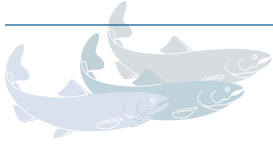


Making First Nation Law: The Listuguj Mi'gmaq Fishery





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We are extremely grateful to Chief Allison Metallic and Council of the *Listuguj Mi'gmaq Nation* for the opportunity to produce this case study as a resource for other Tribes in Canada and the USA. We also thank Jeff Basque, Senior Negotiator, *Listuguj Mi'gmaq Government* for coordinating the logistics and all of his support throughout the preparation of this report.

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The Research Team

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Making First Nation Law: The Listuguj Mi'gmaq Fishery



On May 19, 1993, the Listuguj Mi'gmaq First Nation Government took over the management of the salmon fishery in the Restigouche River where it flows between the provinces of New Brunswick and Quebec – waters the Listuguj Mi'gmaq people had fished for many generations. They did so not under a contract with provincial or federal authorities – the province of Quebec in fact opposed them. Nor did they do it by asking permission or receiving a request from some other government – they asked no permission and received no such requests. Nor did they do it by force – although their actions were shaped in part by violence.

They did it by passing, implementing, and enforcing a law.

But this law was not simply a by-law of the *Indian Act*. It was a Listuguj Mi'gmaq law, an assertion and manifestation of the nation's right to fish and to govern its people, lands, and waters in its own ways.

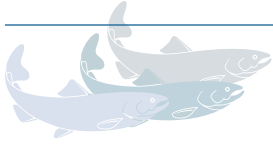
The law begins by pointing out that “we the indigenous peoples of Gespe'gewa'gi are vested by Gisiteget with sacred responsibilities for stewardship of the land, waters and all living things.”¹ It goes on to state that the law “is enacted pursuant to Mi'gmaq custom and in the exercise of the inherent jurisdiction of Listuguj First Nation....” The law specifies, among other things, where it applies, how it will be enforced, how the fishery will be managed each year, and how the resource will be used.²

Since its adoption, the Listuguj Mi'gmaq First Nation Government Law on Fisheries and Fishing has been the effective law governing salmon fishing on the Restigouche River, displacing provincial and federal authority.

This is the story of that law: its genesis, application, and effects. And it is the story of a First Nation not only reclaiming inherent jurisdiction over the resource, but reclaiming governance – including law-making and enforcement – as an inherent, Indigenous right, tradition, and practice.

¹ Gespe'gewa'gi is the seventh district of Mi'gma'gi, the Mi'gmaq homeland. “Gespe'gewa'gi includes what is known today as northern and north-central New Brunswick, the Gaspé Peninsula, parts of the mainland of Québec, as well as the islands and surrounding waters.” See <http://nutewistog.migmawei.ca/gespegewagi>, accessed July 25, 2010. Gisiteget is a Mi'gmaq word for Creator.

² “Listuguj Mi'gmaq First Nation Law on Fisheries and Fishing,” p. 1; see Appendix.



“It was someone else’s law”



The Restigouche River rises in the Appalachian Mountains of eastern Canada and flows approximately 200 kilometers into the Gulf of St. Lawrence and the Atlantic Ocean. In its lower reaches, before it empties into the Bay of Chaleur, the river marks the boundary between the provinces of New Brunswick and Quebec.

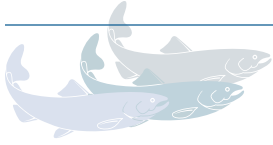
The ancestors of the Listuguj Mi'gmaq depended on the resources of the Restigouche River, its watershed, and neighboring lands and waters. One species of fish that they particularly cherished was the salmon. Fishing for salmon had been a way of Mi'gmaq life long before Europeans came to North America. The lives of the salmon and the lives of the Mi'gmaq were intertwined; they took care of each other.

“For countless generations,” writes John Martin, a former Mi'gmaq Chief of Gesgapegiag, another Mi'gmaq community in Gespe'gewa'gi, “the Mi'gmaq have had a special relationship with the salmon.” According to the Gespe'gewaq Mi'gmaq Resource Council, “Salmon has provided the people of Gespe'gewa'gi with strength and nourishment for thousands of years.”³ The salmon played multiple roles in Mi'gmaq life as food, in ceremony, and in trade. Writes Fred Metallic,

In Mi'gmaq I say ‘the salmon is my brother.’ If the salmon is my brother, then he’s no different than my uncle, my cousin, my aunt’s husband who has passed away. And all these people are buried here, all these people who shared their experience and understanding of salmon fishing; they shared their experiences and knowledge of this territory. They taught my father everything that he knows about salmon fishing... and he taught me... we continue to give back to people through the salmon so that we can continue to acknowledge and strengthen that we are connected.⁴

³ John Martin is quoted in Metallic and Chamberlin (2006, p. 8); the Resource Council quote is from Gespe'gewaq Mi'gmaq Resource Council's Notes, http://www.facebook.com/note.php?note_id=129532063006, accessed May 14, 2010.

⁴ Metallic (2008, p. 8).



But by the mid-1800s, Canadian policy, the spread of non-Indigenous settlements, and the imposition of provincial law had severely restricted Mi'gmaq hunting and fishing activities and reduced Listuguj Mi'gmaq land holdings to just over 4,000 hectares on the north shore – the Quebec side – of the Restigouche River.

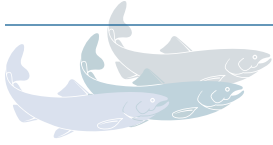
Under the Canadian constitution, the provinces have authority over natural resources, including most fish. But salmon are anadromous, spawning in fresh water streams but spending most of their lives in the ocean. They therefore fall under federal jurisdiction, even when in provincial waters. But in 1922, the Canadian government gave Quebec jurisdiction over Atlantic salmon in Quebec's waters, and Quebec took over management of the fishery on which the Listuguj Mi'gmaq people depended. Soon the province was limiting who could fish, where, when, and how much.⁵

The Listuguj Mi'gmaq paid little attention to the laws governing the salmon fishery. These weren't their laws, they had never given up their right to fish, and much of their life revolved around the salmon. So they kept fishing according to their traditional values and harvesting practices.

Meanwhile, salmon were declining throughout much of the North Atlantic. From the mid-1800s on, agricultural and industrial development in the Maritime Provinces and New England affected salmon spawning habitat, while commercial and recreational fishing put growing pressure on mature fish. As numbers dropped, competition rose, including competition on the Restigouche River, a premier stream for Atlantic salmon. But the Listuguj Mi'gmaq continued to fish and support their families as they always had.



⁵ First Nations have argued that Canada is obligated to rescind this delegation of authority to the province.



*“They told us
to stop fishing.
We never
stopped.”*

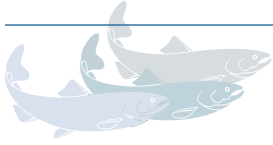
By the middle of the 20th century, commercial fishermen and upstream sport fishermen were claiming that Listuguj Mi’gmaq fishermen were affecting their catch, while the province claimed the Mi’gmaq were violating provincial fishing laws. During the 1970s, provincial authorities began charging Listuguj citizens with illegal fishing, illegal sale of fish, and other violations, criminalizing non-compliant fishing and enforcing regulations against gill netting, food fishing, and small-scale catch-and-sell efforts by Listuguj citizens. As the decade progressed, tensions between the province and non-Native fishermen on one side and the Listuguj Mi’gmaq on the other continued to rise. There were threats of violence against the Mi’gmaq. But as one Listuguj citizen put it, “They told us to stop fishing. We never stopped.”⁶

In 1972, commercial salmon fishing was banned in the Bay of Chaleur. It was reopened in New Brunswick waters in 1981, and Quebec lifted its ban in 1982, only to ban it again in 1985 as both provinces agreed that commercial fishing had to end throughout the Bay.⁷ The end of commercial fishing was a devastating blow to the regional economy. It was a blow also to the Listuguj Mi’gmaq, who fished both for consumption and sale. A resource that once had been more than sufficient to feed and support the people was now in trouble. But the Listuguj Mi’gmaq position was this: We’ve always fished these waters. We are not the ones overtaxing the resource. We did not create the crisis. We will continue to fish.



⁶ At a number of places in this account, we quote from interviews with Listuguj citizens in the winter and spring of 2010. Most of these interviews included assurances of anonymity. Unattributed quotations in this account are from those interviews.

⁷ See Parsons and Lear (1993).



“Crisis brings us together”

Today, more than 2,000 Mi'gmaq live at Listuguj, occupying some 650 homes. In the early summer of 1981, the community was about a third of the size it is now, with just over 200 dwellings. It was about to be overrun.

On June 9, 1981 – just as the fishing season got underway – Lucien Lessard, Quebec's Minister of Recreation, Fish and Game, sent word to Alphonse Metallic, Chief of the Listuguj Mi'gmaq Government, that the community had thirty-six hours to remove all Listuguj Mi'gmaq fishing nets from the Restigouche River.

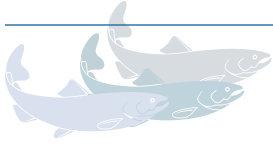
Chief and Council refused to comply.

On June 11, without warning, an armed force of some 500 Quebec Provincial Police, fisheries officers, and game wardens, some in helicopters and boats, launched a violent raid on the Listuguj community. Scenes of police marching down the streets, beating Listuguj citizens, arresting people, seizing boats and other property, and ripping fishing nets to pieces made the national and international news. Outraged Indigenous people from across Canada and even the United States rushed to Listuguj to support their relatives. On June 20, the police launched a second raid, but Listuguj Mi'gmaq citizens, this time prepared and organized, stopped them from entering the community.⁸

Almost thirty years later, the events of that summer remain vividly alive in the minds of those who were there, and the costs are still apparent. One person who had been a teacher at the time remembered that Listuguj Mi'gmaq children “were traumatized. Those kids are now in their thirties. The government, the church, the schools never did anything to counsel them. My daughter was eight. She had nightmares for years.” Said another, “My children were so young then. For so long afterwards, they couldn't understand why, whenever they heard a helicopter, they felt scared.” Others described the helplessness they felt as they watched relatives being beaten or handcuffed and provincial officers mocking their Chief.



⁸ These raids are the subject of Alanis Obomsawin's powerful 1984 documentary film, “Incident at Restigouche,” which includes some of the news footage shot at the time. The film can be viewed at http://www.nfb.ca/film/incident_at_restigouche, accessed May 16, 2010.



“Let’s stop this nonsense. Let’s try to make an agreement. Take control of the fishery. Make our own rules.”

The raids transformed the Listuguj Mi’gmaq community. “We fight [amongst each other] all the time,” said one Listuguj citizen. “But if trouble starts, we’re like glue. We have one voice.” Said another, “The salmon raid brought people together. We were invaded. The raid cut across family divisions.” One elder, remembering those days, said, “I’ve never been so proud of my people as I was then. It awakened something in us.”

Part of that transformation – of that awakening – was a reinvigorated sense of identity and an effort to figure out how to respond not only to the raids themselves but to the violation of community, the attack on Listuguj livelihood, and the affront to Mi’gmaq values and culture. Reflecting back on her experience at the time, one woman said, “Prior to ’81, my generation didn’t really put a lot of thought into being First Nation. You got up and went about your day. We exercised our rights, we fished for salmon. We didn’t really think about being First Nation. But when you have to band together to protect yourselves, you begin to see things a little differently.” The raids also encouraged people to think differently about the fishery. After the raids people were saying, “Let’s stop this nonsense. Let’s try to make an agreement. Take control of the fishery. Make our own rules.”

On June 23, 1981, three days after the second raid, the Listuguj Mi’gmaq Chief and Council met with the Quebec Minister of Fisheries, Lucien Lessard. At that meeting, Councilor Mike Isaac stated clearly that the Listuguj Mi’gmaq people would continue to exercise their right to fish, a right that pre-existed the government of Quebec and even the government of Canada. He stated that the province of Quebec had no right to regulate Mi’gmaq fishing and would not be allowed to do so; that it had no jurisdiction within the territory of the Listuguj Mi’gmaq; and that it had exceeded its authority in its effort to exert its power on Listuguj Mi’gmaq lands. He said it would be up to the Listuguj Mi’gmaq Government and the federal government of Canada to decide jurisdictional issues together.⁹

With that meeting, the Listuguj Mi’gmaq people began a nation-rebuilding journey that would last more than a decade, culminating in 1993 when they established a framework – in the form of a Mi’gmaq law – for the effective exercise of their right not only to fish but to regulate the resource on which they depend.

⁹ Listuguj Mi’gmaq First Nation, “Minutes of Meeting with the Minister Lucien Lessard, Chief & Council of the Restigouche Band Council, June 23, 1981,” pp. 6, 8, 9 (unpublished; courtesy of Donald Germain).



“To make the fish sacred again”



In their discussion of Mi'gmaq governance, Alfred Metallic and Amy Chamberlin write that, “In the fisheries, the pathway followed by the Mi'gmaq over the years has been one of resistance; the path is also one of affirmation: to use, manage, and occupy the land and the water in accordance with Mi'gmaq values, philosophies, and ways-of-being.”¹⁰

Ultimately, Mi'gmaq resistance opened the door for Mi'gmaq affirmation, but it was not a simple process, and it took a long time. When the second raid occurred on June 20, the Listuguj Mi'gmaq people knew what was coming. They turned out in force, blockaded the roads into the community with trucks and cars, stood their ground, turned back the provincial police, and compelled Quebec to abandon force as its primary strategy. In effect, the Listuguj Mi'gmaq forced Quebec to come to the table and talk. At the June 23 meeting, they made clear to Quebec what their own starting point would be.

The result, over the course of the 1980s and early 1990s, was a series of conservation agreements between Quebec and the Listuguj Mi'gmaq Government called Atlantic Salmon Conservation Agreements. Both parties wanted to avoid further conflict, and the Listuguj Mi'gmaq Government, concerned about the long-term health of the resource, was willing to compromise: they would work with Quebec to establish rules that would govern the fishery.¹¹ These agreements allowed the Listuguj Mi'gmaq to continue fishing and provided for hiring and training Listuguj Mi'gmaq citizens as conservation officers. But in return, the community had to agree to quotas on its annual catch. The quotas started in 1982 at just over 36,000 pounds, of which 15,390 pounds were set aside for domestic consumption. The 1982 agreement contained a tagging requirement for transport of fish outside the reserve; it also provided financial compensation, at three dollars a pound, if Listuguj Mi'gmaq fishermen failed to reach the quota.

Over time, pressure from the province, sport fishermen, and others to reduce the Listuguj quota drove the numbers down. By 1985, Listuguj Mi'gmaq allowable annual catch had dropped to 15,390 pounds, interestingly the same amount set aside in 1982 for domestic (non-Aboriginal) consumption. Eventually the reductions threatened people's ability to get enough to eat. While the provincial and federal argument for these reductions was conservation, it appeared to the Listuguj Mi'gmaq that they were being forced to forego catching salmon, not so much to protect the fish as to leave more fish to be caught by someone else, often sportsmen fishing from corporate and other fish camps upstream.

¹⁰ Metallic and Chamberlin (2006, pp. 24-25).

¹¹ This is apparent in the minutes of the June 23 meeting; see Listuguj Mi'gmaq First Nation (1981)



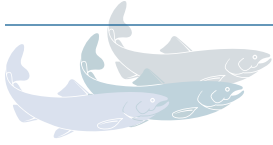
By the late 1980s, it was clear that these agreements were not working. There was little transparency in the negotiation of the agreements. The province took the lead in setting the rules, changing them more or less at will, while Listuguj Mi'gmaq quotas continued to fall. The agreements produced fewer jobs than expected, and the conservation argument appeared to be at least partly a ploy designed to protect the sports fishery and other non-Indigenous fishing.

To top it off, Listuguj Mi'gmaq citizens were again being charged for violations of provincial or federal fishing regulations. By 1990, Quebec was cracking down on violations of provincial fishing laws. In June and July of that year, Quebec launched undercover operations involving telescope surveillance of Listuguj Mi'gmaq fishermen, undercover sting operations, river raids and other techniques, yielding a flurry of charges. Over the four seasons from 1989 to 1992, Listuguj citizens accumulated approximately 74 fishing charges under the federal *Fisheries Act* or the *Quebec Act Respecting the Conservation and Development of Wildlife* for either fishing illegally or illegally selling Atlantic salmon.¹²

Furthermore, there was continuing concern about the state of the fishery resource. Listuguj Mi'gmaq fishermen had noticed the declining salmon runs; traditional knowledge passed on through the generations made them acutely aware that the runs were nowhere near what they used to be. Canada's determination that the salmon were endangered had only confirmed what Listuguj Mi'gmaq fishermen already knew: *something had to be done to save the fishery*. While conservation arguments made by other governments rang hollow in view of continued high takings by non-Native fishermen, the Mi'gmaq knew that the conservation challenge was urgent, and they were worried. It was more than their livelihood at stake. Salmon was more than food. It infused Mi'gmaq culture. They felt a responsibility to preserve the fish for their grandchildren, to protect a resource that was essential to their way of life. They were looking for something that not only would address over-fishing but would "make the fish sacred" again. As one Listuguj Mi'gmaq citizen put it,

This river has been generous to our people for centuries, giving us the salmon. The relationship that we have with it is monumental. It's something we cherish. When 1981 came, every community member was involved in protecting our right to fish the salmon. That's how strong our relationship is to it. It's not about commerce. It's not about government saying no. It's about relationship, no different than if someone came into your home and started to take your children away. You don't play with that.

¹² Hutchins (2006, p. 34).



“We will be the last to stop fishing. This is an Aboriginal right. These other groups have to stop first.”

But if the issue was conservation, it would have to be conservation on Listuguj Mi'gmaq terms. According to Wendell Metallic, the position was, we have to preserve the salmon, but “we will be the last to stop fishing. This is an Aboriginal right. These other groups have to stop first.”

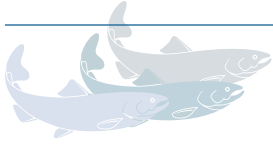
Traditional Mi'gmaq governance also played a role in the community's thinking about the fishery. The Listuguj Mi'gmaq Government is one of three Mi'gmaq nations located in Quebec and one of eight nations making up the seventh district of Gespe'gewa'gi, Mi'gma'gi. The traditional governing structure of the Mi'gmaq territory is the Mi'gmaq Grand Council, created long before European contact, representing the seven districts into which Mi'gmaq territory is divided.¹³ Each district has its own District Keptin, whose task is to help the communities achieve their objectives. Among other things, the Keptins have to think about the appropriate use of resources in the whole of Mi'gmaq territory, including traditional lands beyond the boundaries of the reserves. The Keptins help to ensure strategic thinking and resource stewardship, taking a long-term view of the health of the resource and the communities.

The Chief at the time of the salmon raids, Alphonse Metallic, was also District Keptin for the seventh district. He eventually passed the role of Keptin on to Gary Metallic, Sr. Seeing the need of the people to have control over the salmon resource, Gary began to ask how to make a law for the river, assuming as a starting point that this was – as it always had been – within Listuguj Mi'gmaq power, regardless of what Canada would say. His vision and support were critical in organizing the community, in developing the political will among Listuguj citizens to take control of the fishery, and in grounding the assertion of governing power in Mi'gmaq traditions.

Meanwhile, two national developments also were having an impact at Listuguj. The first was the 1990 Supreme Court of Canada decision in *Regina v. Sparrow*. Section 35(1) of Canada's *Constitution Act, 1982* provides constitutional protection to the Aboriginal and treaty rights of the Aboriginal peoples of Canada.¹⁴ However, it does not define those rights, a task effectively left to the courts.

¹³ On the seven districts, see Augustine testimony accessed www.johncummins.ca/docs/Dec2.doc August 25, 2010.

¹⁴ Aboriginal peoples is defined in the *Constitution Act* as the Indian, Inuit, and Métis peoples of Canada.



“Sparrow was a turning point. It affirmed our right to fish.”

Ron Sparrow, a citizen of the Musqueam Band, was arrested in 1984 for fishing on the lower Fraser River – a traditional Musqueam fishing ground – using a net that violated the terms of his band’s fishing license, granted by the Crown.¹⁵ At trial, Sparrow’s defense argued that the license restrictions were inconsistent with Section 35(1) of the *Constitution Act, 1982* protecting Aboriginal and treaty rights, and that fishing rights were among those protected. This defense failed in the lower courts, but on appeal, the Supreme Court – in a unanimous decision – found that Ron Sparrow was indeed exercising an Aboriginal right that existed at the time of the passage of the Act and for which the Act provided protection. It decided further that once conservation goals are met, Aboriginal fishing for food, social, and ceremonial needs must take priority over other uses of the fishery.¹⁶

“*Sparrow*,” says Brenda Gedeon Miller, Chief of the Listuguj Mi’gmaq in the mid-1990s, “was a turning point. It affirmed our right to fish.”¹⁷ The Mi’gmaq had long known they had that right. With Sparrow, Canadian law caught up with them.

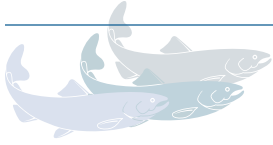
But the focus on fishing was not limited to Listuguj Mi’gmaq and Musqueam. The second national development was a growing Aboriginal concern with fishing rights across much of Canada. Well before Sparrow, First Nations had been protesting what many of them saw as federal and provincial violations of Aboriginal fishing rights, and were asserting their rights to manage fisheries and to fish for commercial sale. In British Columbia, for example, First Nations were involved not only in legal battles but in direct action. In one famous incident, Gitksan and Wet’suwet’en fishers, acting on the advice of their elected and hereditary chiefs, simply ignored Canadian Department of Fisheries and Oceans (DFO) license requirements (when the DFO attempted to seize their nets on the Skeena River, the fishers threw marshmallows at the officers). As the fishing issue gained traction across Canada, Listuguj Mi’gmaq peoples were watching.

In the early 1990s, these multiple factors came together with new Listuguj Mi’gmaq leadership. When Brenda Gedeon Miller became Chief in 1992, the Listuguj Mi’gmaq Council met to discuss its priorities. Fisheries was high on the list. Action clearly was needed. But what action?

¹⁵ The Musqueam are Coast Salish people whose traditional territory encompasses much of Vancouver, British Columbia, at the mouth of the Fraser River.

¹⁶ *R. v. Sparrow*, [1990] 1 S.C.R. 1075.

¹⁷ Interview with Brenda Gedeon Miller, 9 February 2010.



In response to *Sparrow*, Canada's DFO had launched an Aboriginal Fishing Strategy in 1992. The objective was, among other things, to provide an opportunity and framework for management of fisheries by Aboriginal groups for food, social, and ceremonial purposes, and to improve conservation, management, and enhancement of the resource.¹⁸

The Listuguj Mi'gmaq could have followed up on the DFO policy change, working within the new federal strategy. But they had other ideas. As Peter Hutchins, a lawyer who worked closely with the Listuguj Mi'gmaq Government in these years, remarks, the Listuguj Mi'gmaq response was:

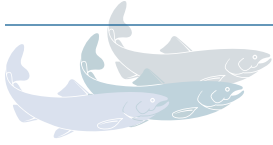
...to seek an appropriate alternative to the application of federal and provincial fisheries laws and regulations and the federal government's policy as embodied in the Aboriginal Fishing Strategy and to devise, in their stead, rules for the fishing of salmon and conservation of salmon that made sense to Mi'gmaq fishermen, and that had their support and respect. The technique was to formulate Mi'gmaq fishing rules and a conservation program, including protection of vulnerable areas, with the Mi'gmaq fishermen and to enact them in virtue of the inherent Mi'gmaq jurisdiction. The response, in other words, was to assert and exercise Mi'gmaq self-governance over fishing activities and fishing resources.¹⁹

With this in mind, in 1992-93 both the traditional and the elected leadership of the community, in consultation with the fishermen, began to plan to take over management of the river and the fishery resource.



¹⁸ See <http://www.dfo-mpo.gc.ca/fm-gp/aboriginal-autochtones/afs-srapa-eng.htm>, accessed June 13, 2010.

¹⁹ Hutchins (2006, pp. 34-35).



“We’re not asking permission anymore”

“Do we like the idea of being self-governing?”

By the early 1990s, intensive strategic discussions were underway at Listuguj. “This is a pretty radical community,” said one Listuguj leader during these years. “There was a lot of support for an aggressive move.” But how should the Listuguj Mi’gmaq Government assert control of the resource?

These internal discussions had two sides. On one hand, in the aftermath of *Sparrow*, many of the fishermen wanted simply to exercise the right that the court had secured: go out there and fish. On the other hand, the affirmation of the right raised a new question: how do you exercise that right responsibly and effectively, particularly in view of the looming threat to the survival of the salmon? This was a governance question. What if Listuguj were in charge? What if Listuguj were to manage the fishery itself? To do so would be a major step in a return to Mi’gmaq self-government, but it would have to be done well. Not only was survival of the resource at stake, but mismanagement could be used by opponents of the Mi’gmaq to undermine the rights argument. As Brenda Gedeon Miller says, “You have to balance the exercise of the right with the responsibility to manage and protect the resource.”²⁰

This meant compromise. Unlimited fishing was not an option, for the resource couldn’t bear it. Any realistic management plan would have to limit fishing to certain times and places, and these limitations would have to be enforceable – not by Quebec, but by the Listuguj Mi’gmaq Government. But any such compromise was going to have to have community support. Engaging with the community, therefore, was critical. Listuguj Mi’gmaq people were accustomed to just going out on the river and catching fish. But if their own government took over responsibility for the resource, it was going to have to impose its own rules. It would have to take governance seriously. “We had to get past ‘you can’t tell me I can’t fish on Saturday. This is my right.’” The community was going to have to decide: “Do we like the idea of being self-governing?”

The Listuguj Mi’gmaq Government began to consult with various stakeholders within the community about what community management of the fishery might look like: fishermen, youth, elders, its own employees, and other Listuguj Mi’gmaq citizens. Fishing affected everyone. “The fisherman’s circle of family and friends had to understand and support the new fishing system as well. Otherwise, the whole family was in chaos.” These were sometimes difficult discussions, but over a period of about eighteen months, understanding of the need for active management grew.

²⁰ Interview with Brenda Gedeon Miller, 9 February 2010



The Listuguj Mi'gmaq Government also reached outside the community, talking to non-Indigenous groups, the Canadian Department of Fisheries and Oceans, and others. Knowing that effective management would require information and training, it began to look for partners who could provide both. It sent its Mi'gmaq Rangers to the First Nations Tribal Justice Institute in British Columbia for training, and it engaged its own biologist and technical team to advise it on conservation and management issues.

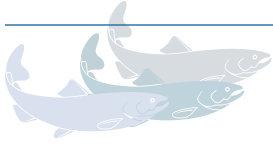
By 1993, with input from across the Listuguj Mi'gmaq people and encouragement from traditional leadership, Listuguj had developed a draft of a fishing law and a fisheries management plan. The Listuguj Mi'gmaq First Nation Law on Fisheries and Fishing specifies, among other things:

- 1.) the goals of the law and of fisheries management;
- 2.) the territory within which the law would apply;
- 3.) a schedule for the development of an annual fishery management plan; and
- 4.) how the community would be consulted.

It provides for co-management agreements with adjacent governments in the interests of conservation and effective management of the resource; and establishes means of monitoring the condition of the resource, setting harvest limits, and carrying out other management activities. It places responsibility for enforcement and compliance with the new Mi'gmaq Rangers Division of the Listuguj Mi'gmaq Government, sets out the rules to be applied by that Division, and states that “no person or agency other than a duly appointed Mi'gmaq Ranger shall interfere with or molest the Mi'gmaq in fishing and conducting fishing related activities, including landing, storage, transport, use and disposal of fish by sale or otherwise.”²¹ It rules out quotas or other allocations for Mi'gmaq fishing unless it can be demonstrated that the Listuguj Mi'gmaq are “exclusively responsible for endangering fish stocks.”²² It empowers the nation to regulate the days and areas where fishing will be allowed.

²¹ “Listuguj Mi'gmaq First Nation Law on Fisheries and Fishing,” p. 5 (see Appendix)

²² *Ibid.*, p. 6.



*“Here’s the plan.
Go enforce it.”*

The Listuguj Mi’gmaq Government showed these documents to the Quebec authorities. “It was not a submission. It was a statement. Here’s what we’re going to do. We informed the non-Natives that we’re retaking control of our river.”

Quebec’s response, delivered in a letter to the Listuguj Mi’gmaq leadership on June 4, 1993, was to the point. It said, in essence, “You can’t do that.” When it became clear that Listuguj was going to pass its law and implement its plan regardless of Quebec’s reaction, the province threatened to pull more than \$419,000 that the Listuguj Mi’gmaq Government badly needed for fishery management and conservation. Listuguj decided to go ahead anyway. It swore in its own conservation officers, the Mi’gmaq Rangers, to enforce the new management plan, telling them, “here’s the plan. Go enforce it.” It scavenged funds wherever it could to pay the Rangers and equip them. The attitude, in short, was: never mind what Quebec says. “Just do it.”

Quebec now faced a dilemma. It had a resource management and conservation responsibility, and it was under pressure from non-Aboriginal users to meet those responsibilities. But both management and conservation were now in the hands of the Listuguj Mi’gmaq Government. Eventually word came to Chief Miller: “Let’s talk.” The two sides sat down together but could not reach an understanding in 1993, nor could they in 1994, although they continued to communicate at both the strategic and operational levels in an effort to avoid a repeat of the 1981 conflict. It was not until 1995 that Quebec agreed to the Mi’gmaq plan and restored the lost funds. But one of the provincial demands was that the Mi’gmaq Rangers be sworn in by Quebec. Their authority, in other words, would come from the provincial government. Listuguj Mi’gmaq Government refused. “They’ll only be sworn in by our own government.”





“It’s a Mi’gmaq law”



In 1995, traditional Listuguj leaders,²³ acting “pursuant to Mi’gmaq custom and in the exercise of the inherent jurisdiction of Listuguj Mi’gmaq First Nation,” ratified the Listuguj Mi’gmaq First Nation Law on Fisheries and Fishing, commonly known as the Listuguj Mi’gmaq Fishing Law, adopted in 1993 by Chief and Council.²⁴ Attached to the law are schedules that constitute the fishing management plan, subject to annual amendment in response to the condition of the fish and the watershed. The plan establishes conservation targets and sets out rules governing harvest techniques and areas subject to special protections. It is a comprehensive guide to responsible management of the fishery.

Critically, the Fishing Law is not a by-law of the Indian Act, nor is it a product of delegated authority originating in some other government. Instead, it is something created by Listuguj Mi’gmaq governing institutions in a deliberate exercise of self-governing power. “It’s a Mi’gmaq law.”

To some readers, that may seem trivial. But making Mi’gmaq law was a groundbreaking step in reclaiming governance as a Mi’gmaq right and practice. The law is about the fishery. But it has significance far beyond the management of the river and the salmon, as important as those are. It restores to the government of the Listuguj First Nation its status as a law-making body.²⁵ That body is not simply an administrative entity, managing social programs and tracking funds. It makes law. It enforces law. It *governs*.

Some of the effects are subtle. Peter Metallic, head of the Rangers, talks about having worked as a conservation officer for Quebec. He worked on the reserve, but in a Quebec uniform. Now that changed. He felt “uplifted” when he made the switch. “I was enforcing their law. Now it’s our law. I was free from something you hate to do but had no choice.”

The law has force off the reserve. The boundary of the reserve along the river is the high-water mark; beyond that point is federal or provincial jurisdiction. But the fishing activities that the law addressed occurs off-reserve, in traditional Mi’gmaq territory. There, the elected Chief and Council of the Listuguj Mi’gmaq Government – political entities established under the federal *Indian Act* – have no legislative jurisdiction granted by the Canadian Parliament. Therefore, it was

²³ The Listuguj Overseers’ Tribal Council, an advisory body to the Keptin.

²⁴ “Listuguj Mi’gmaq First Nation Law on Fisheries and Fishing,” Appendix, p. 1.

²⁵ On traditional governance among the Listuguj and other Mi’gmaq of the region, see Metallic and Chamberlin (2006), also Miller (1993).



“Leadership, management, fishers, community members, and no one telling us from outside, but we are going to decide. It was a milestone.”

necessary to turn to a source of authority arising from Aboriginal title. This was why the community asked the traditional leaders, represented by the Listuguj Overseers’ Tribal Council, to sanction the law. Thus the law applies in a designated geographical area, off-reserve, of approximately 200 square miles of land and 50 square miles of water. It is enforced by the Mi’gmaq Rangers, whose enforcement authority is recognized by the Crown.

But the Listuguj Mi’gmaq Government did not simply create and pass a law. It backed up its new law and management plan by investing in training staff, building relationships with other governments and entities with knowledge or interests in the fishery, and combining Mi’gmaq knowledge with top-of-the-line science. “We do our homework.”

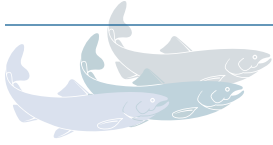
First adopted in 1993, the Listuguj fisheries management plan remains in force today. It is amended in response to new data and changing conditions, and each amendment involves consultation with the community. Although it has been a long time coming, it is not simply a Chief-and-Council matter. At one of the first meetings of the working group that proposes changes in the annual plan, an elder said that this was the first time he’d been on a committee where there were no government agents sitting there telling the people how to do things. “Leadership, management, fishers, community members, and no one telling us from outside, but we are going to decide. It was a milestone.” In a very real sense, the fish management plan is a community plan.

As Alfred Metallic and Amy Chamberlin suggested,²⁶ in the fishing law and the management plan Mi’gmaq resistance becomes Mi’gmaq affirmation – of their right to fish, their right to govern, and their centuries-old relationship with the salmon. Federal and provincial regulation was about days of fishing and numbers of fish, and the Listuguj Mi’gmaq have adjusted to that, to some degree, in their own management plan and their acute awareness of the conservation challenge that they have to address. But when it comes to implementation, they also bring to the plan generations of intimate knowledge.

We know that you have to pay attention to the moon, the birds and the moon tides. All of this has an effect on when the salmon decide to move up river. You need to pay attention to the moon, to the birds, to the bugs and the wind. When the bugs are out in June and the birds – when they’re around in the afternoon and the winds start picking up; there’s certain times when you know it’s good fishing, you just know. You know that’s a sign: the salmon are on their way in, the salmon are coming.²⁷

²⁶ Metallic and Chamberlin (2006, pp. 24-25).

²⁷ Metallic (2008, p. 5).



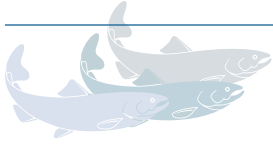
Is the plan working? From 1992 to today, no Listuguj Mi'gmaq citizen has been charged with violating federal or provincial fishing law on Listuguj-regulated waters. Meanwhile, Listuguj Mi'gmaq Rangers, whose task is to enforce the plan, have done so, confiscating equipment from an occasional Mi'gmaq violator of the community's own regulations, and enforcing the law with non-Native fishermen as well. The Listuguj Mi'gmaq Government has reached out to other governments, concluding agreements for scientific and management services with the federal Department of Fisheries and Oceans, the Quebec Ministry of Natural Resources and Wildlife, and, the then Quebec Ministry of Environment.

Regarding the views of other governments and users of the resource, lawyer Peter Hutchins notes that the Listuguj Mi'gmaq Government made "continued efforts... to inform and seek the cooperation of both the federal and provincial governments...." While neither government was willing at first to sign intergovernmental protocols with Listuguj Mi'gmaq Government, Hutchins finds that "from an atmosphere of tension and government anxiety over the Mi'gmaq action in 1993, there evolved over the initial years a state of grudging acceptance." Both the province of Quebec and DFO eventually "came to believe that the salmon population had *not* been put at risk through this exercise of Mi'gmaq self-governance" (*emphasis added*). As for other users of the resource, Hutchins says that "the owners of shore properties and fish pools along the Restigouche were very pleased with the results of Listuguj regulation and conservation initiatives and actively worked with the Mi'gmaq."²⁸

One of the most satisfying indicators of success came in 1995 when the Atlantic Salmon Federation awarded the Listuguj Mi'gmaq First Nation for the best-managed river in the province. The award event took place in Quebec City. Among the attendees: the fisheries minister of Quebec, whose department had long opposed Listuguj Mi'gmaq actions.



²⁸ Hutchins (2006, p. 35).



“It revitalized pride in who we are”



In June of 1993, as the fishing law was being finalized and adopted, Chief Brenda Gedeon Miller testified before the Royal Commission on Aboriginal Peoples. Referring to Mi’gmaq nation building, she stated that “the Listuguj Mi’kmaq First Nation Government has decided to assert its jurisdiction within our traditional territory. We have reorganized the administration of our local government, obtained the mandate from the community members to proceed in this direction and have informed governments of our course of action.” With marvelous understatement, she noted that “It has not been an easy one for them to swallow.”²⁹

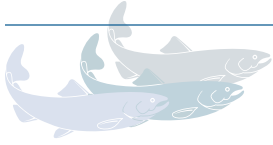
Seventeen years later, Listuguj Mi’gmaq management of the river and the fishery is well established; Mi’gmaq Rangers enforce the law; and Listuguj Mi’gmaq citizens continue to fish and to honor the salmon. Today, “you wouldn’t see what I call a foreign government patrolling our waters and telling our fishers when and how they could fish. It’s nice to know that we can employ our own people to patrol our waters and protect our fishers.”

There have been economic benefits as well. The Listuguj Mi’gmaq Government receives more than \$600,000 dollars a year from the federal Department of Fisheries and Oceans and the Quebec government to support the Rangers program and related activities, and fishery management sustains about forty jobs in the community.³⁰

Not everyone is satisfied with the results. Some citizens feel the community role in the annual development of the fishing plan has been diminished over the years; it has become less community consultation and more community notification. Others see politics and family connections creeping into fishery decisions, enforcement, and the distribution of jobs. “It’s all family politics,” said one Listuguj Mi’gmaq Government employee, while another saw elected leaders using the fishery for their own ends, cheapening the community’s accomplishment. Some worried about how to make the fishery more of a community enterprise, arguing that their own citizens should be treated like shareholders in the fishery, sharing profits and losses. One person involved in the fishery argued that “we need to revisit the law, look at what’s working and what’s not. I hardly call that a failure. It still works. It’s unique. But it’s been close to twenty years.”

²⁹ Miller (1993, pp. 46-47).

³⁰ Information supplied by Robert Smith, Director of Finance, Listuguj Mi’gmaq First Nation, February 10, 2010.



“The effort to expand self-governance is a product of the fishing law.”

A few citizens resist the law. “Who made these laws?” they ask. The answer is, ‘We made these laws.’ But some individuals still claim that they have the right to do what they want in the fishery.” Some people try to take advantage of the close relationships that are typical of First Nations communities. “You’re my cousin,” they say to a Ranger. “Let me go ahead and fish.”

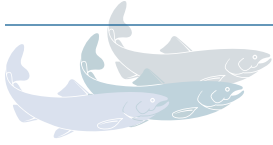
On the other hand, the law has had ripple effects that reach well beyond the fishery. The Listuguj Mi’gmaq Government has expanded the scope of its own governance. It has developed agreements with municipalities, the provinces of Quebec and New Brunswick, and Canada in other areas such as municipal infrastructure, social services, education, police services, justice systems, and forestry. These have not involved law-making – although forestry soon may – but they have involved Listuguj Mi’gmaq assertions of the right to decide what happens in their community and on their lands. As one community leader, long involved in these activities, put it, “The effort to expand self-governance is a product of the fishing law.”

In 1993-94, for example, as the law was being made and implemented, the Listuguj Mi’gmaq Government brought the schooling of the community’s children under its control. “They didn’t ask permission,” said a Listuguj school administrator. “They just did it. The school authorities tried to stop it. We started with the young ones, nursery school, etc. Nearly all the community now sends their kids to our own school.”

The community has its own police force. “Our cars patrol this community hourly. Quebec patrols the adjacent community every six to eight hours. We assist the provincial police, but they don’t come on the reserve. That’s a result of the history. They’re not welcome here.”

There have been less tangible benefits as well. One citizen saw the entire process, from salmon raids to fishing law, as an education: “I learned about my rights. I knew I had them, but through this process, I learned more about my treaty rights.” The last decade and a half also have seen new community activities that express Mi’gmaq values and traditions. Outside entities that once dominated aspects of community life have been pushed to the sidelines. For many Listuguj Mi’gmaq citizens, over these seventeen years the community began to feel more and more as if it was truly theirs.

The fishing law was a Listuguj Mi’gmaq creation, an act of will by a people determined to retain not only their rights but their own ways of living in the world. As one leader said, “When the law comes from your own people, their words, you can justify it. This is your own law. You created it. It revitalized pride in who we are.”



“A long way to go”

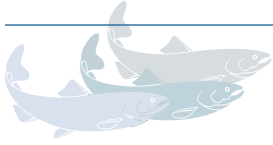


Plenty of work remains to be done. As one councilor said, “We may be moving along on the steps to self-government, but we have a long way to go.” Some citizens question the Listuguj Mi’gmaq Government’s commitment to self-governance, suspecting that the continuing need for outside funds discourages the community from being as assertive as it could be. As one citizen said, “if we were so good at governance, we’d have more than that one law.”

More law may be coming. The Listuguj Mi’gmaq Government is exploring ways to assert greater control over the community’s forest resources and replicate on land what the fishing law and the Rangers have done on water: enforce Mi’gmaq law and protect Mi’gmaq resources and traditions.

Governance itself remains a challenge. Continuity of effort can be a problem in a community where elected officials serve only two-year terms, and the march of elections is relentless. Said one administrator, “I always dread a new [council] coming in. It takes six or eight months for them to learn, then a year or so to get something done, and then you’re in election mode again.” The council is the ultimate authority on nearly everything, which means that keeping politics at arm’s length from the fishery, from other economic enterprise, and from other programs is a daily battle. The community also needs a way of resolving its own internal disputes – about the fishing law and other things – that keeps the politics out of it and is perceived by the citizens as fair. A new justice committee has been formed; it’s in its early days yet, but it may solve the problem. And if the Listuguj Mi’gmaq Government is going to make more law, it will need to formalize a law-making process that all its citizens recognize and respect.

Plus, there’s a revenue issue. As long as the Listuguj Mi’gmaq Government depends on federal funds to carry out its programs and manage the fishery, it will be hostage – to some degree at least – to federal priorities and decisions. “The way out,” as one senior Listuguj Mi’gmaq Government employee said, “is economic development” that can produce own-source revenues. But it will take a while.



Perhaps most important for many Listuguj Mi'gmaq citizens is the generational challenge. As one councilor said, "Everyone knows about the '81 raids. But a lot of young people don't know why. Why did it happen? Why was the Ranger program started? Some of them only see the uniform on the Ranger, not the reason for it. It's just another authority figure. We aren't doing a good job of educating our youth on what it's all about: the conservation of fish, the culture." Others agreed: "Everything I was taught, I taught my kids. But many parents don't teach their kids about fishing. In a couple of generations, no one knows anything."

As this suggests, some citizens wonder if the fierce attachment to Listuguj Mi'gmaq rights and self-governance will last as the generation that faced the salmon raids ages and young people grow up with no memory of what the community went through. It may be that "crisis brings us together," but what will sustain that togetherness when the memories of crisis fade?





“The rebirth of our Nation”



What can we learn from the story of the Listuguj Mi'gmaq Fishing Law?

For many generations, the Listuguj Mi'gmaq were a fishing people with a complex, intimate relationship with the salmon. But from the early 1800s on, as European settlements and provincial and Canadian governments asserted ever greater control over Mi'gmaq lands and waters and the animals within them, that relationship became more and more difficult to maintain. The Mi'gmaq defended their rights as best they could, continuing to fish as their ancestors had and defying efforts to make them stop.

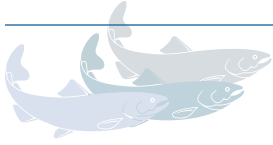
The resulting conflict came to a head in the salmon raids of 1981. The raids were a turning point. They brought the community together and produced a determination to reverse the downward spiral of Mi'gmaq history, the loss not only of resources but of the values and traditions with which those resources were intertwined. Out of the trauma of 1981, a vision began to emerge of a revitalized people, exercising their right to fish and their right to govern themselves and their resources in their own ways.

But the vision raised questions. How do you make it a reality? How do you fight back?

The answer, it turned out, was not guns or litigation or marching in the streets. Ultimately, the Listuguj Mi'gmaq fought back with the tools of governance: by making credible law – Mi'gmaq law – and then backing it up with competent management and enforcement.³¹

This is perhaps the key lesson emerging from this story. The vision was essential. Its power came from the fact that it was an Indigenous conception, rooted in the community and in the centuries-old, Indigenous traditions of governance. But the challenge was to make the vision come alive. To do that, the Listuguj Mi'gmaq Government turned to lawmaking, one of the core functions of government. Asserting their right to make their own law, drawing on customary practice, and building on generations of accumulated knowledge of the fishery, they put in place a law and a management plan that could support their own subsistence and commercial needs and conserve the salmon.

³¹ Peter Hutchins argues that it was important that Listuguj Mi'gmaq Government chose to make law instead of entering into negotiations with other governments. If they had chosen negotiation, “they'd still be at it now.” Interview with Peter Hutchins, 8 April 2010.



*“Be prepared.
You need very
high performance
in law-making
and policing.”*

But there was a further step as well. Asserting control, passing a law, and developing a plan were not enough. They had to exercise that control effectively and responsibly. They had to back up that law and that plan with competent management and enforcement. As one of those involved in the process said, “Be prepared. You need very high performance in law-making and policing.” They took their time. They invested in getting good advice, in training their people, in educating the community. The lesson: “Just do it” is not enough. You have to do it well. As one Listuguj Mi’gmaq leader said, reflecting back on the development of the law and management plan, “We needed to do it right.”³²

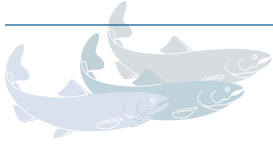
Other factors also played a part in the Listuguj Mi’gmaq success. The effort to reassert self-governing power had broad community support and participation. “We were all involved in making it,” said one Listuguj Mi’gmaq citizen about the fishing law.

The community also was fortunate in its own people. They had a District Keptin who was determined to find a way to meet the people’s needs and conserve a precious resource. They had elected leadership that was willing and able to engage other governments in dialogue without abandoning the community’s principles and priorities, to engage the community in developing an Indigenous solution to the challenge they faced, and to seek out the legal and technical advice they needed to produce a quality plan. They had individuals who understood and could work with Mi’gmaq traditions and protocols – and they had individuals who understood and could navigate the legal/bureaucratic/administrative maze of provincial and federal governments. These were critical assets during a drawn-out process of assertion and negotiation. They also could draw on the experience and ideas of other First Nations facing similar issues across Canada. In a fundamental sense, they were not alone.

This is much more than the story of a fishery. It’s a nation-rebuilding story – still unfinished, but a remarkable beginning. In 1993, as the Listuguj Mi’gmaq Government was putting its fishing law and management plan in place, Chief Brenda Gedeon Miller testified before the Royal Commission on Aboriginal Peoples. “We believe we have embarked on a critical path,” she said. “This critical path leads to what you refer to as ‘self-government’ in modern day contemporary terms, but what we refer to as ‘the rebirth of our Nation.’”³³

³² The Listuguj Mi’gmaq experience lends support to the core findings of the Harvard Project on American Indian Economic Development, which found that success in achieving collective goals came to those Native nations who asserted self-governing power and backed up that power with competent, responsible governance that reflected their own values and therefore had legitimacy with their own peoples. See, for example, Jorgensen (2007).

³³ Miller (1993, pp. 54-55).



Appendix

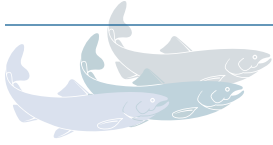
Listuguj Mi'gmaq First Nation Law on Fisheries and Fishing

Preamble

- WHEREAS we the indigenous peoples of Gespe'gewa'gi are vested by Gisiteget with sacred responsibilities for stewardship of the land, waters and all living things;
- WHEREAS we are duty bound to protect, conserve and respect all things which Mother Earth supports within our territory;
- WHEREAS we have agreed to co-exist with other peoples as recorded in the wampum;
- WHEREAS our agreements with the French and British Crowns are also recorded in treaties;
- WHEREAS we intend to promote a harmonious relationship with all our relations;
- WHEREAS the Listuguj Mi'gmaq have been consulted throughout the development of the Fishing Plan annexed as a Schedule A to this Law and have indicated their full support of the Fishing Plan;
- WHEREAS the Listuguj Mi'gmaq First Nation Government and the Listuguj Overseers' Tribal Council, the traditional governing body of the Listuguj Mi'gmaq First Nation, the Seventh District of the Mi'gmaq Nation, are both responsible for the protection of the Listuguj Mi'gmaq fisheries and the harvesting rights of the Listuguj Mi'gmaq;
- WHEREAS the Listuguj Mi'gmaq First Nation Government has consulted with other governments involved as well as with interested user groups on the management of fish resources in the Restigouche River Watershed;
- WHEREAS the present Listuguj Mi'gmaq First Nation Law on Fisheries and Fishing is enacted pursuant to Mi'gmaq custom and in the exercise of the inherent jurisdiction of Listuguj Mi'gmaq First Nation and without prejudice to the Aboriginal and Treaty Rights of the Listuguj Mi'gmaq First Nation, the Listuguj Overseers' Tribal Council, the Listuguj Mi'gmaq First Nation Government and the Listuguj Mi'gmaq;
- NOW THEREFORE, the Listuguj Overseers' Tribal Council jointly with the Council of the Listuguj Mi'gmaq First Nation Government pursuant to Mi'gmaq custom and in the exercise of their inherent jurisdiction hereby enact as follows:

PART I Short Title

This Law may be cited as "the Listuguj Mi'gmaq Fishing Law".



PART II Definitions and Interpretation

(1) In this Law:

“Council” means the Council of the Listuguj Mi’gmaq First Nation Government;

“Fishing Plan” means the Fishing Plan set out in Schedule A as amended from time to time;

“Listuguj Mi’gmaq” means a person who is a direct descendent of the Mi’gmaq, normally resides within the traditional territory of Gespe’gewa’gi and whose immediate family remains affiliated with Listuguj;

“Mi’gmaq Rangers” means the division of the Aboriginal and Treaty Rights Directorate established as such by the Listuguj Mi’gmaq First Nation Government; and,

“Tribal Council” means the Listuguj Overseers Tribal Council, the traditional governing body of the Listuguj Mi’gmaq First Nation which is the Seventh District of the Mi’gmaq Nation.

(2) In this Law, words referring to male persons include female persons and words referring to female persons include male persons, as the context requires. The singular includes the plural.

(3) The Schedules form an integral part of this law.

Part III Development of the Annual Fishing Plan and coming into force of the Fishing Plan

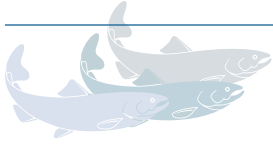
Prior to the month of March of each year, the Aboriginal and Treaty Rights Directorate of the Listuguj Mi’gmaq First Nation Government shall prepare a draft Fishing Plan to govern fisheries management and fishing activity for the current year.

The Draft Fishing Plan shall be published in the Listuguj Wi’gatign or another Community newspaper during the month of April.

The Council and the Tribal Council shall call and hold at least two community meetings or general assemblies in order to consult the membership of the Listuguj Mi’gmaq First Nation and to obtain the informed consent of the membership.

When the Council and the Tribal Council are satisfied that the membership of the Listuguj Mi’gmaq First Nation has been fully consulted and has consented to a Fishing Plan, the Listuguj Mi’gmaq First Government may by Order-in-Council adopt the Fishing Plan for the current year and may by order replace or amend the Schedule to this law to incorporate the Fishing Plan for the current year.

After adopting the Fishing Plan for the current year, the Council shall ensure that the adopted Fishing Plan is published in the Listuguj Wi’gatign or another community newspaper and is communicated to the membership of the Listuguj Mi’gmaq and to such interested governments and interested user groups as the Listuguj Mi’gmaq First Nation Government considers appropriate prior to the first day of fishing.



Part IV Territorial Application

This law and the Fishing Plan annexed as Schedule A shall apply in and throughout the Restigouche River Watershed which includes Listuguj (Restigouche) River, Pijgogoloatig (Kemp) River, Patapegiag (Patapedia) River, Matapegiag (Matapedia) River, Upsalquitch River, Apsetgoetig (Southwest) River, Metamgetjoig (Kedgwick River) and all tributaries contiguous thereto the whole as appears in Schedule B.

Part V Management Regime

The Listuguj Mi'gmaq First Nation Government together with the Tribal Council shall be solely responsible for the implementation of the Fishing Plan as provided in this law.

The Listuguj Mi'gmaq First Nation Government may enter into co-management arrangements with adjacent governments in the interest of conservation and management of fisheries resources.

The Listuguj Mi'gmaq First Nation Government shall exercise its responsibility in respect of the Fishing Plan through the Aboriginal and Treaty Rights Directorate.

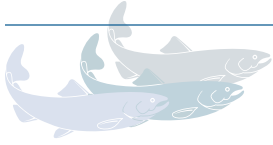
The Aboriginal and Treaty Rights Directorate shall have responsibility to monitor the fishing activities of the Listuguj Mi'gmaq community.

In the fulfilment of its mandate the Aboriginal and Treaty Rights Directorate may:

- (a) conduct stock assessments;
- (b) engage in scientific activities for the purpose of establishing harvesting limits;
- (c) identify special protection zones;
- (d) conduct restoration and enhancement activities as required;
- (e) examine alternative harvesting techniques; and,
- (f) develop commercial components to the Listuguj Mi'gmaq fishery.

The Aboriginal and Treaty Rights Directorate may employ the necessary personnel to coordinate scientific activities and to coordinate initiatives with agencies outside of the Listuguj Mi'gmaq First Nation Government conducting similar activities.

The personnel of the Aboriginal and Treaty Rights Directorate must include Aboriginal persons at the professional level.



Part VI Compliance

The Mi'gmaq Rangers Division of the Listuguj Mi'gmaq First Nation Government shall have the responsibility to ensure compliance with this law.

The Mi'gmaq Rangers Division may:

- (a) conduct monitoring activities in areas managed by the Listuguj Mi'gmaq First Nation Government;
- (b) conduct patrols, surveillance, investigations; and
- (c) develop and promote fish and wildlife education programs.

The rules respecting monitoring of fishing activity are set out in Schedule C to this law.

The Listuguj Mi'gmaq First Nation Government may establish by Order-in-Council rules concerning monitoring and other measures that the Mi'gmaq Rangers shall apply in situations of non-compliance with any provision of this law and may by Order amend Schedule C to incorporate those rules.

The Listuguj Mi'gmaq First Nation Government jointly with the Tribal Council may establish a Local Committee to monitor and oversee the implementation of this law.

Any violation to any provision of this law recorded by Mi'gmaq Rangers shall be placed before the Local Committee for resolution.

No person or agency other than a duly appointed Mi'gmaq Ranger shall interfere with or molest the Mi'gmaq in fishing and conducting fishing related activities, including landing, storage, transport, use and disposal of fish by sale or otherwise.

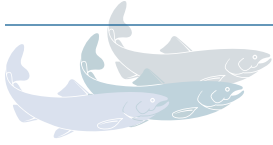
Part VII Resource Allocation

Subject to the other sections in this Part, no quotas shall apply to fishing by Listuguj Mi'gmaq for any given year.

No resource allocations shall be established unless it is determined by the Aboriginal and Treaty Rights Directorate that the harvesting activities of the Listuguj Mi'gmaq are exclusively responsible for endangering fish stocks.

Fishing days and areas to be fished to ensure that the prescribed escapement and deposition levels of salmon stocks are achieved are set out in Schedule A of this Law.

The Listuguj Mi'gmaq First Nation Government may for conservation purposes alter the established fishing days or areas to be fished and by order amend Schedule A to incorporate such changes.



Part VIII Use of Resource

All Listuguj Mi'gmaq are at free liberty to use or dispose of at best advantage any fish caught in compliance with this law and any applicable orders-in-council.

Any Mi'gmaq not a resident of Listuguj may upon giving notice to the Listuguj Mi'gmaq First Nation Government harvest salmon in accordance with the Fishing Plan and any further rules established by Order-in-Council by the Listuguj Mi'gmaq First Nation Government with the approval of the Tribal Council.

Part IX Special Protection Areas

There shall be no fishing for any purposes other than for scientific purposes in the following areas:

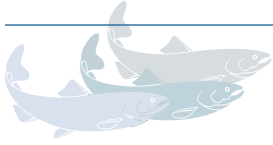
- a) those areas designated in Schedule D; and,
- b) Conservation Protection Areas that may be designated from time to time by the Aboriginal and Treaty Rights Directorate in conjunction with the conservation authorities of adjacent governments if public notice of such designation has been given in accordance with Section 31.

The Listuguj Mi'gmaq First Nation Government may by Order-in-Council establish any areas to be placed under special protection and by order amend Schedule D accordingly.

When additional areas are placed under special protection by the Listuguj Mi'gmaq First Nation Government, public notice shall be made through local newspapers or public meetings to ensure that Mi'gmaq harvesters are made aware of the designated areas

Part X Coming into force

The present law shall come into force on the date of its adoption by the Listuguj Overseers' Tribal Council and the Council of the Listuguj Mi'gmaq First Nation Government.



SCHEDULE 'A'

Listuguj Mi'gmaq First Nation Fishing Plan

Atlantic Salmon

Part I Conservation Targets

Deposition Levels: 71 Million salmon eggs

Escapement Levels: 12,200 Salmon
2,500 Grilse

Part II Harvesting in the Estuary Area

Location

The estuary area of the Restigouche River Watershed is for the purpose of the Fishing Plan defined as being bounded on the east side by a line from Miguasha Point to the ferry landing dock in Dalhousie, New Brunswick on the north and south sides by lines running along the respective shorelines and on the west side by a line that begins at pier number 11 as marked with paint then running in a southern direction to the Old Mission Point in New Brunswick.

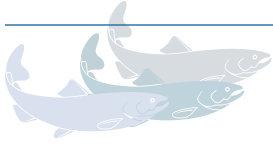
Harvesting Techniques

The following rules apply to harvesting techniques in the Estuary Area:

- a) rod and reel – unrestricted use;
- b) trap nets – permitted with prior approval from the Listuguj Mi'gmaq First Nation Government;
- c) spearing – permitting with prior approval from the Listuguj Mi'gmaq First Nation Government; and,
- d) gill nets – permitted with prior approval from the Listuguj Mi'gmaq First Nation Government.

Special provisions for the use of gill nets in the Estuary are:

- a) the length of any gill net shall not exceed 500 feet;
- b) gill nets shall be made immobile when placed in the Estuary and are to be placed perpendicular to the shoreline;



- c) gill nets shall not be placed in the Estuary for two consecutive days after five consecutive days of fishing have expired;
- d) for the purpose of this plan there shall be no fishing between the times of 8:00 a.m. on Mondays and 4:00 p.m. on Wednesdays; and,
- e) fishing with gill nets is restricted to the period of time between 4:00 p.m. and 8:00 a.m. the next morning;
- f) for the benefit of the Mi'gmaq harvesters, gill nets should have floats that indicate the owner's identification number, thus avoiding any misunderstanding when nets which were removed from the water are returned to the owner;
- g) gill nets shall not be placed beyond the 11th pier of the north boom;
- h) the owner of a gill net shall maintain a log book to record the daily number of fish caught and is required to present it to a Mi'gmaq Ranger upon request; and,
- i) a schedule of the dates and times that gill nets may be placed in the Estuary shall be prepared by the Listuguj Mi'gmaq First Nation Government and posted in public areas and inside log books.

Part III Harvesting in the River Area

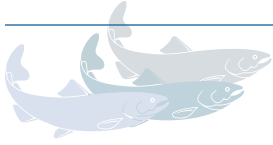
Location

The River Area is located up river from the Estuary Area and includes all the rivers and tributaries contiguous thereto.

Harvesting Techniques

The following rules apply to harvesting techniques in the River Area:

- a) rod and reel – conducted in accordance with prescribed regulations as agreed to by the Listuguj Mi'gmaq First Nation Government and the appropriate river manager;
- b) trap nets – permitted with prior approval of the Listuguj Mi'gmaq First Nation Government and in accordance with any agreements between the Listuguj Mi'gmaq First Nation Government and the appropriate river manager;
- c) spearing – permitted with prior approval from the Listuguj Mi'gmaq First Nation Government and in accordance with any agreements between the Listuguj Mi'gmaq First Nation Government and the appropriate river manager; and,
- d) gill nets – not permitted.



SCHEDULE 'B'

Map contained in file copy of Fisheries Law and may be obtained from the Listuguj Mi'gmaq Government, Listuguj, Quebec, Canada

SCHEDULE 'C'

Rules on Monitoring

Atlantic Salmon

The monitoring and reporting of non-compliance shall be conducted by the Mi'gmaq Rangers as set out in Part VI of the Listuguj Mi'gmaq Fishing Law.

The Mi'gmaq Rangers shall apply the rules to ensure compliance with the Listuguj Mi'gmaq Fishing Law.

In the event of non-compliance the Mi'gmaq Rangers shall apply the following rules:

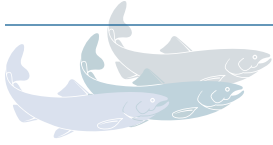
- a) if a gill net or other fishing device is used in a way that does not respect the Listuguj Mi'gmaq Fishing Law, a Mi'gmaq Ranger shall be dispatched to investigate the situation to determine if, in fact, the law is not being respected;
- b) if it is found that a gill net or other fishing device is being used to fish contrary to the Listuguj Mi'gmaq Fishing Law, a Mi'gmaq Ranger will attempt to ask the owner to remove the gill net or other fishing device;
- c) in the event an owner refuses to voluntarily remove the net or other fishing device the Mi'gmaq Ranger may remove the gill net or other fishing device and this action will constitute a seizure;
- d) all seized equipment shall be returned to the owner in the following manner:
 - 1) **first incident**, returned after two days;
 - 2) **second incident**, returned after one week; and,
 - 3) **third incident**, returned on the closing date of the fishing season.



SCHEDULE 'D'

Special Protection Areas

- a) **The Bottleneck** – being that area commonly referred to as “the Bottleneck” located from the last pier of the north boom proceeding westerly to the western point of McBeath Island;
- b) **Spawning Beds** – those areas located in the upper reaches of the various rivers of the Restigouche River system containing salmon eggs which are not to be disturbed from October 1 to March 31 of any year;



PROCLAMATION

LISTUGUJ OVERSEERS' TRIBAL COUNCIL

The Listuguj Overseers' Tribal Council has considered a law, to be cited to as the, Listuguj Mi'gmaq First Nation Law on Fisheries and Fishing, 1995. In the exercise of the inherent right of the Mi'gmaq First Nation to establish rules and regulations the aforementioned law is enacted by the Listuguj Overseers' Tribal Council at a duly convened meeting held on the ____ day of _____, 1995.

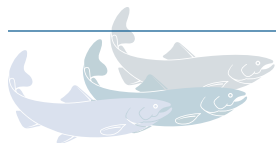
District Keptin, Seventh District
(Gespe'gewagi)

Listuguj Overseer

Listuguj Overseer

Listuguj Overseer

Listuguj Overseer



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