none escape.”⁸ The petitioners wanted these forms of fishing outlawed along the full course of the Trent so that fish could reach upstream farmers and be conserved in order to sustain agricultural development of the region. In sum, their petition spoke to the dominant ideological view that fisheries attracted immoral types who sought instant profit over developing land. As I will continue to show, they articulated a principle that would guide parliament for many years to come: commercial fishing was immoral and encouraged landlessness and idleness and therefore the fisheries should be conserved for farmers who contributed to society.

The member for the Trent River region tabled the above settlers’ petition in the legislature and proposed that the *Act for the Preservation of Salmon* be extended to the Midland District. His bill, however, died on the floor when the house was prorogued for running late. Parliament, however, acted on the petition in 1823 and amended the *Act*.⁹

⁸ Petition to the legislative assembly, dated 12 March 1817, tabled 28 March 1817, reprinted in Fraser 1912: 403.

⁹ Upper Canada, *An Act to repeal part of, and to amend and extend the Provisions of an Act passed in the second year of the Reign of His present Majesty, entitled, “An Act to repeal the Laws now in force relative to the Preservation of Salmon, and to make further provisions respecting the Fisheries in certain parts of this Province; and also to prevent accidents by fire from persons fishing by torch or fire light*, 4 Geo. IV (1823) c.20.

The revised statute represents a social balancing act by parliament. First, it extended the *Act's* coverage to the whole of the Trent River. They did not, however, extend the law's reach over the whole of the Midland District, thus keeping the Mississauga of this region without the protections promised in the *Crawford Purchase* that first opened the region to settlers. Section 3 of the *Act* repeated the objective of its predecessors to ban settlers from fishing with nets and weirs and restricted them to spear fishing. Most importantly for the Ojibwa, the *Act* maintained the crucial *proviso*: "that nothing in this act contained shall extend, or be construed to extend, to prevent the Indians fishing as heretofore when and where they please". Parliament, however, widened the open season by two weeks. Now non-native settlers could spear during the full productive period of the salmon runs from 1 September to 10 November. For the Ojibwa, this closed season was a significant departure from the closure starting on 1 September that parliament first considered in 1807. In 1823, Parliament also placed its first restraints on aboriginal commercial fishing with its 4th clause:

And whereas the intention of the said Act is in a great measure defeated by persons employing Indians to catch salmon after the expiration of the time limited by the said Act, Be it further enacted by the authority aforesaid, that from and after the passing of this Act, it shall not be lawful for any person or persons to employ, buy from, or receive, under any pretence whatever, from an Indian or Indians, any Salmon taken or caught within any of the said Districts, during the period in which person are prohibited from taking or attempting to take or catch any Salmon or Salmon-Fry within the said District.¹⁰

As a result of this clause and the *provsio*, parliament protected the Ojibwa right to fish by any methods at any time, but prohibited aboriginal commercial use during the closed season. The closed season was so late, however, that the clause still allowed aboriginal sales for over 2.5 months. According to parliament, the intent of the revised *Act* was no longer just about protecting aboriginal fishing, elite angling, and settle subsistence fishing, it was now about closing all forms of commercial fishing to ensure a basic level of subsistence to all three groups. As I will show below, the Ojibwa protested these limitations on their commercial fishing rights, but appreciated the ban on non-native

¹⁰ Upper Canada, ... *An Act to repeal the Laws now in force relative to the Preservation of Salmon, and to make further provisions respecting the Fisheries...*, 4 Geo. IV (1823) c.20. s.4

commercial fishing and were very amenable to allowing fish to pass upstream to settlers for their subsistence.

On a final note, Roland Wright argued that the *Act's* fourth clause reveals the crown's intent to limit Ojibwa fishing to "domestic, non-commercial purposes only."¹¹ Wright's conclusion must be qualified. First, he misses the ecological dimension that the *Act* only touched on aboriginal commercial use for a short part of the salmon runs, not the major part of the runs which were still open to aboriginal commercial use. Secondly, the crown was not a homogenous unit. It was divided between a military sector that controlled Indian Affairs and a civil administration that attempted to protect Ojibwa rights under civil laws. Further, the civil administration was split between an executive council that attempted to represent the King's policies and commitments and an elected assembly that stood up for the settlers' interests. An examination of the journals of the legislative assembly reveal that the Crown's executive authority did not develop the first restrictions on Ojibwa commercial fishing treaty rights. Rather, settlers pressed for these limits through their elected representatives. These pressures continued. The settlers' representatives, not the Executive Council or the Indian Department, was responsible for these first efforts to circumscribe aboriginal treaty rights.

After the passage of the revised *Salmon Act* in 1823, parliament immediately continued its new policy to discourage the development of commercial fisheries and protect the fisheries for farmers as a supplement to their food production. Their next focus was the inlet into Burlington Bay where non-natives had built a commercial herring fishery. The narrow outlet was susceptible to physical control and a consortium of non-natives fishers monopolized it. In response, settlers around the Bay petitioned parliament to break the commercial operation.¹² In 1823, parliament responded with an *Act for the Better Preservation of the herring fishery at the outlet of Burlington Bay*.¹³ It prohibited people from netting the bay's inlet on Saturdays and Sundays and thus allowed some fish

¹¹ Wright 1994: 344.

¹² "Bill intituled An Act for the better preservaton of the Herring Fishery at the outlet of Burlington Bay", 4 March 1823, reprinted in Alexander Fraser, "The Journals of the Legislative Assembly of Upper Canada for the years 1821, 1822, 1823, 1824", *Eleventh Report of the Bureau of Archives for the Province of Ontario* (Toronto: L.K. Cameron 1915): 146.

¹³ Upper Canada, *An Act for the better preservation of the herring fishery at the outlet of Burlington Bay*, 4 George IV (1823) c. 37.

to reach other settlers. The *Act*, however, was of limited value, and in 1836 settlers again petitioned parliament to break the consortium's control over the outlet and preserve fish for their subsistence use.¹⁴ In response, parliament totally banned settlers from setting nets across the mouth of the outlet at all times.¹⁵ Clearly, parliament was more sensitive to the subsistence fishing concerns of settlers than it was interested in promoting a commercial fishery at this time.

In 1833, parliament heard separate petitions from residents along the Niagara, Detroit, and St. Clair Rivers regarding intensive non-native whitefish netting.¹⁶ The legislature responded with *An Act to protect the White-Fish Fisheries in the Straits or Rivers Niagara, Detroit and Saint Clair, in this Province* (1833). The *Act* prohibited the use of seines longer than fifty fathoms and outlawed the use of apparatus designed to divert fish from their spawning streams.¹⁷ Most significantly, parliament gave farmers the power to repel landless market fishers from their riparian waterfronts.¹⁸ Later, in 1839, the local legislative member for the Detroit River area read a petition from 117 of his constituents, "praying that persons may only be allowed to fish near the mouth of the River Thames, on certain days of the week, so as not to prevent the ascent of fish up said River."¹⁹ No law followed, but the action again illustrated the fact that settlers and their members of parliament were opposed to any development of commercial fishing that might deprive agriculturists of a local supply of fish.

The settlers' petitions to parliament and the legislature's shared concerns about the moral effects of commercial fishing explain a certain mystery in the literature on the development of the Ontario Great Lakes fishery. That literature puzzles over why there

¹⁴ Journals Legislative Assembly, 9 December 1836, in Anon, *Journal of the House of Assembly of Upper Canada from the Eighth Day of November 1836, to the Fourth Day of March* (York: William Lyon Mackenzie, 1837): 157.

¹⁵ Upper Canada, *An Act for the preservation of the Fishery within Burlington Bay*, 6 William IV (1836) c.15.

¹⁶ Journals of Legislative Assembly, 4 January and 13 February 1833, in Anon, *Journal of the House of Assembly of Upper Canada from the Thirty-First Day of October 1832 to the Thirteenth Day of February 1833* (York: Robert Stanton, 1833): 76, 140.

¹⁷ Upper Canada, *An Act to protect the White-Fish Fisheries in the Straits or Rivers Niagara, Detroit and St. Clair*, 3 William IV (1833) c. 29.

¹⁸ Upper Canada, *An Act to protect the White-Fish Fisheries in the Straits or Rivers Niagara, Detroit and St. Clair*, 3 William IV (1833) c. 29. s. 3, 4.

¹⁹ *Journals of the Legislative Assembly*, 3 April 1839, Anon, *Journal of the House of Assembly of Upper Canada from the twenty-seventh day of February to the eleventh day of May 1839* (Toronto: James Cleland, 1839): 117.

is no evidence of a commercial fishery on the northern shores of the Great Lakes before 1840 while Americans had developed large enterprises around 1800.²⁰ These historians overlooked the fact that parliament actively obstructed settler commercial fisheries. I will continue to illustrate that fishery management policies between Upper Canada and the United States diverged from the beginning.

Methodists missionaries and the Ojibwa fisheries

Christian missionaries in the form of Methodists first moved to convert the Ojibwa to Christianity in the mid 1820s. In 1825, they built their first Ojibwa mission on the Credit River. Between 1826 and 1829, they expanded their missions to include the Mississauga of the Bay of Quinté, Kingston, Rice Lake, Mud Lake, and the Chippewa of Snake Island and the Narrows of Lake Simcoe.

The Methodist strategy had an ecological component. Starting with their mission built on the flats of the Credit River, they deliberately identified Ojibwa fishing places as the best locations to convert these peoples to Christianity because families assembled in large groups at these predictable places for extended periods of time.²¹ At other seasons of the year, the aboriginal communities atomized into small family units that dispersed over a very large territory, making potential converts hard to locate and large audiences impossible to assemble. The Methodists' records reveal their efforts. For example, in the fall of 1826, a missionary attempted to meet the Mississauga at their fishing islands in Rice Lake and built chapels "on three Islands in different parts of Rice Lake, where these 'Christians of the woods' hold their devotions when encamped in those places [for fishing]."²² At the Bay of Quinté, they built a mission on the tiny Grape Island where "the fish at times throng around the Island".²³ In 1836, a missionary reported that he was

²⁰ Edwin C. Guillet, *Early Life in Upper Canada* (Toronto: University of Toronto Press, 1933): 267, 272; Dunfield 1985: 15, 75, 108; McCullough 1989: 15; Bogue 2001: 17-27.

²¹ As early as 1642, Jesuit missionaries (who left the province in 1763) recognized that aboriginal fishing villages were the locations to attempt to convert aboriginal peoples to Christianity because families assembled in large groups at predictable places for extended periods. Anon., "Of the Mission of the Holy Ghost among the Algonquins, the nearest to the Huron", ca. 1642, in *JR* chapter 12: 205. See also, Anon, "Of the nature and some peculiarities of the Sault, and of the Nation which are accustomed to repair thither", ca. 1669-71, in *JR* 54: chapter 10: 209.

²² Anon, "Rice Lake", *Third Annual Report of the Canada Conference Missionary Society* (York, printed by William Lyon Mackenzie, 1827): 8.

²³ Anon, "Rice Lake Mission", *Christian Guardian*, 30 January 1830: 83.

hopping from island to island in Lake Huron trying to reach Ojibwa families while they were fishing.²⁴

It is important to note that where the Methodists erected their missions affected subsequent Ojibwa history. As shown in chapter 1, gardening and fishing were long intertwined in the Ojibwa cultural-ecology. In the 1820s, the Methodist missionaries commenced a plan to concentrate the Ojibwa into permanent agricultural villages by building village infrastructure at their fishing places and encouraged the Ojibwa to enlarge their gardening activities. Both were women's production sites. "It will be most profitable", wrote Bishop Stuart to the governor of Canada, to focus conversion efforts, "where they reside the greater part of the year, and where the women and children remain all year."²⁵ This tactic that focused on the ecology of fish and the Ojibwa's division of labour made women, children, and elders the first major audience of the proselytizers. By 1827, the missionary strategy was "successfully" in place at Grape and Snake Islands.²⁶ At the latter fishing island, a Methodist reported:

By the middle of the present month (September) the Indians here will remove to their hunting grounds, when Mr. Law, who has been their teacher for 12 weeks past, will remove his school to an island in Lake Simcoe. Here, 20 miles from any white settlement, he will reside with the aged people and teach their children till the return of the hunters, which is in the month of May next.²⁷

Because Ojibwa fishing fit into the Methodists' strategy to "civilize" and convert the Ojibwa to Christian farmers, they originally helped the Ojibwa protect their fisheries and treaty rights.

The Mississauga engage parliament with concerns about conservation and morality

Immediately upon his arrival among the Mississaugas of the Credit in 1825, the famous missionary, Egerton Ryerson, helped the Mississauga craft a petition to

²⁴ J. Stinson, letter to the editor, *Christian Guardian*, 7 September 1836: 174.

²⁵ Bishop Stuart to Governor of Canada, dated Quebec 22 April 1829, reprinted in *Report of the Indians of Upper Canada by a sub-committee of The Aboriginal Protection Society* (London: William Ball, Arnold, and Co., 1839): 9.

²⁶ Anon., "State of the Missions under the direction of the Missionary Society of the Methodist Episcopal Church", *The Methodist Magazine*, vol. 10 (1827): 227-228.

²⁷ Anon, "Lake Simcoe", in *Third Annual Report of the Canada Conference Missionary Society* (York: William Lyon Mackenzie, 1827): 9.

parliament that demanded greater protection of their fishery. Chief Adjutant who had discussed the settler incursion into his community's fisheries with Superintendent Claus in the treaty negotiations of 1818 and 1820, signed the petition. Ryerson worded the petition strategically. First, he had the Mississaugas claim that their traditional social organization and land use system caused them to lead a "miserable life". But now, they indicated that they had a new plan for their "future profit and happiness on this Credit River." In particular, they indicated that they had accepted the Methodist plan and "are about to settle down through your advice & assistance at this place, to become planters & attend to the means of religion and education since our minds have been enlightened by the ways of the gospel light." In short, the Mississauga spoke to the dominant society's assumptions that the river be used in an industrious and 'settled' manner. The problem of non-native incursions into their reserved fisheries confounded this plan. The Mississauga and Ryerson therefore exposed the invaders as an "inferior class of white people, who bring and introduce all manner of evil amongst us." Consistent with the ideology of the day, they argued that the fishing, if improperly conducted, was a source of "evil". They therefore asked the crown to protect their river from non-native encroachment so that the evil may be eliminated and the Mississauga could make moral use of the resource. After speaking to these western moral assumptions, the Mississauga then proposed amendments to the *Act for the Preservation of Salmon* that would conserve the resource while meeting their social needs:

we have made the following resolution for the sale of our fish, and for the preservation of the fishery, namely: to appoint some trusty person as agent to cure and make market for all the salmon caught, and the money derived to be divided amongst the Nation; and to preserve the fishery, it is agreed not to fish two nights in a week, viz. Saturday nights and Sunday nights, and not to catch any salmon for sale after the tenth day of November.²⁸

In short, the Mississaugas proposed a commercial fishery as the cornerstone to their new social adaptation and were amenable to closing it at the time set in the 1823 *Act*. They

²⁸ Chief Adjutant and 21 others from the Mississauga Nation of Indians residing on the River Credit to Sir Peregrine Maitland, Lieutenant Governor of Upper Canada, dated 16 November 1825, tabled in the House of Assembly on 3 January 1826, Anon, *Journal of the House of Assembly of Upper Canada from the 7th November 1825 to the 30th January 1826* (York: William Lyon Mackenzie, 1826): 55.

were also amenable to the western concept of closing their fishery on the weekend. They indicated in a subsequent petition that the weekend closures would allow salmon to escape and reach upstream settlers for their subsistence – hence another expression of their willingness to provide farmers with some access to their fish, but keep control over commercial operations in their waters.²⁹ Thus, Ryerson and the Mississauga spoke to the political points of the day: 1) they would use the fishery in an industrious manner and adapt to western society, 2) they would allow settlers a subsistence use of their fishery, and 3) they wanted commercial fishing banned because it was idle and a threat to moral social development.

The Mississauga and Ryerson addressed their petition to the lieutenant-governor who handed it down to the lower house. Here, the naturalist, Charles Fothergill, moved to amend the 1823 *Salmon Act* to incorporate the Mississauga's proposal. The assembly, however, rejected his bill. As a result, the *Act for the Preservation of Salmon* remained without the measures the Mississauga desired. In particular, there were no mechanisms to enforce the law against unlawful settler fishing.

While the 1826 bill failed in parliament, the non-native invasion of the Ojibwa's reserved hunting and fishing grounds continued. On the Credit, settlers controlled the river by placing fish offal at its the mouth to deter salmon from ascending and blocked the river with gill nets.³⁰ All these means of fishing were illegal but after thirty years, the Mississauga still lacked external assistance to arrest the settlers.

It is clear that settlers knew the law and that the fisheries belonged to the Ojibwa. In 1829, a British engineer wrote that, "the Indians [are] the lords of the islands, of all the rivers, and of the fish that swim therein."³¹ However, he added the caveat that, "but this law is often broken through by settlers".³² He then listed examples of settlers squatting on the Ojibwa's fishing islands. He also explained that many settlers subverted the colonial land administration's system of rigid "diagrams" and squatted along rivers where

²⁹ *The Petition of the Mississauga Indians, settled at the River Credit, to our Great Father, Sir John Colborne, K.C.B. Lieutenant-Governor of Upper Canada*, 5 February 1829, printed in *The Journal of the House of Assembly Upper Canada* (York: Francis Collins, 1829): 30-31.

³⁰ *The Petition of the Mississauga Indians ...* 5 February 1829: 30-31.

³¹ MacTaggart 1829: 172

³² MacTaggart 1829: 277.

they could cultivate the flats.³³ He then listed many such examples, all of which were illegal trespasses on Mississauga or Chippewa lands. There is plenty of additional evidence that settlers poached Ojibwa resources and squatted on their reserved lands and islands throughout the 1820s. The poachers not only included settlers, but persons from other aboriginal nations, particularly the Iroquois, who had been displaced by settlement around Montreal. These land use pressures made it difficult for the Ojibwa to enforce their laws on all these outsiders. The generation of Ojibwa men and women who gave evidence to the Hunter & Hunter law firm and the Williams commission from 1906 to 1923 had grown up during this period. In 1923, Robert Paudash told the Williams commission about some of the difficulties his community had experienced: "The Algonkins and the Frenchmen and other people, they come and trespass... Them Lake of Two Mountain Indians come up there and their ground was on the Quebec side."³⁴ Settlers also noted these external pressures. In 1832, a settler walking the tributaries of the Trent River observed first hand the Mohawk trespasses. He recognized that the Trent tributaries were the exclusive hunting grounds of the Ojibwa, and it appears, so did the Mohawks who were hunting there. He recorded:

At the rapids below the clearing I fell in to day with three Indians of the Mohawk tribe, returning from the chase with a quantity of furs. One of them was Pierre... I asked him if he and his companions had not been trespassing on the hunting grounds of my friends the Chippewas, to which he replied, with a scornful laugh, that ... [the Ojibwa] don't dare not look a Mohawk in the face'.³⁵

Evidently, these Mohawks consciously contravened the treaty of peace made in the 1650s that determined the boundaries between the two nations' hunting grounds. There is also evidence that as a settlement in southern Ontario began to expand north, some affected Mississauga families relocated their hunting grounds north into the Chippewa's hunting territory, thus confounding the nation's ability to maintain the integrity of its cultural ecology. The Chippewa resented these relocations that they viewed as trespassing.³⁶ In

³³ MacTaggart 1829: 200.

³⁴ NAC, RG 10, vol. 2332, file 67, 071-4c, sworn statement of Robert Paudash to the Williams Commission, 26 September 1923: 228.

³⁵ Need 1838: 390.

³⁶ NAC, RG 10, vol. 2332, file 67, 071-4c, sworn statements to the Williams Commission, September 1923: 116, 282.

response to all these trespasses, Robert Paudash explained, "we make complaint to the government and that it is our ground", but the incursions continued.³⁷

The Ojibwa complaints did reach the ears of government. In 1828, a commission was called to inquire into the management of Indian affairs. It was the first of many. One commissioner wrote directly about the problem of trespasses and stated that the Algonquians, Nipissining, and Iroquois: "will naturally trespass on those of other tribes, who are equally jealous of the intrusion of their red bretheren as of white men." He noted that, "complaints on this head are increasing daily" and he feared that the tensions would result in murders. The commissioner recommended that the existing game and fish laws be ammended to provide "effectual legal protection" and "vigilant superintendence" to enable aboriginal people to remain "in the possession of their lands".³⁸ He also predicted that if such protection was not provided, aboriginal people "will starve in the streets of the country towns and villages, if they do not crowd the gaols of the larger towns and cities".³⁹ Losing possession of their reserved lands and the integrity of their communal and family property regime and becoming economically dependent was a fate that Mississauga leaders had sought to avoid when they developed their original strategy of co-existence in the *Gunshot Treaty*, which was now only half-heartedly implemented in a colonial system of game and fish laws that lacked an effective enforcement scheme and was subject to modifications by settlers. The Mississauga desperately needed British legal protection to maintain the integrity of their traditional legal and cultural ecology. If resource use by outsiders continued unchecked, the Ojibwa would loose their ability to conserve their natural resources and this would cause the collapse of their cultural-ecology and system of supporting laws.

In 1829, the Mississauga of the Credit again petitioned parliament to amend the *Salmon Act* to provide them with security over their fishery. Once again, Ryerson likely wrote the Mississauga petition. Strategically, Ryerson again crafted the petition to speak to the English social theory of the day about the negative effects of fishing on society.

³⁷ NAC, RG 10, vol. 2332, file 67, 071-4c, sworn statement of Robert Paudash to the Williams Commission, 26 September 1923: 228.

³⁸ Report of H.C. Darling, 24 July 1828, printed in *The British Parliamentary Papers: Correspondence and other papers relating to Aboriginal Tribes in British possessions, 1834* (Irish University Press: Shannon 1968-71), vol. 3: 24.

³⁹ Report of H.C. Darling, 24 July 1828, printed in the *British Parliamentary Papers...* 1968-71, vol. 3: 24.

This time, Ryerson and the Mississauga described the settlers fishing at the Credit River as “wicked white men”, “almost all lazy drunken white men” and people “who will not work”. They portrayed the scene on the river flats as a place of “swearing”, drinking, and “wicked” behaviour. The petition also reinforced the game law theory that this idleness was infectious, asserting that the idle settlers presented “a very bad example to our young people, and try to persuade them to be wicked like themselves”. The English game laws were of course designed to arrest such idle habits and the Mississauga asked the Lieutenant-Governor of Upper Canada “to cause laws to be made to keep these bad men away from our fishery”.⁴⁰ By contrast, the Mississauga described themselves as “industrious” and again proffered their plan to develop a commercial fishery to assist their economic and social adaptation.

Parliament referred the Credit River Mississauga’s petition to a select committee for investigation. The committee interviewed Chief Peter Pahtahseka and Ryerson. When the committee asked Ryerson who the “bad men” were, he provided a perfect definition of the type of idleness the English fishery laws were designed to prevent:

Not the farmers, but idle unindustrious men – who come from a distance, and remain there the whole fishing season – they do not fish for their family supply – but fish to sell and make money and spend it idly – they bring whiskey, and endeavour to entice the young Indians to fish for them – and injure them much.⁴¹

He further described the conflict:

The whites come and encamp on the flats immediately under their village and there they burn their fences during the fishing season. They feed at their hay – use their boards – and annoy them in all manner the petition complains of – several boats, from five to fifteen will during the last of the fishing season watch the entry of the salmon – and just as they pass the shoals, all the boats attack them with spears and light and kill nearly the whole so that in fact the Indians have not the opportunity of getting even a reasonable supply for themselves.⁴²

⁴⁰ *The Petition of the Mississauga Indians...* 1829: 30.

⁴¹ Evidence of Reverend Ryerson, “Report of the Select Committee to which was referred the Petition of the Indians residing on the river Credit”, printed *Journal of the House of Assembly, Upper Canada*, 5 March 1829 (York: Upper Canada: Francis Collins, 1829): appendix 17: 32.

⁴² *Report of the Select Committee to which was referred the Petition of the Indians residing on the river Credit*, 5 March 1829, printed in the *Journal of the House of Assembly Upper Canada* (York: Francis Collins, 1829): appendix 17: 34.

Ryerson concluded his interview with a single sentence summing up the intent of the fishery laws to promote moral and industrious behaviour, arrest idleness, and “preserve” the fishing rights of the Mississauga. “I think”, said Ryerson, “that such a prohibition of the white fishermen and the preservation of the right of fishing to the Indians along all the borders of their own reserve absolutely necessary to their moral, religious and domestic improvement.”⁴³

Although the *Act for the Preservation of Salmon* is never explicitly named in the records of the committee’s investigation, it is clear that “existing” fishery laws were in place to protect the Mississauga, but did not work. As Ryerson stated, “[t]he fine is so small that the offenders disregard it, the fish caught enabled them to pay the fine.” When asked, “How could this evil be remedied?” Ryerson suggested revising the existing law to widen the conservation zone at the mouth of the river and invest the Mississauga with exclusive authority over the whole river. Ryerson had command of the details: “the prohibition must extend along the lake shore as well as up the river.” Ryerson spoke directly to the value of the laws: “None, but the Mississaugas living on the Credit should be allowed to fish – a penalty on all persons offending against the law, and the forfeiture of their nets, tackle, boats, canoes, &c.”⁴⁴ The subject of surveillance was at the heart of the Mississauga issue. Since 1807, the *Salmon Acts* consistently omitted overseers and Ryerson insisted that surveillance and imprisonment of offenders “is the only mode of preventing the injury effectually.”⁴⁵

In the end, the select committee recommended “a law whereby the Mississauga people living on the Credit may be more effectually protected from white fishermen”.⁴⁶ Two weeks later, the legislature passed *An Act to better protect the Mississauga tribes, living on the Indian reserve of the river Credit, in the exclusive right of fishing and hunting therein*.⁴⁷ The Act defined a trespasser as: “any person or persons whatsoever, against the will of the said Mississauga people, or without the consent of three or more of their principal chiefs, shall hunt or fish in any way, mode, or manner, whatsoever, for

⁴³ Evidence of Reverend Ryerson, 1829: appendix 17: 32.

⁴⁴ *Report of the Select Committee*, 1829: appendix 17: 34.

⁴⁵ *Report of the Select Committee*, 1829: appendix 17: 34.

⁴⁶ *Report of the Select Committee*, 1829: appendix 17: 32.

⁴⁷ Upper Canada. *An Act to protect the Mississauga tribes, living on the Indian reserve of the river Credit, in the exclusive right of fishing and hunting therein*, 10 Geo IV (1829) c. 3.

fish, or game, or fur, of any kind.”⁴⁸ It also gave the Mississauga the powers of sheriffs to apprehend offenders and along with a local constable, take such offenders before any justice of the peace. Jail time was set for one to three days, and the fish, game, and furs taken from the offenders were converted into the property of the “Indian arresting and taking such offender”.⁴⁹ Meanwhile, the larger property items of the offender, such as boats, nets, and other gear, were converted into the property of the Mississauga community. The legislators also defined the exclusive Mississauga fishing zone as the entire Credit River below their reserve and prohibited settler fishing within a mile of the river’s mouth.⁵⁰

The community’s secure tenure over their resources was the cornerstone to Ojibwa management of their natural resources. With the passage of the new *Act* the Mississauga reasonably believed they had regained secure tenure over their fishery. These Mississauga then proceeded to write down their own laws for their regulation and management of their fishery in two articles:

1st. No person belonging to the village shall fish in the River Credit, on Saturday and Sunday nights, during the fall run of salmon.

2nd. No person shall give permission to any unauthorized person to fish or to take such to fish with him; unless it be thought expedient at a future council.⁵¹

The first article reflected an assurance the Mississauga made in their petition that they would “let the fish pass up to our white brothers up the River.”⁵² The parliamentary select committee had also asked Ryerson if the Mississauga’s exclusive possession of the river mouth, “will do injury to the upper settlements in respect of the ascent of fish further up?” Ryerson provided the desired answer that Mississauga control over the mouth of the river would be in the best interest of the moral and law-abiding farmers living upstream:

⁴⁸ Upper Canada. *An Act to protect the Mississauga tribes...*, 10 Geo IV (1829) c. 3, s. 1.

⁴⁹ Upper Canada. *An Act to protect the Mississauga tribes...*, 10 Geo IV (1829) c. 3, s. 1.

⁵⁰ Upper Canada. *An Act to protect the Mississauga tribes...*, 10 Geo IV (1829) c. 3, s. 2.

⁵¹ NAC, RG 10, vol. 46, pp. 23976-23983, By-Laws and Regulations for the Indian Village of the Credit passed in General Council, April 23rd, 1830.

⁵² *The Petition of the Mississauga Indians...* 1829: 31.

Not at all – it would serve them – and the white settlers up the Credit would wish that some prohibition should be put to the present plunder by these white people at the mouth of the river – were the Indians protected in the fishery the people above would have some share of the fish – for two nights and one day the fish would have an unmolested passage up if the Indians only were permitted to fish – as it is, the settlers upstream scarcely ever get a salmon – moreover it is the only way in which the fishing can be preserved.

He emphasized the conservation side of his plan:

It is well known that this unbounded destruction of the salmon will destroy the fishery altogether -- it has done so in the rivers on the south side of the lake, as I am well informed.⁵³

The Mississauga thus passed the first article of their by-law to manage the fishery in a manner that would explicitly assist the upstream farmers procure a subsistence level of salmon to complement their agricultural priorities while conserving the resource. The parliament of Upper Canada preferred the Mississauga's plans to commercially fish while allowing farmers a subsistence access to the fishery rather than leaving open the possibility for farmless non-natives to develop a commercial fishery.

The second article of the Mississauga's by-law was aimed at internally regulating the *Act's* stipulation that settlers required permission to fish from "three or more principal chiefs". Repeatedly, since the early 1800s, Mississauga chiefs reported that non-natives bribed their members to access the fishery. William Claus spoke about these non-native actions in his treaty meetings with them in 1818. I suspect the Mississauga passed the second article that, "[n]o person shall give permission to any unauthorized person to fish or to take such to fish with him; unless it be thought expedient at a future council", to prevent the bribing of members of the community to gain entry into the fishery and regain control over unauthorized use.

With these internal laws and parliament's external legislation, the Mississauga of the Credit finally had the means to manage and enforce all access and levels of use of their fishery. It is difficult, however, to assess the success of the co-existent legal regime. Parliament renewed the *Act to better protect the Mississauga tribes* in 1834, but in the early 1840s, the crown forced the Mississauga to surrender their remaining Credit River

⁵³ *Report of the Select Committee*, 1829: appendix 17: 32.

lands. As a consequence, the community relocated to the Grand River and the legislation expired.

The Mississauga of Rice Lake also petitioned the Lieutenant-Governor in 1829 about what they considered the failures of the “existing laws” to protect their hunting and fishing grounds from settler encroachments. They wrote that the existing laws only enabled them to inform trespassers of “their injustice” and “urge them to depart” but that, “our words are feeble and they will not listen.”⁵⁴ The Mississauga believed nothing short of government surveillance would guarantee them the “protection” they felt the “existing laws” were intended to provide. They also asked for an inquiry, and parliamentary protections: “and your petitioners further pray, that in case the existing Laws do not afford to the Indians a mutual and just protection, that Your Excellency may be pleased to recommend a Legislative Enactment whereby Offenders may be brought to Justice, in a Summary Manner.”⁵⁵ The “existing laws” the eastern Mississauga made reference to are never named here and elsewhere, but clearly they are references to the *Acts for the Preservation of Salmon* and the *Acts for the Preservation of Deer*.

In an apparent response to the eastern Mississauga’s petition, parliament debated a bill to extend the *Act for the Preservation of Salmon* to the whole province. The bill passed overwhelmingly in the assembly, with a small minority of six members opposing the bill (the dissenters represented regions with emerging non-native commercial fisheries at Burlington Beach and ridings along the Northumberland waterfront).⁵⁶ For reasons unknown, however, the bill did not pass into law. This was yet another crucial misfortune for the Ojibwa. Had the *Act* been extended to the whole province and included any of the new measures built into the *Credit River Act*, it would have provided the eastern Mississauga with “the privileges in law” and powers to bring trespassers “to justice” that they sought. The bill’s failure to pass, however, left the eastern Mississauga without the improved statutory protections they needed.

⁵⁴ NAC, RG 10, series A., vol. 5, petition of the Mississauga Indians of the Rice Lake in the Newcastle District to his Excellency Sir John Colborne K.C.B. Lieutenant Governor of the Province of Upper Canada, February 1829: 3-6.

⁵⁵ NAC, RG 10, series A., vol. 5, petition of the Mississauga Indians of the Rice Lake in the Newcastle District to his Excellency Sir John Colborne K.C.B. Lieutenant Governor of the Province of Upper Canada, February 1829: 3-6.

⁵⁶ *Journal of the House of Assembly of Upper Canada*, 11 January 1830: 3.

The timing of the failure of the 1830 bill for the extension of the *Salmon Act* was significant. Later that same year, the British military passed control of Indian affairs over to the colony's civil administration. With this transition to civilian control, aboriginal policy changed abruptly as the colony declared a new policy to promote aboriginal welfare through Christian conversion and agricultural instruction.⁵⁷ Thereafter Ojibwa petitions for protection of their hunting and fishing rights and traditions received an entirely different hearing.

When the 1830 *Salmon* bill failed, the eastern Mississauga tried again, a few months later, with another petition to the lieutenant-governor. Thirty-five Mississauga men signed the petition that first explained the trespasses into their territories and the government's failure to protect their rights.

Whereas certain individual aliens have made it a practice to come annually into our country & have carried off from our neighbouring forests Fur to the amount of several hundreds of dollars per ann. We the Majesty's peaceable and dutiful subjects beg leave respectfully to address your Excellency touching this their illicit procedure which is not only illicit but highly prejudicial to your Petitioners whose privilege it hath been for years past & whose means of support it must be for years to come to catch the wild animals of the surrounding forests.

The petitioners then stated that they wanted to co-exist with the settlers in peace and prosperity but that this co-existence required respect for the different rights and privileges that the Mississauga held.

Relying on your Excellency's vigilant [illegible] for the welfare of all classes of His Majesty's subjects under your government we the [illegible] natives of the woods – who wish to cultivate peace with all men & at the same time to maintain our rights and privileges...

They concluded with another appeal to the legislature for greater legal means to protect their rights and prevent usurpers from taking their resources.

Being assured therefore that your Excellency will right our wrongs we leave it to your Excellency to order such measures to be adopted as shall not only prevent

⁵⁷ Surtees 1984: 87.

those persons alluded to but [illegible] all others in future from [illegible] upon the privileges which appertains to us His Majesty's faithful & loyal Subjects.⁵⁸

No government response is found in the records. It is likely that the petitioners received no response from the newly invested colonial authority. The Mississauga continued, however, to place their concerns before parliament. In 1837, for example, Captain Paudash protested that the massive scale of settler spring fishing in Rice Lake threatened to destroy the Maskinongé fishery: "a great number of the Whites resort to these waters in the spawning season of the Maskinongé and destroy immense numbers of that Fish -- should that by them be persevered in that fine fish will in a short period of years be entirely destroyed."⁵⁹ Again, he expressed his knowledge of negative ecological impacts.

As had happened many times before, Ojibwa petitions led to new or revised acts of parliament that seemed to redress these recurrent issue. In 1839, parliament passed a revised *Act of the Preservation of Deer*. The *Act* had, as intended, a positive bearing on the Mississauga and Chippewa as its *proviso* held, "that nothing in this Act shall extend or be construed to extend, to any Indians now or hereafter to be resident within the limits of this Province", and therefore placed the burden of conservation on settlers.⁶⁰ The following spring, among other matters discussed at an annual general assembly, Ojibwa hereditary chiefs reviewed the revised *Deer Act*. The Ojibwa concluded that the *Act* contained a concept missing from the *Salmon Acts*, that being a ban on settler fishing on Sundays. They wanted guarantees that this ban would apply to their fisheries, so they informed the legislature: "it is our desire that our Great Father may be pleased to recommend that the said [Salmon] Act may be so amended as to impose the same fines and penalties upon any person or persons fishing on the Lord's day."⁶¹ The Ojibwa recommendation would only have affected non-native fishers. While there is no evidence that parliament acted on the request, the effort is further evidence that the Ojibwa not

⁵⁸ NAC, RG 10, series A, vol. 5, Rice Lake Indians petition respecting persons who cut their timber and trap their furs, 14 August 1830: 2579-2582.

⁵⁹ PAO, RG 1, Orders and Regulations, Vol. 1 Series A-VII vol. 10: 82.

⁶⁰ Upper Canada, *An Act passed in the fourth year of the reign of His late Majesty King George the Fourth, intituled, 'An Act for the Preservation of Deer within this Province,' and to extend the provisions of the same; and to prohibit Hunting and Shooting on the Lord's Day*, 2 Victoria (1839) c. 12, s.12.

⁶¹ Ojibwa general council, 24 January 1840, to Col. S.P. Jarvis, Chief Superintendent of Indian Affairs, reprinted in Jones 1861: 128.

only understood the implications of these first conservation laws but, actively sought to shape the laws restricting settler hunting and fishing.

Without the necessary law enforcement provisions, by the end of the 1830s, the Mississauga could only rely on their traditional laws to try to control the settler invasion. Jack Cowe, for example, carefully guarded his traditional hunting and fishing grounds at Jack and Chandos Lake before he died in 1835. According to one non-native settler in the Kawarthas:

Handsome Jack, an Indian chief, ... claimed all the streams and lands in this locality as his fishing and hunting grounds... He was most tenacious of his rights, and would invariably destroy all the traps of white men he found set on his streams. But, he would allow the pale face to hunt for deer and partridge or to fish in the streams, so long as no furs were taken.⁶²

Mississionaries and government redirect their moral concerns

In 1830, Methodist missionaries and the crown abruptly changed their words of support for the protection of Ojibwa fishing rights. As stated, when the British crown transferred responsibility for Indian Affairs from their military authority to the civil administration of Upper Canada, the declared policy of government shifted to the promotion of aboriginal welfare by converting them into Christian farmers to encourage the "industrious habits of civilized life".⁶³ Methodist missionaries would carry out the state's new agenda.⁶⁴ After initially identifying Ojibwa fishing places as the ground for their conversion efforts, Methodists began to reinvision Ojibwa fishing as an obstacle to their conversion. Most significantly, the Methodists began to redirect the moral concerns of English game laws towards the Ojibwa.

Missionaries began by attacking the seasonal rounds of the Ojibwa as being harmful to their moral improvement. There was precedent in English history. One of the first fishery laws passed in England was premised on the fact that peasants could not be supervised on Sundays when they left their villages for fishing places. Once assembled at these places, it was feared that the peasants might engage in vices, discuss their

⁶² Mulvany 1884: 218-22.

⁶³ Extract of a Dispatch from Sir. J. Colborne to Sir George Murray, G.G.B, dated York 14 October 1830, Upper Canada, in *The British Parliamentary Papers*, 1968-71: 128.

⁶⁴ Surtees 1984: 87.

grievances, or even contemplate revolt. Thus, in 1389, the English parliament passed a social control law prohibiting Sunday fishing that brought people's Sunday activities under the increased surveillance of the church.⁶⁵ In the early 19th century, Methodists resuscitated this concern in Upper Canada. For example, at Rice Lake, a missionary expressed his concern that:

An important object would be gained at this place, (and I think at all the Mission stations,) if the long spells of hunting in spring and fall could be dispensed with. They greatly retard the progress of improvements, and expose the Indians to many serious temptations... Almost every instance of moral and religious instability occurs when they are absent on these and other hunting excursions.⁶⁶

Once again, the church, this time in colonial Canada, feared that the unsupervised environments of Ojibwa fishing and hunting created opportunities for immoral activities.

Methodists records from the period are replete with descriptions of the Ojibwa as "idle in the extreme" and they identified Ojibwa hunting and fishing as the cause. To make the Ojibwa "disposed to follow industrious occupations", they proposed direct intervention in their social and economic way of life.⁶⁷ In 1844, the Reverend James Coleman clearly articulated the social rationale behind English game laws to parliament and why these social control measures should be brought to bear on the Ojibwa.

... hunting and fishing are employments so fascinating to the human mind, so profitable when game and fish are abundant, and attended with so little disagreeable labour, in comparison of agriculture and mechanical trades, that I think the Indians, so long as they reside in spots where the hunting and fishing are good, will not give themselves up with perseverance and energy, either to the culture of the soil or handicraft employments. I have seldom known even a white man, brought up from his cradle to the sports of the field, to become an industrious and useful member of society, let the motives have been ever so strong to make him so. It has passed into a proverb that a fisher seldom thrives, a shooter never, and that a huntsmen dies a jovial beggar. How then is it to be expected that the Indian, who can have no motive to a settled and laborious

⁶⁵ The English Game Act 13 R. (1389) 2 cap. 13; Anon. *The game law, or A collection of the laws and statutes made for the preservation of the game of this kingdom drawn into a short and easy method, for the information of all gentlemen, and caution of others* (London: E. and R. Nutt, and R. Gosling, for S. Butler, 1722.): v. See also Munsche 1981: 11-12.

⁶⁶ "Report of Mud and Rice Lake Missions," *Christian Guardian*, 4 December 1833: 14.

⁶⁷ Letter from Rev. James Evans to Rev. John Beecham, dated Mission House, River St. Clair, Upper Canada, 29 March 1836, in *The British Parliamentary Papers*, 1968-71: 530, 531.

agricultural life, but the persuasions of the Missionary and [government] Superintendent, will, in favorable situations for success, relinquish his former employments of hunting and fishing, for those which are less profitable to him, and attended with, to him, much greater fatigue.⁶⁸

Coleman's presentation to parliament was replete with the social concern that hunting and fishing caused people to fail to develop "industrious" habits and become a "useful members of society". In particular, Coleman made the connection between the social control measures of English game laws and what he believed to be Ojibwa underdevelopment which he blamed on their attachment to hunting and fishing that did not require the so-called discipline and energy of farming. Coleman, therefore, called on the government and missionaries to make the necessary "persuasions" to eliminate Ojibwa fish and animal use.⁶⁹

Determined to eradicate Ojibwa fishing, the missionaries launched new aggressive interventions. First, they asked the government to alter the substance of treaty

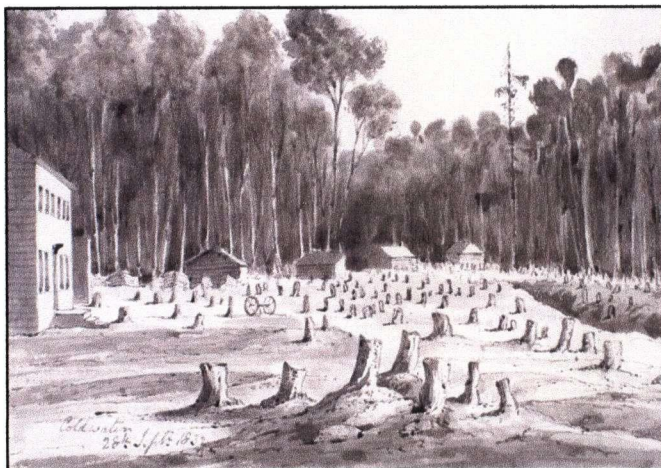


Figure 5.1. Depiction of the land bound agricultural mission at Coldwater, September 1832. By Henry Martin.
Source: NAC C115022

presents that the Ojibwa negotiated earlier. In 1830, these presents included 5700 fishing hooks, 984 cod lines, 80 lbs seine rope, 80 lbs twine, and 285 lbs twine.⁷⁰ Even more destructive to the Ojibwa lifeway and cultural ecology, Methodists proceeded to relocate Ojibwa communities to landlocked missions. In 1830, Methodists

relocated three Chippewa communities from Lake Simcoe and southern Georgian Bay and concentrated them at the Coldwater mission, making these Chippewa the first subjects of the new relocation policy (see figure 5.1). In 1837, Methodists persuaded the Mississaugas of eastern Lake Ontario to remove to the landlocked Alnwick mission. In

⁶⁸ "Evidence of the Rev. James Coleman", in "Report on the Affairs of the Indians in Canada, 1844", printed in *Journals of the Legislative Assembly for 1847*, appendix T, sub-appendix 34: n.p.

⁶⁹ "Evidence of the Rev. James Coleman", in "Report on the Affairs of the Indians in Canada, 1844", printed in *Journals of the Legislative Assembly for 1847*, appendix T, sub-appendix 34: n.p.

⁷⁰ "Report on the Affairs of the Indians in Canada 1844": appendix T: n.p.

1838, they removed the Scugog nation from a point on Balsam Lake to a landlocked mission near Lake Scugog (see map A.1). Although no further case study communities were subject to relocation, the policy was still intact in 1844, when a missionary argued to a commission investigating Indian Affairs that, "it is necessary the Indian should be prevented becoming hunters or fishers, and this can be alone done, by locating the village where there are no facilities for either."⁷¹ The Superintendent of Indian Affairs concurred, "the means would be to procure for them good agricultural situations, remote from marshes; to encourage them to cultivate their lands; produce their own animal food, instead of hunting for it."⁷² The forced removal from Ontario's wetlands was exactly what the Mississauga had sought to prevent when they negotiated their strategy for co-existence in the 1788 *Gunshot Treaty*, subsequent treaties from 1811 to 1818, and continued to fight for through a system of colonial laws to protect their separate rights and control over resources.

Some Ojibwa, especially the prominent converts, Peter Jones and George Copway, accepted the missionaries' message. For example, Reverend Coleman argued that Peter Jones informed him that the productive Credit River fishery "has been a great preventative to the welfare of the Indians."⁷³ Other Ojibwa, however, resisted the missionaries' efforts. In 1836, Ojibwa residing on the St. Clair River refused the missionary efforts, arguing that their spirits "would be angry with us for abandoning our own ways."⁷⁴ Some Ojibwa families apparently retreated permanently to their family hunting grounds, away from their southern fishing places to avoid contact with the missionaries. In 1865, James W. Bridgland would report encountering some of these Ojibwa holdouts:

I visited also in the vicinity of Rosseay [Rousseau] Lake, the Indian settlement. This settlement is formed by a few families of Pagan Indians, who hitherto have refused social intercourse with Christian Indians, and object to Missionary visitations. They have under imperfect cultivation, some 30 or 40 acres of land,

⁷¹ "Report on the Affairs of the Indians in Canada 1844": appendix T: sub-appendix 34: n.p.

⁷² "Report on the Affairs of the Indians in Canada 1844", appendix T, sub-appendix 40: n.p.

⁷³ "Evidence of the Rev. James Coleman...", in "Report on the Affairs of the Indians in Canada 1844" appendix T, sub-appendix 34: n.p.

⁷⁴ Anonymous Ojibwa person, quoted by D. Coates, in *The British Parliamentary Paper*, 1968-71: 526.

planted this season with corn, potatoes, pumpkins, and beans. They have log houses, and as many dogs as Human inhabitants.⁷⁵

Despite this resistance, on the part of some Ojibwa families, the Methodists gauged the success of their efforts by repeatedly reporting the number of acres under cultivation at each mission. By their own measure, however, the missions were not successful. Throughout the 1830s and 1840s, many clergymen reported nothing but frustration as Ojibwa communities resisted changes.⁷⁶

Most Ojibwa, however, were not totally opposed to all of the changes introduced by the Methodists. Many Ojibwa indicated an interest in the new schools, but wanted to work the school schedule into their existing family harvesting schedule. In 1833, at Rice Lake, a missionary reported, "The school continues... except that the attendance has not been so regular or numerous – Hunting, sugar making, planting, &c., are the causes."⁷⁷ Some communities re-developed maple sugar bushes close to the new schools to integrate the two schedules. Integrating a full agricultural season with spring planting and fall harvesting at the same time as major fish runs was much more difficult. In 1833, the Reverend Case berated four families he spotted fishing at Colpoy's Bay and tried to account for it this way: "the company were on a fishing voyage, of which they are yet too fond. Their apology was that they had finished their planting, and should soon return to the mission to hoe their corn."⁷⁸ To the chagrin of the missionaries, "it so happens that these hunting seasons occur about the time when they ought to be busily engaged in their agricultural occupations."⁷⁹ Here as elsewhere in Canada, missionaries (later Indian Agents) would negotiate the balance between traditional seasonal rounds and village agriculture. By 1838, Methodists confessed that their enthusiastic reports of successful conversions and the number of acreages under cultivation often were exaggerated.⁸⁰

⁷⁵ James W. Bridgeland to Alexander Campbell, Commissioner of Crown Lands, 7 August 1865, in Florence B. Murray, ed., *Muskoka and Haliburton, 1615-1875: a collection of documents* (Toronto: The Champlain Society, 1963): 132

⁷⁶ Anon., "Report of a visit to Lake Simcoe", *Christian Guardian*, 28 December 28, 1831: 25.

⁷⁷ Anon., "Report from Rice Lake", *Christian Guardian*, 3 July 1833: 134.

⁷⁸ Rev. Case, "Report of a tour of Penetanguishene", *Christian Guardian*, 24 July, 1833: 146.

⁷⁹ Anon., "Rice Lake", *Twenty-third Annual Report of the Missionary Society of the Wesleyan-Methodist Church in Canada* (Toronto: 1848): xx.

⁸⁰ In 1838, a critic charged: "1st. That an attempt to make Farmers of the Red men has been, largely speaking, a complete failure. 2nd. That congregating them for the purpose of civilization has implanted

With non-native settlement proceeding apace in Upper Canada (table 5.1), parliament established a commission in 1844 to gauge the success of the Methodist missions. The committee circulated two lengthy questionnaires, one to Indian Affairs officers and the other to missionaries. Thirty percent of the questions aimed to determine agricultural “progress”, 19% related to indicators of Christian reform, and 22% concerned education and health. Four questions asked about the persistence of hunting and fishing among the Ojibwa. For example, question #19 asked: “Is their fondness for fishing, hunting, &c., as great as formerly”; and question #20 queried: “What time do they spend in such occupation, and at what seasons of the year.”⁸¹ The responses noted some agricultural success, but found that the Ojibwa “fondness” for hunting and fishing was largely undiminished. Chief superintendent of Indian Affairs, Jarvis, reported that Ojibwa hunting and fishing “prevails as much as ever.” Jarvis added, however, that increased non-native settlement was reducing the remaining hunting grounds of the Ojibwa.⁸² In western Ontario, superintendent Clench observed “very little difference” in the Ojibwa “fondness” for hunting and fishing, but did report that when the unsettled lands in the London and Western Districts were filled, aboriginal “hunting must cease.” Regarding the Chippewas of the Upper St. Clair, River aux Sables, and Kettle Point, Superintendent Jones suggested that the fisheries were growing in importance.⁸³ Evidently, the dominant society’s social engineering plans were not to be easily accomplished. Most significantly, in 1836, the Coldwater agricultural mission collapsed and the three Chippewa bands reclaimed their traditional homes and fishing grounds at Snake Island, Beausoleil Island, and the “Narrows” around Lake Simcoe.

The crown formally breaks its commitment to terrestrial ecological co-existence

After the collapse of Coldwater agricultural mission, the Indian Department realized that the eradication of Ojibwa fishing pursuits was unrealistic and began to view the Ojibwa fisheries as the future foundation for Ojibwa social and economic development. The state, however, had no interest in protecting Ojibwa rights over lands

many more vices that it has eradicated.” A Methodist respondent admitted that there was some truth to the first charge. See: “Despatch on Indian Affairs”, *Christian Guardian*, 12 September, 1838.

⁸¹ “Reports on the Affairs of the Indians in Canada 1844”: appendix T: n.p.

⁸² “Reports on the Affairs of the Indians in Canada 1844”: appendix T: n.p.

⁸³ “Reports on the Affairs of the Indians in Canada 1844”: appendix T: n.p.

and wildlife. It was in this context that Lieutenant Governor Bond Head wrote to the Colonial Office that the Ojibwa's hunting and fishing rights made them, "the lord of the manor".⁸⁴ Two years later, Bond further explained his analogy when he described the Ojibwa's unsundered lands as an "Indian preserve, as large as one of our counties in England". Further, he believed that from the time of the first non-native settlements to his administration, that the two cultures co-existed along ecological lines: "for a considerable time, the white men and the red men, without inconvenience to each other, following their respective avocations, the latter hunted, while the former were employing themselves ... in laboriously following the plough." He, however, held this co-existence to be doomed to failure: "in the process of time, however, the Indian preserves became surrounded by small patches of cleared land; and so as this was effected, the truth began to appear that the occupations of each race were not only dissimilar, but hostile to the interests of the other."⁸⁵ Although the crown never acted to restrict settler incursions, Bond Head claimed that he was powerless to restrain settlers from invading the Ojibwa (p)reserves. Now, instead of restraining the non-native settler's illegal expansion, he proposed to remove all Ojibwa peoples from southern Ontario to Manitoulin Island where the fisheries would be their main economy. He initiated his plan with an appeal to the Saugeen Ojibwa to yield their peninsula on the grounds that their original agreement for ecological and legal co-existence in the *Treaty of Niagara* (1764) was no longer workable: "as an unavoidable increase of the white population, as well as the progress of cultivation, have had the nature effect of impoverishing your hunting grounds it has become necessary that new arrangements should be entered into for the purpose of protecting you from the encroachment of whites."⁸⁶ In essence, Bond Head "naturalized" non-native settler expansion. It was not, however, "natural" for settlers to usurp Ojibwa lands when there were laws in place to prevent these events – rather the state created the problem by failing to enforce its laws and treaty agreements. On this pretense, Bond Head unilaterally broke all commitments to the original terms for the non-native

⁸⁴ Sir Francis Bond Head, memorandum to Colonial Officer, no. 95, 20 November 1836, in Sir Francis Bond Head, *Communications and Despatches relating to recent negotiations with the Indians* (Toronto: British Colonist, 1837): 3.

⁸⁵ Sir Francis Bond Head, *A Narrative by Sir Francis B. Head, Bart.* (London: John Murray, Albermale Street 1839): 122-3.

⁸⁶ Canada 1891: 112.

settlement of Ontario. As Victor Lytwyn showed, Bond Head did, however, make repeated commitments to protect the Saugeen fisheries from non-native encroachments so as to set the resource aside for aboriginal economic development.⁸⁷ In essence, the state now forfeited all duties to protect aboriginal treaty rights over game and their habitats but did make new commitments to protect aboriginal commercial fisheries.

Bond Head's plan to remove all the Ojibwa of the colony to Manitoulin Island, like so many schemes, was never realized. Not surprisingly, many native communities adamantly refused to leave their traditional places. In the face of these state relocation schemes, the small and disperse Ojibwa communities of southern and western Ontario repeatedly expressed concerns about the security of their land and resources.⁸⁸ In response, two commissions investigated the management of Indian Affairs in 1840 and 1844.

Calls for the extinction of wildlife and Ojibwa hunting rights

Following the Mississauga and Chippewa's protests throughout the 1830s, the subject of their fishing and hunting rights and deficiencies in the "existing laws" came prominently before two commissions struck in the 1840s to make recommendations on the management of Indian Affairs. The 1840 commission was asked, among other things, to investigate the "destruction of game within the Indians' Reserves" (meaning all unsundered "Indian lands").⁸⁹ The commissioners concluded that existing statutes, even if they were made "severe", would not stop settlers from plundering aboriginal resources:

There are no tracts of land belonging to Indians within the settled portion of this Province, which produces game sufficient for the maintenance and support of the Tribes to which they belong; and if they abounded in game, the severest penal statutes would scarcely prevent the white inhabitants from killing it.⁹⁰

⁸⁷ Lytwyn 1992.

⁸⁸ The *Christian Guardian* is replete with discussions of Ojibwa land insecurity.

⁸⁹ Jarvis, "Report of Committee No. 4, on Indian Department, 1840" printed in *Journals of the Legislative Assembly for 1847*, appendix T.

⁹⁰ Jarvis 1840: appendix T.

The commissioners' reluctance to add teeth to the *Salmon and Deer Acts* is a clear signal of the changing times for settler-aboriginal relations. The commission also began to sow the seeds for a new argument that two sets of laws for two groups of people were unfair, an argument that persists to the present. It was "unfair", the Commission suggested, to make settler hunting penal "when the Indians themselves are permitted to hunt over the estate of every white man in the country, without meeting interruption."⁹¹ Long after the Ojibwa admitted non-native settlement of Ontario on the basis of certain conditions the crown now viewed Ojibwa treaty hunting rights as "unfair" as opposed to original settlement conditions. On the subject of the aboriginal fisheries, however, the commissioners were of a different mind and argued that "the protection of their fisheries – the preservation of their timber growing on their lands – and the removal of squatters, are of far more importance to them."⁹² Nothing was done about the recommendation concerning "protection of their fisheries".

In 1844, parliament appointed another commission to make recommendations for the management of Indian affairs. It summoned extensive evidence from field officers and missionaries. On the subject of hunting rights, the commission reinforced the 1840 commission's pronouncement that no amount of legislation would prevent non-native usurpations.⁹³ Reflecting the social agenda of the day, the commissioners also concluded that it was in the best interest of aboriginal people if the government neglected its duty to protect game: "As to the preservation of game, they [commissioners] considered that its entire extinction or disappearance might be ultimately more beneficial to the Indians than its most rigid preservation for their use."⁹⁴ This statement is more confirmation that the laws for "the preservation of game" were for the benefit of aboriginal people, or rather, "preservation for their use." These laws, however, were now seen as a hindrance to a new colonial agenda with new ideas about what was "beneficial" for aboriginal peoples that departed from the arrangements the Ojibwa negotiated as the means to co-existence in their original treaties.

⁹¹ Jarvis 1840: appendix T.

⁹² Jarvis 1840: appendix T.

⁹³ "Reports on the Affairs of the Indians in Canada, 1844", printed in *Journals of the Legislative Assembly for 1847*, appendix T: n.p.

⁹⁴ "Reports on the Affairs 1844: appendix T: n.p.

On the subject of aboriginal fisheries, the commission heard repeated field evidence that aboriginal people sought and needed improved protection of their fisheries from settler encroachment. In one example, a superintendent reported that the Chippewa fishery on the Saugeen Peninsula “is very productive, and has attracted the notice of the white people, who annoy the Indians by encroaching on what they consider their exclusive right.”⁹⁵ The commissioners agreed with the 1840 commissioner on the subject of fisheries, that, “the protection of the Indian Fisheries [is] a matter of importance” and made three recommendations for improved protection of Aboriginal fisheries under the “existing law”.

1. That the rangers, chiefs, and other officers be informed of the nature of the existing law, which may be applicable to their locality.
2. That they report all infringements to the local Officer, who shall thereupon take such steps as may appear advisable for the punishment of offenders.
3. That the local Officers report to the Governor General any insufficiency in the law to prevent injustice, and that, if necessary, a legal enactment be introduced to supply additional power for its repression.⁹⁶

The “existing law” the committee cited is undoubtedly the *Act Preservation of Salmon*, which at this time applied to the Home, Gore, and Newcastle Districts, but not the Midland district. The second article suggested improved methods of surveillance, as the Mississauga long sought and needed, while the third article contemplated adding teeth, likely overseers, to the existing laws. What, if anything, the crown did to follow these recommendations can be seen from a case study of the Mississauga’s reserved fishing grounds in the Bay of Quinté with reference to the Saugeen’s exclusive treaty fishing rights in Lake Huron.

Shifting grounds: the case of the Bay of Quinté fishing reserves

In chapter 3, I demonstrated that the Mississauga reserved all the islands and many points of land and river mouths in the Bay of Quinté in the *Crawford Purchase* (1784). I also showed that crown surveyors did not survey these places nor did the Midland Land Board allot these places to settlers even when settlers applied specifically

⁹⁵ “Reports on the Affairs 1844: appendix T: n.p.

⁹⁶ “Reports on the Affairs 1844: appendix T: n.p.

for them.⁹⁷ In chapter 4, I showed that during the negotiations of the Moira River surrender (1811-16), the Mississauga complained that settlers squatted on their reserved islands and demanded as a condition for their riverine surrender that they obtain “some writing” from the crown to show to the island squatters and eject them. I also showed above that it was common knowledge among settlers in the 1820s that, “the Indians are allowed to retain all the islands in the great rivers.”⁹⁸

Before the 1850s, the Mississauga’s reserved islands, beaches, and peninsular points in the Bay of Quinté contained the perfect environmental factors for the development of a non-native commercial fishery. Indeed, it was here that the first productive non-native commercial fishery began in the colony. Many factors were



involved. One factor had to do with the fishing technologies of the day. Before 1875, fishers in Upper Canada conducted their fishing from shore, rather than in large off-shore vessels. Small rowboats were used to set gill nets across river mouths or stretch seines around shallow spawning grounds which fishers then dragged ashore sweeping up all the fish in their path. Secondly, a hauling area on

a beach was a critical environmental conditions for the operation of these fisheries (figure 5.2). As I showed above, farmers tried to repel fishers from their riparian lands in the developed agricultural fields of the colony. Farmers did not, however, own the key beaches and hauling grounds in the Bay of Quinté. Rather, the Mississauga did. It is also relevant that non-native commercial fishing was illegal in almost all parts of Lake Ontario, Lake Erie, and the St. Clair River system, except the Bay of Quinté. These

⁹⁷ Minutes of Council, Quebec, 22 October 1788. PRO, CO 42, vol. 62: 36-53, *vide* Victor P. Lytwyn, “Final Report: Historical Research Report on British Policy Regarding the Granting of Islands in the Context of Bois Blanc (Boblo) Island in the Detroit River”, Indian Claims Commission, Exhibit 14, 5 March 1999: 71; Minutes of a weekly meeting of the Land Committee, Quebec, 25 June 1790, PRO, CO 42, vol. 69: 176-179, *vide* Lytwyn 1999: 75; Schedule of Petitions for Leases, September 1797. AO, RG 1, A-I-1, vol. 54 (old no. 6): 2014; Petition dated 28 May 1790, from James May, Detroit, to Lord Dorchester, AO, Upper Canada land petitions M1/203, *vide* Lytwyn 1999:73.

⁹⁸ MacTaggart 1829: 277.

factors made the Mississauga reserved fishing places attractive to prospective non-native commercial fishers in the early 19th century.

It appears that in many cases, when the Midland land board denied a settler a grant to an island or point of land in the region, the settler then turned to the Mississauga and requested a lease or purchase. The evidence indicates that the Mississaugas were prepared to lease or sell some of their islands, but on their own terms. An early historian of the region, William Canniff, learned from early settlers that a Mississauga chief agreed to lease Wapoose Island and yearly collected rents from the leasee.⁹⁹ Another settler paid rent to the Mississaugas for Bakers Island.¹⁰⁰ A different local historian recently recorded that in the 1820s, Henry Campbell negotiated a lease for Sagastaweka Island and paid the Mississauga an annual rent.¹⁰¹ Canniff argued that the settlers clearly understood the islands remained Mississauga property. He gave as an example the sale of a small island in the Bay in 1826: "this island originally belonged to the Mississauga, as did most of the islands in the Bay, until a comparatively recent date. John Cuthbertson, a grandson of Capt. John, purchased the island from John Sunday, and other Mississauga chiefs."¹⁰²

The Mississauga understood that their private sale of islands contravened the *Royal Proclamation of 1763*, but always disputed this clause. In 1793, the Mississauga and a group of "Western Indians" informed the Crown that they never agreed to this clause, stating, "We never made any agreement with the King, nor with any other Nation that we would give to either the exclusive right of purchasing our lands. And we declare to you that we consider ourselves free to make any bargain or cession of lands, whenever & to whomsoever we please..."¹⁰³ So, the Mississauga proceeded to manage their land transactions. Significantly, they approached the leases and sales of their islands in the same manner as they did with the crown, drafting up treaties with the settlers. In 1847, the Mississauga used the same language from their *Gunshot Treaty* to affirm a sale agreement with Francis Kerky for Mudlunta Island that involved payments in perpetuity:

⁹⁹ Canniff 1869: 382.

¹⁰⁰ Canniff 1869: 407.

¹⁰¹ Susan Weston Smith, *The First Summer People: The Thousand Islands 1650-1910* (Toronto: Boston Mills Press, 1993): 121.

¹⁰² Canniff 1869: 406.

¹⁰³ Message from the Western Indians to the Commissioners of the United States, dated 13 August 1793, in Cruikshank 1923, II: 19.

Article of Agreement made this Second day of June in Thousand eight hundred and forty-seven.... Jacob Storms John Storms and John Simson of the tribe of Indians called the Chippewa tribe being Council for said tribe of the first part doth Lease Mudlunta Island to Frances Kerky, of the second part as long as grass grows and water runs for the sum of five shillings, per year, HCY [Halifax currency] yearly which the said Francis Kerky his heirs executors and assigns for ever are holders to pay to the said first part signed sealed and delivered,
Jacob Storms His Mark –
John Storms His Mark –
John Simons His Mark –
Francis Kerkey His Mark –¹⁰⁴

The Mississauga sales, such as these, affronted the crown. In 1826, when the Mississauga leased two islands in the Bay of Quinté to Methodists, the missionaries reported to their congregation that the government was angered by the private deal.¹⁰⁵ Similarly, Canniff recorded that the Mississauga's lease of a small island to John Cuthberston "led to some trouble with the government, who held that the Mississauga had no right to sell their land except to Government."¹⁰⁶ It is not possible to collect a complete list of the Mississauga transaction, but in the very least it included 10 islands.¹⁰⁷

Not all went well for the Mississauga in their private land dealings. Although some lessees consistently paid the rent, others refused. This occurred in 1833 when the non-native lessees of Big Island reneged on their annual rent.¹⁰⁸ In this case, the Mississauga turned to the government, who arranged a treaty conveying the island to the settlers in return for monies paid to the Mississauga.¹⁰⁹ Settlers who entered the region without Mississauga authority posed a greater problem than those who reneged on the rent. As shown, the Mississauga repeatedly asked the Indian Department and commissions investigating Indian affairs to remove the squatters and protect their

¹⁰⁴ NAC, RG 15 (Department of the Interior), registered 6 May 1874, Ottawa, quoted in Susan Weston Smith, *The First Summer People: The Thousand Islands 1650-1910* (Toronto: Boston Mills Press, 1993): 120.

¹⁰⁵ The missionaries printed the lease in *The Methodist Magazine*, vol. 10 (New York, 1826): 227.

¹⁰⁶ Canniff 1869: 406.

¹⁰⁷ NAC, RG 10, vol. 414, letter by Chiefs John Sunday, John Sampson, Captain Irons, 4 principal warriors, and 9 warriors, dated Alnwick 21 June 1847

¹⁰⁸ NAC, RG 10, Series A, vol. 791, Minutes of a council held at the Post of York, 30 January 1828: 7196-7; NAC, RG 10, vol. 712, Governor General's office -- Upper Canada, Abstract of Petitions, 1838-1844.

¹⁰⁹ Canada 1891, Treaty # 36, vol. 1: 89-90.

fisheries. These requests reached the ears of the commissioners as I indicated above,¹¹⁰ but as had become all too common the government enacted no surveillance actions. In the spring of 1847, the Mississauga again protested illegal settler use of the lands and resources and listed over 75 of their islands, points of land, and beach properties in the Bay of Quinté that were subject to illegal settler occupation.¹¹¹ With the exception of Big Island, however, there is no evidence the government took action. Because settlers could apparently occupy the islands with impunity, it is unlikely many of them were interested in negotiating purchases or leases from with the Mississauga.

In 1857, a government inspector recorded the extent of non-native fishing in the region. He found a long-established community of fishers on Wellington Bay that was using seines of up to 100 rods in length (figure 5.2). At Salmon point, he observed seven fishing stations: "the whole fishery being conducted by the owners of the seines, with their families, who thus secure the whole catch to themselves".¹¹² Based on the catch from previous years, the inspector reported, "it is supposed to consist of three-fourths white fish and one fourth salmon, worth 6 to 10 dollars per barrel, respectively."¹¹³ At the Duck Islands, the inspector noted that the salmon fisheries had already collapsed from years of overfishing. From Timber Islands to Bull's Cove, and inside Prince Edward's Bay, he observed small seine operations. At Orphan and adjacent islands, 400 barrels of "very superior salmon" had been caught for several seasons.¹¹⁴ Salmon were also caught at Nicholson's Island and the prime seining grounds between Bald Head and Weller's beach where he observed 27 seine operations.¹¹⁵

Non-native fishing in the Bay of Quinte was substantial by 1857. With initial Ojibwa consent, this non-native commercial fishery had developed out of the reach of the government's morality laws against commercial fishing and away from the farmers' waterfronts, but as the evidence shows, it also grew to defy the Ojibwa owners of the

¹¹⁰ "Reports on the Affairs 1844": appendix T: n.p.

¹¹¹ NAC, RG 10, vol. 414, letter by Chiefs John Sunday, John Sampson, Captain Irons, 4 principal warriors, and 9 warriors, dated Alnwick 21 June 1847

¹¹² John McCuaig, "Appendix V. (3)", dated 16 October, 1857, Pictou, Upper Canada, printed in "Report of the Commissioner of Crown Lands of Canada for the year 1857 (Toronto: 1858): Appendix V. (3), n.p.

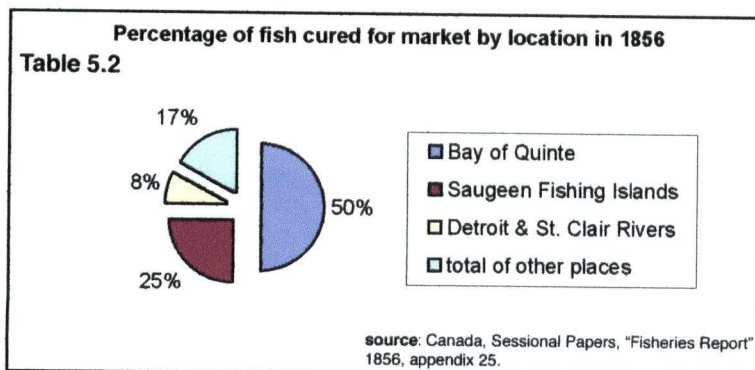
¹¹³ McCuaig, 1857: n.p.

¹¹⁴ McCuaig, 1857: n.p.

¹¹⁵ McCuaig, 1857: n.p.

islands, points of lands, beaches, and other suitable fishing places. Victor Lytwyn showed that a similar history occurred among the Saugeen's Fishing Islands.¹¹⁶

A government inspector tabulated the non-native commercial fish catches around the colony in 1856 (table 5.2). It indicated that fifty percent of all fish cured was



produced in the Bay of Quinté where 150 to 200 fishers were employed. Twenty-five percent came from the "Fishing Islands" off the Saugeen Peninsula, and eight percent from the

Detroit and St. Clair Rivers (figure 5.2).¹¹⁷ Historians of the Great Lakes fisheries have noted this data but failed to observe that these first three major non-native commercial fisheries emerged on waters, beaches, islands, and points of land that the Ojibwa reserved in the *Crawford* (1784) and *Bond Head* (1836) treaties with the explicit crown assurance that they would preserve the fisheries for the Ojibwa in exchange for land surrenders. When the commissioner of crown lands read the above data, the illegal invasion of the Ojibwa's reserved (but unprotected) fisheries led to a fundamental shift in government fisheries policies with significant repercussions for the Ojibwa.

The crown decides to encourage a non-native commercial fishery

Between 1840 and 1856, non-native settlement increased rapidly and the government began to look for new lands and resources for immigrants (table 5.1). In 1856, for example, Joseph Cauchon, the Commissioner of Crown Lands for Canada (province) reported that within the southern Ontario peninsula, "the supply of Crown Lands for settlement is now exhausted" and that "fields for the extension of settlement must be sought in other parts of Canada". In response, the commissioner identified the Chippewa and Mississauga's northern hunting grounds, that he called the "Ottawa-Huron tract" as the "the most advantageous part of the Province where government has still any

¹¹⁶ Lytwyn 1992.

¹¹⁷ Joseph Cauchon, Commissioner of Crown Lands, "Fisheries", Report of the Commissioner of Crown Lands of Canada for the year 1856, CSP no. 25 (Toronto: 1857): n.p.

considerable extent of land to dispose of.”¹¹⁸ The Ojibwa and Mississauga had reserved the area three times, first in the *Royal Proclamation of 1763*, the *Gunshot Treaty*, and then the *Rice Lake* treaty, but the government proceeded to build roads and settle immigrants in the region without first seeking a treaty of surrender. Thus, the Ojibwa’s reserved northern hunting grounds became the terrain on which central Canada (illegally) extended northwest in the 1850s.

Cauchon knew well that the Ottawa-Huron tract was marginal agricultural land and thus proceeded to identify resources other than agriculture that settlers could develop. In particular, he identified the potential of the Great Lakes fisheries. To illustrate its potential, he cited the fishing returns of the non-native commercial fishing groups in the Bay of Quinté, the Fishing Islands, and the Detroit River (table 5.2). Hence, the government’s failure to prohibit the illegal movement of non-native fishers into these reserved Ojibwa fishing grounds served to demonstrate the potential of the fisheries as a new field of non-native industry. It heralded a new period in Ontario fisheries history, in which government would now promote commercial fisheries development. But, as will be shown, moral issues continued to cause the government concern and it would move cautiously and build social control measures into its new fisheries policies that became the first modern *Fishery Act* in 1857.

Conclusions

The issue of English moral concerns about fishing is not examined in the literature on the history of the Great Lakes fisheries. The evidence indicates that between 1823 and 1856, the crown actively obstructed settler efforts to develop commercial fisheries for fear that it would cause moral decline and underdevelopment in the colony. Instead, the legislature acted to conserve the fisheries for agrarian settler subsistence use, aboriginal commercial and subsistence use, and anglers. The mechanism for these actions were the *Act for the Preservation of Salmon* and other acts targeted at specific non-native operations at Burlington Bay and the Niagara and Detroit Rivers.

Between 1805 and 1820, the Ojibwa negotiated treaty agreements in which they agreed to surrender land in exchange for the reservation and protection of their key

¹¹⁸ Report of the Commissioner of Crown Lands for the year 1856, CSP no. 25 (Toronto: 1857): n.p.

wetland hunting and fishing environments. They negotiated from the perspective of their aboriginal rights and concerns for the conservations of their resources. After each treaty, parliament protected the Ojibwa rights to *salmonoid* fishes and deer in legislated game and fish laws. After 1820, the Ojibwa lobbied parliament to add enforcement measures to the laws as settlers trespassed on their resources with impunity. In their appeals to parliament, the Ojibwa adapted their arguments to meet the social concerns of parliament and proposed to develop commercial fisheries that would support their social adaptations and contribution to society, provide a subsistence supply of fish to settlers, and lead to the conservation of the resource. Parliament, however, only enacted enforcement protections for the Mississauga of the Credit River. Meanwhile, the settler invasion of the Mississauga and Chippewa's reserved hunting and fishing grounds continued.

In the 1830s, Methodist and parliament's words to protect the Ojibwa fish and game resources shifted dramatically when the civil government obtained control over Indian affairs and set a course to convert the Ojibwa to Christian agriculturists. They viewed Ojibwa harvesting as an obstacle to their conversion and relocated many communities to landlocked missions. One result is that by the end of the 1830s, missionaries determined the modern geography of "Indian Reserves" in southern Ontario.¹¹⁹ In cases where the Methodists developed their missions at key Ojibwa fishing grounds, the Ojibwa were able to maintain their links to some of the most productive fishing grounds and spawning areas in the province. In cases where the Methodists removed Ojibwa communities to landlocked missions, such as Alderville and Scugog, members of these communities remain without waterfront fishing grounds to this day. This geography continues to limit their ability to access the fisheries. Meanwhile, the communities located in key spawning grounds continue to be confronted with outside measures for the conservation of their fisheries.

Most significantly, in 1836, the crown unilaterally abrogated its commitment to terrestrial ecological co-existence with the Ojibwa. In 1844, a commission of inquiry went further when it proposed that the extinction of all wildlife in Ontario was in the Ojibwa's best interest. The crown, however, did not formally withdraw its commitment

¹¹⁹ Canada 1891, Treaty #52, vol. 1: 124-8.

to protect Ojibwa fisheries and in fact saw the fisheries as the Ojibwa future source of subsistence.

In the next chapter, I will show how sportsmen emerged on the scene to draft the first modern *Fishery Act* (1857). How far the government was prepared to go to protect the Ojibwas' fishing rights in the face of pressure from this new social interest group as well as non-native commercial fishers is the subject of my next chapters. I also trace how the government's moral concerns and concepts for the social control of the settler population informed the development of modern fisheries law.

Chapter 6

Sport Fishers strike: The lobby and the “science” behind the 1857 *Fishery Act*

They were fishing with minnows, worms, spawn, in fact every lure that was illegitimate and unscientific.
American Sportsman (1872)

Until the 1850s, Upper Canada's parliament half-heartedly protected the treaty fishing rights of the Mississauga and Chippewa while it attempted to suppress commercial fishing and conserve the salmon resource for agrarian settlers. It also offered some protections to sport fishers. Despite the government's intentions, by the 1850s, settlers started a commercial fishery in the Bay of Quinté, Detroit River, and Saugeen Fishing Islands – all reserved aboriginal fishing grounds. With so many competing social interests now vying for the resource, I will show that it was sportsmen who first moved to bring new order to the fisheries when it successfully infiltrated parliament and prompted the passage of the first Canadian comprehensive *Fishery Act* in 1857.¹

Although the 1857 *Act* is viewed as one of the first ‘modern’ acts to regulate commercial fishing, its primary innovations were to outlaw traditional aboriginal fishing methods regardless of treaty protections and use the authority of the state to privilege sport fishing. It became the basis to Canadian fishery laws when it was revised in 1858 and 1865 and following Confederation in 1867, became the *Fishery Act* of Canada in 1868. The 1857 *Act* regulated fishers' efforts with limits on the times, places, and technologies for fishing, and for the first time, shifted enforcement from private informers to government agents who had the full authority of magistrates to enforce the statute by search and seizure. The *Act* also broadened laws to prohibit pollution and protect habitats. These principle tenets of the 1857 *Fishery Act* remain at the core of modern fishery legislation.

Historical studies generally portray the 1857 *Fishery Act* as a consolidation of the early Upper Canadian fishery laws.² Margaret Beattie Bogue's recent study of the Great Lakes fishery is a typical example of this trend: “Over the years, one principle of

¹ Canada (province), *The Fishery Act*, 20 *Vict.* (1857) c. 21

protecting the fish population after another had gone on the statute books, until 1857 and 1858, they added up to an impressive foundation on which the Dominion of Canada would base its fishery policy in 1868.”³ The implication is that each fishery statute was a progressive step towards better protection of the “fish population”. But, to briefly review the findings discussed in chapters 2, 4 and 5 of my study, the history of the Upper Canadian fishery statutes must be interpreted from the perspective of the social and political question: for whom in the human population was the resource being preserved? The compass and strength of Upper Canadian fishery laws depended on the group it benefited. The Ojibwa had a large hand in developing the first stream of fish conservation laws (1807, 1810, 1821, 1829); these were designed to conserve the resource for the Ojibwa, but lacked enforcement. Another stream ran parallel to the first (1823, 1833, 1836); these laws were designed to conserve fish for the subsistence fisheries of agrarian settlers and suppress the development of a commercial fishery. The 1857 *Fishery Act*, repealed rather than consolidated these fishery laws and reversed any previous policy concerning protection of Ojibwa and farmer fishing. The new *Fishery Act* encouraged a non-native commercial fishery and also opened the way to a major sport fishery through the conservation of many popular fishes reclassified as “game” for sport fishers. Sportsmen pressed for these reforms. Suddenly, the prerogative over all fish labeled “game” fell to sport fishers who benefited from new and significant legal means to enforce the laws. The question is: how did sport fishers manage to gain so much influence at such an early date? The answer involves sportsmen transformation of the moral ideology on which previous fishery laws were based into an ideology based in science. As will be shown, this science embodied many of the moral assumptions of the day about the negative effects of fishing on non-whites and non-elites, but gave new modern authority to these assumptions. At its core, this science contained elite social ideology, racist assumptions, and tactics for social control.

² Lambert 1967: 150-1; McCullough 1989: 19-21; Wright 1994: 344.

³ Bogue 2001: 179.

The origins of the sport fishing culture in eastern Canada

British North America had an early sport fishing culture as a result of a long British military presence with an officer-class that actively promoted the growth of a ‘fraternity’ of anglers in Canada. As early as the 1760s, observers reported British officers angling in the waters around their garrisons. In 1761, at Michilimackinac, “The amusements consisted chiefly in shooting, hunting, and fishing... the lake is filled with fish, of which the most celebrated are trout, white-fish and sturgeon.”⁴ William Johnson,



Image 6.1. Officers fishing near the estate of Governor-General Haldimand, Montmorency River, Quebec, 1782. By James Peachey. **Source:** NAC C-002024

the Superintendent of Indian Affairs and proponent of the *Royal Proclamation of 1763*, set the stage when he built an elaborate private fishing preserve in the Mohawk valley. His son, John Johnson, a subsequent Superintendent of Indian Affairs, established his estate around gentlemanly angling in Montreal.⁵ Johnson’s superior, General

Haldimand, built his estate on the Montmorency River, another scene for gentlemanly angling (image 6.1). In the 1790s, Peter Russell and Captain Cootes build a fishing and shooting “paradise” at the the head of Lake Ontario.⁶ One British officer speaking about the period from 1816 to 1820 noted, “[a]lmost every Officer in our service is a sportsman.”⁷ Between 1825 and 1850, in western Ontario, it is recorded that military officers stationed at London, Upper Canada West, angled in the local watershed for

⁴ T. De Couagne to William Johnson, 27 November 1763, in Major Robert Rogers, *Diary of the siege of Detroit in the war with Pontiac: also a narrative of the principal events of the siege, a plan for conducting Indian affairs by Colonel Bradstreet, and other authentick documents never before printed, 1711-1774* (Albany, N.Y.: J. Munsell, 1860.): 203. See also Edwin C. Guillet, *Early Life in Upper Canada* (Toronto: University of Toronto Press, 1933): 177.

⁵ Paul Schullery, *American fly fishing: a history* (New York: N. Lyons Books, 1987): 21.

⁶ See chapter 4 of this study.

⁷ Frederic Tolfrey, “The Sportsman in Canada”, *The Spirit of the Times*, 22 July 1843.

speckled trout.⁸ When the Reverend Thomas Magrath published a descriptive account of Upper Canada in 1833, one of over a hundred pamphlets produced for prospective immigrants during that time, he emphasized the colony's sportfishing potential. Written in the form of letters exchanged within his family, one of Magrath's letters informed prospective migrants, "Whoever is fond of fishing, should bring with him his tackle duly prepared; a stiff trout rod, and all the usual requisites for angling."⁹ This advice was typical in the emmigration literature of the day. In 1836, the naturalist, John Richardson, recorded sport fishing in Lake Ontario and the Georgian Bay.¹⁰

As early as the 1820s, Americans also eyed the Canadian angling scene when in two sport periodicals emerged in the United States in 1829 and 1831 to share knowledge and news about horse racing and field sports. Canadian scenes and events were included. The *American Turf Register and Sporting Magazine* (1829-1845) and the *Spirit of the Times & Life in New York* (1831-1843) carried only a few angling articles at first, mostly to do with appeals for information about the sport, but over time, the number of fishing articles increased, with a focus on methods and popular fishing places. The contributors reviewed the English literature, made known information on locations, and disseminated and entrenched values and rules to enoble the art in a new environment. Canadians contributed to these American periodicals and British magazines such as *The English New Sporting Magazine* and *The London Sportsman*. By the 1840s, so many military personnel and their wives wrote about their sporting experiences in Canada that they engendered a small field of Canadian "military sporting literature".¹¹ In one case, Master

⁸ Robina Lizars and Kathleen MacFarlane Lizars, *In the Days of the Canada Company: The story of the settlement of the Huron Tract and a view of the social life of the period, 1825-1850* (Toronto: William Briggs, 1896): 372.

⁹ Thomas William Magrath, *Authentic letter from Upper Canada: with an account of Canadian field sports* (Dublin: W. Curry, Jun and Company, 1833): 174.

¹⁰ Richardson 1836: 1, 11, 24.

¹¹ George Heriot, *Travels Through the Canadas containing a description of picturesque scenery on some rivers and lakes*, 3 vol. (London: Richard Phillips, 1807); John Howison, *Sketches of Upper Canada, domestic and local characteristics* (Edinburgh: Oliver & Boyd, 1821); George Head, *Forest Scenes and Incidents in the Wilds of North America* (London: John Murray, 1829); Walter Henry, "Observations on the Habits of the Salmon Family", paper presented to the Literature and Historical Society of Quebec, 1837, reprinted in William Agar Adamson, *Salmon-fishing in Canada, by a resident* (London: Longman, Green, Longman, and Roberts, 1860): 299-322; Catherine Parr Trail, *The Backwoods of Canada* (London: C. Knight, 1836); Frederic Tolfrey *The Sportsman in Canada*, (London: T.C. Newby, 1845); George Drought Waburton, *Hochelaga or England in the New World*, 2 vol. (London: 1847); Charles Lanman, *The Adventures of an angler in Canada, Nova Scotia and the United States* (London, R. Bentley, 1848); Charles Lanman, *Haw-Ho-Noo or Records of a Tourist* (Philadelphia: Lippincott, Gambo and Co., 1850); Anna

Tolfrey wrote a series of nine lengthy articles in the 1840s, entitled, "The Sportsman in Canada" for the *London Sporting Magazine* and *Life in New York* and then published a two volume book under the same title based on them.¹²

These early 19th century books and magazine articles promoted Canada internationally as a sports destination for military personnel, travelers, immigrants, and others. They described the sophistication of the Canadian angling fraternity, the lure of trout and salmon, the fishing equipment packed by officers and others stationed overseas, recommended certain artificial flies for Canadian rivers, and attempted to increase the authority of the Canadian angling experience by linking their stories with anecdotes and verses from the revered angling writing of Izaak Walton and his followers. Tolfrey for example described the fishing exploits of an army lieutenant stationed at Niagara during the War of 1812 and dubbed him a "Walton *secondus*".¹³ This was high praise.

A political rivalry developed between Britain and the United States in the sport fishing literature that found expression in comparisons between the American and Canadian fishing environments and their respective potential for sustaining a sophisticated sport fishing culture. British officers could transplant their culture of salmon and trout angling to Canada in part because of the colony's ecological similarity to the British Isles. Salmon and trout are cold water fish and predominately inhabit waters north of the St. Lawrence in Canada and the higher latitudes of Europe. This meant salmon and trout were scarce in the United States and southern European countries, and non-existent in the Mediterranean. This scarcity elsewhere promoted expressions of a northern – hence Canadian -- biological superiority among the British-Canadian writers in sports magazines. Henry wrote that salmon occur in Upper and Lower Canada, New Brunswick, Nova Scotia, and Newfoundland, but "such is the dislike of this fish for a warm climate, that it is rarely seen in Europe southward of the 45th or 46th degree of latitude", and as for the United States, it is "a rare occurrence" in the

Jameson, *Sketches in Canada and rambles among the Red Man* (London: Longman, 1852); Major Strickland, *Twenty-Seven Years in Canada West or His Experience as an Early Settler*, vol. 1. (London: Richard Bentley, 1853); Sussana Moodie, *Life in the Clearings versus The Bush*. (London, Richard Bentley: 1853); John J Rowan, *The Emigrant and Sportsman in Canada* (London: Edward Stanford, 1876).

¹² Tolfrey 1845.

¹³ Tolfrey, *The Spirit of the Times*, 1843: 404.

Hudson and Delaware.¹⁴ Trout and salmon were supposedly healthier, larger, and gamier on the British side of the St. Lawrence River and Lake Ontario. Tolfrey figured that the “military settler in Canada, if he have a predilection for field sports, will be in his element”.¹⁵ For the British officers stationed outside their “element”, such as in India and South Africa, the men actively attempted to physically transplant trout and salmon of the North Atlantic to these *salmo* starved environments.¹⁶

The Atlantic salmon fishery of the St. Lawrence became the central focus of much of the Canadian sport fishing trade literature. After spending one to three years at sea, salmon run up the St. Lawrence River to their natal rivers and take refuge at the bottom of pools along the lower reaches of the river in the late spring. By mid-October, the salmon leave these pools and proceed further up the river to spawn in shallower, calmer water, on gravel beds. After spawning, the salmon return down the river, often taking refuge in another deep pool, before returning to sea with the spring floods. Aboriginal people long knew the location of these freshwater pools. Subsequently, French settlers knew them as key fishing places. Military sportsmen hired aboriginal or French Canadian guides to show them the location of these pools, or “holes” as they called them. The military sportsmen, such as Henry, then publicized their newly acquired knowledge of the holes and the prospects for fishing them, such as the celebrated Jacques Cartier River located close to the military garrison at Quebec, along the following lines:

The [French] Canadians have given odd names to different holes, or *remoux* formed by the eddies of this powerful stream. Immediately under the bank of Dayree’s garden is a recess, worn deep in the rocky bank, and generally shaded by the impending precipice, called the ‘trou noir.’ ... A little lower down, on the opposite side, the bank slopes at about an angle of 45 degrees to within eight or nine feet of the water; and there the fish lie in a tolerably quite eddy, where you may hook them, sitting on a ledge immediately over their heads. This is called the ‘Grand Rets’. Lower down is the ‘Petit Rets;’ and at the lower end of the canal, where the river expands, is a famous fishing hole called ‘L’Hopital,’ where the wounded salmon are supposed to wait to be cured of their cuts and bruises. For half a mile below this the fishing is good – the best being immediately above

¹⁴ Piscator [W. Henry], “Salmon Fishing in Canada – No. 1”, *The New York Albion*, 1839: 221.

¹⁵ Tolfrey, *Spirit of the Times*, 1 April 1843: 56.

¹⁶ Major General J.G. Elliott, *Field Sports in Indian, 1800-1947* (London: Gentry Books, 1973): 178-182.

a sloping rock running quite across, where the water makes a chute, or rather runs violently down a long inclined plane, at an angle of about 20 degrees.¹⁷

The quotation indicates an older and intimate French Canadian knowledge of the river's micro-environments and the ways sport fishers transmitted this knowledge and added their angling advice to members of their fraternity.

Canada was an exciting angling frontier to military sportsmen. These adventurous anglers hired aboriginal guides to take them to pools yet untouched by western anglers, hence a type of 'virgin' fishery. In one example, in 1816, Major Browne, paid two native men to take him and his gear to a remote pool on the Jacque Cartier River. Tolfrey recorded that, "the Major had resolved upon exploring this stream in secret, in order that he might be the first to announce the important discovery. One thing was certain, not a European had ever wetted a line in this little river."¹⁸ In another example, Colonel J.E. Alexander reminisced, "We recall with intense delight our sensations whilst exploring and surveying for government undescribed solitudes and rivers of New Brunswick, 'till now ungraced in story'."¹⁹ The British officers then ascribed their names to the pools, to put themselves at the center of the river's 'story' and write themselves into western fishing lore. As a result, rivers like the Godbout now read like a text of successive claims to fishing places with pools named: Indienne, Du Trappeur, De la Croisée, Etienne, Du Notaire, MacDonald, Howarth, and Kate.²⁰

Early sport fishers found an abundance of fish. They also encountered environmental obstacles to sporting practices that they were determined to overcome. In doing so, they removed environmental obstacles in ways that adversely affected the long-term health of the environment. Strickland recorded, for example, "[t]he small streams and creeks are so over-arched with trees in Canada, that it is almost impossible, except in

¹⁷ "Piscator" (W. Henry), "Salmon Fishing in Canada – No. II", Sorel 30 March 1839, *The New York Albion*.

¹⁸ Tolfrey 1845: 58.

¹⁹ J.E. Alexander, "Fishing in New Brunswick", in Adamson 1860: 323.

²⁰ For another example of the European naming aboriginal fishing places to create a toponymic text of a lake's littoral region that can be read as a history of Euro-Canadian sport fishing, see Thoms 2002: 69-98; See also Dan Marshall's Ph.D. thesis on the re-naming/mapping of the banks of the Fraser River, BC, during the gold rush: "Claiming the land: Indians, goldseekers, and the rush to British Columbia" (Vancouver: Ph.D. thesis University of British Columbia, 2000).

odd spots, to make casts with the fly endangering your tackle.”²¹ Canada was not a pastoral English countryside. For anglers, one fortunate side of settlement was the clear-cutting of the littorals. Henry wrote about this in the *New York Albion*, “[t]he thickly wooded banks of the river were sadly in the way of the first fishers; but many trees have been cut down, and good stands cleared at the best fishing spots.”²² Of course, this deforestation had the unforeseen effect of causing soil erosion that silted up the deep pools and warmed the waters. Furthermore, the rafting of logs scoured fish habitats along river bottoms. All of this destruction eventually reduced fish habitats and stocks; but these negative environmental impacts on salmon population would not be understood for some time. Meanwhile, other factors were incorrectly blamed for decreasing salmon stocks.

The new fishing environment of Canada not only presented the angler with new physical challenges, it also introduced new species of fish to European sportsmen. They had to decide which of them deserved to be recognized as “game”. The sport literature that emerged after 1820 provided one vehicle for anglers in North America to reach a consensus. In Europe, salmon and brown trout held paramount cultural significance, promoted first by Isaac Walton, and then many others. In North America, Atlantic salmon were restricted to the north; in present-day Ontario, salmon were found only in Lake Ontario. Because salmon were not present in the myriad inland lakes of Canada and most American watersheds, writers needed to construct the significance of other more common fish species to enoble them as “game”. Tolfrey, for example, nominated the maskinongé, a unique North American fish, as a “fresh-water monster” that tore anglers hands and fingers and taxed all their strength.²³ He also touted black bass and pickerel because they too offered “capital sport”.²⁴ The point that the category “game fish” was socially constructed is also illustrated in an *American Turf* article about the Cincinnati Angling Club: “The fish considered game by the club, are the pike, salmon and bass.”²⁵ The factors that were paramount in classifying species of fishes as game were fighting spirit and susceptibility to capture by angling technologies. Certain fish

²¹ Strickland 1853: 219.

²² “Piscator” [W. Henry], “Salmon Fishing in Gold River, Nova Scotia”, *New York Albion*, 1842.

²³ Frederic Tolfrey, “The Sportsman in Canada”, *The Spirit of the Times*, 17 February 1844.

²⁴ Frederic Tolfrey, “The Sportsman in Canada”, *The Spirit of the Times*, 22 July 1843.

²⁵ Anon. “The Cincinnati Angling Club”, *American Turf Register and Sporting Magazine* 3.7 (1832): 355-6.

were ruled out because they did not rise to an artificial fly. This latter criterion eliminated lake trout. For example, Charles Lanman explained in *Adventures of an Angler in Canada* that the lake trout was not a candidate for game classification because “they love the gloom of deep water, and are not distinguished for their activity.”²⁶ White fish were also ruled out as its mouth was too soft to hold a hook. In the end, Atlantic salmon, bass, maskinongè, and speckled trout emerged as the prized game fish of the new world.

Once they had identified their game species, sportsmen lobbied the colonial government to protect them in their interest. Because the colonies of Upper and Lower Canada united as the single province of Canada between 1841 and 1867, sportsmen’s early efforts to shape fishery laws in one region affected both regions. I will therefore examine both regions in my analysis.

Spearing

One of the sportsmen’s first concerns involved the spearing of salmon in the rivers tributary to the St. Lawrence River. Throughout the first half of the 19th century, spearing fish, especially salmon, was immensely popular among settlers. In the 1830s, T.W. Magrath, a settler on the upstream portion of the Credit River reported that, “the most usual method of killing them [salmon] is with the spear”.²⁷ Major Strickland explained that, “Salmon fishing commences in October, when the fish run up the rivers and creeks in great numbers. The usual way of catching them is by spearing.” Susanna Moodie described spearing on the Trent River watershed.²⁸

Historians tend to cite aboriginal origins for settler spearing.²⁹ However, spearing was also practiced in England and Scotland, where it was known as the leister. It is likely, therefore, that spearing practices by settlers had their origins in both North American and European traditions. The immense popularity of spearing among settlers is sometimes attributed to its novelty, but there are likely more practical reasons. For one

²⁶ Lanman 1848: 59.

²⁷ Magrath 1833: 287-8, 291-2.

²⁸ Strickland 1853: 238; Trail 1836: 159.

²⁹ Guillet 1933 : 264-5; Nancy B. Bouchier and Ken Cruikshank, “‘Sportsmen and Pothunter’: Environment, Conservation, and Class in the Fishery of Hamilton Harbour, 1858-1914”, *Sport History Review* 28 (1997): 1-18; Magrath 1833: 180.

thing, spearing was the only method of catching river-running salmon sanctioned by Upper Canadian law. For another, spearing was the most advantageous, given the habits of salmon. Because Atlantic salmon cease feeding when they enter rivers, baited hooks were useless. Once the salmon reposed in deep pools, set nets were ineffectual. When salmon sat in their pools, the only productive fishing implements were spears and dip nets. Atlantic salmon, however, will rise to an artificial fly from their riverine pools (and sometimes baited hooks) and these fact made fly-fishing and angling the other productive methods of capturing river-run salmon.³⁰ The fact that salmon were best taken from their pools by spears and artificial flies eventually set fly fishers against aboriginal people.

Initially, sport fishers expressed no concern about competition or threats to salmon stocks from settler and aboriginal spear fishing. Indeed, if anything, early anglers viewed aboriginal spearing as an exciting spectator sport. Tolfrey explained that in 1816, on his first fishing trip in Canada, his superior officer took him to the Jacques Cartier River, not only to fly fish, but also witness aboriginal spearing:

[The Major] gave me to understand we should not only have capital sport, but that the scene we should witness on the morrow would be novel and interesting, as he had engaged the services of these two Indians for the purpose of witnessing their extraordinary quickness of sight and their dexterity in spearing trout and salmon... 'and they tell me there are some deep pools and stands in the Jacques Cartier water, just below the *strame*, I intend that you and I shall go with them in their canoes and see them spear the salmon, and I'll go bail we have some excellent sport'.

Tolfrey wrote about the thrill: "a more interesting sight I never witnessed than the spearing of salmon by these adept professors. .. the adroitness and acuteness of vision, and the novelty of the scene altogether, made an impression on me that time can never obliterate." In another example, Sir Henry James Warre (1819-1898) recorded a guided angling trip to the Saguanay River that he described as an "almost (except by Indians) unvisited Eden."³¹ On his first day, the salmon did not rise to his artificial flies (he

³⁰ Richardson 1836: 148-9.

³¹ NAC, MG 24, F 71, H. F. Warre papers, "Fishing tour below the Saguenay", 13 July 1840, vol. 2: 226.

blamed the bright sunlight).³² He wrote of his gratitude when, “a Young Indian speared one about 14 lbs and which afforded us our excellent supper.”³³

Fly-fishing and spearing could both lead to enormous catches for sport fishers. In 1832, Magrath reported that while fishing with artificial flies, “I have frequently caught from nine to ten dozen [108-120 Atlantic salmon] in a few hours.” By comparison he reported, “a good spearsman [could] kill from forty to fifty Salmon in a few hours.”³⁴ In this settler’s report, fly-fishing was the more effective technology. In 1840, Henry Warre recorded that four sport fishers caught 600 salmon and trout in 12 hours.³⁵ By comparison, the British officer, Major Strickland, recorded that in Ontario, “I have known two [spear] fishermen in this manner kill upwards of two hundred salmon in one night”.³⁶ The anthropologist, Alexander Chamberlain, recorded a lower number: “Their skill in this sort of [spear] fishing was remarkable, two hundred pounds of fish [less than 100 fish] being frequently the reward of a day’s labour.”³⁷ Again, the evidence is that spear fishing did not always equal the large catches of anglers. Meanwhile, the historical records are replete with the large size of angling catches. In 1867, *The Canadian Handbook and Tourist’s Guide* noted that at Charleston Lake (north of Kingston): “fish abound in it, and it is not unusual for the sportsmen to take one hundred bass with a single line in a day.”³⁸ Although both fishing technologies could lead to large catches, sportsmen began to argue in the late 1830s that spear fishing was a threat to the resource. They girded their arguments with what they called “scientific” arguments. It was already apparent at the time that the salmon population was in decline. Who or what was to blame became a powerful political issue.

The agenda of scientific anglers

Three influential advocates emerged in the mid-19th century to engage in debate about who or what was to blame for the collapse of the salmon stocks. Dr. Walter Henry

³² Warre is most known for his covert expedition to the Orgeon country to reconnoître American development of the region. He posed undercover as a sport fisher and hunter.

³³ NAC, MG 24, F 71, H. F. Warre papers, vol. 2: 220.

³⁴ MacGrath 1833: 174-5.

³⁵ NAC, MG 24, F 71, H. F. Warre papers: 223.

³⁶ Strickland 1853: 75-6.

³⁷ Chamberlain 1888: 154

³⁸ Anon, *The Canadian Handbook and Tourists’ Guide* (Montreal: M. Longmore & Co., 1867): 110.

was one of the first persons to raise the alarm. Henry was born in Ireland in 1791 and studied medicine at Trinity College, Dublin. He served in the Napoleonic wars and was stationed to Canada in 1827, where he rose to the rank of staff-surgeon in 1839 and deputy inspector-general of hospitals in 1845.³⁹ Henry was also an avid participant in the British fly-fishing fraternity in Canada and wrote about his fly fishing adventures in the *New York Albion* using the pseudonym "piscator". In a paper he presented to the Literature and Historical Society of Quebec in 1837, entitled "Observations on the Habits of the Salmon Family", he blamed commercialization of the shoreline, commercial weir and stake netting by French Canadian settlers, and aboriginal spearing methods for the destruction of the stocks. While fly-fishing, spearing, and dip-netting were the only effective means to capture river-running salmon, it is no coincidence that Henry did not raise alarms regarding fly-fishing.

The progressive settlement of the interior of the country is prejudicial to the salmon race in various ways. The stake nets and weirs or salmon traps, with which every promontory of both shores of the St. Lawrence is now armed, are more numerous and better arranged than formerly. As the population increases on the banks of the breeding streams in both provinces, mills and dams are erected, and new impediments placed in the way of the fish; whilst Canadian fishermen, and the Indians, their aboriginal enemies, become more skilful and successful every year. All this *improvement* is calculated to thin their numbers.⁴⁰

Parliament needed to act to prohibit settler and aboriginal technologies, he informed his audience, "some legislative protection for salmon, appears to be much required in the Canadas."⁴¹

Two decades after Henry's Quebec lecture, William Agar Adamson gave a similar talk with a similar message. Adamson was born in Dublin in 1800 and earned a Bachelor of Arts degree from Trinity College, Dublin, in 1821. Adamson began his career as a clergyman of the Church of England and from 1841 to 1867, held the position of chaplain and librarian to the legislative council for the united provinces of Canada. An

³⁹ William Canniff, *The Medical Profession in Upper Canada, 1783-1850: An Historical Narrative with original documents relating to the profession* (Toronto: William Briggs, 1894): 418-421. Dr. Henry is best known for performing the autopsy on Napoleon's body in 1821.

⁴⁰ Walter Henry, "Observations on the Habits of the Salmon Family", paper presented to the Literature and Historical Society of Quebec, 1837, reprinted in Adamson 1860: 321

⁴¹ Henry 1860: 321.

avid fly fisher, he wrote articles on fishing for his college's *University Magazine* and for *Blackwood's*.⁴² In 1856, Adamson published a paper in the *Canadian Journal of Science Literature and History* entitled "The Decrease, Restoration and Preservation of Salmon in Canada" and then read it to the Canadian Institute in Toronto. He reported a significant decrease in Atlantic salmon in eastern Quebec and the complete collapse of the resource in Lake Ontario and identified two causes for the decline:

This deplorable decrease in natural production of great value has arisen from two causes: 1st the natural disposition of uncivilised man to destroy at all times at all seasons whatever has life and is fit for food; and 2nd. – the neglect of those persons who have constructed mill dams, to attach to them slides, or chutes, by ascending which fish could pass onwards to their spawning beds in the interior.⁴³

It is clear from the balance of his lecture that "uncivilised man" was a reference to aboriginal fishers and the net fishing practices of the Hudson's Bay Company (HBC) who held an exclusive fishing lease to rivers in the eastern Laurentian region known as the King's Posts. He said: "the Hudson's Bay Company, ... fish some of them [rivers] in an unsystematic manner, with standing nets, because they can be conveniently and cheaply so fished, whilst others are left wholly to the destructive spear of the Indian."⁴⁴ The "undiscriminate net and cruel spear" employed by aboriginals, the HBC net fishing, "unproductive and wasteful" and "nets, spears, torches" were the "engine of piscine destruction". Adamson told his audience that the HBC did not appreciate the value of salmon and should be constrained to trading fur only and he recommended the termination of the HBC's lease⁴⁵

The third, and perhaps the most influential sport fishing proponent was Richard Nettle. Nettle was born in Devenport, England, in 1815, and served in the British navy until 1842, when he took leave for Canada.⁴⁶ He was an avid salmon fly fisher and in the late 1840s, noted a decrease in salmon stocks of the St. Lawrence River and Lake Ontario. In 1857, he published a small book called *Salmon fisheries of the St. Lawrence*

⁴² W.L. Morton, "Adamson, William Agar", in *DCB*, vol. 9 (Toronto: University of Toronto Press, 1976): 4-5.

⁴³ Adamson 1856: 289-298.

⁴⁴ Adamson 1856: 295.

⁴⁵ Adamson 1856: 295.

and its tributaries, in which, like Adamson, he blamed the HBC and aboriginal fishers, and also Americans fishers in Gulf of the St. Lawrence for the decrease in the salmon fisheries.⁴⁷ In one example, he explained that on the Jacques Cartier River, “spearing at one end of the river and netting at the other, have been the means of destroying this magnificent fishery.”⁴⁸ He was, of course, referring to commercial fishing at the mouth of the river and aboriginal spearing in the shallow headwaters. His own class, the British gentleman, fished the river-running salmon in the middle of the river where he laid no fault. He also had his say about the destructiveness of the spear in many fisheries that he thought should be stamped out.

The principal cause of the destruction of the fish in this river, as well as at the Portneuf and the Jacques Cartier, is the ruinous practice of spearing them on their spawning beds, a practice which must be put an end to throughout the Province. Did the mass of the people know the evils resulting to the use of the spear, and that by the use of it they are deprived of an abundance of that delicious fish; which ought to be on the table of every habitant at least once a week – they would en masses – burn every spear in the country, in the rivers of each district; which would be but a slight punishment for the evils they have brought upon the community.⁴⁹

Nettle also articulated the critical and persistent argument regarding aboriginal exemption from the existing laws: “it has been said that no law prevents the Indians from spearing and netting the fish at any time. I here enter my protest against any such assertion.”⁵⁰

Nettle also directed his appeal to parliament and stated that the goals of his book were to: “awaken public opinion”; “bring about a determined expression of opinion on the part of the legislature and the people”; “destroy every spear and *negog* in the country”; and “abolish the use of the illegal net”.⁵¹

Henry, Adamson, Nettle, and other sportsmen from the period shared a critical identity; they all described themselves as “scientific anglers”. By the mid-19th century,

⁴⁶ Adam McKay, “Nettle, Richard”, *MacMillan Dictionary of Canadian Biography*, Fourth edition (Toronto: MacMillan of Canada, 1978).

⁴⁷ Richard Nettle, *Salmon fisheries of the St. Lawrence and its tributaries* (Montreal, Printed by J. Lovell, 1857).

⁴⁸ Nettle 1857: 69

⁴⁹ Nettle 1857: 79.

⁵⁰ Nettle 1857: 88.

⁵¹ Nettle 1857: 128.

the phrase had become widely used in the Canadian literature. For example, Susanna Moodie, stated that her friend fished “in the most scientific manner.”⁵² In the 1850s, Major Strickland gave his word on “science”, making the comparison between bait and flies. He reported that, on the Speed River, “I have frequently caught a pailful of these delicious trout in the space of two or three hours. For my own part, I found a small garden-worm the best bait; but one of our clerks, a Mr. Hodgett, was skilful with the fly, and consequently used to catch his fish in a more scientific manner.”⁵³ An 1850 book promoting sport fishing in Canada reported that Nova Scotia was “not only famous for its salmon, but also for its scientific anglers”.⁵⁴ These commentaries raise a key question. What is the root of these “scientific” claims for certain fishing methods? Did anglers use “scientific” claims to advance their social and class interests? I will now examine the assumptions upon which these “scientific” claims were based.

The notion of scientific angling can be traced to the first sporting magazines that Canadians and Americans read. It is clear from these popular publications of the early 19th century that a “scientific angler” was defined as a person who fished with the artificial fly (as opposed to bait), was upper class, was knowledgeable on the literature on angling, obeyed a code of ethics, did not commercially fish, and possessed some knowledge of streams, flies, weather, and fish (principally salmon and trout). In 1830, a sportsman caught a gentleman fishing trout with a net, which he called a “vile net” and “an outrage against all the rules of scientific angling”.⁵⁵ In the same year, another sportsman author portrayed a “scientific” angler as a gentleman who makes his own flies, casts accurately over 30 and 40 feet, and “*never sold a trout in his life*” (emphasis in original).⁵⁶ In another edition of the *American Turf Register & Sporting Magazine*, a writer described an American judge as a practitioner of the “the scientific destruction of the inhabitants of the wood and stream”.⁵⁷ A doctor explained, “An angler, sir, uses the finest tackle and catches his fish scientifically – trout for instance – with the artificial fly,

⁵² Moodie 1855: 230.

⁵³ Strickland 1853: 218.

⁵⁴ Lanman 1850: 45.

⁵⁵ Anon, “Fish Stories”, *Providence (R.I.) Advertiser*, reprinted in *American Turf Register and Sporting Magazine* 1.11 (July 1830): 550.

⁵⁶ Anon, “Trout Fishing in the Neighbourhood of Carlisle”, *American Turf Register and Sporting Magazine* 1.12 (August 1830): 614.

and he is mostly a quiet, well-behaved gentleman.”⁵⁸ The *American Turf Register & Sporting Magazine* explained that “the plan usually followed by those who may be called scientific trout fishers” is to use an artificial fly and “stand some distance from the water, to prevent being seen.”⁵⁹ Tolfrey reported that a certain British Lieutenant who fished muskellonge on Lake Erie was a “scientific and enthusiastic” angler.⁶⁰ It is further recorded that his battalion, the 19th Light Dragoons served up a maskinongè “scientifically.”⁶¹ Dr. Henry explained his “scientific approach”: “I am an angler, but of a genus unknown to Dr. Johnson, and even to Patriach Izaak Walton. I eschew and abominate all the rudimental, inane, and childish parts of the sport...”⁶²

On the surface, “scientific angling” meant fishing with artificial flies and was steeped in cultural values. But, beneath the phrase laid a more significant social and racial presupposition reflecting the social structure of the 19th century colonial North America. Anglers’ laid out a social theory that fishing people existed along a historical spectrum in which people progressed from “barbarians” and “savages” to civilized fishers who refined fishing to an “art” or “science”. The “scientific” and artistic end of the spectrum reflected the “highest intellectual state” of fishers and had been attained by only the elite. It was the moral imperative of the elite to remove those from the fishery who had not attained this level of refinement. The discourse was started by some of the first men in the natural sciences. In 1828, the naturalist Sir Humphrey Davy, successor to the famous naturalist Sir Joseph Banks, outlined these social supposition in *Salmonia – Or Days of Fly-Fishing, In a Series of Conversations. With some Accounts of the Habits of Fishes Belonging to the Genus Salmo*:

The search after food is an instinct belonging to our nature; and from the savage in his rudest and most primitive state, who destroys a piece of game, of a fish, with a club or spear, to a man in the most cultivate state of society, who employs artifice, machinery, and the resources of various other animals, to secure his

⁵⁷ J.V.S, “Sketch of a True Sportsman”, September 15, 1829, reprinted in *American Turf Register and Sporting Magazine* 4.1 (September 1832): 14-15.

⁵⁸ Dr. Bethune, quoted in Charles F. Orvis and A. Nelson Cheney, *Fishing with the Fly* (Rutland, Vermont: Charles E. Tuttle Co.: 1886): 143.

⁵⁹ Anon, “Angling”, reprinted from “The Cabinet of Natural History and American Rural Sports”, *American Turf Register and Sporting Magazine* 2.10 (June 1831): 502.

⁶⁰ Tolfrey 1845: 88.

⁶¹ Tolfrey 1845: 92.

⁶² Henry 1860: 322.

object, the origin of the pleasure is similar, and its object the same: but that kind of it requiring most art may be said to characterize man in his highest or intellectual state; and the fisher for salmon and trout with the fly employs not only machinery to assist his physical powers, but applies sagacity to conquer difficulties; and the pleasure derived from ingenious resources and devices, as well as from active pursuit, belongs to this amusement.⁶³

The passage is clear on the concept of social evolution or progress from “savage” spear fishing methods to “a man in the most cultivate state of society” who fished with the fly. This latter method of fishing characterized “man in his highest or intellectual state”. It also implied economic independence from the fish.

In 1829, a writer to the first edition of the first sport magazine published in North America, *The American Turf Register and Sporting Magazine*, laid out this culturally constructed social hierarchy:

‘Such is the natural progress of man in society,’ says the Rev. Mr. Daniels, in his elaborate and entertaining work on rural sports, “that the wearisome pursuits, which are the first and sole means of his subsistence, often rank afterwards among the prime sources of his diversion and enjoyment.” In that state of barbarism which precedes the introduction of the arts, *fishing* and hunting form the chief employ of the savage adventurer, who, finding in them the means of life, naturally makes their improvement an object of his skill and perseverance.

The method by which the first men drew their prey from the waters was, without doubt, sufficiently simple, but after a long and steady application to the same pursuits, the most unskillful, in time, become expert; contrivances are suggested, improvements are discovered, and the mind traveling in one track, goes slowly on towards the last stage of proficiency. When, at length the era of commerce and refinement arrives, the seas and rivers, which before drew only the necessitous to their shores, now present a recreation to the sedentary, and an amusement to opulent leisure.⁶⁴

Similarly, this writer conceived a social “progress” from barbaric fishing methods to what he believed to be the ultimate social achievement: the use of fish resources for “recreation” and “leisure” by “sedentary” and skilled men. The writer felt that western society’s “progress” to a commercial empire meant that fishing for leisure should take precedence over the “simple” use of fish as food. Thus fishing became an amusement of the elite members of agrarian societies.

⁶³ Sir Humphrey Davey, *Salmonia – Or Days of Fly-fishing, in a Series of Conversations. With some accounts of the habits of Fishes belonging to the genus salmo* (London: J. Murray, 1828).

These were not abstract ideas, but ones held by Canada's fly fishing elite. Henry, for example, expressed his disgust that a seigneur had built a mill dam on a salmon river in the 1840s. He described the act as "avaricious barbarism", a "sacrilege" and a profanity committed against a river that should have served as sport to the officers.⁶⁵ Writing in Canada in the 1850s, the so-called tourist, Charles Lanman, articulated the social spectrum succinctly. He described aboriginal and non-native spear fishers as "barbarians" and condemned their use of the fishery for food and commercial purposes. In his mind, "only instruments used by the scientific angler" were acceptable.⁶⁶ Lanman argued the "scientific angler [who] prefers the artificial fly" represented, "the only civilized mode employed ... for taking them [trout]." In turn, he called on anglers to condemn the "heathenish mode of netting this beautiful fish."⁶⁷

The post-colonial legal theorist, Peter Fitzpatrick, argued that colonizers often described the superiority of their legal regimes by constant reference to what they "were not", unrefined "savage" systems of law.⁶⁸ Fitzpatrick argued that modern western law is inherently racist because it built its legitimacy from a colonial comparison and negation of alternative, indigenous systems of law. The same theory applies to the emergence of the sport fishers' science: its claim to legitimacy was established by reference to what it was not: a "savage" fishing system. For example, Thaddeas Norris, an eminent figure in mid-19th century American sport literature, defined the "true" angler by what he was not: "one who fishes with nets is not, neither is he who spears, snares, or dastardly uses the crazy bait to get fish, or who catches them on set lines."⁶⁹ In essence, the construction of a "scientific angler" required a constant negation and comparison to all fishing techniques other than the ones sportsmen advocated.

The sport fishers' social hierarchy had many gradients. Fly-fishing was at the top of the hierarchy, while somewhere below this 'scientific' method stood angling with bait. For example, the famed outdoor enthusiast, R.B. Roosevelt, on his fishing trip around the

⁶⁴ Anon., "Angling", *The American Turf Register and Sporting Magazine* 1.1 (September 1829): 35-37.

⁶⁵ "Piscator" (W. Henry), "Salmon Fishing in Canada - No. II", *New York Albion*, 30 March 1839: 313.

⁶⁶ Lanman 1850: 39.

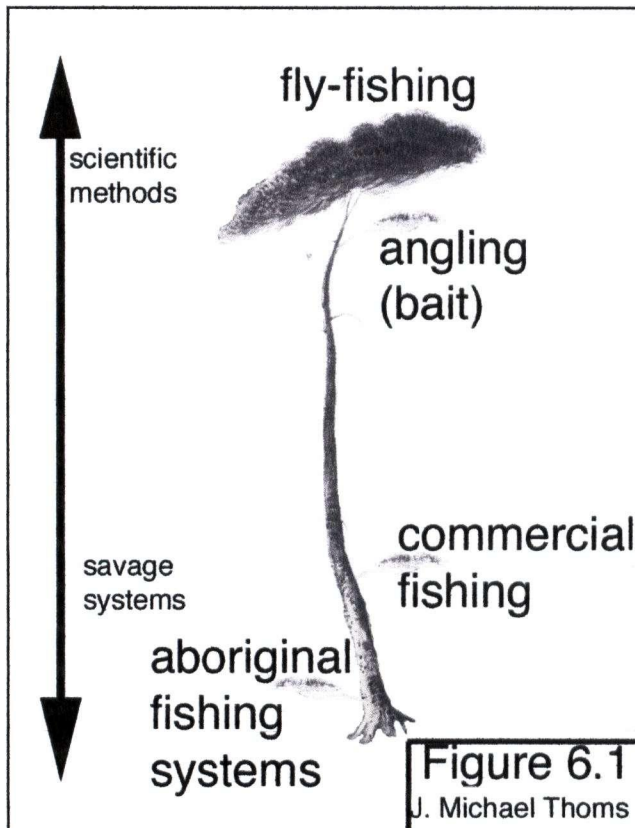
⁶⁷ Lanman 1850: 58.

⁶⁸ Peter Fitzpatrick, *The Mythology of Modern Law* (London, New York: Routledge, 1992).

⁶⁹ Thaddeus Norris, *The American Angler's Book: Embracing the Natural History of Sporting Fish and the Art of Taking Them with instructions on fly-fishing, fly-making, and rod-making; and directions for fish breeding* (Philadelphia: Porter & Coates, 1865): 33.

eastern shore of Lake Superior in the 1860s, explained that “bait fishing, although an art of intricacy and difficulty, is altogether inferior to the science of fly-fishing”.⁷⁰ Another stated that fly fishing “has been designated the royal and aristocratic branch of the angler’s craft, and unquestionably it is the most difficult, the most elegant, and to men of taste, by myriads of degrees the most exciting and pleasant mode of angling.”⁷¹ As Dr. Henshall once said, “Fly-fishers are usually the brain-workers in society.”⁷² Non-native commercial fishing stood further down the hierarchy, and native fishing methods stood at the bottom.

In sum, sport fishers conceived fishing practices to exist on a social hierarchy that ranged from savage to civilized (see figure 6.1). According to this perspective savages



fished for “subsistence” or trade. Afterwards, through social, intellectual, and commercial development, western elites refined fishing into a skilled science. In this popular expression of an evolutionary fishing hierarchy the savage was “simple” and driven by base needs, while, western scientific methods are complex, driven by higher aspirations, and placed within civilization, literature, and culture. Thus, even before ecological scientists brought their studies and methods to the problems of Great Lakes fisheries

management in the late 19th century, anglers had already assumed and described their methods as ‘scientific’. This science included a concept of fishing ‘seasons’ before the advent of ecological sciences and identified target fish (game fish) for special

⁷⁰ Robert Barnwell Roosevelt, *Superior Fishing: The Striped Bass, Trout, and Black Bass of the Northern States* (New York: Carleton: 1865): 20.

⁷¹ Quoted in Paul Schullery, *American fly fishing: a history* (New York: N. Lyons Books, 1987): 30

⁷² James A. Henshall, quoted in Orvis 1886: 143.

management measures. In the 1850s, what was missing for sportsmen was a framework of laws upon which to implement their ideology and codes of fishing. The first step for anglers was the 1857 *Fishery Act*.

Behind the Scenes: scientific anglers and legislators build the 1857 *Fishery Act*

The private papers of Richard Nettle contain a rare account of the involvement of scientific anglers in the drafting and passage of the 1857 *Fishery Act*.⁷³ These documents describe a powerful coalition of self-styled scientific fly-fishers that included the advocates Henry, Adamson, and a host of parliamentarians whom Nettle described as “veteran sportsman”: John Prince,⁷⁴ William Price, George Brown, and Darcy McGee. This cabal of parliamentarians, military officers, a parliamentary librarian and chaplain collaborated to write and pass their dream and self-serving fishery act. Of course, the prominent members of the coalition had already expressed negative views about aboriginal spearing and claimed that their fishing methods were superior. These legitimizing claims and their political clout enabled this group to bring about the first statute that banned aboriginal fishing in Canada even though it overrode treaty protections.

Nettle’s account begins in 1854, when he and Adamson drafted a bill for the *protection of Fisheries in Lower Canada* “at the request of many friends.”⁷⁵ Nettle described the bill as a “a measure such as was deemed necessary for the protection and increase of the fisheries”. The bill passed through parliament from the top-down. Colonel Taché took charge of the bill in the executive and then passed it down to the assembly for concurrence, where Mr. Cauchon, the Commissioner of Crown Lands, led the debate in favour of the bill.⁷⁶ Some members of the House, including Philip Vankoughnet, and Simpson, acted to protect aboriginal fishing and successfully struck the prohibition on spearing from the draft bill. Nettle recorded that before the bill

⁷³ NAC, R2740-07-E, Richard Nettle fonds.

⁷⁴ In 1865, Prince wrote a short auto-biography. The historian, R. Allan Douglas, states that Prince’s biography reveals little about his political and judicial career, family or railway and mining interests. It does, however, offer “a great deal about his military career and his life as a sportsman.” See “Prince, John”, *DCB* 9: 645.

⁷⁵ NAC, R2740-07-E, Richard Nettle to His Excellency the Governor General in Council, 1857: 1.

⁷⁶ *Journals of the Legislative Assembly*, 25 April 1854 (printed by order of the Legislative Assembly, 1854): 923.

became law, “it had been materially altered in Committee and shorn of its most important clauses that rendered it comparatively valueless and inoperative.”⁷⁷ The final *Act* is a short, three paragraph statute that banned the killing or purchase of salmon, maskinonge, or trout between 1 October and 1 February.⁷⁸ It also banned the use of a “self-acting machine”, such as stake nets or barrier nets, or the use of torchlights to catch salmon and trout, but not spear fishing. Consistent with long statutory traditions, a final *proviso* exempted the proprietors of the fisheries from the full effect of the laws.⁷⁹ In the minds of the legislators, these proprietors were seigneurs and the HBC who held an exclusive government fishing lease in the King’ Posts. Nettle does not state what were the “most important clauses” shorn from his bill, but it is clear from subsequent statements that Nettle and Adamson objected to the absence of a ban on spearing, the fact that the open season was set to include September (a time when salmon ascended the headwaters of the river to spawn on shallow beds where they could be speared), and that no enforcement provisions were included.⁸⁰ In addition, Nettle and Adamson were particularly disturbed by the *proviso* that protected the fishing rights of proprietors. It was the goal of sports fishers to upset the control over fisheries that seigneurs, the HBC, and aboriginal people held, in order to open the resource to new prerogatives set by themselves. Nettle consoled himself that while the *Act* was deficient in his mind, “[it] had one good effect, however, for it had brought the question of the fisheries prominently before the public.”⁸¹

In response to parliament’s failure to pass the full version of his *Act*, Nettle took his lobby directly to the Governor-General, Sir Edmund Head. It was a fortunate fact for him that Head was an avid fly-fisher and in him, Nettle expected to locate a sympathetic and most influential audience. On 5 September 1855, Nettle wrote to Head that the 1854 *Act* was “a dead letter” and related his concerns about aboriginal spearing and market use of trout and salmon.⁸² He then explained that a ban on spearing and other measures were of “paramount importance” but that parliament lacked the “wisdom” to see these facts

⁷⁷ NAC, R2740-07-E, Richard Nettle to His Excellency the Governor General in Council, 1857: 1.

⁷⁸ Canada (province), *An Act for the protection of Fisheries in Lower Canada*, 18 Vict (1854) c. 114.

⁷⁹ Canada (province), *An Act for the protection of Fisheries in Lower Canada*, 18 Vict (1854) c. 114.

⁸⁰ NAC, R2740-07-E, Richard Nettle to His Excellency the Governor General in Council, 1857: 2-6

⁸¹ NAC, R2740-07-E, Richard Nettle to His Excellency the Governor General in Council, 1857: 1.

⁸² NAC, R2740-07-E, Richard Nettle to His Excellency the Governor General in Council, 1857.

and struck the clauses. Nettle then asked the highest legislative authority in the land to push the goals of the sport fishers through parliament, exhorting him that that it was his "sincere hope that your excellency will cause steps to be taken, as will put a stop to such wanton destruction of so great a source of wealth – and even of luxury".⁸³

Nettle's letter to the governor-general may have worked. Within months, William Price, a member of parliament and veteran sportsman, approached Nettle and requested that he draft an enlargement of the 1854 *Act*, "adding thereto the clauses that had been so unwisely struck out."⁸⁴ Nettle responded and quickly drafted a new bill with the aid of the fly fishing lobbyist, Dr. Adamson. At the opening of the next legislature in the spring of 1856, Price tabled the draft legislation. Nettle and Adamson were again frustrated, however, when parliament was prorogued before the measure passed. "Thus, again," wrote Nettle, "were the fisheries especially the Salmon Fisheries – left to the tender mercies of the marauders, who were carrying destruction before them."⁸⁵

In the summer of 1856, Nettle and Adamson decided to build public support for their fishery legislation. Adamson started the public campaign with his 1856 lecture to the Toronto chapter of the Canadian Institute (described above). He opened his lecture by stating his desire to receive the "co-operation among the members of the Canadian Institute". Over the winter of 1856-57, Nettle wrote his book, *Salmon Fisheries of the St. Lawrence and its tributaries* and dedicated it to the fly-fishing Governor-General, Sir Edmund Head. Nettle opened his book with a wide appeal for support from the rich, the poor, and the legislature:

laws are made for evil-doers. Every year sees our markets supplied with Salmon pierced with the spear or 'negog' Reader! If thou art a lover of fair play, thou wilt aid by thy influence to bring about a better state of things. I write for the poor who have been deprived of that support which a good Providence had provided for them. I write to the rich, who have influence, and I beseech them to exert it in good cause. I write to the Legislature, who are as stewards, and to whose care is committed the welfare of the people at large; and who, as lawgivers, are required to make good laws for the guidance of the community. I ask that the executive authorities see that good laws are framed and enforced. I pray for that which has been so loudly called for.⁸⁶

⁸³ NAC, R2740-07-E, Richard Nettle to Edward Head, Governor General, 5 September 1855.

⁸⁴ NAC, R2740-07-E, Richard Nettle to Edward Head, Governor General, 5 September 1855: 2.

⁸⁵ NAC, R2740-07-E, Richard Nettle to His Excellency the Governor General in Council, 1857: 2.

⁸⁶ Nettle 1857: 7-8.

In preparation for the opening of the next session of parliament, Nettle, Adamson, Dr. Henry, and the sport fishing parliamentarians, Prince and Price, circulated a petition across the St. Lawrence countryside praying for the protection of the salmon and trout fisheries.⁸⁷ Between 6 March and 20 May, no less than fifteen copies of the petition arrived at the legislature.⁸⁸ Nettle claimed that the effect of this agitation was to make the protection of salmon and trout fisheries a very public issue. This time, the Commissioner for Crown Lands, Hon. Cauchon, asked Adamson to draft a new fishery bill.⁸⁹ Once received, however, Cauchon stripped the bill of the contents desired by the sports lobby. Upon learning this news, Nettle traveled to Toronto to meet Cauchon and see the revised bill. "It contained some good clauses," recorded Nettle, "but there were errors, both of omission and commission that left it very incomplete – nay fatally so."⁹⁰ Therefore Nettle, "expressed his opinion, candidly and courteously," to the Commissioner, but to his chagrin, reported, "but those who knew the peculiarities of that lamented gentleman will understand how pertinacious he could be, for he would accept no suggestion nor allow any amendments to be made."⁹¹ Nettle later met with Dr. Adamson to discuss the means to restore the bill's "ommissions". Adamson was not optimistic, "The Doctor said, well, we can do nothing, he will not alter it for anyone, nor will he listen to reason."⁹² But Nettle pushed on, listing all the sport fishing allies he had within parliament.

All this was very unsatisfactory, and could not end here. Sectional prejudices could not interfere with the public good. I was much annoyed at such perverseness, after all that had been done, and did not conceal my opinion when asked for it. Friends both in and outside Parliament were agreed that amendments were necessary. That veteran sportsman Colonel Prince, Mr. Price, Mr. Geo. Brown, Darcy McGee, the Members of the Gulf Ports and others, whose opinions

⁸⁷ NAC, R2740-07-E, Richard Nettle to His Excellency the Governor General in Council, 1857: 7.

⁸⁸ The journals of the Legislative Assembly for 1857 record that the petitions came in from the Parish St. Roch, Quebec City, St. Sylvestre, Trois Riviere, the townships of Tadousac and Bergeronne, the County of Saguenay, the seigniory of Murray Bay, the County of Megantic, and Portneuf.

⁸⁹ NAC, R2740-07-E, J. Agar Adamson to Richard Nettle, 24 March 1857.

⁹⁰ NAC, R2740-07-E, Richard Nettle to His Excellency the Governor General in Council, 1857: 7.

⁹¹ NAC, R2740-07-E, Richard Nettle to His Excellency the Governor General in Council, 1857: 7.

⁹² NAC, R2740-07-E, Richard Nettle to His Excellency the Governor General in Council, 1857: 7.

were of value, were very desirous of making the measure as perfect as it possibly could be.⁹³

Then a series of strange events unfolded. Cauchon resigned as Commissioner of Crown Lands. Historians state that Cauchon got himself in trouble with his ambitious plans to build a railway to the Red River.⁹⁴ Nettle suggested a more mysterious set of events, recording in his memoirs that “a concatenation of events occurred that few at present day know anything of, nor of the force of circumstances that led the Hon. Mr. Cauchon to retire from the Ministry.”⁹⁵ A few days after Cauchon’s departure, Nettle got very lucky when the Solicitor General, Henry Smith, “placed in my hands, Mr. Cauchon’s draft of the proposed Fishery Act, and asked me, on behalf of the Government, to be so kind as to make such amendments as were deemed necessary. After consulting with those friends who were largely interested in the fisheries, I completed the Bill and returned it to the Solicitor General.”⁹⁶ The bill passed both levels of parliament with little opposition and received royal assent on 10 June 1857.

The result was the 1857 *Act* that covered the fisheries within the united provinces of Upper and Lower Canada. It was an unprecedented nine pages in length.⁹⁷ The *Act* repealed all previous fishery legislation and then declared all rivers and creeks in the province of Canada to be free and open.⁹⁸ This action was intended to dispossess seignors and others from their proprietary grants to the fisheries. Now, the sportsmen hoped that all rivers of the province were unencumbered of ancient claims that could fetter their aim to possess and control the resource. For the moment, the *Act* protected the HBC’s lease to the King’s posts as Adamson worried that its sudden revocation would lead to a fishing frenzy. Thus, he planned to ease in the cancellation the next year. As expected, the *Act* named Atlantic salmon, speckled trout, maskinongè, and bass as game fish, meaning they were reserved for sportsmen. Article 27 read, “It shall not be lawful to catch salmon in any way whatever except with a rod and line between the first of August and ... the tenth of March in Upper Canada”. This measure effectively ended any

⁹³ NAC, R2740-07-E, Richard Nettle to His Excellency the Governor General in Council, 1857: 7-8.

⁹⁴ Lambert: 114.

⁹⁵ NAC, R2740-07-E, Richard Nettle to His Excellency the Governor General in Council, 1857: 7-8

⁹⁶ NAC, R2740-07-E, Richard Nettle to His Excellency the Governor General in Council, 1857: 8.

⁹⁷ Canada (province), *The Fishery Act*, 20 Victoria (1857) c. 21.

⁹⁸ Canada (province), *The Fishery Act*, 20 Victoria (1857) c. 21, s 5.1

riverine fishery except by hook and line as sport fishers wanted. Article 29 banned the use of spears to catch salmon, Maskinonge, speckled trout, or bass at “any time”.⁹⁹ Other provisions of the *Act* set up an orderly commercial fishery by setting down the principals of master-servant law. The way was now clear for one group in Canadian society to supervise the activities and even the possessions of another. These supervisors were sportsmen.

On the same day the *Fishery Act* received royal assent, so to did the *Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws respecting Indians*.¹⁰⁰ Both statutes were based on the social belief that aboriginal life was uncivilized. The latter statute was an assimilationist plan to strip aboriginal people of their rights and self-administration on the premise that civilization would be brought to them slowly by a system of external measures and controls. The *Fishery Act* that criminalized aboriginal spearing was drafted by people who believed aboriginal spearing was barbaric and inferior to the civilized “scientific” method of angling and it passed through the House at the same time.

Nettle’s influence for the encouragement of the sport fishery and eradication of aboriginal fishing was not over. A few months after the *Fishery Act* passed into law, the premier of Canada named Nettle the Superintendent of Fisheries for Lower Canada. In his memoirs, Nettle recorded his first efforts to bring the *Act* into effect.

Nettle and the 1857 *Act* in operation

Immediately following his appointment as Superintendent of Fisheries for Lower Canada, Nettle hired a schooner and began a hasty patrol of the St. Lawrence River to circulate copies of the *Fisheries Act*, collect statistics about the fishery, and proclaim the new law against spearing. At Quebec city, Nettle learned of spear fishing on the famous Jacques Cartier River and called on the colony’s top lawyer, the solicitor general, to summon the accused and undertake the prosecution. The accused (unidentified) retained council and pleaded guilty. As a result, Nettle and the solicitor-general decided to apply leniency in the case so as to make the first application of the spearing prohibition

⁹⁹ Canada (province), *The Fishery Act*, 20 Victoria (1857) c. 21, s 29.

¹⁰⁰ Canada (province), *An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws Respecting Indians*, 20 Victoria (1857) c. 26.

uncontroversial, while holding a show trial to make clear the state's intentions to clamp down. Nettle recorded in his papers, "I was very glad for many reasons that the Solicitor-General had conducted the prosecution, as it gave the people to understand that the Government would sustain the Superintendent of Fisheries, in his arduous and responsible office for the preservation of the fisheries."¹⁰¹ After the sentence was read, in a dramatic action, consistent with the purpose of the prosecution as a show trial, Nettle stood up in the court house and lectured the audience on the "evils" of spear fishing and the "determination of government to stop it."¹⁰² It is no coincidence that the first prosecution under the *Fisheries Act* was made against a spear fisher, the primary target of the all-powerful sports lobby. The speed of the events, however, was remarkable. As Nettle himself noted, "this first case" occurred on 1 August, 1857, not two months after the passage of the *Fisheries Act*.¹⁰³

After the court session, Nettle carried on his patrol, hearing and seeing evidence of aboriginal spearing on the St. Margaret and St. John Rivers. In the Gulf, he recorded in alarmist language the destruction:

Within the last two years the destructive practice of the spearing has been carried on by the Indians – principally by the tribe of Micmac, who having destroyed the salmon fisheries on the Restigouche and other rivers on the south shore, are now making their advances for the same purpose on the north shore.¹⁰⁴

Nettle recorded that the "Micmacs were violently disposed" when he tried to stop their spear fishing and called the fishers together for a lecture, informing them, "on no consideration would I allow them to go up the river spearing." Summoning up his beliefs that aboriginal spear fishing was uncivilized he recorded that the Micmac response to the lecture was "quite savage".¹⁰⁵ The confrontation ended when the Micmac stated they would petition government on the issue. No doubt these aboriginal people still felt they might have access to parliamentary protections of their rights, but clearly a majority of

¹⁰¹ NAC, R2740-07-E, draft paper entitled "The organization of the Fishery Service", 1897: 4

¹⁰² NAC, R2740-07-E, draft paper entitled "The organization of the Fishery Service", 1897: 4.

¹⁰³ NAC, R2740-07-E, draft paper entitled "The organization of the Fishery Service", 1897: 4.

¹⁰⁴ Richard Nettle, "Report Ending September 24, 1857", in Report of the Commissioner of Crown Lands for the year 1857, CSP no. 15 (Toronto: 1858): appendix U: n.p.

¹⁰⁵ Richard Nettle, "Report Ending September 24, 1857: appendix U: n.p.

parliamentarians were taking a new perspective on the group to be protected by fisheries legislation.

In terms of the HBC fisheries, Nettle reported a fishing war, "I found the agents of the Hudson's Bay Company (who has a lease and license of the territory and fisheries of the North Shore) and the fishermen from all parts of the Province, etc., etc., warring with each other for the occupancy of the salmon rivers, even to personal violence and destruction of property." He further observed other confrontations over key fishing grounds. In his view, the fisheries were in a state of chaos, or what he called, "lawless proceedings" as fishers vied for the grounds of other fishers.¹⁰⁶ In response, Nettle rushed back to Quebec city to urge new amendments to the *Act*. He wanted the government to take an active hand in the allocation of fishing places through a fishery lease system that would invest selected fishers with their own exclusive monopoly on specific fishing places.

Conclusion

The appointment of Nettle as Superintendent of Fisheries for Lower Canada was the culmination of a process that began in the early 19th century whereby a group of sportsmen sought to usurp the fisheries of Canada for sporting purposes. In this chapter I showed that these sportsmen self-identified as scientific anglers. This "science" was built on moral assumptions and racial ideologies and reinforced through a comparison and negation of aboriginal fishing systems. This was obviously not a modern science and it emerged before the development of the ecological sciences. In chapter 8 of this study, I will show how sportsmen later influenced the development of the first modern fisheries sciences to effect truth statements that endorsed their mode of fishing. I will show that these first scientists also possessed many of the sportsmen social, moral, and racial ideologies. But first, in the next chapter I will show how Nettle and his cabal of sportsmen amended the 1857 *Fisheries Act* and then re-made the cultural geography of the Great Lakes fishery to suit their social and technological interests and pushed the Ojibwa to its margins.

¹⁰⁶ Richard Nettle, "Report Ending September 24. 1857", appendix U: n.p.

Chapter 7

Legal Grounds: fishing leases and the 1858 *Fishery Act*

Indians enjoy no special liberty as regards either the places, times, or methods of fishing. They are entitled only to the same freedom as White men, and are subject to precisely the same laws and regulations.

W.F. Whitcher, Superintendent of Fisheries, 1875¹

After concluding his first patrol of the St. Lawrence River and Gulf in 1857, the scientific angler and Commissioner of Fisheries, Richard Nettle, hastened back to Quebec City and reported a situation that we currently call the “tragedy of the commons”. He observed American commercial fishers trespassing on the communal fishing grounds of French-Canadians. In addition, he reported aboriginal spear fishers “trespassing” on and “destroying” the same grounds.² He wanted a method to protect Canadian fishers and prevent a short-sighted fishing frenzy. Nettle therefore proposed that parliament give his Department of Fisheries (“Fisheries”) the power to subdivide the Great Lakes drainage basin into hundreds of private property units in the form of exclusive fishery leases. The state could then protect the labour and property of the lessees in the form of fishery officers paid from the monetary returns of the leases.³

Nettle’s analysis and solution bore a similarity to the principles behind exclusive English game and fish laws. As I explained above, as early as 1765, Blackstone iterated the ‘tragedy’ concept and social solution that wildlife could only be protected when a single man held “custody” over it “with the sole and exclusive power of killing it himself, provided he prevented others”.⁴ Without this private property principle, Blackstone and the English aristocracy argued that fish and game “would soon be extirpated by a general liberty.”⁵ Nettle’s plan also drew from the English gentry’s reasoning that the private

¹ NAC, RG 10, vol. 1972, file 5530, circular signed by W.F. Whitcher, Commissioner of the Department of Fisheries for the Hon. Minister to Marine and Fisheries, Ottawa, 17 December 1875.

² Richard Nettle, “Report Ending September 24. 1857”, in Report of the Commissioner of Crown Lands for the year 1857, CSP no. 15 (Toronto: 1858): appendix U: n.p.

³ Nettle: Report for 1857: n.p.

⁴ Blackstone 1765-69: II c. 27: 417.

⁵ Blackstone 1765-69: II c. 27: 412.

tenure of resources controlled social behaviour such as immorality and idleness among inferior classes and promoted industry among the superior classes. I will show that Fisheries' proposal was as much about social control as it was about conservation. It conceived fishing leases (or fishing "spaces") as a disciplinary tool for the elimination of idleness and vice in the fisheries with the power to transform selected settlers into "industrious" fishers. I will also show that because Fisheries controlled the allocation of fishing leases, including fly-fishing leases on rivers, it issued leases to selected individuals as a form of patronage. Similar to the history of England, this power gave Fisheries the ability that king's once held to establish a hierarchy of private ownership over wildlife, but this time across water. Fisheries used this power to rebuild an entirely new social waterscape that pushed the Ojibwa to the margins of the fisheries where they remain today. The Ojibwa were not silent during this process and immediately made legal arguments that the leasing system violated their treaty rights and took direct action against non-native lessees in their traditional waters.

The moral arguments for exclusive fishing leases

In the fall of 1857, Nettle and his cabal of parliamentary sportsmen drafted a revised *Fisheries Act* with critical new provisions to stamp out the social organization of the fisheries and all its ancient titles and re-make it under their supervision into a highly structured waterscape in which different peoples would be allocated different spaces for their fishing. The first step in their plan was to evict the existing fishers on salmon and trout rivers and invest sportsmen's clubs with their exclusive use. At the same time, they called for the subdivision of all shore-based commercial fishing places into discrete spaces so that they may be re-allocated to the highest bidder for his exclusive use. In this process, Fisheries would remove existing commercial fishers who failed to bid high enough or possess the influence to retain their fishing grounds. As well, Fisheries would be careful not to lease river mouths and other areas that might impact on the passage of fish to private sport fishing grounds. Funds developed from these leases were calculated to fund the operations of two superintendents of fisheries, one for Canada East (Quebec), and one for Canada West (Ontario), and over time, pay the costs for increased surveillance.

Nettle and his sportsmen colleagues' plan was bold and initiated the most radical changes in the social organization of the Great Lakes fisheries. First, however, they needed parliament to sanction their plan. The legislative records reveal that Nettle and his supporters used moral and social engineering arguments to justify the amendments. For example, one supporter described the social environment of the 1850s shore-based seine fisheries as a scene of rampant immorality:

The moral effect of seine fishing, as it is now carried on, furnishes perhaps, as grave an objection to its continuance as can be urged, for it is found from experience that where it prevails, idleness, drunkenness and other kind of vices spread with alarming rapidity; and in many respects the population resembles that of a locality where gold has recently been discovered in small quantities.⁶

To transform these peoples into moral and industrious fishers, Nettle proposed fishing spaces as a tool of social engineering. His staff helped him out. For example, W.F. Witcher, a sportsman⁷ and Nettle's eventual successor, informed parliament that the existing system of "indiscriminate free fishing" was "productive of many social evils" and alleged that he "could point out frequent examples of able-bodied men having lapsed into an improvident and idle existence" in the open access fishery.⁸ He added that it caused "individuals who might earn for themselves and families the comforts and competence which reward industrious perseverance in agricultural pursuits [to] now wile away the precious season in half-starved and a pseudo-savage state."⁹ His proof that an unregulated fishery caused settlers to descend into savagery was his observation that many "idle" and "lazy" non-native fishermen resembled aboriginal hunters.¹⁰ Witcher's statement drew from the scientific sportsmen's idea that fishing existed on a social spectrum from savage and unsystematic fishing systems to civilized methods and that people could slide backwards. Witcher therefore believed that government intervention was necessary to bring social control to the fishery and elevate the settler fishers from a

⁶ D. Young Leslie, untitled report to John McCuaig, 1859, Superintendent of Fisheries for Upper Canada, Brighton, Upper Canada, reprinted in "Report of the Commissioner of Crown Lands of Canada for the year 1859", CSP-no. 12 (Quebec: 1860): 82.

⁷ See W.F. Witcher, *Nepigon Trout: an Ottawa canoeists experience on the Northern Shore of Lake Superior* (Montreal: Issued by the Passenger Department of the Canadian Pacific Railway, 1988).

⁸ Witcher, 24 December 1858: n.p.

⁹ Witcher, 24 December 1858: n.p.

¹⁰ Witcher, 24 December 1858: n.p.

“savage” state. Through close government surveillance and the monitoring of fishing returns, Whitcher believed that the lease system would “weed out” idle lessees and the state could replace them with others.¹¹ Another Fisheries office and sportsman stationed on Lakes Huron and Superior, William Gibbard, backed up this argument with the statement that the lease system would enable a “superior class of fishermen” to emerge and displace the existing fishers.¹² In sum, Nettle and his crew informed parliament that the creation and allocation of fishing spaces would bring social and moral control to the fishery, maximize yields, and engineer an industrious and civilized class of fishers. The government did not elevate its conservation arguments to the same level as its social control concerns. If anything, it proposed that its system would promote much higher yields and the “discovery” of new fishing grounds.

There is a debate in the literature about whether Fisheries deliberately planned to use the lease system to re-allocate Ojibwa fishing grounds to non-natives. Victor Lytwyn demonstrated that after the passage of the *Act*, Fisheries re-allocated the vast majority of the best Ojibwa fishing grounds to non-natives.¹³ Roland Wright did not dispute Lytwyn’s findings, but argued that the *Act* offered the Ojibwa the first real opportunity to define their fishing grounds and obtain secure and exclusive tenure over them. Wright therefore argued that the *Act* had positive intentions but Fisheries mismanaged its implementation.¹⁴ Wright is wrong. The records of parliament’s debate over Nettle’s bill reveal that the legislature understood that the new system could be used to marginalize native fishing. In particular, the Commissioner for Crown Lands, L.V. Sicotte, who tabled the bill, argued that the new provisions would transform aboriginal fishing places into industrial non-native fisheries when he told parliament: “many rivers in Lower Canada would be leased for the sum of \$500 per annum, where now Indians made a scanty living of what they could catch.”¹⁵ In essence, Siscotte proposed that the re-allocation of aboriginal fisheries to others would yield a new source of revenue to government and encourage an industrial fishery.

¹¹ Whitcher, 24 December 1858: n.p.

¹² William Gibbard, Fishery Overseer for Lakes Huron and Superior, “Report of the Fishery Overseer for the Division of Lakes Huron and Superior, for 1859”, in *CSP* no. 12 (Quebec: 1860): appendix 31: 85.

¹³ Lytwyn 1992.

¹⁴ Wright 1994.

Parliament accepted these arguments and passed a revised *Fisheries Act* (1858).

The critical fourth article read:

4. The Governor in Council may grant special fishing leases and licenses on lands belonging to the Crown, for any term not exceeding nine years.¹⁶

The power of space: law created spaces then filled them with regulations

In 1858, Fisheries officers began to carve up the rivers, lakes, and shores of the Great Lakes basin into a series of spaces. Many post-modern theorists have studied the implications of cadastral maps that divided indigenous geographies into series of uniform spaces. In *Post-Modern Wetlands*, Rod Gibblett argued that the drawing of a gridded waterscape was the primary “instrument of colonization” that eradicated or transformed wetlands around the world.¹⁷ David Harvey argued that the formation of spaces on a cadastral map “opened up a way to look upon space as open to appropriation and private uses.”¹⁸ Here, I am particularly persuaded by Nicholas Blomley’s argument in *Law, Space, and Geographies of Power*, that law needs space in order to function.¹⁹ In effect, it appears that Nettle realized that he could not regulate fishers’ actions until he set them apart in discrete spaces over which he could regulate their activities on peril of loosing their space. Below, I will show that by creating fishing spaces, Fisheries created the appearance that all of the Great Lakes drainage basin was open to allocation despite its existing social and cultural landscape. Soon, fishers with leases were bounded in law, those without lease who still tried to find a place to fish, became the “lawless”.

When navigation opened in the spring of 1858, the superintendents of Fisheries for Canada East and Canada West traveled the coasts of their divisions and leased land based commercial fishing places to the highest commercial bidders and leased rivers and streams to sportsmen’s clubs. It is important to consider Fisheries’ actions in Canada East as its experiences on the St. Lawrence and Gulf affected its decisions for the

¹⁵ Mr. Sicotte, “Fisheries”, 30 April 1858, reported in “Parliamentary Intelligence”, *Canada Parliamentary Debates* (Ottawa: 1858): n.p.

¹⁶ Canada (province), *The Fishery Act*, 22 Vict. (1858) Cap 86, section 4.

¹⁷ Gibblett 1996: 71.

¹⁸ Harvey 1990: 228.

¹⁹ Nicholas K. Blomley, *Law, Space, and the Geographies of Power* (New York: Guilford, 1994).

administration of the Great Lakes waters during this period of time when the provinces were united. I will first examine their process of leasing angling rivers in Canada East.

The immediate effect of the angling lease system can be illustrated from the case of the Moisie River. Nettle's assistant Pierre Fortin explained how he "dispossessed" the river's existing fishers:

In the month of June last year, I received, through Andrew Russell, Esq., Assistant Commissioner of Crown Lands, orders from the Government to proceed to the River Moisie on the North Shore of the River St. Lawrence, and give possession of the former river to Mr. Halliday, the lessee thereof, in virtue of a contract passed between the Government and that gentleman. I reached the River Moisie on the 25th of that month, and on arriving I immediately communicated with the fishermen whom I found carrying on salmon fishing in that river. I went to them one by one, and informed them that I was instructed by the Government to put Mr. Halliday in possession of the whole river, and that they must discontinue their fishing, remove their nets at once, and leave the system entirely free.²⁰

On the celebrated Godbout River, Nettle marked out two exclusive fly-fishing leases, including one for his fellow fly-fishing advocate, Adamson. Nettle's assistant recounted his trip up the Godbout with Nettle, "to order off a party of Indians who were netting above the place where the lessees of the Fly fishing portion of the river were encamped."²¹ The Algonquians did not relinquish their fishery easily. In July 1860, after taking possession of his lease, Adamson summoned a local justice of the peace, his "personal friend", to come to his lease when "trouble had occurred between the party and a few Indians, who insisted on spear fishing in the river".²² Napoleon Comeau, the justice's teen-aged son, accompanied his father to the Godbout River and later described the event in his autobiography. Comeau recorded that Adamson "complained of poor sport on account of the Indians having netted the best 'pool', and having speared at night in some others." Comeau's father heard from the aboriginal fishers that it was their traditional fishery and that the recent closure of the local HBC post left them without

²⁰ Richard Nettle, Superintendent of Fisheries for Lower Canada, "Report of the Superintendent of Fisheries for Lower Canada, for 1859", Appendix 32, CSP no. 12 (Quebec: 1860): 91.

²¹ Alfred Blais, Fishery Overseer Report, "Godbout Division", CSP no. 12 (Quebec: 1860), appendix 32: 100.

²² Napoleon A. Comeau, *Life and Sport on the North Shore* (Quebec: Telegraph Printing, 2nd edition, 1923): 51.

food. He nevertheless arrested one Métis fisher and ordered the others off the river for good.²³ To keep the native fishers from the river, Adamson hired the young Comeau, as a private guardian of the lease. In his memoirs, Comeau recalled Adamson's enforcement strategy:

it would only be for a short time each season, from the 15th of July to the end of August, which covered the period the Indians would be on the sea coast, as after that date they would be inland, hunting.²⁴

Adamson's tactic of surveillance during the spawning season focused on the intersection of ecology and technology, whereby he could use his ownership and private surveillance of the salmon pools to preclude aboriginal use at the time and place they met spawning fish during their seasonal rounds. In this way, colonial law converted this aboriginal fishing place into another's private space. In his autobiography, Comeau described aboriginal resistance to the lease and how he slept at the pool during spawning times and hid in the woods to detect aboriginal arrivals on the lease.²⁵ In fact, Comeau devoted an entire chapter of his autobiography to the subject of "poachers", especially "professional poachers" and described how he learned "their tricks and ways of escaping capture". Comeau's romantic descriptions of a cat-and-mouse game with a particular Métis fisher tragically disguises the terror and subsistence concerns surely felt by Comeau's adversary.²⁶ Meanwhile, Comeau prosecuted his own commercial herring lease on the St. Lawrence River. Thus the fishery lease system invested Comeau with two secure sources of income and provided nothing but insecurity to the regional aboriginal community.

Government records reveal that fishery overseers were vigilant in their protection of fly-fishing leases. In another example, on the Restigouche River, Fishery Overseer John Mowat reported that aboriginal people were "generally followed by the guardians when they go up the river gathering berries and bark."²⁷ Nettle himself reported favourably on the development of private guardians on fly-fishing leases: "When

²³ Comeau 1923: 52.

²⁴ Comeau 1923: 52-53.

²⁵ Comeau 1923: 113.

²⁶ Comeau 1923: 109-115.

²⁷ John Mowat, Fishery Overseer, Matepédia and Restigouche Divisions, "Net-fishing by Indians and Settlers", CSP no. 5 (Ottawa: 1876): 137

occupied by sportsmen the rivers receive increased protection; and besides contributing to the fishery funds they also become subject to a local guardianship at private cost, and in that respect cease to be a charge on the public revenue."²⁸

As already hinted at in the case of Nettle's awarding of an exclusive fly fishing lease to his friend and supporter, Adamson, the lease system provided the government with the ability to issue exclusive riverine fly-fishing leases as a form of patronage. The sportsman writer of the *Emigrant and Sportsmen in Canada* announced in 1876: "Everything in Canada is saturated with politics, even the angling. Men get their salmon rivers according to their politics. It is even doubtful whether a conservation [sic] salmon would rise to a grit fly."²⁹ This patronage system meant the angling supporters of the government received sole control over rivers in a process similar to how English kings obtained the allegiance of lords and built his kingdom. The patronage allocation of Quebec's watersheds continued for over one hundred years until the separatist government of the *Parti Québécois* finally abolished the colonial legacy in 1984 and opened the rivers to public access -- but not to aboriginal use.³⁰

Nettle viewed his first year of work as a success. In his final report for 1859, he stated that he had issued 163 leases in the lower St. Lawrence. His report is replete with examples of native spearing allegedly causing the destruction of many salmon rivers. He described five cases where he arrested aboriginal spear-fishers and other related instances where he investigated non-native merchants rumoured to be buying speared salmon from aboriginal people.³¹

During the same season, Whitcher oversaw the transition of the HBC's ancient fishery lease to the King's Post in the lower St. Lawrence to public tenure and arrested two aboriginal spear-fishers in the process.³² In his report, Whitcher attacked the HBC for not only providing a market for speared fish, but also for informing the aboriginal fishers of their rights. Whitcher denounced the existence of any aboriginal fishing

²⁸ W.F. Whitcher, Commissioner of Fisheries, "Renting Angling Streams", in "Report of W.F. Whitcher", *CSP* no. 4 (Ottawa: 1872): lxxi.

²⁹ Rowan 1876: 381.

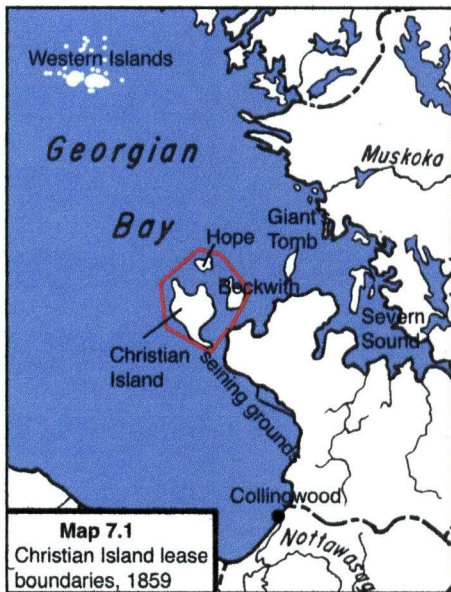
³⁰ Paul-Louis Martin, *Histoire de la chasse au Québec* (Montréal: Les Editions du Boréal Express, 1980).

³¹ Richard Nettle, Superintendent of Fisheries for Lower Canada, "Report of the Superintendent of Fisheries for Lower Canada, for 1859", Appendix 32, *CSP* no. 12 (Quebec: 1860): 97.

³² W.F. Whitcher, J.P., "Mr. Whitcher's Report", 1859, Appendix 34, *CSP* no. 12 (Quebec: 1860): 157.

rights,³³ something he continued to do when he became the first Commissioner of the Department of Marine and Fisheries (“Fisheries”) in 1865.

In Canada West, fishery officers similarly used the lease system to displace aboriginal nations from their fisheries. In 1859, the fishery officer, William Gibbard, circumnavigated Lake Huron and allocated a series of commercial leases. On his tour, he met Saugeen chiefs who insisted that their Fishing Islands not be leased to outsiders.³⁴ He ignored the demand and issued six non-native leases to their islands. At Cape Croker,



Gibbard leased some of this Chippewa nation’s sovereign fishing islands, once again against the community’s will.³⁵ At Sault Ste. Marie, Gibbard found that Americans bid higher than Canadians for leases and proceeded to lease some of the Ojibwa’s fishing islands specifically reserved in the *Robinson-Huron* and *Bond Head* treaties.³⁶ At Christian Island, Gibbard established a fishery lease for these Chippewa around their three island reserves (map 7.1).³⁷ He then opened up the wider extent of their fishing grounds in Severn Sound, the Western

Islands, the islands around the Muskoka River, and the sand beaches between Christian Island and Collingwood to other lease applicants. Gibbard, however, was unable to find applicants for any of these grounds except the mouth of the Nottawasaga River at Collingwood.³⁸ On paper, this action confined the Chippewa of Christian Island’s fishing to the waters proximal to their reserve and created the perception that all the adjacent waters were open and possessable.

³³ Whitcher, Report for 1859: 157.

³⁴ NAC, RG 10, vol. 418: 572, quoted in Victor Lytwyn, “Waterworld: The Aquatic Territory of the Great Lakes First Nations”, in Dale Standen and David McNab, eds., *Gin Das Winan: Documenting Aboriginal History in Ontario* (Champlain Society Occasional Papers number 2. Toronto: Champlain Society, 1994): 23.

³⁵ NAC, RG 10, vol. 418, quoted in Lytwyn 1994: 18.

³⁶ William Gibbard, Overseer of Fisheries for Lakes Huron and Superior, “Report of the Fishery Overseer for the Division of Lakes Huron and Superior, for 1859”, dated 31 December 1859, Collingwood, Upper Canada, Appendix 31, CSP no. 12 (Quebec: 1860): 84.

³⁷ NAC, RG 10, vol. 252 pt. 2 file no. 150625, Christian Island Fishery Lease, 22 October 1859.

³⁸ Return of Fishing Stations: Yields &c., on Lakes Huron and Simcoe, CSP no. 11 (Quebec: 1862).

At the end of his first duties in 1859, Gibbard had issued 97 leases on Lake Huron. Of these, only twelve had been issued to aboriginal nations and fourteen to the

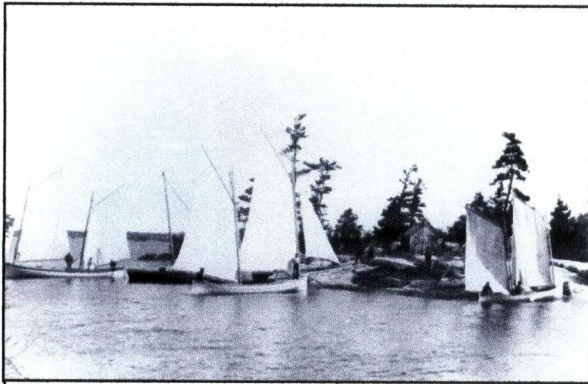


Figure 7.1. Non-native commercial fishers returning to an island base camp on Lake Huron (1885). Islands like this one were previously the fishing places of Ojibwa women and families.
Source: Simcoe County Archives, Boyd collection

HBC. By contrast, Gibbard issued 71 leases to “practical fishermen”, who represented a total population of 917 fishers. In sum, Gibbard leased 73 percent of the Lake Huron fishery to non-natives, including American residents. The “practical fishermen” represented only 37 percent of the lake’s fishers.³⁹

Fisheries did not record its issue of any exclusive angling leases in

Canada West. The general impression in the literature is that only the governments of Quebec and New Brunswick granted these prerogatives to clubs. There is, however, evidence that angling clubs asserted exclusive rights over waters in what is now Ontario. For example, in 1871, the Long Point Company, a gentleman’s hunting and fishing club, obtained the exclusive rights over the wetlands on Lake Erie that the Upper Canadian legislature earlier protected from land grants to from a hunting preserve for its military officers.⁴⁰ In the 1880s, a hunting and fishing club asserted exclusive rights over the productive wetlands in Lake Scugog near the Mississaugas of Scugog’s reserve.⁴¹ Sometime in the 1890s, the St. Lawrence Anglers Association successfully lobbied Fisheries to ban all forms of fishing, except angling, around the Thousand Islands.⁴² The latter favour remained politically controversial for years. In 1907, the opposition demanded answers in the Ontario legislature about the “international Club of American and Canadian gentlemen who enjoyed a special agreement with the Dominion Government... [in which] the Yankees seemed to have all the best of the arrangement.”⁴³

³⁹ Gibbard, Report for 1859: 85. See also Lytwyn 1990.

⁴⁰ PAO, RG1-273-3-22, box 5, memo re: application of the Long Point Company for the purchase of certain marsh lands adjoining their property at Long Point.

⁴¹ *Beaty v. Davis et al.*, Chancery Division, *The Ontario Reports* 20 (1891): 373-381.

⁴² Ontario Game and Fish Commission, “Commissioners’ Report”, OSP no. 79 (Toronto: 1892): 264.

⁴³ Anon, “Some must have licenses”, *Globe* 6 April 1907: 8.

Another club, the Tadenac sportsmen's club controlled islands in the eastern Georgian Bay. In 1902, the Rideau Club, composed of elite politicians and bureaucrats, including D.C. Scott, the deputy-superintendent of the DIA, applied for an exclusive sport fishing lease to an island in Lake Superior.⁴⁴ Around the same time, the Denholm Angling Club obtained a private lake north of Ottawa. Frederick Wooding, a fisheries scientist and author of the popular, *Angler's Book of Canadian fishes*, wrote that, "Its handful of members were mainly senior civil servants who when not involved in the affairs of state, spent much of their spare time as possible in pursuit of the lake's lovingly propagated brook trout."⁴⁵ In 1901, a group of gentlemen established the Caledon Mountain Trout Company with extensive private fishing rights over the headwaters of the Credit River.⁴⁶ The club held its private fishery for almost 75 years, a considerably longer exclusive tenure than the Mississauga of the Credit ever managed to assert over this river in the early 19th century. Clearly, political patronage and fishing privileges were tightly linked in late 19th century Ontario and the social geography of Ontario's lakes and rivers underwent a significant re-organization after 1858.

In sum, a cabal of sportsmen designed the 1858 *Fisheries Act* to re-allocate aboriginal fishing grounds to non-native commercial and sportsmen under their supervision. The sportsmen drafters believed that the creation and allocation of fixed fishing spaces not only served as a vehicle of dispossession, but was a means to bring social control and social engineering to the fishery and create a new social waterscape that suited their interests.

Non-native resistance to the new legal regime

Through the 1858 *Fisheries Act* the state laid claim to and proceeded to re-allocate all potential fishing places. Many settlers and Ojibwa nations believed that the state's action was a violation of their rights and they resisted the efforts of Fisheries officers to repossess their fisheries. For English settlers, their ancestors had built a body of customary laws to protect their communal resources against state efforts to assert

⁴⁴ NAC, RG 23 (Department of Marine and Fisheries), file 2931 part 1, J.C. Patterson, Rideau Club, to James Sutherland, Minister of Marine and Fisheries, 28 June 1902.

⁴⁵ Frederick H. Wooding, *The Anglers' Book of Canadian Fishes*, originally published in 1959 (Harbour Publishing, 1994): 117.

⁴⁶ PAO, F4150-11-0-1, files of the Caledon Trout Club, box 9.

similar to the customary laws that peasants developed in England to regulate communal resources. This was not an open access fishery. I will show that other examples existed.

In 1859, fishery overseer John McCuaig attempted to create and allocate the first leases on Lakes Ontario and Erie but met with strong resistance. In his first annual report, he explained that at Burlington Beach, Long Point, Turkey Point, Presqu'Isle, Cape Vescey, Cobourg, Wellington Beach, and other places, the established non-native fishing communities created "combines" to resist the lease system. In effect, these communities joined together to intimidate all outsiders from applying for a lease to their fishing place. For example, when a Mr. Young offered McCuaig \$500 for the whole fishery on Wellington Beach, the community responded so forcefully that Young withdrew his tender (image 7.2).⁵¹ At Burlington Beach, one of the oldest established settler fisheries in the province, previously targeted in 1823 and 1836 with legislation to break its internal control, the fishers made a mutual pact to pay McCuaig \$10 each for their existing fishing stations, so long as McCuaig recognized their existing places and admitted no further lessees.⁵² McCuaig's objective was to break the community and create greater access to the herring fishery, so he declined the offer. McCuaig, however, was unable to find a person brave enough to make a counter-bid against the combine. McCuaig then hired an agent to observe the fishers. The fishers promptly beat him up. McCuaig reported:

I despair of leasing Burlington Beach, and other important fisheries, unless some means can be devised to secure quiet men who may be disposed to lease them in the enjoyment of their rights. We are completely at the mercy of this lawless class of men – I find it impossible to get any of the inhabitants living in the neighborhood to inform against the Fishermen, not, however, from any want of interest in having provisions of the Act carried out, but from the fear of the consequences to themselves and property; and an Agent whom I employed to inform me of any violation of the Act was severely beaten by them. Under these circumstances it has been quite impossible with the limited powers bestowed upon me to carry out my instructions, or bring justice to the violators of the law.⁵³

⁵⁰ Leslie Report for 1858: n.p.

⁵¹ John McCuaig, Superintendent of Fisheries for Upper Canada, "Annual Report of the Superintendent of Fisheries, for Upper Canada, for the year 1859" in Report of the Commissioner of Crown Lands of Canada for the Year 1859, CSP no. 12 (Quebec: 1860): 78.

⁵² McCuaig, Report 1859: 79.

⁵³ McCuaig, Report 1859: 80.

Once again, the fishers did not likely share the view that they were "lawless". They were only "lawless" in the sense they did not accept the new laws imposed by outsiders. They had their own system of informal laws regulating their use, access, and allocation.

McCuaig had similar problems in his attempt to lease farmers' waterfronts over which farmers claimed customary and riparian rights.⁵⁴ At the close of the 1859 season, McCuaig reported that his efforts to open up Lake Ontario and Erie and allocate fishing leases were "unsuccessful".⁵⁵

Of significance, the settler-fishers in the Great Lakes and St. Lawrence who feared the loss of their customary fishing places, called for government action. In response, parliament struck a select committee in 1859 to hear the settlers' complaints. It convened a second committee in 1860 to examine further evidence "that since passing the Fisheries Act of 1858, more than thirty individuals have been dispossessed of fishing posts which they occupied in good faith".⁵⁶ The aggrieved settlers made legal claims that fell into five categories. First, the established fishing communities, such as the settlers at Burlington and Wellington Beaches, made claims to protection of their fisheries under English customary law. They drew this defense from the body of customary laws that their ancestors developed to resist state usurpation of their resources under England's game laws. Like their English ancestors, they based their claim on a history of undisturbed communal fishing since 'time out of mind'.⁵⁷ Second, they claimed that the expropriations took place without the lawful amount of time for appeal. Third, seigneurs along the St. Lawrence claimed an exclusive right to fish under their grants from the French crown.⁵⁸ Fourth, farmers claimed riparian ownership of the fisheries fronting their farms. Fifth, and in a move that surprised the crown, the occupants of Ojibwa leases to fishing islands in the Bay of Quinte and Detroit River claimed that the Ojibwa had

⁵⁴ McCuaig, Report for 1859: 80.

⁵⁵ McCuaig, Report for 1859: 80.

⁵⁶ "Report of The Select Committee appointed to enquire into the working of the Fishery Act of 1858, and the regulations made thereunder", printed in *CSP no. 9* (1860): 2-3.

⁵⁷ "Report of The Select Committee appointed to enquire into the working of the Fishery Act of 1858": 3; W.F. Whitcher, Commissioner of Fisheries, "Riparian Claims", *CSP no. 5* (Ottawa: 1876): xxxvi-xxxvii.

⁵⁸ Whitcher 1876: xxxvi-xxxvii.

granted them the “exclusive fishery privileges” with the right of “fending off the public” and that these rights were therefore “absolute” and “in perpetuity”.⁵⁹

In English law, the strength of a customary claim turned on the community’s evidence that they had used the resource for generations and protected it from outsiders with the result that the resource did not stand in a state of open-access susceptible to new claims but was effectively closed and managed by a defined user group. The select committee of parliament reviewed the evidence and concluded that seigneurs, farmers owning waterfront lands, and the non-native fishing combines held rights to their fisheries by virtue of French grants and English customary law tenure that pre-existed the passage of the 1858 *Fisheries Act*. In 1865, parliament gave this conclusion legal effect when it revised the *Act* to state that the crown could not grant fishing leases where the exclusive right of fishing, “exist by law in favor of private persons”.⁶⁰ Hence, parliament recognized that some settlers, whom they called “private persons”, held exclusive fishing rights against the crown.

The select committee of parliament did, however, refuse one of the settlers’ arguments: that in some cases they purchased an island with the exclusive fishery from the Ojibwa.⁶¹ This was not the only possible verdict for the times. A different course of events occurred in New York State. In 1639, the Gardiner family purchased an island (Gardiner’s Island in Suffolk County) from the aboriginal owners complete with the beach and submerged lands. The Gardiner family maintained possession of the island into the 20th century and never tolerated trespass thereon by public officials or private persons. In turn, the state of New York never claimed the shore front rights around the island.⁶² The legal historian, S.L. Mershon, demonstrated that consistent with the law of early English colonial land grants, the Gardiners obtained aboriginal title directly from the aboriginal proprietors and continued to hold it against the public.⁶³ The same legal principle could have prevailed in the Canadian Great Lakes, but did not.

⁵⁹ NAC, RG 10, vol. 3909, file 107, 297-3, W.F. Whitcher, “Memo for the Minister, Re: Fishery Privileges of Indians,” n.d., reprinted in letter by E.E. Prince, Department of Marine and Fisheries, 5 April 1898.

⁶⁰ Canada (province), *An Act to amend chapter sixty-two of the Consolidated Statutes of Canada, and to provide for the better regulation of Fishing and protection of Fisheries*, 29 Victoria (1865) c. 11, s. 3.

⁶¹ NAC, RG 10, vol. 3909, file 107, 297-3, W.F. Whitcher, “Memo for the Minister, Re: Fishery Privileges of Indians”.

⁶² Mershon 1918: 97-98.

⁶³ Mershon 1918: 98.

Ojibwa Resistance to the lease system

The Ojibwa also resisted the government's leasing system and made legal arguments. Their arguments, however, led to different results. In the summer of 1859, while Gibbard conducted his first tour of Lake Huron, the Chippewa quickly recognized the implications of the new lease system. In July 1859, the chiefs of Christian Island wrote to the Department of Indian Affairs (DIA) and stated that the process violated their treaty rights. They held, "we are at liberty to fish any shores without lease, rent to pay, the game and fish is ours, we never surrender to the Government yet."⁶⁴ Similarly, before Gibbard reached Manitoulin Island, the Ottawa chiefs of Wikwemikong wrote the DIA to remind them that pursuant to the *Bond Head Treaty* their fishing islands were "set apart for the exclusive use and benefit of the Indians".⁶⁵ Gibbard nevertheless leased the prized Ottawa fishing grounds around Club and Horse Islands without consulting the chiefs.⁶⁶ The next year, a broad coalition of Ojibwa nations from around Lakes Simcoe and Huron petitioned that: "when they surrendered their lands to the Government, they did not sign over all the game and fish."⁶⁷ In 1861, Manitoulin Ojibwa fishers burnt down and carried away all the buildings, fish-sheds, and wharfs of non-native leasees in their waters.⁶⁸ At the Fishing Islands, the Saugeen repeatedly destroyed the non-native fishing stations erected on their islands.⁶⁹ In 1863, the Ottawa destroyed non-native stations around Manitoulin Island.

The Ojibwa actions led to an inquiry, but not through a select committee of parliament like the one that heard the settlers' claims to pre-existing rights. Instead, the secretary of the state for the colonies handled the Ojibwa claims, and the result was quite different. The secretary reported, "the Indians now assert that this [Fishery] Act trenches

⁶⁴ NAC, RG 10, vol. 549, 190, Petition from the Chiefs and Warriors belonging to Beausoleil and Christian Island to William Bartlett, Visiting Superintendent of Indian Affairs, dated Beausoleil Island, 21 July 1859.

⁶⁵ NAC, RG 10, vol. 573, n.p., quoted in Victor Lytwyn, "Ojibwa and Ottawa Fisheries around Manitoulin Island: Historical and Geographical Perspectives on Aboriginal and Treaty Fishing Rights". *Native Studies Review* 6.1 (1990): 17.

⁶⁶ Lytwyn 1990: 17.

⁶⁷ PAO, RG 1, vol. A-1-7, n.p., quoted in Lytwyn 1990: 18.

⁶⁸ William Gibbard, "Report of William Gibbard, Esq., on the Fisheries of Lakes Huron and Superior, 1861", CSP no. 11 (Quebec 1862): n.p.

⁶⁹ Gibbard, Report for 1861: table of returns for Lakes Huron and Simcoe.

on their just rights, as they never surrendered the fisheries when they ceded their land.”⁷⁰ Instead of examining the basis to the Ojibwa treaty claims, the secretary put the Ojibwa claims to an English customary law test whereby the Ojibwa had to establish exclusive custody of their fisheries ‘since time out of mind’. The Ojibwa’s system of laws and properties over fisheries should have passed this test, but the secretary argued that they could not “establish this position... that until the year 1857 they had enjoyed the monopoly of fishing in these [Great Lakes] waters.” Instead, he found that the Ojibwa fisheries of the Great Lakes and rivers had always existed in a state “open to all” and could thus be subject to re-allocation by parliament.⁷¹ Basically, the secretary ruled that the Ojibwa did not restrain others from entering their fishing grounds – that their fisheries were not subject to customary or communal regulation but were open to access by all. In effect, it treated Ojibwa title and communal/family ownership as an open access system. The ruling was a repeat of the colonial assumption that aboriginal people were nomadic, that they possessed no concepts of property or laws and that their traditional resources were open to possession by others. On this basis, the secretary justified Fisheries continued re-allocation of Ojibwa fishing grounds to others. Conversely, as shown above, the select committee of parliament accepted the settler fishers’ customary law claims to long and undisturbed use of their fisheries and granted them protections in law despite the fact that these peoples were newcomers to the lakes.

Rationales for Ojibwa dispossession reconsidered

The above discussion raises questions: were the Ojibwa fisheries really in a state of open and unregulated access? Some current scholarship holds up Fisheries’ statements that the Great Lakes were in a tragic state of open and unregulated access before 1858 and treats its effort to bring law and order to the fisheries as an act of foresight.⁷² Is it possible, however, that Fisheries used this English argument as a convenient pretense to open the Ojibwa fisheries to re-allocation to others? I further ask: were colonial officials

⁷⁰ NAC, RG 10, series 2, vol. 2: 444-5.

⁷¹ NAC, RG 10, series 2, vol. 2: 444.

⁷² Neil S. Forkney, “Maintaining a Great Lakes Fishery: The State, Science, and the Case of Ontario’s Bay of Quinte, 1870-1920”, *Ontario History* 87.1 (March 1995): 47.

disingenuous about their knowledge of Ojibwa laws and efforts to regulate access to their fishing places?

I can only conclude that fishery officials were disingenuous about their knowledge of Ojibwa laws and property claims. First, the fact that the Ojibwa claimed property in land-based resources regulated through a system of community laws was part of the general literature at the time. In 1850, George Copway described his community's laws and property systems in his *Traditional History and Characteristic Sketches of the Ojibway Nation*.⁷³ In 1847, the American Commissioner of Indian Affairs circulated a questionnaire entitled, "Inquiries respecting the History, present Condition and Future Prospects of the Indian Tribes of the United States" to missionaries, Indian agents, and others familiar with native communities.⁷⁴ Question 10 asked about aboriginal "game laws, or rights of the chase". It was a leading question that assumed a widespread aboriginal system of laws regarding exclusive use of hunting grounds:

Has each family of the tribe a certain tract of country, within the circle of which, it is understood and conceded, that the head or members of the family have a particular or exclusive right to hunt? Are intrusions on this tract the cause of disputes and bloodshed.

In western Lake Superior, Reverend Baraga answered that in terms of the local Ojibwa, "each family of this tribe a certain hunting region, to which the family have a particular or exclusive right." He added that incidents of trespass were a major source of conflict in the community. In 1852, the famous historian of the Ojibwa, Henry Schoolcraft, used some of this data to describe the "conventional [hunting] laws" of the Ojibwa in his widely read *Indian Tribes of the United States*.⁷⁵ The German writer, J.G. Kohl, described an array of Ojibwa property systems in his book *Kitchi-Gami: Wanderings Round Lake Superior*, published in London in 1860.⁷⁶ In 1861, Peter Jones described his community's system of laws and property in his *History of the Ojibway Indians*.⁷⁷ In all

⁷³ Copway 1850: 20.

⁷⁴ A copy of this questionnaire with Reverend Baraga's answers regarding the Fond du Lac Ojibwa is reprinted in Studies Slovenica, *Chippewa Indians as recorded by Rev. Frederick Baraga in 1847* (New York: League of Slovenian Americans, 1976).

⁷⁵ Quoted in Warren 1885: 252.

⁷⁶ Kohl 1860: 421.

⁷⁷ Jones 1861: 17.

of these publications, both Ojibwa and non-natives writers made frequent use of the word “law” and “property” to describe the Ojibwa’s legal system. More importantly, Fisheries officers knew first hand about the Ojibwa’s laws and efforts to protect their fishing places from settler incursions. In 1861, Gibbard reported that Ojibwa fishers in Lake Huron and Georgian Bay “are anxious to drive all others away from their neighbourhood” to protect their fishing grounds from outside leases.⁷⁸ In 1863, W.F. Whitcher perfectly described the Lake Huron Ojibwa’s system of property and laws in both their land and aquatic resources:

In all that is related to soil and fisheries they [Ojibwa] conceive themselves sovereign proprietors, and as much, not amenable to the laws and usages which govern subjects of the realm. They make and administer their own laws. Whosoever would occupy their lands, reside within their jurisdiction and use ‘their fisheries’ must conform to tribal orders and decrees.⁷⁹

In his own words, Whitcher understood the Ojibwa to hold proprietary claims to fisheries over which they administered their own laws and denied access to outsiders or set rules for outside use and access. Fisheries officials and the colonial secretary were also aware of the fact that various settlers paid rent to the Ojibwa for access to key fishing grounds in the Bay of Quinte and Saugeen Fishing Islands.⁸⁰ Further, Fishery officials were obviously aware of Saugeen, Ottawa, and Chippewa efforts to physically protect their fisheries and evict the non-native usurpers. Nevertheless, the secretary ignored this evidence of communal tenure and opened their fisheries to the public.

In sum, the colonial government’s ruling that the Ojibwa fisheries were lawless and “open to all” can only be interpreted as a pretense to deny the Ojibwa tenure over their fishing grounds and open the resource to outside allocation.

Further state legal defenses: *the Magna Carta*

While the colonial secretary put the Ojibwa claims to an English customary law test, he did not address the Ojibwa contention that they reserved their fishing grounds in

⁷⁸ William Gibbard, “Report of William Gibbard, Esq., on the Fisheries of Lakes Huron and Superior”, CSP no. 11 (Quebec 1862): n.p.

⁷⁹ W.F. Whitcher, CSP no. 18 (Ottawa: 1863): n.p.

⁸⁰ NAC, RG 10, series 2, vol. 2: 444-5.

their various treaties with the crown. Whitcher developed a plan to deal with their treaty claims.

In 1839 and 1852, two cases went before the courts of Upper Canada in which settlers were accused of trespassing on fishing grounds contained within the private lands of another settler. The accused defended themselves by arguing that under the terms of *Magna Carta*, fisheries in navigable waters were free and open to all unless set aside by an act of parliament.⁸¹ What is important is that both cases turned on a revival of section 47 of *Magna Carta* (1215) that: "river banks which we have reserved for our sport... shall be again thrown open." Centuries of English game laws had emptied this clause of its meaning, however; new reforms of the game laws were in the air. The American legal historian, Thomas Lund, argued that in the 1830s, American courts began to reform the legacy of English game laws, colonial charters, and acts of state assemblies that granted exclusive hunting and fishing preserves in the USA by turning to the terms of *Magna Carta* that prohibited exclusive grants in tidal and navigable waters.⁸² The goal of the American courts was to democratize access to American fisheries by throwing these waters open to public fishing. It was a revisionist reading of the law and it appears that Canadian courts followed this current.

In Upper Canada, Whitcher believed that a similar restoration of the terms of the *Magna Carta*, that all fisheries in navigable waters were public, unless expressly leased by an act of parliament, could provide him with the grounds to challenge any aboriginal treaty claims to the reservation of exclusive ownership of parts of the Great Lakes. In 1866, he referred the Ojibwa treaty claims to the solicitor general for an opinion. In turn, the solicitor general provided Whitcher with the legal opinion he wanted:

Indian tribes have acquired no such [exclusive fishing] rights by law unless it may be contended that in any of those treaties or instruments for the cession of Indian Territory there are clauses reserving the Exclusive right of fishing and even in that case if such should be the fact I should say without an Act of Parliament ratifying such reservation no exclusive right could thereby be gained by the Indians...⁸³

⁸¹ *Moffatt et al. V. Roddy* (1839) (unreported).

⁸² Lund 1975: 72-74; Lund 1976: 711-714; Lund 2000: 491-4.

⁸³ NAC, RG 10, vol. 323, opinion of the solicitor general on claim [of] Indians to exclusive fishing rights, 6 March 1866: 216131-5; also copied at: NAC RG 10 vol. 711, James Cockburn, Solicitor General, Crown Law Department, 6 March 1866.

In a further letter, the solicitor general stated:

If these general rights of the public are restricted or curtailed in any way, it must be by Act of Parliament in derogation of the common law.⁸⁴

The solicitor general's decision was faulty in many respects. First, he did not take account of the fact that after each Mississauga and Chippewa treaty, parliament restricted settler access to the Ojibwa fisheries. This knowledge would have met his test that parliament needed to curtail settler fishing privileges and protected Ojibwa fishing rights in derogation of the common law.

Secondly, the 1805-6 Mississauga treaties show that the crown did not "grant" fishing rights to the Mississauga.⁸⁵ Rather, the Mississauga "reserved" their original aboriginal rights over their fishery and "granted" their land to the crown. As Simcoe once informed his superiors, the fisheries belonged to the Ojibwa by original right and that "we not give what is not our own".⁸⁶ On these grounds, the fisheries would have only been subject to English law if granted to the Crown.

It is also possible that the solicitor ignored some evidence that parliament generated at the precise time he conducted his inquiries about the nature of aboriginal exclusive fishing rights. That document credited to the legislature of Canada in 1866 read:

When King George III sent out Simcoe as his representative to Govern Canada he made a treaty with the Indians at the Bay of Quinte called the Gun Shot Treaty. Thousands of Indians were present including all the principal chiefs of the different Tribes. The Governor stated although the Govt. wanted the land it was not intended that the fish or game rights be interfered with as these belong to the Indians who derived their living from thence. These promise were to hold good as long as grass grows and water runs.⁸⁷

The legislature's document acknowledged that Upper Canada was founded on a promise that the Ojibwa retained their exclusive aboriginal title over their fisheries.

⁸⁴ NAC, RG 10, vol. 323, opinion of the solicitor general on claim [of] Indians to exclusive fishing rights, March 1866: 216131-5.

⁸⁵ Canada 1891, Surrender #13, vol. 1: 34-35.

⁸⁶ Lt. Governor John Graves Simcoe to the Lords of the Committee of the Privy Council for Trade of Foreign Plantations, 11 September 1794, in Cruikshank 1923, III: 52-68.

⁸⁷ PAO, F 4337-2-0-11, extracts from the Public Records Office, London England.

Recently, the legal scholar, Roland Wright, reified the solicitor's opinion. His paper has been persuasive in recent Canadian jurisprudence:⁸⁸ but is the subject of growing debate in the legal history literature.⁸⁹ Unfortunately, Wright repeated the solicitor's mistakes. In particular, his attempt to show that the 47th clause of the *Magna Carta* always operated in the British North American colonies is flawed. Wright's errors stem from his direct jump from the state of English fishery law in 1215 to 1850. In doing so, he overlooked 500 years of British law building. He then ignored the *prima facie* evidence that the English king repeatedly granted exclusive rights to marshes, streams, ponds, pools, shorefronts, inter-tidal zones, and navigable North America waters to elite men in various 17th century colonial charters. Evidently, the *Magna Carta* did not restrain the king from issuing exclusive fishing grants. Further, American judges have ruled that the *Magna Carta* had no bearing in 18th and early 19th century colonial land allocation processes. For example, in the late 19th century, a New York legal authority reviewed whether English colonial crown grants on Staten Island included the transfer of exclusive ownership of inter-tidal resources, and he concluded that they did because the *Magna Carta* imposed no limits on the king's authority:

It has, however, been strenuously but mistakenly insisted that the right of alienation by the Crown was restricted by *Magna Charta* and other statutes, not only as to prevent the King from making a Grant of a fishery in severalty but from making any absolute transfer of the soil under water.

What may be the law elsewhere on the strength of reasoning sustaining this view, it must be regarded as the law of New York that no such restraints were imposed by the *Magna Charta* or otherwise upon the kingly power.⁹⁰

Similarly in 1882 and 1896, the Supreme Court of Canada found that during the early history of Canada, the crown did not regard the *Magna Carta* as a restraint on its ability to recognize exclusive fishing rights.⁹¹

⁸⁸ *R. v. Nikal*, *Supreme Court Reports* 1 (1996): 1013.

⁸⁹ Lytwyn 1994; Blair 1996-1997: 125; Walters 1998: 301; Harris 2001: 29-30.

⁹⁰ *Estates and Rights of the Corporation of the City of New York*, vol. 1: 223, cited in Mershon: 143.

Fisheries moved ahead to complete its agenda

After receiving the solicitor general's opinion, the Department of Fisheries moved ahead with its agenda to abrogate all treaty fishing rights in the Great Lakes and re-allocate the Ojibwa's fishing grounds to non-natives lessees. In April 1866, in a crucial directive, the Commissioner of Crown Lands ordered fishery officers to expropriate all remaining aboriginal fisheries with the instruction: "all Fisheries around Islands and fronting the mainland belonging to Indians be disposed of by the Fisheries Branch of this Department".⁹² The intent was to open up the surrounding waters to non-native lessees.

In 1866, Whitcher gave force to his plans when he created 18 districts across Canada West and appointed an overseer to each one. A full 56% of the overseers were stationed in the Mississauga's waters of the Bay of Quinté and the Thousand Islands at the Head of Lake Ontario. Whitcher only appointed one overseer for a sprawling district that included western Lake Ontario and all of Lake Erie. As well, only one overseer was appointed to Lake Superior. Amazingly, the Mississauga and Chippewa fishing places in

central Ontario received comprehensive surveillance. On Scugog and Balsam Lakes, the traditional waters of the Mississauga of Scugog, one overseer was appointed, with a second added in 1876. In 1869, an overseer was added to Lake Simcoe where the Georgina Island and Mnjikaning nations fished. At

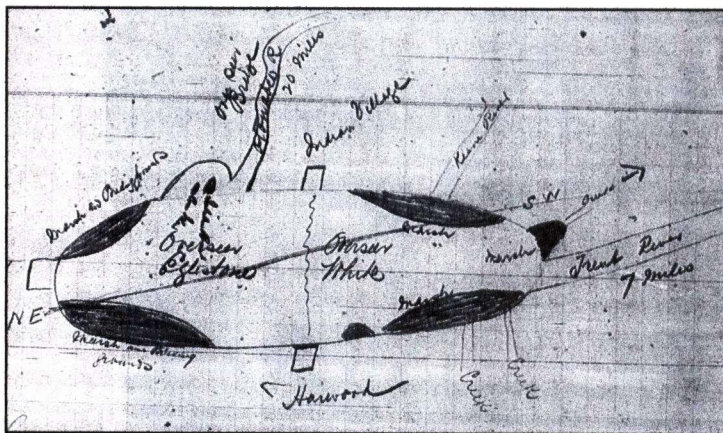


Figure 7.3. Fisheries' sketch of its surveillance of Rice Lake.

Source: NAC, RG 23, vol. 187, file 813, 29 March 1897.

Rice Lake, where two Mississauga nations reside, two overseers were appointed before 1897 (figure 7.3). Figure 7.3 illustrates how Fisheries organized its surveillance system on Rice Lake and shows its precise knowledge of the location of the lake's wetlands and

⁹¹ *The Queen v Robertson*, *Supreme Court Reports* 6 (1882): 88; *Re. Provincial Fisheries*, *Supreme Court Report* 26 (1896): 526.

⁹² NAC, RG 10, vol. 323, A. Russell, Assistant Commissioner of Crown Lands, dated Ottawa 3 April 1866: 216, 132.

spawning beds as well as the two Mississauga communities. Suddenly, by 1869, all of the Mississauga and Chippewa's traditional inland fishing grounds were under constant state surveillance, while the surveillance of other regions such as eastern Lake Ontario, Lakes Erie and Superior, received scant attention. From the 1790s onwards, the Mississauga and Chippewa long demanded that the government enforce its first fisheries laws, made in their interest, but the government never created such surveillance measures. After the passage of 1865 *Fisheries Act*, the state finally acted to appoint fishery guardians, but now, the appointments were made in an effort to keep aboriginal people off their traditional fishing places.

Mississauga and Chippewa resistance: part II

In the 1860s, the economy of the Ojibwa nations in Georgian Bay and Lake Huron region was flourishing through the commercial harvest of fur and fish. Records from the period indicate that the Ojibwa had developed their fisheries into profitable commercial enterprises with production for local markets and export by rail and steamer to southern Canadian and American markets. The records also indicate that the Ojibwa continued to harvest and preserve large catches of fish for their winter use.⁹³ Part of the reason for the successful Ojibwa fishing returns appears to be due to the fact that not all fishery officers followed the Commissioner of Crown Lands instructions in 1866 that, "all Fisheries around Islands and fronting the mainland belonging to Indians be disposed of by the Fisheries Branch of this Department".

Originally, as I showed above, in 1859, Gibbard assigned the Chippewa of Christian Island a small fishery lease tightly wrapped around their island reserves. At this time, Gibbard had yet to find lessees for the surrounding waters between the Western Islands and Collingwood. In 1866, Fisheries appointed a new fishery overseer to the Georgian Bay, G.S. Miller. Miller allowed the Chippewa of Christian Island (and other Chippewa communities) to define the extent of their traditional fisheries. The Chippewa of Christian Island then expanded their small leases issued by Gibbard to be more inclusive of their traditional waters. Miller then charted their grounds as "Indian Fisheries" and placed a condition on all non-native boat licenses that prohibited access to

⁹³ NAC, RG 10, volume 1972, file 5530.

these "Indian Fisheries". Further, the records reveal that Miller informed the Chippewa that they "are not amenable to the fishery laws" and instructed the Ojibwa to defend their fisheries from settler trespasses.⁹⁴ Indian Agent Phipps did the same thing for the Ottawa regarding their fishing islands off the east coast of Manitoulin Island.⁹⁵

The records reveal that the Chippewa of Christian Island attempted to manage their fishing grounds on their terms. First, they gave notice to the non-native fishers, "that they will take all nets set in the vicinity of Christian Island at any time." In response, most non-natives withdrew their nets from around Christian Island.⁹⁶ However, the Chippewa were amenable to non-native entry on their terms and issued their own fishing permits to non-natives for \$20.00 to fish inside their traditional waters.⁹⁷

This changed in 1875 when the Chippewa of Christian Island lifted 5,000 yards of non-native nets set in their waters without permission and fined the fishers. They had done this before, but now the difference was that a new fishery overseer, James Patton, replaced Miller. Patton had continued the process of licensing off-shore non-native boat fisheries, but he omitted to include the reservation of "Indian Fisheries" as a restriction on these licenses. As a result, non-native boat fishers proceeded to fish inside the Ojibwa waters around eastern Manitoulin Island, Cape Croker, and the Christian Islands. In all three areas, the Ojibwa and Ottawa fishers seized the non-native fishers' nets. This year, however, the non-native fishers took their complaints to a Collingwood newspaper. Under the heading "Indian Outrage", the Collingwood *Enterprise* described the three incidents as "theft" and called for "justice."⁹⁸ The Toronto *Globe* picked up and repeated the story of the "outrage" and cautioned that if the state did not intervene, non-native fishers would go "in a body and tak[e] summary vengeance on the Indians."⁹⁹ The newspaper articles made their way to the Department of Marine and Fisheries and generated a swift response from Whitcher.¹⁰⁰

⁹⁴ NAC, RG 10, vol. 1972, file 5330, W.F. Whitcher to E.A Meredith, Deputy Minister of the Interior, dated Ottawa 29 December 1875.

⁹⁵ NAC, RG-10, vol. 1972, file 5522.

⁹⁶ NAC, RG 10, vol. 1972, file 5330, W.F. Whitcher to E.A Meredith, 1875.

⁹⁷ NAC, RG 10, vol. 1972, file 5330, W.F. Whitcher to E.A Meredith, 1875.

⁹⁸ NAC, RG 10, volume 1972, file 5530, undated clipping, Collingwood *Enterprise*.

⁹⁹ Toronto Globe, "Outrage by Manitoulin Island Indians", 28 October 1875.

¹⁰⁰ NAC RG 10, vol. 1972, files 5522 and 5530.

Whitcher disavowed the restrictions Miller had inserted in the non-native boat licenses and sought to eradicate the "impression in some quarters, that exclusive control of fishing in connection with Indian properties belongs to the resident Indians, and that they are at liberty to remove the fishing gear of Whitemen who resort to these fisheries."¹⁰¹ He then issued a circular to all fishery overseers that repeated the solicitor general's opinion of 1866 that purportedly established "the exact legal status of Indians in respect to the Fishery laws":

Indians enjoy no special liberty as regards either the places, times, or methods of fishing. They are entitled only to the same freedom as White men, and are subject to precisely the same laws and regulations.¹⁰²

Whitcher also promoted a new punitive strategy that was aimed at bringing aboriginal people into full compliance with the *Fisheries Act*. In 1862, Gibbard reported his frustrating efforts to enforce the law on the Ojibwa and open their fisheries to greater production by non-native fishers:

The Indians still continue to give great annoyance to our lessees. They do not fish to any extent on their own grounds (of which the leasing system has given them more than a reasonable share), but seem jealous of every-one, and are anxious to drive all others away from their neighbourhood. They consider themselves under no restraint of law, and even when caught red-handed.

In particular, Gibbard was baffled about how to use the existing legal measures to "punish" the aboriginal resisters. He reported to his superiors:

it is difficult under present circumstances to know how to punish them; fines they cannot pay, and it would entail great expense and loss of time to take them to gaol.¹⁰³

Whitcher solved this problem. His tactic was to confine all aboriginal fishing, whether for personal or commercial use, to a precise space by lease. Leases for domestic use would be granted free of charge, but commercial fishery leases required payment of a fee.

¹⁰¹ NAC, RG 10, vol. 1972, file 5530, circular signed by W.F. Whitcher, Commissioner of the Department of Fisheries for the Hon. Minister to Marine and Fisheries, Ottawa, 17 December 1875.

¹⁰² NAC, RG 10, volume 1972, file 5530, circular signed by W.F. Whitcher, 17 December 1875.

¹⁰³ William Gibbard, "Report of William Gibbard, Esq., on the Fisheries of Lakes Huron and Superior", CSP no. 11 (Quebec 1862): n.p.

Whitcher then made the aboriginal community's retention of even their food fishing lease conditional upon each member's compliance with the lease system and all of Fisheries' laws. In effect, interference of any member with a non-native lease would cause the entire community to lose its lease, the community's only remaining access to their fisheries. The legal geographer, Nick Blomley, advanced the idea that law needs defined spaces in order to function.¹⁰⁴ Whitcher's strategy is evidence of this point. The Ojibwa had resisted the Canadian laws that established the time, method, and place of their fishing, but once Whitcher made all their fishing conditional upon respect for the laws set for a particular space, on peril of losing that space, the state acquired the power to bring the Ojibwa under its legal regime.

To operationalize his plan, Whitcher requested that all Indian Agents force aboriginal communities to select a fishing area for their protection and submit a description of the area. The Indian Agents were not to describe the full fishing grounds claimed by each nation, only what the agent considered "reasonable".¹⁰⁵

On 14 March 1876, William Plummer, the Superintendent of Indian Affairs responsible for southern Ontario spoke with the Mississauga and Chippewa and then conveyed to Whitcher a description of fishing leases for their use.¹⁰⁶ It may be that Plummer selected grounds smaller than the communities wished as he qualified his list as what would be "just and proper to set apart". Additionally, the Chippewas of Rama submitted their own list that was more expansive than Plummer's description of their desired grounds.¹⁰⁷ I illustrate this information in map 7.2. The data reveals the Chippewa's core fishing grounds that they long understood to be protected for their exclusive commercial and subsistence use. In addition to their description of fishing leases, it is clear that the Chippewa informed Plummer about how these places fit within their cultural ecology. Plummer therefore informed Whitcher:

owing to their [Rama] hunting grounds being so remote the aged and very young cannot resort to this as a means of livelihood and during the winter and spring

¹⁰⁴ Blomley 1994.

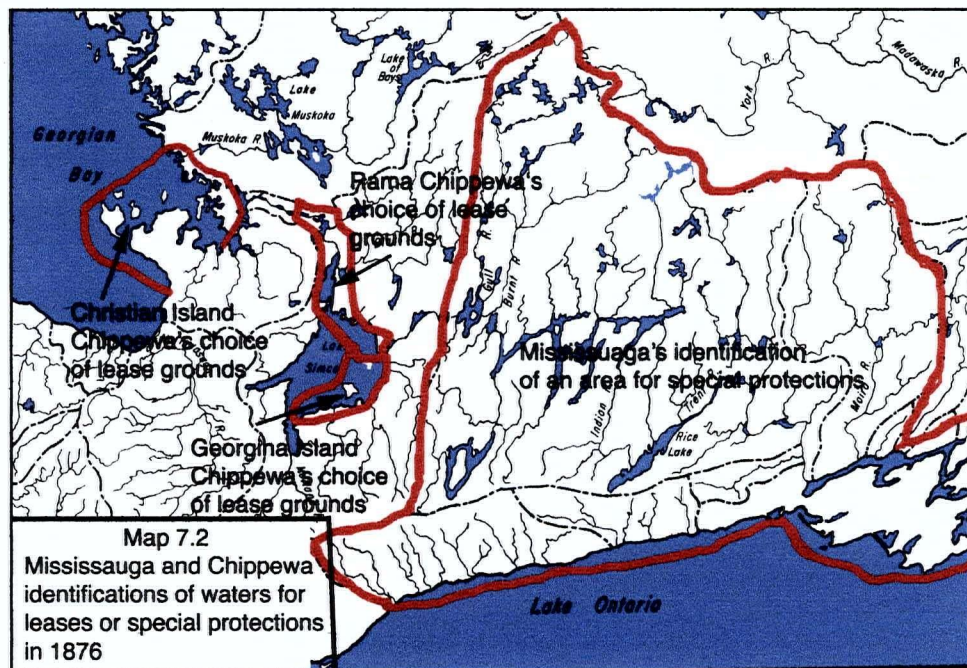
¹⁰⁵ NAC, RG 10, vol. 1972, file 5530, circular signed by W.F. Whitcher, 29 December 1875.

¹⁰⁶ NAC, RG 10, vol. 1972, file 5330, William Plummer, Superintendent of Indian Affairs, to the Minister of the Interior, dated Toronto 9 March 1876.

¹⁰⁷ NAC, RG 10, vol. 1972, file 5330, Chief J.B. Nangishkung, Rama, to William Plummer, date Rama Council House, 15 June 1876.

they suffer much destitution. This fishery would provide for these classes as the water is always open and large quantities of herring are caught in nets during the winter.¹⁰⁸

In sum, Rama's intention to lease their fisheries at the Narrows, Lake Couchiching, St. Johns, Sparrow, and other lakes was intended to protect one aspect of their cultural ecology. These were the primary residence of women, children, and elders, while men traveled north to their hunting grounds in the winter. Plummer indicated that Rama's



“claims to these fisheries” was of fundamental importance to their domestic economy and an important source of food for women, children, and elders over the winter. Plummer made the same case for the Chippewas of Christian Island when he described their leasing grounds: “it is here where the old men and women, and children fish when the able bodied men are absent.” In terms of the Chippewa of Georgina Island, Plummer reported that they already possessed a lease around their two island reserves but felt its fee was exorbitant and in violation of their treaty rights.¹⁰⁹

The Mississauga of Alderville, Rice, Mud, and Scugog Lakes made a different request. For them, their family fishing grounds were more disperse and therefore they

¹⁰⁸ NAC, RG 10, vol. 1972, file 5330, William Plummer, 9 March 1876.

¹⁰⁹ NAC, RG 10, vol. 1972, file 5330, 9 March 1876.

requested that Fisheries protect their commercial and food fishing pursuits across their traditional watershed without the requirement of a license.¹¹⁰ They were amenable to settler commercial fishing over the same grounds.

Plummer also reported to Whitcher various problems where non-natives had already leased some of these prime Ojibwa fishing grounds, especially locations in Lake Simcoe, and forcefully ejected the aboriginal fishers. He added that many of these non-native lessees were prosperous farmers and did not need the profits of the fishery. He therefore stated that the DIA was prepared to buy out these non-native lessees, if necessary, to avoid conflict.¹¹¹

Plummer forwarded this information to Fisheries on 9 March 1876.¹¹² Fisheries, however, took no action. In response, Plummer wrote several letters to expedite the matter. Then, on 1 June 1876, Plummer wrote the Minister of the Interior, responsible for Indian Affairs and explained:

I have written several times about the fishing of my Indians, but hitherto without any apparent results. I have written again today.

It seems the fishery officers have received instructions to lease what has been from time immemorial, Indian fisheries, without any dispute. The consequences are they are deprived of that which has been to them the principal source of their living.

I find this is falling especially hard on the Cape Croker and Christian Islands Indians.

I have done all I can to pacify them and I hope I shall have influence enough to keep them from breaking the law but while I take these steps with them I must say I feel very strongly on the subject and I cannot help but thinking they have been dealt very unfairly with. It may have been done inadvertently but the fact remains and unless something is done for their relief the consequences will be serious. ...

You might expect large deputations of them at Ottawa, and no persuasions of mine backed by all the authority of the Department will prevent their coming.¹¹³

Whitcher eventually replied in late 1878. He justified his inaction in a long letter in which he revealed that he now had no intention to follow through on his proposal to set aside leases for aboriginal nations, based on their input, as set out in his 1875 circular.

¹¹⁰ NAC, RG 10, vol. 1972, file 5330, 9 March 1876.

¹¹¹ NAC, RG 10, vol. 1972, file 5330, 9 March 1876.

¹¹² NAC, RG 10, vol. 1972, file 5330, 9 March 1876.

¹¹³ NAC, RG 10, vol. 1972, file 5330, William Plummer, Superintendent of Indian Affairs, to E.A. Meredith, Minister of the Interior, 1 June 1876.

To justify his deception, he blamed natives for historically overfishing and causing a decline in fish stocks. He claimed that under his management, the fisheries had rebounded and that he had no intention to change the order of things that now saw most traditional Ojibwa fisheries in the hands of non-native lessees. In particular, he considered natives to be culturally prone to abusing the fisheries and refused to restore their access that he considered a threat to the stocks.¹¹⁴ Instead, he limited Ojibwa fishing to tiny state-determined fishing leases to the waterfront of their reserves. In his opinion, native restrictions on access were in the best interest of fish conservation. It was a crucial and arbitrary action. Now the Chippewa of Christian and Georgiana Islands found themselves with tiny leases around their islands while the balance of their traditional fisheries, the subject of crown promises of protection when they surrendered lands to settlers, were opened to non-native lessees. Meanwhile, the Mississauga obtained no lease protections and all their traditional inland lake fisheries were opened to commercial non-native fishing.

In 1875, the Ojibwa's limited waterfront access to their fisheries was compounded when Fisheries leased off-shore boat fisheries around their reserves. These boaters established a web of nets to intercept fish before it reached the shores of their reserves. In the case of the Saugeen waterfront lease, the Superintendent of Indian Affairs reported in 1882 that non-native fishers strung a corridor of nets outside the Saugeen community's lease and "almost entirely cut off the chance of the Indians catching any". Non-native fishers were free to move about and apply for different leases, as the Superintendent reported, "these whitemen have unlimited grounds elsewhere, where they fish all the year", before cordoning off the Saugeen beaches in the late fall where herring and whitefish migrated for centuries and the Ojibwa built one axis in their traditional seasonal rounds. In a most poignant comment on the success of the government's plan to reduce the aboriginal fishery to tiny spaces, and open up the fishery to non-natives, the superintendent stated that 350 Chippewa fishers were "crowded into this narrow space" behind a gauntlet of non-natives nets.¹¹⁵

¹¹⁴ NAC, RG 10, vol. 2064, file 10,099 1/2, W.F. Whitcher, Commissioner of Fisheries, to L. Vanhoughnet, Deputy Superintendent of Indian Affairs, 15 September 1875.

¹¹⁵ NAC, RG 10, vol. 1972, file 5530, William Plummer, Superintendent of Indian Affairs, dated Toronto 1 March 1882.

In my next chapter, I will explain how the Ojibwa's limited waterfront access to their fisheries was compounded when Fisheries established new fishing seasons based on its new sciences that made the time whitefish and trout reached their shores as out of season. The closed time did not, however, affect off-shore non-native boat fisheries established around the Ojibwa reserves who intercepted the fish when in season and before it reached the shores of the reserves. Soon, it became apparent to many Ojibwa that by the time fish reached their shoreline reserves, the law had defined the fish as out of season, and the remaining Ojibwa fishery was cut down.

The collapse of the Ojibwa conservation system

As stated, one fundamental aspect of the Ojibwa's treaty strategies was to continue to own and manage their valued ecosystem components according to their own laws and concepts of property. Between 1807 and 1857, while parliament provided some legal measures for Ojibwa control of river mouths and fishes, it failed to provide the Ojibwa with all the legal protections and tools necessary to protect the integrity of their cultural ecology and system of supporting resource management laws. The outcome of parliament's failure was that settlers invaded the Mississauga's hunting and fishing grounds regardless of the colonial statutes or the Ojibwas' laws against trespass onto their grounds. In 1858, parliament sanctioned the wholesale non-native invasion and appropriation of Ojibwa fishing grounds. For the Ojibwa, these trespasses compromised their ability to manage their resources as they could no longer control access, monitor pressures, and adjust their use accordingly. By the end of the 19th century, the Ojibwa system of laws and the integrity of their legal landscape collapsed. One result is that the Ojibwa found themselves in competition with non-native and native trespassers and were forced to enter a race to harvest the resources of their grounds. By the end of the 19th century, settlers started to mount many examples of the Ojibwa overfishing and "cleaning out their hunting grounds". In 1901, James Dickson, a crown surveyor, commented on these accounts. He wrote, "some people assert that it is the Indian who are killing off the game. This is libel on the poor red man". Based on his extensive field experience, he argued that the much publicized examples of large Ojibwa kills only occurred in areas where non-natives invaded their hunting grounds and attempted to appropriate their

resources. The Ojibwa response, he argued, was to clean out his hunting ground to maximize its return before non-natives seized all the resources:

Whoever heard of an Indian, so long as the white man did not encroach on his hunting grounds, knocking a fawn on the head for fear it would again get in front of his dogs and allure them from larger game, leaving both hide and carcass to feed the fishes? Who ever heard of an Indian killing moose and deer for the hides alone, leaving the carcass to feed the fox and wolf or bait bear traps? So long as the Indian has the field to himself he only takes enough game to supply his own frugal wants and no more. It is only when the white man steps in to dispute his rights to the hunting ground that he kills off all the beaver in a pond or destroys all the game he can in one season.¹¹⁶

It is a cogent analysis. In the Ojibwa's legal system, trespass was prohibited and could be punished by a variety of means. A family's exclusive ownership of a hunting ground coupled with the ability to control outside pressures gave them the ability to conserve their resources. However, once others invaded their hunting grounds with impunity, families lost the ability to husband their resources and lost any incentive to protect it for their future use as its sustainability was no longer secure. Now, in the truest sense of Garret Hardin's theory of the "Tragedy of the Commons", the aboriginal closed-access resource management system was broken and it was in the Ojibwa family's best economic interest to maximize the return from their hunting grounds as its future yields were very uncertain. It is likely the same events occurred in the fisheries.

Conclusions

Nettle's 1857 argument that the fisheries existed in a state of the "tragedy of the commons" and needed conservation was not the primary motive behind the sportsmen's creation of the lease provisions in the 1858 *Fisheries Act*. The *Act* had more to do with moral regulation, social control, the appropriation of aboriginal fisheries, and the generation of revenue for the government. Fisheries used its creation of fishing spaces as deliberate tool for the social control of fishers and the reshaping of the existing social and cultural waterscape.

¹¹⁶ James Dickson, *The Game Fields of Ontario* (Toronto: Warwick Brothers & Rutter, 1901): 25.

It is important to note that sportsmen did not emerge late in the history of fisheries politics as the literature suggests. Rather, they were behind the most crucial legislative changes to the organization of the fisheries of the Great Lakes and its watershed. In effect, sportsmen laid the foundations to the current geography of the fishing in Ontario. In the process, they privileged their methods and vested key salmon and trout rivers in their friends and colleagues as a form of patronage.

The Ojibwa and settlers resisted this new legal regime. While settlers succeeded in their argument that they had enclosed their fisheries "since time out of mind", the government found otherwise for the Ojibwa despite considerable contemporaneous evidence to the contrary. Fisheries also developed flawed arguments based on the *Magna Carta* to deprive the Ojibwa of their fisheries. It appears that Fisheries' arguments were disingenuous and their agenda was to re-allocate the vast majority of the Ojibwa's traditional fishing grounds to others. They accomplished this feat by 1876 with their false pretension to establish fishing leases for the Ojibwa. As a result, they erased the Mississauga and Chippewa's traditional fishing geography and outlawed Ojibwa fishing systems. The effect of the lease system was to limit aboriginal fishing to small zones, not their traditional waters reserved in treaties as condition of surrendering land to settlers. As well, the Ojibwa's treaty strategies to manage their traditional fisheries with their own laws and systems was now broken. Ultimately, the lease system tied the Ojibwa nations to waterfront fishing grounds behind a gauntlet of non-native nets and at a time the fishery was closed. The Ojibwa remain in this situation to this day.

The story, however, is not over. To solidify the system of laws and spaces that they built, sportsmen then influenced the formation of fisheries science in Canada to ensure that their values and order of things was embedded in this new production of scientific knowledge.

Chapter 8

Making Modern Fisheries Science: 1865-1899

*The natural history of the Salmon, prosecuted in a country [North America]
where conflicting interests have not as yet sprung up to cause the perversion of facts
would furnish a rich field to ichthyologists.*

John Richardson, 1836¹

In 1994, the Ontario Federation of Anglers and Hunters (OFAH) argued against the treaty fishing rights of George Howard, a Mississauga fisher, on the basis that closed seasons “were established for conservation purposes” and that they were biologically informed.² It is evident, however, that the sportsmen’s concept of a closed season predated the development of the modern ecological sciences that emerged in the late 19th century. Indeed, all of the sportsmen’s technologies, code of ethics, and choices of fishing places predated the emergence of modern fisheries science but are sanctioned by this modern science. The final question that needs to be answered is: when the modern fisheries sciences emerged in the late 19th century, based on the new principles of the scientific research method, how and why did it develop truth statements that supported the sportsmen’s practices, seasons, values, and other social assumptions while censoring aboriginal fishing times and methods? To answer this question, I build on my evidence that sportsmen emerged early in Upper Canada as a powerful lobby with pseudo-scientific concepts based on the negation of aboriginal fishing systems.

Finding an ideological justification for the sportsmen’s system of closed seasons

As I discussed above, in mediaeval Europe, the English elite developed the concept of a “closed season” to prevent the lower classes from accessing river-run fishes when they were available. These lords did not build the laws for closed seasons around any form of fisheries science. Rather their intent was to make sure that the fishes reached their estates where they could capture them. In Upper Canada, the first closed seasons

¹ Richardson 1836: 148.

² Supplementary Affidavit of C. Davison Ankney, in Supreme Court of Canada, court file no. 22999, *George Henry Howard (Appellant) and Her Majesty the Queen (Respondent) and the Ontario Federation of Anglers and Hunters and the United Indian Councils (intervenors)*, para. 7.

had a similar social objective and prevented settlers from fishing at the time the Ojibwa traditionally fished. By the 1850s, sportsmen had a clear sense of what they wanted included in Canadian fishery laws. They wanted to be able to catch salmon as it proceeded up rivers and rested in pools during June, July, and August, which they termed 'in season', and ban the ensuing aboriginal capture of the fish when it proceeded to shallower upstream waters in September. In 1858, Nettle successfully refined the *Act* to meet the fly-fishers' wishes. Section 24 read:

24. It shall not be lawful to fish for, catch or kill salmon in any way whatever, between the first day of August and the first day of March in any year; Except only, that it shall be lawful to fish for salmon with a rod and line, in the manner known as fly-surface-fishing, from the first of March to the first of September in any year, in Upper or Lower Canada.³

For good measure, section 25 puts salmon spawning grounds off-limits.⁴ Speckled trout came under an identical regulatory regime.⁵ In effect, the sportsmen drafters made it illegal for anybody to fish river running salmon or speckled trout by any method other than angling and criminalized any form of fishing on its spawning grounds. By a careful balancing of opening and closing dates, sportsmen exclusively legitimized their own fishing times, places, and methods. It was not a difficult matter as the earlier Upper Canada laws already defined the season when the Ojibwa fished during their seasonal rounds as open to the Ojibwa and closed to settlers. The new laws simply repealed the Ojibwa's open season and shifted the open season to the time sportsmen fished.⁶

The criminalization of traditional aboriginal fishing, however, was not a *fait accompli*. In an apparent response to a concern about aboriginal fishing, a short time

³ Canada (province), *The Fishery Act*, 22 Victoria (1858) c. 86, s. 24.

⁴ Canada (province), *The Fishery Act*, 22 Victoria (1858) c. 86, s. 25. "It shall not be lawful to use any net, or to take salmon in any way whatever... in any pools or ponds where salmon are wont to spawn."

⁵ Section 32 of the 1858 *Fisheries Act* ensured: "It shall not be lawful to kill any kind of speckled trout, in any way whatever between the twentieth of October and the first of April in any year; nor shall any Speckled Trout be killed at any time by means of nets or seines in any inland Lake, River nor Stream in Upper Canada (province), *The Fishery Act*, 22 Victoria (1858) c. 86, s. 32.

⁶ Note: the same occurred with respect to the aboriginal deer hunting season. Because aboriginal people hunted deer in the spring, the *Act for the Preservation of Deer* (2 Vict. (1839) c. 12, s.1) protected this season for aboriginal harvesters. Later, sportsmen closed this season and made the early fall the open season. This was a convenient time for sportsmen as the trout season had just closed and the men could extend their vacation to include moose hunting and not have to return at another time. In addition, moose shed their antlers in the late winter, therefore it had a greater value to sportsmen as trophies when killed with their racks in the fall.

after the 1858 *Fisheries Act* became law, the Governor in Council passed additional regulations that were intended to provide some protection for the aboriginal fishery.

Section H of the regulations read:

H. – Indians may, for their own *bonâ fide* use and consumption, fish for, catch or kill Salmon and Trout by such means as are next above prohibited [spearing, netting] during the months of May, June and July, but only upon waters not then leased, licensed or reserved by the Crown; provided always that each and every Indian thus exempted shall be at all times forbidden to sell, barter or give away any Salmon and Trout so captured or killed in the manner hereinbefore described.⁷

The exemption was, however, rendered meaningless by the weight of the fishing laws and regulations as a whole. Many aboriginal riverine fishing places were coming under leases, commercial use was prohibited, and the allowable times for spearing did not permit aboriginal spearing from August to October, the time for which the technology was designed.

The greater significance of the regulation was that it rekindled the sportsmen and government fishery overseers' attacks on aboriginal spear fishing. They expressed concern that the slightest allowance for spearing created a potential loophole for aboriginal people and fish buyers to exploit. Whitcher initiated the attack against the regulation in his official report for the year 1859, when he argued, "I cannot close this report without touching upon the subject of spearing by Indians." Whitcher's superior had approved the regulation, and Whitcher constructed his criticism carefully, remarking that, "the qualified exemption of Indians under the Fishery Regulations arose, I feel assured, from motives humane and considerate."⁸ Whitcher believed, however, that his superiors had been misled "by arguments in support of such exception drawn from the apparent necessities of Indian life". Whitcher argued from his field "experience" that, "it is quite a mistaken notion that they kill and cure Salmon for provisioning their inland hunt", and backed up his statement with evidence that government and missionaries provided food supplies to some native communities that allegedly eliminated the need for

⁷ Regulations, printed in "Report of the Commissioner of Crown Lands for the year 1858", *CSP* no. 17 (Toronto: 1859), appendix T: para. H.

⁸ W.F. Whitcher, J.P., "Mr. Whitcher's Report, 1859", *CSP* no. 12 (Quebec: 1860), appendix 34: 162.

fish at all.⁹ But it was the rights of aboriginals that Whitcher aimed to undermine. He argued, "that the Indians must suffer starvation by being deprived of their 'native liberty' to ruin our Salmon Fisheries, is a very flimsy apology on the part of those who still desire to perpetuate so flagrant an abuse."¹⁰ Aboriginal rights, it appeared, were less important than providing salmon for non-native sportsmen. He therefore mustered all the sportsmen's 'scientific' reasons for banning aboriginal fishing systems and privileging his own.

For sportsmen, however, it was hard to answer a simple question. Non-native fishers who, like the Ojibwa, wanted to continue fishing spawning shoals of salmon, trout, whitefish, and herring, demanded that fishery officials answer the question, "if you kill a female fish six months before spawning, you just destroy as many eggs as if you killed her six days or six hours before depositing her eggs, nay in the act of depositing her eggs."¹¹ It was a difficult question to answer and Whitcher and others fell back on their reservoir of social and moral assumptions that girded their "scientific" concept of seasons. In particular, Whitcher responded to this challenge by focusing on social constructions of maternity, vulnerability, and the palatability of spawning fish as food. Whitcher conceptualized spawning beds as "nature's free hospitals" or "nurseries" where any invasion was "deplorable".¹² Couched in terms of male protection of female reproduction, he stated:

And, after all [the hardships from ascending rivers from the sea], lean from exertion and thin food; dark and slimy from the physical drain and unhealthy action incident to the procreative state, perhaps sluggish and heavy with thousands of ova, or bruised in the exhaustive labor and anxious cares of depositing their prolific burden, -- they are ruthlessly slain by the spear.¹³

Whitcher therefore constructed spearing as a ruthless attack on "anxious" mothers. In his mind, nature intended spawning grounds to be nurseries where fish "bread supplies and furnish wealth to the longshore and estuary fishing". In essence, he argued that aboriginal fishing places be designated safe havens for the reproduction of fish for non-

⁹ Whitcher 1859: 162.

¹⁰ Whitcher 1859: 162.

¹¹ Ernest Edward Prince, *The Object of a Close Time for Fish* (Ottawa: 1899): lxxvi.

¹² Whitcher 1859: 162.

¹³ Whitcher 1859: 162.

natives who captured them at other times and places. Thus, sportsmen and the government expected aboriginal people to bear the burden of their conservation measures. At the same time, Whitcher's fellow fishery officer responsible for the Upper Great Lakes, William Gibbard, helped him build his "nursery" argument. Gibbard described from hearsay that the Cape Croker Chippewa spear fishery was a scene of "bloody" slaughter: "Indians frequently in a few hours (as it has been described to me) 'bloody the water' for acres around and fill their canoes with trout in a very short time."¹⁴ The problem Gibbard observed was that the aboriginal spear technology was ideally suited to capture spawning trout and whitefish on honeycombed shoals where non-native nets and other fishing technologies (except trolling) were unsuccessful. Gibbard's response was to recommend that all shallow spawning shoals, suited primarily to Ojibwa fishing methods, be set aside as fish sanctuaries and protected by strict enforcement of the *Fisheries Act's* ban on spearing with an additional ban on trolling to conserve this fish habitat for the benefit of non-natives.¹⁵ In effect, Gibbard proposed a scenario whereby the geography of fish sanctuaries in Lake Huron and Georgian Bay would mirror the traditional fishing places of the Ojibwa. Below, I will show how Fisheries realized this objective.

Whitcher added to his defense the concept that fish were unpalatable (at least to the western gullet) during the time they spawned. As early as the 15th century, people used the word "in season" to denote the time when animals were considered to be in the best flavour for eating or "readily available in good condition", and out of season to refer to a time when the fish were, according to their tastes, in their worst flavour.¹⁶ The early "scientific" anglers in Canada developed the belief that fish caught on spawning beds were "out of season", unfit to eat, and were in fact "half- poisonous".¹⁷ Whitcher added this palatability argument to his defense.¹⁸

Whitcher failed, however, to answer the substance of the above question: what difference did it make if the same fishes were killed in June or September, they would

¹⁴ William Gibbard, Overseer of Fisheries for Lakes Huron and Superior, "Report of the Fishery Overseer for the Division of Lakes Huron and Superior, for 1859": 87.

¹⁵ Gibbard 1859: 87.

¹⁶ *The New Shorter Oxford English Dictionary* (Oxford: Clarendon Press, 1993): 2746.

¹⁷ Tolfrey, "The Sportsman in Canada", *The Spirit of the Times*, 1 April 1843; Henry 1860: 318; Adamson 1856, 1860, appendix I: 297

¹⁸ Whitcher 1859: 162.

still fail to deposit their eggs? Whitcher followed up this argument with a truer reflection of the social interests behind his laws, "besides, to tolerate it, must always expose Crown lessees to the risk of having their limits suddenly deteriorated by the bold encroachments of spearers." The real issue for Whitcher was the effectiveness of the aboriginal technology at a place and time where for which it was designed: "The practice of capturing Salmon by torch-light and spears is justly held to be most pernicious. Employed, as it almost invariably is, at a time when the waters of each river are lowest and clearest."¹⁹ The sportsmen's objective was to criminalize the technology that linked aboriginal culture with ecology.

In sum, Whitcher's rationale for "seasons" was not based on an objective science, but was entirely about protecting the social and economic interests of non-native fishers. A pure-sounding biological argument for closed seasons has been harder to muster, but nonetheless, one was developed to camouflage the social interests behind the definition of closed times.

The development of modern scientific arguments

Sportsmen have long claimed that their work increased the development of scientific knowledge about fish. For example, early sport fishing journals encouraged readers to submit fish specimens to naturalists for examination, and many pages of the trade literature were devoted to the unfolding knowledge of the natural history of North American fish.²⁰ In 1837, Dr. Henry asserted that these contributions made angling one of the "handmaids of science".²¹ Unlike naturalists, sportsmen devoted early thought to the "problems" of fisheries conservation and proposed solutions (albeit in their interest). As will be shown, anglers kept up with the emerging science of fisheries management in the Great Lakes and actively contributed their knowledge and advice to government scientists and biologists, and in the process, developed a tight relationship.

The origin of modern fisheries science is generally traced to the early studies of natural history conducted by naturalists. Naturalists were not interested in the cause of

¹⁹ Whitcher 1859: 162.

²⁰ See *The American Turf Register and Sporting Magazine*, 1829-1845; *The Spirit of the Times & Life in New York*, 1831-1843; *The New York Albion*, 1839-1843.

²¹ Henry 1860: appendix II: 316.

fish fluctuations or habitat protection, the issues that typify modern fisheries research, but were interested in locating different species of fish and classifying them in the taxonomic order developed by Carl Linneaus. British explorers and others ensured the study of natural history flourished in Canada from 1800 to 1850.²² Eventually, by the 1850s, academic appointments and courses in natural history were offered at Canada's oldest universities.²³

The historians of aquatic science, Tim Smith, Stephen Bocking, and Joseph Taylor demonstrated that the years 1860 to 1880 were the formative years for the development of fisheries science research in the Great Lakes.²⁴ Both found that in the 1860s, academic research shifted to a more scientific focus on the biology and life history of fish. Smith states that the maturity of international scientific research was demonstrated in 1883 at the Great International Fisheries Exhibition, held in London, England. He found that Louis Agassiz, who conducted fisheries research in the Canadian Great Lakes among other places, was at the front of this shift when he wrote in 1860: "it would be a good thing have the whole subject of the fisheries considered from a scientific point of view."²⁵ A year earlier, D. Young Leslie offered Canadian parliamentarians his opinion that the management of the Canadian Great Lakes fishery be based on scientific study:

first let me observe that it is much to be regretted that the natural history of the White Fish of the Canadian Lakes has not been sufficiently studied, and enough

²² For a history of Canadian naturalists, see J.R. Dymond, "Zoology in Canada", in Frank Dawson Adams, ed., *A History of Science in Canada* (Toronto: The Ryerson Press 1939): 41-57; C. Stuart Houston, ed., *Arctic Ordeal: The Journal of John Richardson Surgeon-Naturalist with Franklin, 1820-1822* (Montreal & Kingston: McGill-Queen's University Press, 1984); Suzanne Zeller, *Inventing Canada: early Victorian Science and the Idea of a Transcontinental Nation* (Toronto: University of Toronto Press, 1987); W.A. Waiser, *The Field Naturalist John Macoun, the Geological Survey, and Natural Science* (Toronto: University of Toronto Press, 1989). For studies of naturalists internationally, see: Alan C. Jenkins, *The Naturalists: Pioneers of Natural History* (London: Webb & Bower, 1978); Peter J. Bowler, *The Norton History of the Environmental Sciences* (New York: W.W. Norton, 1992): 248-305.

²³ Dymond 1939: 41-57.

²⁴ Stephen Bocking, "Stephen Forbes, Jacob Reighard, and the Emergence of Aquatic Ecology in the Great Lakes Region", *Journal of the History of Biology* 23 (1990): 461-98; Tim D. Smith, *Scaling Fisheries: the science of measuring the effects of fishing, 1855-1955* (Cambridge: Cambridge University Press, 1994); Stephen Bocking, "Fishing the Inland Seas: Great Lakes Research Fisheries Management, and the Environmental Policy in Ontario", *Environmental History* 2.1 (January 1997): 52-73; Stephen Bocking *Ecologists and Environmental Politics: A History of Contemporary Ecology* (New Haven: Yale University Press, 1997); Taylor 1999.

²⁵ N. Reingold, *Science in nineteenth century America, a documentary history* (New York: Hill and Wang, 1964): 211, quoted in Smith 1994: 46.

of the facts recorded to make us even reasonably acquainted with their habits. In the meantime, and until the subject is taken up by some competent person and thoroughly and scientifically investigated (and it will repay the trouble), we ought to apply what little knowledge we already possess in the practical endeavour to render the mode of fishing the Lakes as little likely to injure the permanent supply ...a[s] possible.²⁶

Young sought the development of scientific knowledge on the natural history of commercial fishes that could form the basic principles to a system of managing the Great Lakes fisheries. He suggested "that some person of competent scientific acquirements should be commissioned to study the habits of various kinds of fish in the Lakes, and accumulate and arrange all the facts available for the formation of a general system of fishing, based upon proper and intelligent principles."²⁷ In 1865, the government responded by hiring Samuel Wilmot, a farmer and merchant at Newcastle, on Lake Ontario, to address the problem of Atlantic Salmon decline in the lake through the development of a fish hatchery.²⁸ In 1868, the federal government purchased Wilmot's hatchery and hired him to operate it. In 1876, it appointed him Superintendent of fish culture for Canada.

Smith and Taylor have studied the first fisheries questions investigated by new self-educated "scientists" such as Wilmot. In the 1860s, one of the first interests of researchers was to establish the basic life history of various commercial fish.²⁹ This was precisely the type of knowledge D. Young, cited above, felt was missing in the management of the Great Lakes fisheries.³⁰

Wilmot kept on top of the emerging scientific literature and contributed to it. His fish hatching methods were widely replicated. He also attended most of the international conferences of fisheries scientists and was well received and won many awards.³¹ In 1883, he built the Canadian "court" at the Great International Fisheries Exhibition in

²⁶ D. Young Leslie, untitled report to John McCuaig, 1859, Superintendent of Fisheries for Upper Canada, Brighton, Upper Canada, printed in "Report of the Commissioner of Crown Lands of Canada for the year 1859"; CSP no. 12 (Quebec: 1860): 82.

²⁷ Young 1859: 84.

²⁸ Smith 1994: 39.

²⁹ Smith 1994: 12.

³⁰ Smith 1994: 8-21.

³¹ Forkney 1993.

London, England (image 8.1). His primary work lay in the field of fish hatching, which he and many others, especially politicians, thought would alleviate through science and technology, the problem of fish overharvesting thereby providing a consistent flow of fish to non-native commercial and sport fishers.

Canadian politicians long believed that the artificial propagation of fish was the panacea to over-fishing and Wilmot enjoyed a long tenure (1865-1891) as the primary

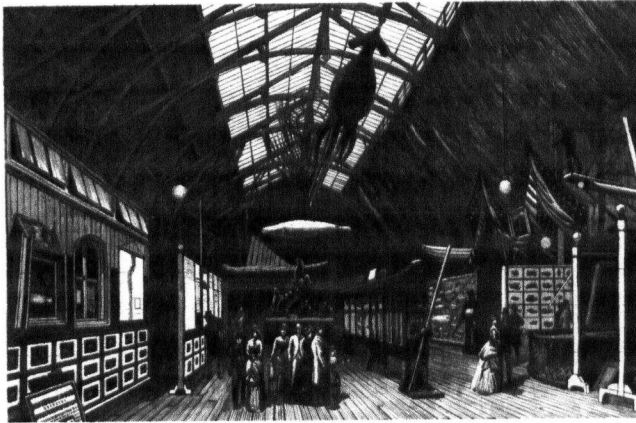


Image 8.1. Canadian Court at the International Fisheries Exhibition, October 1883.
Source: NAC C-121048

researcher and authority on fishery matters in the Great Lakes. During his term, however, the concept of ecology did not inform his research, or that of others. His research ignored, at least initially, other causal factors in the collapse of salmon, such as deforestation (causing the warming and reduction of water flow), habitat alteration, and changes in the composition of fish stocks. These

influences came later to his (and everyone else's) understanding of fishery management problems. The significance of Samuel Wilmot's long tenure at a critical time in the development of ideas for the management of fisheries was that Wilmot proposed to government sweeping changes to the organization and prosecution of the Great Lakes fisheries. These changes occurred before the first generation of university-educated scientists developed the concept of ecology and began to apply their concepts in the field. Most significantly, Wilmot made these changes from the perspective of a sportsman.³² The effect of the sportsmen's "science" on Wilmot's thinking requires close examination.

Wilmot's work

It is clear that Wilmot espoused the sportsmen's perspective. In his first report in 1869, he voiced the sportsman's view that spearing maskinongè was "deadly" and was

³² Wilmot is listed as a general committee member of the Ontario Fish and Game Protective Association. See *By-Laws of the Ontario Fish & Game Protective Association*, 1 March 1876 (Toronto: G.C. Patterson, 1876): 5.

the cause of "havoc and destruction to this fish".³³ The next year, without evidence, he blamed spearing for the scarcity of fish in the Maramachi River in New Brunswick.³⁴ In 1871, Wilmot defined spearing as a "waste" when he argued that, "the torchlight and spear, the gaff-hook, the net, and other devices used in killing the fish in the act of spawning, -- all tend towards making sad havoc and waste."³⁵ In 1874, Wilmot expressed most of the sportsmen's ideas when he described the state of salmon on spawning beds in the following terms:

It must also be remembered that at this time, salmon, from their sluggishness, and from having resorted to the smaller tributary streams on the shallow gravelly beds, become more easy prey for the lawless pursuers, who care nothing for nature's command to increase and multiply, nor object to foul and unwholesome food, kill indiscriminately, with every sort of device, every fish that may be found. This barbarous practice, having hitherto generally prevailed, has in numerous instances totally exterminated many of the better kinds of fish from most of the waters of the older settled parts of this country.³⁶

Wilmot clearly accepted the "scientific" anglers' social argument that fishing on spawning beds was a "barbarous practice", that spawning fish were unpalatable, and that fishing practices existed on a social spectrum from barbaric methods that were wasteful and indolent to more civilized applications leading to industrial and moral development. Consistent with the knowledge of his day, he also blamed spearers, not other factors such as anglers, deforestation, and overfishing, for the collapse of salmon stocks in Lake Ontario.

While Wilmot conceived spear fishing as savage and wasteful from the first days of his employment, he regarded sport fishing as benign and immediately promoted the continued leasing of rivers to clubs because it provided: "a three-fold benefit, namely -- more thorough protection of the rivers, a revenue to the Department, and an increased supply of fish to the tidal and coast fisheries".³⁷ Clearly, Wilmot committed to a number of the sportsmen's assumptions from the start of his career and before he had conducted

³³ Samuel Wilmot, report dated Newcastle 15 April 1869: 93.

³⁴ Samuel Wilmot, "Report of S. Wilmot, esq., on a visit to New Brunswick in connection with artificial salmon breeding in that province", *CSP* no. 11 (Ottawa: 1870): appendix 15: 109.

³⁵ Samuel Wilmot, "Extension of Fish Culture", *CSP* no. 5 (Ottawa: 1872): appendix I: 82.

³⁶ Samuel Wilmot, "Report of S. Wilmot, Esq., on the Fish-Breeding Establishment at Newcastle, Ontario during the season of 1873, *CSP* no. 4 (Ottawa: 1874): appendix H: 109.

³⁷ Samuel Wilmot, "Report of S. Wilmot, esq., on a visit to New Brunswick": appendix 15: 108.

much fieldwork and experimentation. It was a commitment he did not compromise after he started his research and proposed new regulations.

As stated above, one of the first interests of Wilmot's generation of fishery researchers was to establish the basic life history of various commercial fish to inform decisions about their management. In 1869, again at the outset of his employment, he crafted a description of the life history of Atlantic salmon. I will show that he gave crucial scientific authority to the sportsmen's practice of angling in riverine pools where salmon rested during their spawning runs by arbitrarily classifying the pools as "feeding grounds". But first, it is important to observe the work of the famous naturalist John Richardson who attempted to describe the life history of Atlantic salmon in North America in his famous 1837 book, *Fauna Boreali-Americana*. Here, I am interested in the contemporaneous knowledge about whether salmon ceased to feed when it entered spawning rivers. Richardson wrote that, "on entering fresh water for the purpose of spawning, it seems, like many other animals in the nuptial season, to lose its appetite for food." Richardson also noted that despite its non-feeding habits in riverine pools, anglers could, however, entice some salmon to "rise occasionally to the natural or artificial fly, and [it] has been known to take both minnow and worm."³⁸ Although salmon would rise to a sportsman's bait, it did not actually rest in riverine pools to feed. Richardson cited various authorities for this fact, including the work of an American researcher, De Witt Clinton, who published in the *Literary and Philosophical Transactions of New York* that after Lake Ontario salmon entered natal streams in May, "they eat nothing during their residence there, which continues to winter."³⁹ In sum, by the 1830s, leading ichthyologists agreed that salmon did not feed when they entered their spawning rivers. Before I turn to Wilmot's divergent knowledge statement, Richardson indicated that competing social interests in Europe had distorted knowledge of the salmon's natural history to suit their social and economic interests. Richardson believed that Canada in the 1830s, however, was a unique field for study because there were no conflicting interests over salmon: "The natural history of the Salmon, prosecuted in a country where conflicting interests have not as yet sprung up to cause the perversion of facts would

³⁸ Richardson 1836: 149.

³⁹ De Witt Clinton, *Literary and Philosophical Transactions of New York*, quoted in Richardson 1836: 146.

furnish a rich field to ichthyologists.”⁴⁰ By 1869, however, when Wilmot created a scientific truth claim about the life history of salmon, many social interests vied for the rights to the fish. When one examines Wilmot’s work, it appears that Richardson was right that conflicting interests could lead to the perversion of research findings.

It is important to quote Wilmot’s knowledge statement about the life history of salmon before analyzing it:

There is a period when fish are *in season*, and when they should be taken by legitimate means. There is another period when they are *out of season*, and then should be protected by all legitimate means. They are in season after they have fully recovered from the prostrating effects of spawning, and when found upon their feeding grounds, putting fat upon the body. At this time though the eggs are in the ovaries yet they are so minute as to take little if any nourishment from the system, all the food taken forming muscle and fat. They are *out of season* when they have left their feeding grounds, and are coming upon their spawning beds, and are in the act of spawning. The eggs at this period having absorbed from the body of the fish the fat which had been previously put on, become enlarged to their full size, and are mature and ripe for being deposited.⁴¹

In essence, Wilmot worked the sportsmen’s arguments about maternity into a crucial “scientific” justification for their argument that it was acceptable to take salmon in pools, but not shortly after when they deposited their eggs, by creating a crucial distinction between “feeding grounds” and “nursing grounds”. In the above knowledge statement about the life history of salmon he built the scientific argument that when sportsmen caught salmon in riverine pools, the fish were in a stage of their life history where they were engaged in food consumption and muscle development. According to his theory, the pools where salmon rested during their spawning runs were “feeding grounds”. Here, the fish were “in season” and could be taken by “legitimate means”. Of course, this was not factual and at odds with the contemporary knowledge discussed above. But, Wilmot’s arbitrary distinction between “feeding grounds” and “nurseries” was very important. According to this “science”, the crucial transition occurred when fish “left their feeding grounds, and are coming upon their spawning beds”. It is no coincidence that this transition stage perfectly coincided with the time sportsmen’s technologies were

⁴⁰ Richardson 1836: 148.

⁴¹ Samuel Wilmot, report dated Newcastle 15 April 1869: appendix 6: 90.

no longer workable. In sum, Wilmot's science did not bring new management principles to the sport fishery, but rationalized sportsmen's customs and sanctioned their private leases of rivers by terming their fishing pools as "feeding grounds" which they were not. There is no evidence that Wilmot ever critiqued the sportsmen's social and moral assumptions.

Wilmot then contradicted himself when he attacked the practice of commercial fishers who waited at shore-based seine fisheries for the fish to aggregate in the deeper parts of lakes and then run to shore. Again, social interests motivated Wilmot's actions. In 1859, D. Young Leslie reported to parliament his "moral objections" to the seine fisheries. He argued that the shore-based fisheries were scenes of "drunkenness", idleness, and "other kind of vices".⁴² Leslie proposed the eradication of the shore-based seine fishery and its replacement with a capital and labour intensive off-shore gill net fishery as the means to transform the fisheries into an object of industry and morality. In his view, "only persevering and steady industry can expect to make anything of the Gill Nets, they are therefore used only by those who intend to make a livelihood by the business, and are therefore free from those spasmodic alternations from activity to idleness, so injurious to all concerned in seine fishing."⁴³ He therefore lobbied for new laws promoting an off-shore gill net fishery and the abolition of the seine fishery to bring about new social results. The process would deprive small-scale fishers of their shore-based fishing stations and invest the fishery in the owners of larger capital who could purchase boats and gear. In 1869, Wilmot turned his attention to this social agenda. In this case, Wilmot recommended changes to the prosecution of the fisheries.

Hitherto the system of taking pursued by fishermen and others has been to wait until these fish 'begin to run,' as it is termed, and then commence in a wholesale manner to kill and destroy them, just when in the act of coming upon the spawning grounds. Instead of the fishermen procuring the proper means and appliances, and going to these fish when they are upon their feeding grounds in the summer months, in deep water, and catching them in best condition and *in season*, they wait until these fish, compelled by the requirements of nature, *come*

⁴² Leslie 1860: 82.

⁴³ Leslie 1859: 83.

to *them*, upon the shallow spawning grounds, and then kill them in the very act of laying their eggs, and consequently *out of season*.⁴⁴

Wilmot's truth statement appears to be about conservation, but on closer inquiry it was about rationalizing the government's social objective that the fisheries be moved off-shore in order to eliminate vice and become industrious. There is a revealing contradiction between Wilmot's statement here and his above statement about the life history of salmon in rivers. According to Wilmot, all people had to capture fish in their "feeding grounds" and not when "in the act of coming upon the spawning grounds". To make the case that that angling in riverine pools was biologically justified he ignored the fact that these fish were "in the act of coming upon the spawning grounds" when fly-fishers caught them. He managed to do this by claiming that river running salmon used the sportsmen's fishing pools as "feeding grounds". But, now, in order to move the seine fishery off-shore, Wilmot located a second "feeding ground" of running fishes to another place where the state wanted these commercial fishers to move their operations. In effect, Wilmot facilitated the state's objective to eradicate seine fishing by classifying their fishing places as nursing grounds. In short, he used his science to protect the social interests of sportsmen and later met the social agenda of government by designating "feeding grounds" wherever it suited the social agenda.

After Wilmot produced his scientific arguments against seine fishing, Fisheries amended the closed season for whitefish and trout so that it was off-limits when it reached spawning shoals, shores, and rivers.⁴⁵ Some Ojibwa communities immediately felt its effects. On the north shore of Lake Huron, an Indian agent reported, "I fear it will cause an immense amount of misery to the two Bands as the close season is the only time during which great catches are taken, and it is chiefly on the fish they catch they depend for the winter supply."⁴⁶ For Ojibwa communities boxed into small fishing leases where they could only fish when the fish reached their shores, the new regulations prohibited the capture of whitefish, trout, and herring at precisely this time and space. The result

⁴⁴ Samuel Wilmot, report dated Newcastle 15 April 1869: appendix 6: 91. See also Orders-in-Council reported in the *Canada Gazette* no. 9, 27 August 1870: 186-187.

⁴⁵ Order-in-Council, *The Canada Gazette* No. 41, 10 April 1875: 1220.

⁴⁶ NAC, RG 10, vol. 1967, file 5184, William Van Abbott, Indian Agent, to the Hon. Minister of the Interior, dated Sault Ste. Marie, 7 August 1875.

was that only fishers with access to capital could afford to enter the off-shore gill net fishery. The Ojibwa were at a distinct economic disadvantage and had no ability to obtain deeper water leases as government policy was to restrict aboriginal leases to riparian areas proximal to Indian Reserves.

The Ojibwa wrote to the DIA to protest the new season. The DIA responded in 1878, informing Fisheries that, "the present fishing regulations seriously interfere with the Indians ... obtaining as it is said that they formerly did, an important part of their subsistence from waters in which from time immemorial they are said to have been in the habit of fishing unrestricted by any regulations." The DIA argued that: "important modifications should be made in the present fishery Regulations". Whitcher, now a seasoned bureaucrat with a memory of his own long efforts to abrogate aboriginal treaty rights, responded to the letter with new a cavalier attitude. In part, he presented a new state claim over the resource based on its investment in surveillance, scientific research, and stockings. Now, in his mind, it was against "reason" to restore aboriginal rights to the resource:

It is well known that much of the laxity which prevailed in former times, and the prevalence of destructive practices of fishing, particularly by Indians, were due to false sympathy with the pretended sufferings which it was alleged they must sustain if prevented from indulging their habitual preference for spearing fish on their spawning beds. It is scarcely necessary to remark that, owing to the decline of the salmon fisheries, and consequent injury to that trade of the country, the Government has been obliged to supplement the protective enactments adopted by Parliament by an expensive system of fish hatching and restocking through artificial means. Any proposal, therefore, to restore illegal abuses which Indians seem to claim some hereditary right to indulge, not merely involves an abandonment of reasonable and necessary restrictions, but would also necessitate Parliamentary sanction, requiring very satisfactory reasons and at least probable facts to justify the same.⁴⁷

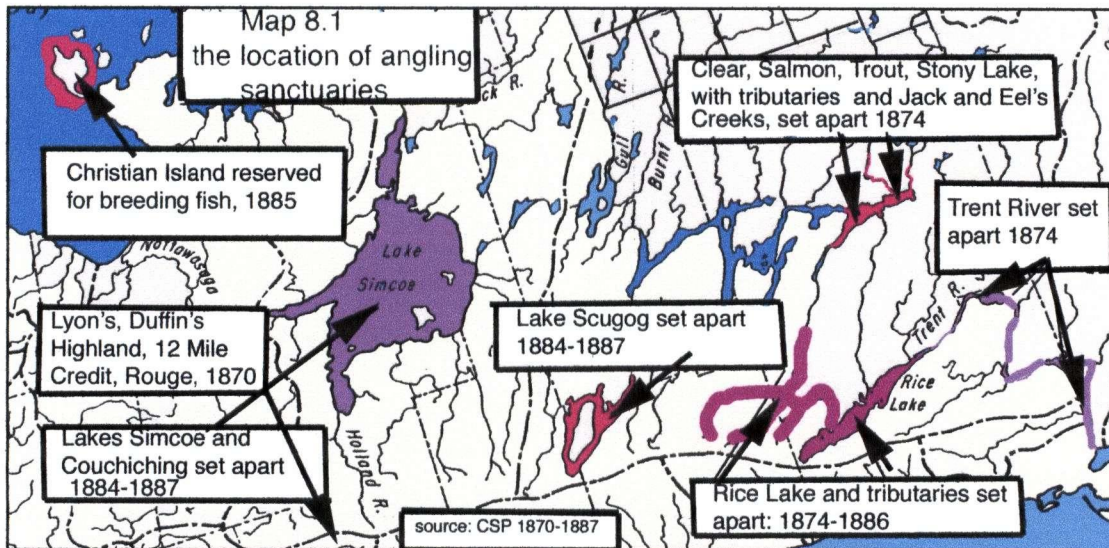
Whitcher then added a response that became the hallmark of arguments against the recognition of aboriginal rights to control their own use of the resource; he argued that conservation also benefited aboriginal people.⁴⁸ But, the question is, for whom was the

⁴⁷ NAC, RG 10, vol. 2064, file 10,099, W.F. Whitcher to L. Vankoughnet, Deputy Superintendent General of Indian Affairs, dated Ottawa 15 September 1878.

⁴⁸ NAC, RG 10, vol. 2064, file 10,099, W.F. Whitcher to L. Vankoughnet, 15 September 1878.

conservation program intended? Next, I show that the evidence points to aboriginal people bearing the burden of the state's conservation schemes with the benefits of the measures flowing to non-natives.

In the 1870s, Wilmot embarked on an ambitious program to set apart spawning grounds in southern Ontario as places for “the natural and artificial propagation of fish”. Wilmot, like the Mississauga many centuries before him, identified several rivers along the shore of Lake Ontario as being productive spawning grounds. In 1870, he set apart the Mississauga's Lyons, Duffin's, Highland and Twelve Mile creeks, and the Rouge and Credit Rivers for the natural and artificial propagation of fish.⁴⁹ He banned all forms of fishing in these sanctuaries except angling. Between 1870 and 1874, he similarly designated the Trent River and the various Mississauga lakes at its headwaters.⁵⁰ Wilmot



then appointed fishery guardians to each sanctuary to prevent non-angling forms of fishing. Rice Lake, where the Alderville and Hiawatha First Nations resided, was a popular sport fishing destination. In 1874, Wilmot set Rice Lake and its tributaries apart as an experimental preserve. Again, only anglers could enter.⁵¹ In 1884 Wilmot added Lake Scugog, where the Mississauga's of Scugog resided,⁵² and Lake Simcoe and

⁴⁹ J.W. Kerr, overseer, “Erie, Niagara and Part of Lake Ontario Division”, CSP no. 5 (Ottawa: 1871): appendix L: 281.

⁵⁰ Order-in-council, *Canada Gazette* no. 52, 27 August 1870: 187; Order-in-council, *Canada Gazette* no. 9, 27 June 1874: 2081.

⁵¹ Order-in-council, *Canada Gazette* no. 47, 23 May 1874: 1487.

⁵² Order-in-council, *Canada Gazette* no. 40, 5 April 1884: 1545.

Couchiching, the Chippewa's central fishing grounds.⁵³ The fact that the traditional inland lakes of the three Mississauga communities were targeted for sport sanctuaries in the 1870s reflected the productivity of these environments, a feature first noted by the Mississauga. In 1885, Fisheries protected the spawning shoals around the Chippewa's Christian Island reserve as a fish sanctuary. Remarkably, by 1885, the new fish sanctuaries of the southern Great Lakes included all of the traditional fishing places of the Mississauga and Chippewa peoples (map 8.1). During this time, Wilmot began cooperating with sport fishing associations in Peterborough to stock trout in the region's waters.⁵⁴

In sum, sportsmen first criminalized Ojibwa fishing with nets, spears, or other methods during spawning runs. Wilmot then gave scientific legitimacy to the sportsmen methods by classifying angling as benign and their fishing places as "feeding grounds". He then designated all of the Mississauga and Chippewa's traditional fishing grounds as "nurseries" where he permitted angling. The effect was to privilege angling as the only legitimate fishing method across southern Ontario and made the Ojibwa bear all of the measures designed to conserve the fisheries for sportsmen. Under these conditions, all of the Ojibwa's traditional fishing system became a criminal act and with comprehensive enforcement in their regions, Ojibwa fishers risked prosecution each time they tried to fish by their traditional means or times.

By the time Wilmot retired in 1891 and was replaced by Canada's first scientifically trained fishery managers, he had moved the sportsmen's agenda ahead to privilege their fishing methods and times in all of the Mississauga and Chippewa's traditional waters that they had protected in treaties as a condition of their surrender of lands to settlers. The next question is what did the new regime of ecologically trained scientists do with this social waterscape and system of laws when they took charge of Fisheries in 1892?

⁵³ Order-in-council, *Canada Gazette* no. 32, 9 February 1884: 1216.

⁵⁴ Samuel Wilmot, "Report of S. Wilmot, Esq., on the Several Fish-Breeding Establishments and Fish Culture in Canada, During the Season of 1876", *CSP* no. 5, (Ottawa: 1877): appendix 24: 366.

The 1890s: a new epoch in fisheries science

The 1890s marked an "epoch change" in Great Lakes fisheries science when Canada turned to university scientists, instead of their own lay staff, like Wilmot, to address the problems of fishery management.⁵⁵ Most significantly, in 1892, Canada hired the fisheries scientists E.E. Prince to head the development of new management principles for the Canadian fisheries. In the same year, the professor of zoology, Ramsay Wright, contributed his knowledge to the Ontario Game and Fish Commission. In 1894, the University of Toronto began cooperation with the federal government to form the Fisheries Research Board, composed of nine university scientists, four representatives of the commercial fishing industry, and two representatives of the federal government. In 1901, the Fisheries Research Board began work on freshwater ecology in the Great Lakes with the development of a laboratory at Go Home Bay in southern Georgian Bay.⁵⁶ Did this new epoch in fisheries management, founded upon the insights of ecology and scientific cooperation, bring new objectivity to fisheries research?

As stated above, by 1892, when E.E. Prince took over Fisheries, Wilmot had completely re-organized the prosecution and social geography of the Great Lakes fishery. Most traditional Ojibwa fishing places were now fish sanctuaries. The historic seine fishery was abolished and replaced with an off-shore gill net fishery concentrated in the hands of fewer and wealthier non-native fishers. It was into this fishery system that ecologists entered the scene in the 1890s to tackle the problems of fish conservation.

Born at Leeds, England, in 1858, Prince studied zoology in Scotland at the universities of St. Andrews and Edinburgh. In 1884, he taught zoology as a senior assistant at Edinburgh and the next year worked for a leading world authority on fisheries W.C. McIntosh, at the celebrated Marine Laboratory at St. Andrews.⁵⁷ When Prince arrived on the scene in Canada he did not, however, bring objective and new scientific judgment to the development of fisheries laws as is believed to have typified his era. Instead, he gave his stamp of approval to the general order of things that Wilmot had established:

⁵⁵ Dymond 1939: 50.

⁵⁶ Johnstone 1977: 46.

⁵⁷ Johnstone 1977: 43-4.

Among many measures that have been taken for the preservation of the fish wealth of our inland lakes and rivers, the establishment of close seasons, affording protection to breeding fish, the liberal stocking of waters with fry from Government hatcheries, have proved of direct and substantial benefit. Without such regulation our vast fresh water fisheries would already have been wholly depleted.⁵⁸

Although Prince endorsed the pre-existing formulae for the management of the fisheries he knew for a fact that some of Canada's fisheries laws were based on social and political objectives, not fish conservation. This he revealed in an 1899 paper entitled "The Object of a Close Time for Fish".⁵⁹ He opened the paper with the query "the question is often asked 'what is the object of a close time for fish?'" and then responded "the answer is by no means so simple or easy as is generally imagined."⁶⁰ Prince conceded that, "Fishery authorities in framing regulations defining close times for various kinds of fishes have had very different aims in view", and he provided examples such as the maritime lobster fishery and the Lake Erie whitefish fishery where the close season was designed to protect social and economic interests, not the resource.

In terms of the development of a closed time for lobster fishing in the Maritime provinces, Prince wrote that it had little to do with the lobster's biology and habits at a particular time of the year. Rather, it had everything to do with protecting the interests of a group of fishers who had to leave the lobster beds at a specific time of the year to fish a different resource. To prevent other fishers from coming in behind them when they temporarily left the lobster beds, Fisheries closed this time to lobster fishing. In effect, Fisheries used the concept of a closed season to protect the social and economic interests of a select group of fishers.⁶¹ Prince acknowledged that "the protection of fish is left entirely out of account" in this example of the objective of a closed season.⁶²

In another case, American law prohibited the capture of Lake Erie whitefish in June. In this case, the justification was that the closed time did not harm commercial fishers who conducted their entire fishery in November when the whitefish were on

⁵⁸ NAC, RG 23, vol. 205, file 1040, part 1, E.E. Prince, "On the Use of Seines in Inland Waters", Special Report No. 1, Department of Fisheries, 1893: 45.

⁵⁹ Prince 1899.

⁶⁰ Prince 1899: lxxv.

⁶¹ Prince 1899: lxxv-lxxvi.

⁶² Prince 1899: lxxv.

spawning shoals. In Prince's words, "the sole object of a close season for whitefish in that case was to meet the desire of the fishing firms and the fishermen for a prohibition to be enforced during a part of the year when they would not feel it."⁶³ Still, Prince argued that the usual objective of a close season was to protect breeding fish and that this objective was sound. Prince girded the merit of close seasons with the sportsmen's argument that spawning fish were unfit to eat. To back up this scientific claim, he stated that the outbreak of disease among BC Aboriginal people could be traced to the consumption of spawning fish.⁶⁴

The significance of Prince's arguments are that, far from bringing new objectivity and the science of the day to the operation of the fisheries in Canada, he added scientific legitimacy to the existing system which had not been developed by scientists, but by sportsmen. In effect, Prince gave his approval to the established system of spatial and temporal restrictions that circumscribed aboriginal fishing economies and promoted non-native interests that were built during a colonial struggle for control over the Great Lakes fisheries. Thus, the role Prince played when he came onto the scene as the first government scientist was to use his credentials to justify the regulatory outcome of an imbalanced colonial struggle.

Where things were left at the end of the 19th century

From 1892 to 1898, the DIA received numerous complaints from aboriginal communities arguing that federal laws circumscribed their ability and right to fish. In the fall of 1895, two Mississauga fishers from the Alderville First Nation on Rice Lake were charged for violating the federal *Fisheries Act*. The two fishers sought assistance from the DIA and claimed that the charges violated their "unrestricted right under treaty".⁶⁵ At the same time, an Ottawa fisher from the Wikwemikong First Nation on Manitoulin Island was charged with a violation of the *Fisheries Act* and claimed an "exclusive right to fish" and the right to obstruct non-aboriginal access to his fishing grounds. In terms of the two Mississauga fishers, the DIA examined the *Rice Lake Treaty* (1818) and found

⁶³ Prince 1899: lxxv.

⁶⁴ Prince 1899: lxxvii.

⁶⁵ NAC, RG 10, vol. 3909, file 107, 297-3, "memorandum" by J.D. McLean, Secretary, Department of Indian Affairs, 27 November 1897.

“there is no mention of any right to fish or hunt being reserved to the Indians”.⁶⁶ These rights had been negotiated and reserved but, as we have seen, only expressed in the crown’s minutes of the negotiations and then in parliamentary legislation. Nobody looked at these other documents and believed that the texts of the treaty reflected the full contents of the agreement. In terms of the Wikwemikong fisher’s defense, the DIA examined the *Bond Head Treaty* signed in 1836 and again concluded, “the wording of this Treaty in no sense gives the Indians the exclusive right to the fisheries”.⁶⁷ Again, they erroneously assumed that the text of the treaty contained the full extent of the agreement and ignored other pertinent documents.

The DIA, nevertheless, sought some form of accommodation from Fisheries to at least provide a source of food to the aboriginal communities to eliminate the costs of government relief. To address the matter, the DIA proposed to Fisheries that the two departments form a joint committee to investigate the Ojibwa claims and make some accommodation. The Minister responsible for Indian Affairs opened his request to the Minister of Fisheries with the observation, “There seems to have been considerable trouble for years as to the fishery rights of Indians in different parts of Canada. The question is constantly coming up.”⁶⁸ The Minister of Fisheries passed the letter to Prince. For his part, Prince had no interest in revitalizing the aboriginal fishery and pulled out the decision of the colonial solicitor general in 1866. “The matter was settled”, he stated.⁶⁹ Here ended the last proposal between the two federal government departments to get to the source of the Ojibwa treaty claims and possibly accommodate aboriginal fishing rights as Ontario assumed control over the Great Lakes fisheries in 1898. For the next 80 years, Ontario’s management policies were silent on the exercise of aboriginal fishing rights.

Because the Ontario and federal governments refused to address aboriginal claims throughout much of the 20th century, aboriginal people were forced to move their hunting and fishing practices underground. On the Nipigon River, elders recall how their parents developed elaborate ways to hide their fish and game catches from game wardens who

⁶⁶ NAC, RG 10, vol. 3909, file 107, 297-3, “memorandum” by J.D. McLean, 27 November 1897.

⁶⁷ NAC, RG 10, vol. 3909, file 107, 297-3, “memorandum” by J.D. McLean, 27 November 1897.

⁶⁸ NAC, RG 10, vol. 3909, file 107, 297-3, Clifford Sifton, the Minister of the Interior to Sir Louis Davies, Minister of Marine and Fisheries, date 20 December 1897, Ottawa.

⁶⁹ NAC, RG 10, vol. 3909, file 107, 297-3, Clifford Sifton, 20 December 1897, Ottawa.

frequently raided their village.⁷⁰ On Lake Scugog, Mississauga fishers once sat on the ice prominently wearing a buffalo robe while they speared trout and whitefish, but after the 1890s, they shelved their robes and donned a white blanket to conceal themselves from game wardens.⁷¹

Conclusion

Fisheries scientists did not develop closed seasons and bans on spearing salmon nor were these laws biologically informed as OFAH suggested. Rather, the concept of seasons pre-existed the first modern forms of fisheries science in the Great Lakes. Before Wilmot became Canada's first lay scientists responsible for solving the problems of fish decline, sportsmen already identified aboriginal spear fishers as the cause of the decline. Sportsmen also developed their own "scientific" defense of their laws against aboriginal spearing and enacted closed seasons that protected their social interests. They could not, however, answer the simple question about the differential impacts on the reproductive capacity of stocks if a fish was taken on its spawning bed or two weeks earlier. Their best answer involved concepts of palatability, racist assumptions of civilization over savagery, and male protection of female reproduction. Wilmot, himself a member of a sportsmen's association, espoused these assumptions and developed a life history of salmon that set up arbitrary distinctions between "nursing" and "feeding" to sanction the sportsmen's time and place of fishing and censure those of aboriginal people. In essence, he gave a crucial biological justification to the sportsmen's practice of fishing pools but not spawning beds. The first generation of academic scientists never critiqued these assumptions but protected the existing order of things when they entered the scene of Great Lakes fisheries management in the 1890s.

⁷⁰ Thoms 1999: 188.

⁷¹ J. Michael Thoms, informal interviews with members of the Mississauga of Scugog Island First Nation, summer 1999.

Conclusion

The Lordly Trout

The Southern Ojibwa

When British settlers entered the Ojibwa homelands in 1783, they did not enter a vast unmarked wilderness peopled by nomadic hunters and fishers. Rather, they entered a cultural landscape that the Ojibwa had divided into an intricate system of family properties where they managed their fish and wildlife resources through a system of laws. British officials therefore had to negotiate a place for settlers within this highly structured cultural and legal geography. British officials responsible for the first three treaties (1783-1788) that opened the door to non-native settlement made no records of the treaties and produced no deeds or maps of the agreements. Meanwhile, the Ojibwa left detailed accounts of the agreements in their recorded oral traditions. They hold that each Mississauga band pursued a common negotiation strategy: they reserved all the points of land, river mouths, and islands for their exclusive hunting and fishing. They also hold that British officials claimed that their subjects were tillers of the soil and that they only wanted the arable lands. In essence, the Ojibwa claim that they protected the integrity of their cultural ecology and its supporting systems of laws in these treaties that were intended as the foundation for ecological, legal, and cultural co-existence in what became Ontario.

Could the Mississauga and Chippewa oral histories be corroborated in the crown's records? Yes. Lieutenant-Governor John Graves Simcoe, his successor Peter Russell, crown surveyors, and district land boards produced a number of records that corroborate the oral accounts. My question then became, what happened to these treaty agreements? The first part of the answer is that the military officials responsible for the treaties deceived their superiors about the contents of the treaty agreements. The second problem was that the British colonial office pre-determined that it would graft the social geography of rural England on top of the Ojibwa homelands. This replica geography included grants of waterfronts, riverine lands, and mill seats to upper class officials. It

also involved a commitment from settlers that they would drain marshlands. Colonial officials carried through on this plan and granted the vast majority of the Mississaugas' valued wetland ecosystems to settlers.

The Ojibwa immediately protested these developments. Colonial officials were not ignorant of the Mississaugas' treaty reservations and it appears that Simcoe decided to protect the Mississauga rights over their fisheries as a customary or free fishery right – that the Ojibwa owned the fisheries by virtue of their original rights but not the adjoining land. The policy failed. Colonial records reveal that settlers made recurrent use of the fisheries adjoining their properties and forcefully ejected Ojibwa fishers from the fronts of their lands. Colonial officials, it appears, encouraged the conflict as they understood settler use of the fisheries to be critical to the colony's genesis. The period from 1783 to 1797 ended with a crown proclamation to protect the Mississaugas' fisheries from settler encroachments but was vague on enforcement.

Between 1805 and 1820, the crown initiated a second series of treaties to expand its title over the better part of Upper Canada's arable lands. This time, military officials kept minutes of the treaty negotiations and produced deeds of conveyance and sometimes maps of the surrender. In their recorded oral traditions, the Ojibwa hold that they sought the affirmation of their original reservations and strengthened their original treaty strategy by demanding the written reservation of their title over fish, wildlife and its surrounding physical habitats. These were the Ojibwas' conditions for the surrender of additional lands to settlers. In turn, the crown produced treaties that are silent on these reservations or state that the surrenders were made "without reservation". The crown's minutes of the treaty negotiations, however, corroborate the Ojibwa reservation of their harvesting rights and wetland ecosystem environments. The question then became, since the crown committed to the Ojibwa reservation of their fisheries as a condition for the surrender of their land, why did it not make these reservations explicit in the texts of the treaties?

To answer this question, I investigated an Ojibwa oral history that the crown implemented their treaty fishing and hunting rights through acts of the colonial legislature. I started my examination of Upper Canada's first fish conservation laws, *Acts for the Preservation of Salmon*, with an analysis of its English prototypes that bore the

same title and preserved the fisheries for lords and other owners and proprietors of the fisheries. I found that Upper Canada's statutes were near identical in structure and style. Most importantly, like their English model, the colonial acts contained a *proviso* that identified for whom the fisheries were being preserved; in this case it was the Ojibwa. I also showed that the legislature's passage of each *Salmon Act* bears a clear temporal and spatial relationship to the series of Ojibwa treaties signed between 1806 and 1820. These acts recognized the Ojibwa as the lords of Upper Canada's fisheries and made settlers bear the brunt of the conservation measures. Similarly, the *Acts for the Preservation of Deer* reserved deer for the Ojibwa pursuant to their treaty rights. It appears that the crown used the legislature to pass laws binding on the settler public to implement its treaty agreements.

The *Salmon Acts* were not perfect measures to protect the Ojibwa's exclusive treaty rights over their fisheries. Without ever obtaining an Ojibwa surrender of their title to the fisheries, parliament sanctioned angling and settler spearing in their waters. This action opened the regulatory door to settler and sport fishing.

In terms of Ojibwa conservation ideas, I found that the Mississauga and Chippewa had conservation strategies in mind when they negotiated their treaty rights. While there is widespread evidence that the Ojibwa believed that water and fish spirits played a vital role in fish abundance, it is also clear that these beliefs did not encompass all their knowledge of ecological relationships and that they understood the negative effects of overfishing, habitat alteration, and trespasses that caused unknown pressures on their resource. The historiography that emphasizes aboriginal spiritual relationships misses this documentary evidence. As well, this historiography is incorrect when it argues that the Ojibwa did not raise "conservation" issues until the late 19th and early 20th century in tandem with western currents of thought. Rather, it appears that the Ojibwa were among the first peoples in Ontario to raise conservation concerns about the development of riverine environments. In essence, the Mississauga negotiated strategic plans for their conservation of fisheries and the preservation of their rights in their treaties. I then questioned what happened to these treaty rights and statutory protections?

Sportsmen

Sportsmen have been fishing the Great Lakes and inland waters of Ontario since 1760 and they had access to power. I showed that these men self-identified as “scientific” anglers. In this so-called “science”, sportsmen conceived fishing practices to exist on a social hierarchy that ranged from savage to civilized. According to this perspective, savages fished for “subsistence” or trade. Afterwards, through social, intellectual, and commercial development, western elites refined fishing into a skilled science. In this popular expression of an evolutionary fishing hierarchy the savage was “simple” and driven by base needs, while, western scientific methods are complex, driven by higher aspirations, and placed within civilization, literature, and culture. In sum, the sportsmen’s science contained racial suppositions, colonial metaphors, elite assumptions, and social control ambitions. Sportsmen were quick to attack the aboriginal fishery and blamed natives for the decline of fish abundance in the Great Lakes basin. They therefore planned to reallocate the aboriginal fisheries to non-native interests. Thus, even before ecological scientists brought their studies and methods to the problems of Great Lakes fisheries management in the late 19th century, sportsmen had already assumed and described their methods as ‘scientific’ and began to propose management systems based on their social suppositions.

By the 1850s, what was missing for sportsmen was a framework of laws upon which to implement their ideology and codes of fishing. I showed that in the 1850s, sportsmen built a powerful coalition of parliamentarians, military officers, and public elites to bring their system of law and order to the prosecution of the fisheries when they drafted and then passed the 1857 *Fishery Act*. The *Act* annulled aboriginal statutory protections and criminalized aboriginal methods, times, and places for fishing while privileging the times, places, and methods of sportsmen.

In 1858, sportsmen revised the *Fishery Act* to contain a private leasehold clause. Fisheries officials who were also sportsmen then re-allocated aboriginal riverine fishing grounds to friends and sports clubs as a form of political patronage. They also carved up the Great Lakes and its inland watershed into a series of spaces and re-allocated the aboriginal fisheries to non-native commercial fishers. Sportsmen had moral assumptions and social control ideas in mind when they drafted the 1858 *Fishery Act*. In particular,

they used their creation of “space” as a means to enforce their laws and punish fishers for transgressions. They also believed that they could use space to engineer moral and industrious fishers. The process left Ojibwa fishers at the margins of Ontario’s fisheries where they remain today.

At the core of angling culture is the fishing rod. Developed in Europe and not through an interaction with fish habits or environments in Canada, the fishing rod technology pre-determined where, when, and how sportsmen wanted to fish in this country. The fishing rod is not an instrument of conservation. Rather it is a class and race-based tool around which sport fishers re-organized the traditional prosecution of the Great Lakes and inland fisheries into a regime of laws, moral and racial assumptions, and social controls that suited their exclusive interests. The historiography that treats sportsmen as a third and late epoch in the history of environmental politics is not accurate for Ontario. In this province, sportsmen drafted the laws that suited their interests and then supervised and controlled other fishers as early as 1857.

Trout

In the mid-19th century when sport fishers re-wrote Ontario fishery laws and repealed its objective to preserve the fisheries for the Ojibwa, they did not write themselves into the legislation as the fisheries’ new lords. Instead, they passed this nobility to game fish. The concept of trout as the “lords”, “monarchs”, or “kings” of the Great Lakes fisheries is common in the sport fishing trade literature from the late 19th century to the present. In effect, medieval concepts regarding the special status and rights of lords is still with us, only now, these lords are the property of sportsmen who claim to protect them. The concept that there are still “lords” in the fishery today reflects the deep history of changing power relations in the Ontario fisheries.

The rule of law

In the conclusion of his famous study, *Whigs and Hunters*, E.P. Thompson asked if there was a rule of law in 18th century England. In the main text of his book, he documented the elites’ appalling brutality towards peasants in their enforcement of the *Black Act*. It therefore surprised many when Thompson concluded that there was a rule

of law at the time. In particular, he showed that peasants resisted parliament's usurpation of their resources by articulating their own alternative claims to property in natural resources in the form of customary law. He showed that in some cases, when peasants could afford the costs of a lawyer, they successfully used their customary law claims to resist elite re-allocation of their communal resources. I found aboriginal nations in colonial New York also drew on this body of English law, hired lawyers, and in several cases, protected their property in fishing places from settler and military re-possession. I also found that English officials on the ground in New York recognized that these aboriginal nations possessed a clear sense of property in resources and had laws for their use and access. There was, in fact, a rule of law at this time. Most importantly, it was on the basis on this respect for legal pluralism and the rule of law that British officials and aboriginal nations (including the Mississauga and Chippewa) agreed to a legal process for the protection and surrender of aboriginal title in the *Royal Proclamation of 1763*.

The crown's respect for the rule of law faded during the settlement of Upper Canada from 1783 to 1856. It is clear that British officials failed to follow the provisions of the *Royal Proclamation* in their first treaty dealings with the Ojibwa. It is also clear that settlers invade the Mississauga fisheries with impunity, forced the Mississauga off waterfronts, and squatted on their reserved islands and other environments. It appears, however, that the Ojibwa subscribed to the English concept of the rule of law. Repeatedly, the Ojibwa brought their concerns of injustice, not to military officials, but to parliament. In turn, parliament heard the Ojibwa petitions. In at least one case in 1829, it formed a committee to investigate the Mississauga's legal complaints and then passed a law that gave the Mississauga the means to enforce their communal fishing laws.

It is clear that sportsmen played a large hand in parliament's passage of the 1857 and 1858 *Fishery Acts* that arbitrarily abrogated aboriginal treaty rights and statutory protections and re-allocated their fisheries to non-native interests. There was, however, a rule of law at this time. It is clear that settlers successfully resisted the sportsmen's laws through claims to customary law. At the same time, the colony's justice department refused to recognize the Ojibwa's treaty rights and alternative definitions of communal property and management of their fisheries. What happened? First, legal officials re-invented the Ojibwa as nomadic peoples with no laws or concepts of property. Colonial

interests first used this concept to enter North America but British officials later rejected it before they negotiated the *Royal Proclamation*. Nevertheless, to this day, the concept that the Ojibwa possessed no concept of property and did not manage access and use of their fish and game resources remains a pervasive and persuasive argument among detractors to Ojibwa rights. This argument speaks to the "tragedy of the commons" concept that English elites first used as an intellectual justification to expropriate peasant resources. Much later, Garret Hardin reified this justification. It is, however, an intellectual justification that does not always match the facts on the ground. In the case of the Ojibwa fisheries, the evidence is that they possessed concepts of property and held a system of laws that controlled use and access to their fisheries. The traditional Ojibwa fisheries were not open to all and the 'tragedy' concept must be seen as an ancient pretense to expropriate another's resources.

In the 1850s there was a hint that parliament might recognize the Ojibwas' rights to their fisheries. Some members of parliament fought for an aboriginal exemption in the 1858 *Fishery Act*. As well, the Ojibwa continued to press their treaty rights before the governor general, parliament, and the Indian Department. Sportsmen therefore needed to gird their system of laws with a strong defense. They therefore turned to science.

Sportsmen had close links with the government's first lay fishery scientist, Samuel Wilmot. It is clear that Wilmot embraced the pseudo-scientific social and racial assumptions of sportsmen and protected their social interests in the knowledge claims of fish life histories that he produced. Accordingly, he determined that aboriginal people and many settlers fished at the wrong time, place, and by improper means. The effect of Wilmot's science was to legitimize sporting technologies, places, and times and criminalize the Ojibwa's system. In particular, he gave scientific legitimacy to the sportsmen's concept of a closed season. In the 1890s, university-trained ecological scientists entered the picture of Great Lakes fisheries management and endorsed the system of laws, privileges, closed seasons, and technological limits that Wilmot developed to entrench the sportsmen's social interests.

Today, sportsmen argue that fishing seasons are "normal" and based in sound biological science. This is not the origin of fishing seasons. In medieval England, lords first established fishing seasons to protect fish when they were vulnerable to lower class

fishing and ensure that the fish would be available only to gentlemen. Social and class interests, not science, is at the root of seasons as a management tool. Scientific arguments came later to justify this elite approach to the social control of who could fish.

Now, where is the rule of law? Today, courts draw on western fisheries science as an authority to arbitrate legal disputes over Ojibwa fishing rights. A measure of the rule of law in respect to aboriginal treaty fishing rights has existed since the 18th century. On the other hand, western fisheries science is arbitrary and far from neutral, objective, or value free. It contains many assumption, presumptions, metaphors, and other cultural ideals developed in a colonial struggle and negation of aboriginal fishing systems and treaty rights. Today, when the courts turn to fisheries management science for input, it does not obtain neutral or value free knowledge. Rather, when the rule of law relies on western fisheries science, it draws on an arbitrary body of knowledge with social control and racial suppositions.

Today, many detractors of aboriginal fishing rights claim that they do not intend to be “racist” when they challenge aboriginal fishing rights, but rather, claim that their arguments are “scientific”. It is no coincidence, however, that everything about aboriginal fishing appears unscientific – fisheries science evolved in a direct negation to the aboriginal model. To continue to invoke western science against Ojibwa fishing methods, times, and places, without deconstructing the social assumptions, methods, social structures, and presuppositions that informed the development of this science, is to perpetuate a race-based argument established in the colonial era designed to control and marginalize aboriginal fishing methods and consolidate settler control. This is why people can claim to be non-racist, while still using scientific arguments today: because the science that suits them all too well is rooted in racist assumptions and the control of aboriginal fishing.

New Directions

As stated, sportsmen have normalized the assumption that fishing seasons are biologically justified. In the words of the OFAH president, seasons are “normal” and

“established for conservation purposes”.¹ To this day, the sportsmen’s basic moral, racial, and social assumptions that shaped a colonial struggle over the fisheries remain an uncritiqued and fundamental component of modern-day fisheries management. Fisheries managers need to evaluate the assumptions that underlie modern fisheries management. Until this occurs, the power of sportsmen’s colonial assumptions will continue to marginalize aboriginal treaty fishing rights and suppress the rule of law.

¹ Supplementary Affidavit of C. Davison Ankney, in Supreme Court of Canada, court file no. 22999, *George Henry Howard (Appellant) and Her Majesty the Queen (Respondent) and the Ontario Federation of Anglers and Hunters and the United Indian Councils (intervenors)*, para. 7.

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Appendix 1. Family hunting grounds index for map 1.3

# on map	Family name	Dodem	Hunting grounds	source
1	St. Germain		Head of Magnetewan River, Doe and Pickerel Lake (O-gah-kah-ning)	1,2
2	Nanishgishking	Reindeer	Muskoka River, Canoe Lake, Joe Potters, Butt, Kechepesekah-me-gong Lake	1, 2
3	Ingersoll		South branch of Muskoka River up to Lake of Bay and to Oxtongue River to Tea, Smock and Ragged Lakes	1,2
4	Big Canoe	Reindeer	Canoe Lake to the eastern and northern heights of land	1
5	Bigwind	Reindeer	Between Trading Lake and Lakes	2
6	Williams		Muskoka Lake to Southern extremity of Lake of Bays	1
7	Yellowhead	Reindeer	North of Hollow Lake to Cedar Lake	2
8	Simons		At the divide of the Magnetewan and Petawawa Rivers, at O-gah-nog-a-wadah (Pickerel) River	1,2
9	Corbier		Between Muskoka and Moor River	1
10	Aissance	Otter	Above Trout Lake to chain of lakes at the head of land	1
11	Kadegagwon		Nottawasaga River to the heights near the headwaters of the Grand River	1
12	Kewatin		Head of the Beaver River	2
13	Snake	Otter/ Beaver	East and west branches of the Holland River	1
14	Cousin		Between Kah-shah-ga-we-gah-mog, Drag, Crooked, Obushong, and Maple Lakes and the Gull River. Burnt River is northeastern boundary	2
15	Blackbird		Maple, Kenice, Bushkong Lakes	2, 3:20
16	Snake	Otter/ Beaver	Sparrow and parts of Muskoka Lake	3:30
17	Monague		Kawigamog Lake	1, 3:51
18	Copegog		Moon River and adjacent Georgian Bay Islands	3:55
19	Aissance	Otter	Moon River	3:62
20	King/ Philips		Go Home and Muskoka Rivers	3:62
21	York	Pike	Talbot River and Balsam Lake	3:70
22	Goose	Elk	Lake Scugog	2
23	Williams		Lake Joseph	3:152
24	McEwan	Reindeer	Upper Burnt River to Gooderhams	3:167

25	Elliot	Elk	Burnt River to Kinmount	3:171
26	Marsden		Burnt River to Bohkung Lake	3:178
27	Marsden		Lindsay	3:184
28	Marsden		Islands of Lake Simcoe	3:187
29	Whetung	Reindeer	Sturgeon Lake	3:192
30	Knott		Gull Lake	3: 199
31	Knottt		Eel's Lake	3:200
32	McCue	Reindeer	Burnt River and Kinmount	3:202
33	Mississaugas of the Credit	Eagle/ Otter	Grand River basin	2
34	Knott		Katchiwano Lake	3:216
35	Paudash	Crane	Belmont Lake to Paudash Lake to the height of land	3:226
36	Crow	Pike	Belmont and Crowe lakes, Beaver Creek	3:221
37	Ingersol		Sparrow Lakem Severn River, Kashe Lake	3:101
38	Ingersol		Peninsula Fairy, Mary, Vernon Lakes	3:108
39	Big Canoe	Reindeer	Lake Joseph	3:16
40	Snake	Otter/ Beaver	Upper Black River	3:112
41	Simcoe		Big Trout Lake	3:130
42	Joe		Big Mud (Dalrymple) Lake	3:140
43	Kenice	White Oak	Kenice Lake	3:141
44	Crane	Crane	Crow Lake and Beaver Creek	3:225
45	Howard	Reindeer	Red Stone Lake	3:242
46	Muskrat	Crane	Baptiste Lake	3:244
47	Cowie/ Howard	Reindeer	Head of South River	3:246
48	Comego		Bay of Quinté, Moira River to Stirling	3:268
49	Smoke		Bay of Quinté to Kingston	3:269
50	Marsden		Jack, Kosheewagana, Coehill Lakes	3:273
51	Smoke		Gull Lake	3:275

52	Smoke		Buckhorn Lake	3:275
53	Smoke		Catchacoma Lake	3:275
54	Smoke		Thompson Lake and Beaver Creek	3:276
55	Crowe	Pike	Chandos and Wallaston Lakes	3:280
56	Crowe	Pike	Crowe River	4:21
57	Young	White Oak	Black River	3:78
58	Eel		Eels River	5
59	Taunchay	Crane	Kashabogamong, Bottle, and Clear Lakes	5
60	Irons	Reindeer	Massaossagoa and Kitcheoum Lakes	5
61	Whetung	Reindeer	Emily Lake and Emily Creek	6
62	Jacobs / Sashamors	Crane / ?	Between Ingersoll's Yellowheads' limits	1
63	Credit River Mississauga	Eagle / Otter	Rouge to Niagara Rivers	1

Sources:

1. PAO, F 4337-6-03, A.E. Williams Papers, statements from elders, 1903.
2. NAC, RG 10, vol. 2329, file 67,071-2, sworn affidavits of elders, 1911-15.
3. NAC, RG 10, vol. 2332, file 67, 0171-4c, bound testimony of Mississauga and Chippewa elders to the Williams Commission, 15-29 September 1923. Page numbers in above table.
4. George Copway, *The Traditional History and Characteristics Sketches of the Ojibway Nation* (London: Gilpin, 1850)
5. Pelham Mulvany et. al, *History of the County of Peterborough* (Toronto: 1884), reprinted in Guillet 1967: 23-5.
6. NAC, RG 10, vol. 2405, file 84,041 part 1, H.V. Wickham, barrister, to Hayter Reed, Deputy Superintendent General of Indian Affairs, 10 December 1896.

Appendix 2: Fur trading posts

- A. Alexander Bailey (Métis with Ojibwa name Pe-too-beeg), located at Bracebridge. His brother Micheal Bailey located at the mouth of Muskoka River.
- B. Aubry White, partner of Alexander Bailey, located at Bigwind Island
- C. Andrew Bell, located at Boshkung Lake.
- D. Shilof (sic), located at Shebashkong, Georgian Bay.
- E. McEwan, located at the outlet of the Severn River.
- F. John Smith, located at Port Hope.
- G. Alfred Thompson, located at Penetanguishene.
- H. Mr. Hamilton (Ojibwa name Min-dah-min-nah-boons), David Mitchell, Mr. Simpson, Mr. Jeffrey, located at Collingwood.
- I. Mr. King, located at Orillia.

Source: PAO, F 4337-6-03, A.E. Williams Papers, statements from elders, 1903-6.