

**Importance of Natural Resources to Mi'kmaq/Maliseet/Passamaquoddy
in the Post Treaty Period**

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Post Treaty Period

Maliseet (Wolustogiyik), Passamaquoddy and Mi'kmaq languages are beautiful and they provide those fluent in them with a detailed guide to landscape and its use. I am humbled by the breadth of ecological knowledge embedded in place-names and expressions. Wolustog, to use an important local example, describes the River's qualities as good and beautiful. Colonists by contrast named the River after the birth of an ancient Christian hero that reveals nothing about the River's character. Maliseet and Mi'kmaq ecological knowledge was and is unique. Landscape and economic activities are in turn important to language. Noting, the endurance and importance of these languages is one of the many ways of acknowledging the perseverance of Wolustogiyik and Mi'kmaq connections to the lands, waters, living creatures, and economic activities within their homelands, before, during, and after treaties were signed with Great Britain.

Maliseet, Passamaquoddy, and Mi'kmaq economies have always been diverse and resilient. First Nations understood the edible and medicinal properties of an incredible array of plants. Maliseets were the original potato harvesters in this River Valley. Ground Nut, a species commonly known as "Indian Potato" grows

along Wolustog. This plant and a host of others such as: Jerusalem Artichokes, maize, beans, pumpkins, plums were carefully managed by Maliseets. A trained eye can find an usually high number of useful plants around former villages such as: the ground nut, ginger, black raspberry, and blood root growing near the Shiketehawk portage near my home. The Jerusalem artichoke on the islands near Aukapaque and on the Fredericton's green where the longhouse was erected last fall, also speaks of an older Native landscape under the thin veneer of British settlement. Maliseet and Mi'kmaq lands were not empty wilderness; they were and are homes and working landscapes.

Colonists overlooked many aspects of Wolustogiyik and Mi'kmaq plant use. Sometimes, they did not know how to recognize or use many of the plants First Nations economies incorporated. In other cases such as the 1695 census of Meductic, records give colonists credit for Wolustogiyik horticulture. Descriptions from the mid- and late-18th century reveal that Maliseets cultivated island and riverside fields from the Nashwaak as far north as Grand Falls. Plants such as berries, grapes, fiddleheads, sweet grass, and calamus root (kiwhosuwassq) remained important for subsistence, trade, and ceremony.

After the treaty period, Mi'kmaq and Maliseet continued to rely on migratory fish such as gaspereau, and Atlantic Salmon. They had efficient technology and skills for catching fish during the day and night. Atlantic Sturgeon could be as big around as a sheep and up to 14 feet long. Maliseets hunted them from canoes using torches and toggle harpoons. Some were eaten and made into glue and paints, while others were traded to colonists. Maliseet, Passamaquoddy, and Mi'kmaq also ate many of

the seafoods available at Wolustoq Wharf. Birds and mammals such as caribou, moose, beaver, and ducks were food sources that were also central to the fur and feather trade.

In 1757, Wolustoq was not dammed, fish were plentiful, and hunting remained good away from the few French villages. Maliseet had access to most of their homeland. With the fall of New France and deportation of many Acadians over the next several years, Britain began intensely developing Maliseet, Passamaquoddy, and Mi'kmaq lands and waters.

A series of treaties, which several presenters are discussing in detail today, negotiated relations between Passamaquoddy, Maliseet, Mi'kmaq, and the British. These treaties guaranteed First Nations access to their fishing, hunting and planting grounds without being molested. I am going to share some examples that demonstrate that First Nations continued asserting their treaty rights into the 19th century. Acknowledging the historic range of strategies they used, including official lobbying and violent actions when the law failed to deliver justice, suggests recent Maliseets and Mi'kmaq advocacy over the right to live on and use the resources of their homelands, have deep roots.

In 1762, just two years after Wolustoqiyik renewed articles of Peace and Friendship at Chebucto, British settlers tried to survey St. Anne's Point. Maliseets told the group that: "they were trespassers on their rights; that the country belonged to them and unless they retired immediately they would compel them to

do so.”¹ The party moved downriver and established Maugerville across from the Oromocto River. Other groups of settlers, however, soon settled near St. Annes against Maliseet’s wishes. Maliseets knew and asserted their rights, but many settlers did not honour them.

In 1766, English merchants requested soldiers be sent to Passamaquoddy Bay to defend their commercial fishery. The Nova Scotia government had granted the merchants exclusive rights to “Indian Island” a centre of Passamaquoddy fishing. They feared violent reprisals from the peoples they dispossessed.

The first record of fisheries decline and challenges to industrial impacts on Wolustog comes from Maliseet concerns over a dam built on the Nashwaak by British entrepreneurs that same year. Maliseets were upset with the dam’s effects on their salmon fishery and colonial officials recorded that they threatened to destroy it. Maliseets recognized the dam was a threat to fish and their Treaty rights to access their fishing grounds. They were willing to destroy property to protect their waters and rights. This early example of river stewardship suggests the public should not be surprised to find First Nations at the forefront of resistance to industrial threats to water quality, local economies, and habitats today. The British officials charged with upholding the law were the same entrepreneurs building the dam on the Nashwaak and fishing in Passamaquoddy waters. Maliseet concerns were valid. Twenty-five years later, a visitor to the Nashwaak, sadly noted that settlement activities had destroyed salmon fishing and moose hunting on the River. In 1783, Mi’kmaq on the Restigouche also protested the ecological changes caused

¹ W.O. Raymond, *The River St. John: Its Physical Features, Legends and History from 1604 to 1784*. Sackville: The Tribune Press, 1950 pg. 142.

by settlement, when colonists' hay cutting dramatically altered the river's banks and interfered with their fishery.

Maliseets burned out a few settlers who located above Mougerville against their permission during the American Revolution. They were upset with Britain's failure to honour its treaty promises. Britain had not maintained Truck houses to support the fur economy and provide subsistence, and settlers and entrepreneurs did not respect Maliseet rights to their hunting and fishing grounds. These conditions caused starvation. Maliseets allied with General Washington during the American Revolution to help secure their economic and subsistence needs. Pierre Tomah, however, realizing that the Americans were not living up to their treaty promises of provisions either, renewed diplomatic relations with the British.

Life became harder for Mi'kmaq and Maliseet when this region became the centre of a British state. Their homelands experienced a huge population boom; first of white and black British Loyalists, and then later waves of European immigrants. The rapid settlement of ¼ million people in the first ½ of the 19th century put enormous strain on the environment. Farming and logging destroyed much of the habitat and the animals that Native hunting and trapping depended upon. Milldams and waste blocked the passage of fish.

Colonists also depended on wild animals for food. Extensive netting at Wolutoq's mouth and further upstream reduced the number of fish reaching Maliseet communities. Encroachment from white settlers on the Richibucto and other watersheds also displaced Mi'kmaq from their fishing grounds. Colonial fishing and hunting laws and state surveillance discriminated against First Nations

practices. Laws forbid using dogs to hunt moose or night fishing. Some of the laws that granted bounties for predator kills also mandated First Nations only receive half the money settlers got for kills.

Most of what little land the government reserved for Maliseets near Fredericton quickly found its way into the hands of a Loyalist judge through shady circumstances. Meductic was granted to a group of soldiers. Maliseets and Mi'kmaq continued to petition for their rights to land and resources and to occupy their traditional lands. Sometimes this resulted in the creation of reserves, such as Tobique. While this reserve offered access to excellent fishing, Commissioner of Indian Affairs, Moses Perley suggested damming it in 1841 to intentionally ruin the fishery that sustained the community to encourage farming. Perley promoted assimilation to shape Maliseet economic activity, however, he was also sympathetic to understanding Maliseet and Mi'kmaq traditional rights and the threats that trespassing and poor state management represented to them.

First Nations adapted some of their economic activities to engage with the colonial economy in the post-Treaty period. Canoe expert Tappan Adney claimed Maliseet and Mi'kmaq canoes were the finest in the world. Maliseet rented canoes to the French military in the 1690s. They continued selling canoes and guiding British officers in the 18th and 19th centuries. Many soldiers, settlers, and colonial officials depended on these vessels. The Grandfather Akwiten canoe, is a fine example of both the beauty and international linkages of Maliseet commercial wood use and artistry.

The sale and use of canoes and snowshoes often occurred within the guiding industry. Records of Maliseets guiding Europeans extend back to 1603, when they escorted French sailors to a copper mine in Minas Basin. Maliseet and Mi'kmaq guides' knowledge of natural resources and making a living on the land were integral to the fish and game economy, which was the backbone of the early tourist industry. These guides were also important to government surveys such as Abraham Gesner's study of provincial geology, which he later drew from to invent kerosene from Kent County oil shale.

Maliseet women made beautiful purses to trade with Europeans from at least the early 1600s. Two centuries later, Loyalist ladies arrived at one of the first government balls in Fredericton wearing moccasin dancing shoes purchased from local Maliseets. The sale of manufactured materials included items such as: porcupine quill boxes, miniature canoes, and Tobbogans. Many of these items were adapted from traditional art forms and motifs. Axe handles, barrels, potato baskets, and a host of other First Nations manufactured goods were fundamental to the settler economy. As a farm boy growing up near Tobique, Maliseet potato baskets and barrels were the first tools I used to earn wages in the provincial economy.

Birch canoes cannot be made from just any size tree, nor does every species split into strips suitable for baskets. Native peoples required a large landbase to find the resources needed for their economic activities. This became harder as settlers cleared more forests. Into the 20th century, records reveal that many settlers recognized Maliseet and Mi'kmaq rights to camp, fish, and harvest wood materials and plants where and when they needed to.

Post Confederation

The generations after Canadian Confederation and the advent of federal regulation of Aboriginal affairs brought significant changes to the Native economy in New Brunswick. The first priority of the federal Indian Affairs branch in the post-confederation decades was the settling of Native people into agricultural communities on their reserves. It was part of the 'civilisation' or 'bible and plow' program that also included the promotion of education and Christianity and was designed to wean the Mi'kmaq and Maliseet population from the migratory hunting and fishing way of life. As elsewhere, the results of these efforts in New Brunswick were mixed at best. Most reserves eventually produced some root crops and vegetables and kept a small number of farm animals; but, the Mi'kmaq and Maliseet peoples were still wedded to hunting and gathering for economic, cultural and spiritual reason. Moreover, it did not make sense from a strictly economic perspective; the size of reserves, and the soil quality and growing conditions, did not allow for a level of agricultural output that could sustain communities. Moreover, much of the arable land on reserves was alienated to non-Native squatters in the middle decades of the 19th centuries.

The integration of Mi'kmaq, Maliseet and Passamaquoddy into the wage labour economy starting in the 1870s had a more significant impact on diminishing the quantity of natural resources harvested. Overall, work in the burgeoning lumber industry -- in the camps, on the river drives and booms, and in the sawmills - - was the most prominent feature of the integration. Guiding sportsmen who came to hunt and fish was an important source of wage labour engaged in by men from

virtually all of the reserves by 1900. Picking potatoes was another important form of employment. While these occupations became an integral part of economic life, it is significant that they were also seasonal and could be blended with longstanding patterns of natural resource harvesting.

Hunting, fishing, trapping and foraging the natural products of the fields, forest, river, lakes and ocean remained vital to Mi'kmaq and Maliseet communities well into the 20th century. They remained vital in the face of deteriorating environmental conditions caused by the advance of lumbering, farming, industrial development and excessive harvesting; more importantly, traditional harvesting persisted in opposition to government policies that were, after 1870, increasingly hostile to Mi'kmaq and Maliseet and Passamaquoddy. The emergence of modern wildlife management programs in the decades after Confederation, mainly inspired by sporting interests, posed a direct challenge to the traditional Native economy in that they favoured recreational over subsistence and commercial forms of resource use. Indeed, one of the most prominent features of the new federal and provincial regulatory regimes was Native exclusion, via the introduction of closed seasons and bag limits, the banning of traditional harvesting methods, the creation of parks and conservation areas and the closing of commons. Fish and Game Commissioners and politicians in New Brunswick were fully integrated into the sporting fraternity as members and guests of elite clubs, and sporting tourism was heartily embraced as a form of economic development. In New Brunswick numerous rivers, lakes and shooting grounds were leased to hunting and fishing clubs, and the private wardens of the clubs were often given full magisterial powers of search, seizure and arrest.

Within this framework Native hunters and fishers were frequently demonized as the primary barrier to effective conservation of wildlife resources, despite the fact that the Passamaquoddy, Mi'kmaq and Maliseet constituted less than three percent of the province's population.

To most non-Native New Brunswick residents the current fish and game laws seem timeless and sensible. In the last twenty years, environmental historians studying North America have discovered what Native groups have known from the beginning: modern fish and game laws were a cultural construction of the late 19th century built on crude scientific notions and racial hierarchies, and they produced injustice to the point of cruelty.

The persistent pattern of individual and community resistance to state authority and the assertion of treaty rights that continues to the present within Native communities evolved within this context of late 19th century changes to fish and game law. Predominantly, the response of First Nations to new restrictions on wildlife harvesting was to furtively break the law. 'Poaching' was practiced routinely by native and non-Native communities alike in the late 19th century; and, there was never a sufficient enforcement apparatus or enough community support to dissuade the offending parties.

From the very beginning, First Nations also insisted that the new fish and game regulations passed after Canadian Confederation should not apply to them because their rights to natural resources were protected by treaties signed with the British government. Based on the surviving documentary record, treaty claims seem to have been most frequent in the fisheries. As a result of persistent claims in

the decades after the passage of the first federal fisheries act (1868), reviews of the issue of treaty rights in the Maritime Provinces were undertaken by the departments of Indian Affairs, Fisheries and Oceans, and Justice in the early 1880s and late 1890s. In both cases, the Department of Justice ultimately ruled that Native peoples did not have any rights to the resources beyond those of non-native people. However, the Mi'kmaq and Maliseet were not dissuaded by these decisions and eventually began to pose legal challenges in the 1920s, which were to some extent slowed by the landmark Syliboy decision in 1928. However, copies of the treaties continued to be circulated in Mi'kmaq and Maliseet communities and reinforced the long established pattern of individual and community level resistance to fish and game laws.

What might be termed the modern era of First-Nation/ state relations as they pertained to natural resources began with the end of the Second World War and the revision of the archaic Indian Act in 1951. Among other things the 1951 revisions rescinded a provision adopted in 1927 that prevented Native peoples from using funds to mount legal defenses without a license from the Superintendent of Indian Affairs. Shortly thereafter (1957), Willie John Simon, a Constable on the Big Cove reserve defended his rights to fish on the basis of the 18th century treaties with the British. Within a decade treaty cases became an important means by which First Nations defended their rights to natural resources, eventually culminating in the landmark Marshall decision.

The most common explanation for this proliferation of litigation has been that it was a result of the politicization of the region's First Nations that came in

conjunction with the wider North American Indian Rights movement of the 1960s and 1970s. It is true that a new generation of self-confident leaders emerged during this period, but overall it is an incomplete explanation. A more cynical and insidious explanation that underlines some of the press coverage and public discourse is that treaty rights litigation is an industry created by legal practitioners and embraced by Native leaders as a new economic opportunity. This pernicious explanation needs to be forcefully confronted and debunked at every turn.

The environmental and regulatory dynamics of the post-Second World War period should be considered in any explanation of the struggle for Native resource rights during the period. Resource degradation in the fisheries sector resulted from the application of increasingly advanced technologies for locating and harvesting marine species, a process supported by government funding to industrial fishing firms; it eventually produced a series of resource crises. The era of modernization also coincided with the chemical revolution in the agriculture and forestry sectors, which resulted in the dumping of millions of tonnes of toxins into ecosystems. The expansion of the base metal mining and pulp and paper industries, the building of hydro-electric dams, extensive road building projects, acid rain, the advent of large scale clear cutting and the creation of single-species plantation forests were among the other negative environmental consequences of the post-war efforts to modernize the provincial economy – generally referred to as progress.

As the wild lands of New Brunswick were becoming smaller and less biologically diverse, and the rivers and lakes were subjected increasingly to chemical runoff, the provincial and federal governments were also intensifying

wildlife management. With the dramatic expansion of the public service in Canada in the decades after the Second World War came a new emphasis on science-based wildlife management, which included a more careful accounting of species populations and greater surveillance and enforcement efforts with regards to the fish and game laws. At the provincial level, heightened levels of enforcement were also driven by the desire to bolster tourism. The revolution in automobile ownership in the post-war decade and completion of the Trans-Canada Highway in the early 1960s made provincial governments optimistic about expanding sporting tourism. Additionally, the extension of wildlife preserves, and the addition of two major federal parks, a number of provincial parks and dozens of campgrounds, most of which eventually prohibited hunting, further limited opportunities for First Nations. For those many First Nations people in New Brunswick and elsewhere, who wished to continue the traditional pursuits of hunting, fishing and trapping, the modern world was closing in on them. In this context, the 19th century notion that Native resource harvesting needed to be controlled gain renewed currency as did the language of demonizing Mi'kmaq and Maliseet hunter and fishers as destroyers of the environment. It could be seen, for example, in the dramatic confrontation at over the salmon fishery at Kingsclear in the late 1970s and in the lobster fishing controversy at Burnt Church at the turn of the 21st century.

Lastly, the legal cases of the modern period should be seen as part of a long and continuous process, the defining feature of which has been an active resistance and assertion of treaty rights utilizing the means at hand at any particular time. It is fundamentally rooted in the experience of Native communities with the rise of

modern state regulation of fish, game and forest resources in the late 19th century, and was reshaped by the modernization programs of the federal and provincial governments after 1945. In this respect, the legal proceedings of the post-war period did not create or even significantly alter, but rather refined the basic arguments about treaty rights that had been made by First Nations since they first encountered restrictions on harvesting rights a century earlier – indeed, since they encountered Loyalists a century before that. Moreover, the proliferation of legal cases did not diminish the longstanding tradition of community level resistance. It continued to act as the foundation of the struggle as legal action was increasingly adopted as another (albeit very important) tool for asserting deeply held convictions in a more formal way. Ultimately, the access that First Nations gained to natural resources in the last few decades is at least as much a product of the long history of social relations of resource extraction between Native communities, their non-native neighbors and the state, as it is a function of legal proceedings that get so much attention.

When discussing natural resources and Wolustóqiyik, Passamaquoddy, and Mi'kmaq economies, it is important to acknowledge the cultural connections that are inseparable from physical survival and economic wellbeing. It is also important to note the continuity in physical actions and moral and legal arguments that have maintained those connections. Plants, animals, waters have been and continue to be integral to Wolustóqiyik, Passamaquoddy, and Mi'kmaq identity, language, and beliefs. First Nations struggles for access and control over what Western society

calls “resources” is not just a demand for fair access, it is also a centuries long struggle to preserve, recover, and create: health and homeland.