

How a fishery ruling redefined First Nations relations in the Maritimes

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OPINION

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In September, 1999, the Supreme Court of Canada issued its ruling in the Indigenous commercial fishing case brought forward by Donald Marshall Jr. Mr. Marshall was already well known in Canada for his mistreatment at the hands of the Canadian policing and judicial system. In this instance, however, the member of the Membertou First Nation wanted the Government of Canada to recognize the continued authority of 18th-century "peace and friendship" treaties between the Mi'kmaq, Maliseet and British authorities.

Surprisingly, the courts agreed. The decision ensured First Nations had the right to engage in the commercial fishery in the Maritimes, albeit with the odd restriction that limited their earnings to a "moderate livelihood."

Twenty years on, the decision has had a positive impact for the Maritime provinces and for the economic realities of its Indigenous peoples.

When the ruling came down in 1999, the government was ill prepared. Concerned about the potential impact on local fisheries, non-Indigenous people pushed back with anger and protests. Authorities worried about potential violence. First Nations, banned for generations from access to commercial opportunities, demanded immediate attention to the court's decision.



Fishing boats head from the harbour in West Dover, N.S., in November, 2007, as the lobster season begins in the southwestern part of the province. ANDREW VAUGHAN/THE CANADIAN PRESS

Cooler heads prevailed. Ottawa bought out commercial licences, quotas and boats, which were allocated to First Nations across the region. Soon, dozens of First Nations boats and hundreds of Indigenous workers were active in the industry. The government provided substantial support for the Mi'kmaq and Maliseet through the Marshall Response Initiative and a variety of subsequent government programs.

A new study from the Macdonald-Laurier Institute reviewed the impact of the decision on Mi'kmaq and Maliseet communities and governments. The report describes the sizable fleets of First Nations vessels in the sector,

the dramatic increase in Indigenous workers and the substantial financial benefit to the communities. It describes, too, the development of onshore processing plants and related businesses.

Few in 1999 anticipated the impact of the Marshall ruling. Millions of dollars are transferred each year from First Nations-owned fisheries to community governments. Indigenous business people are expanding processing, service and related enterprises. More than a thousand Indigenous adults work on the water each year, with many more enrolled in training programs.

Quantifying the economic returns from Marshall tells only part of the story. The judgment

validated First Nations' confidence in Canada's legal system, demonstrating that Indigenous and treaty rights could be protected and enforced through the courts. The government's response provided the funds to convert legal rights into practical commercial opportunities.

The Marshall decision released the Mi'kmaq and Maliseet of the legal and financial barriers on their communities, giving young Indigenous folks the opportunity to learn new skills and make the transition to paid employment. The fishery provided millions of dollars in "own source" revenues to First Nations governments that they could use on local needs and investments.

Today, relations with non-Indigenous communities are stronger and more mutually beneficial. Age-old stereotypes are being destroyed and First Nations communities are finding their footing, demonstrating their determination to be full participants in the economic, societal and political life of the Maritimes.

The judgment also demonstrated that Indigenous treaty rights were real and substantial. The empowerment of Maritime First Nations has had sweeping benefits for the region and for Indigenous peoples. Importantly, Marshall is the new floor, not the ceiling, for First Nations' aspirations.

But the First Nations' struggle is far from over. There is interest in finally addressing the absence of a land surrender agreement in the Maritimes, providing the First Nations with the resources and authority that attends modern treaties. First Nations communities remain, with important exceptions, much poorer and with much worse infrastructure and services than in other Maritimes settlements. While Indigenous cultural resilience is inspirational, there is need to sustain and support Mi'kmaq and Maliseet languages and traditions.

Mr. Marshall's court victory in 1999 brought change, but he was far from satisfied with the "moderate livelihood" restriction placed on Indigenous fisheries, and the Mi'kmaq, Maliseet and Passamaquoddy will continue to contest this barrier to prosperity. In order to make the Marshall treaties real, communities will require full self-determination in the fishery sector.

Nonetheless, all Canadians should celebrate the first 20 years of the Marshall decision and they should expect that even better results lie ahead.