

Smoke on the Water: A Critical Discourse Analysis of Reconciliation in the Case of the  
Mi'kmaq Moderate Livelihood Fisheries

by

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Dalhousie University is located in Mi'kma'ki, the  
ancestral and unceded territory of the Mi'kmaq.

We are all Treaty people.

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This thesis is dedicated to Josi and Kevin MacCarthy.

Thank you, Mom and Dad, for always supporting me.

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## **Abstract**

Indigenous communities have been in direct conflict with the Canadian state when asserting their right to self-determination. Literature reveals that the Canadian state interprets Indigenous resistance as a threat to settler authority, responding with violence and criminal enforcement to coerce Indigenous communities to comply. This state response stands in contrast to international norms related to Indigenous rights and self-determination that have proliferated since the 2007 adoption of the United Nations Declaration on the Rights of Indigenous Peoples. This thesis investigates the relationship between the norms related to Indigenous rights articulated in the Canadian Truth and Reconciliation Commission and the institutional enforcement response to Indigenous resistance in the case of Mi'kmaw moderate livelihood fishing. Through a critical discourse analysis of Fisheries and Oceans Canada and Royal Canadian Mounted Police's public statements, policy documents, and recorded actions, this research assesses the institutional acceptance and implementation of these norms. This research found a discursive influence on state institutions which have adopted a discourse of reconciliation in policy rhetoric and consistently reference Indigenous rights as a normative commitment in public communications. Despite these rhetorical commitments, this research found that state response continued an approach of surveillance, policing, criminalization, and violence against Mi'kmaw moderate livelihood fishers. This significant gap between discursive commitments and actual practices highlights state resistance to norms related to Indigenous rights. However, by compelling state institutions to adopt a discourse of reconciliation and to legitimize their actions through commitments to Indigenous rights, the discursive influence of these norms disrupts the reproduction of settler colonial authority. The exposed contradictions between rhetoric and practice challenge the institutional legitimacy of settler authority, creating openings within settler colonial hegemonic structures for Indigenous communities to achieve self-determination in a subtle yet revolutionary transformation in global politics.

## **List of Abbreviations and Symbols Used**

CDA	Critical discourse analysis
DFO	Fisheries and Oceans Canada
FSC	Food, Social, and Ceremonial
IR	International Relations
RCMP	Royal Canadian Mounted Police
TRC	Truth and Reconciliation Commission of Canada
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples



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## Chapter 1: Introduction

“If we stop, we're going to die”

— Kevin Hartling (Cuthbertson 2024)

As they walked barefoot in the middle of the night along a highway, the pair of Mi'kmaw fishers were exhausted, stripped of their phones and footwear, and left to fend for themselves.<sup>1</sup> Hours before, Kevin Hartling of Membertou First Nation and Blaise Sylliboy of Eskasoni First Nation were wading through a river in rural Nova Scotia on a cold March night. Their focus was on the lucrative baby eels (elvers) found in coastal rivers. With the commercial elver fishery shut down for the 2024 season, the pair of Mi'kmaw fishers were attempting to exercise their treaty right to fish for a moderate livelihood.

It was not long before Hartling and Sylliboy saw the flashing lights of the Fisheries and Oceans Canada (DFO) truck. The DFO officers arrested and detained the pair of Mi'kmaw fishers, confiscated their gear, phones, footwear, and vehicle all before leaving them at a gas station roughly an hour's drive away from where they had been fishing. The pair pleaded with the DFO officers for access to their cellphones to call someone to pick them up or even just to let them write down contact information, but the officers refused. This situation is alarmingly reminiscent of the notorious "starlight tours," a deadly practice where Indigenous individuals were arrested and driven out to remote locations, only to be abandoned in life-threatening conditions (Armstrong 2024; Monchalin 2016, 262).

Hartling and Sylliboy walked for six gruelling hours, wearing nothing on their feet but a couple of plastic bags as shoes given to them by the gas station clerk. After hours, Hartling and

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<sup>1</sup> Mi'kma'ki is the ancestral and unceded territory of the Mi'kmaq, including Nova Scotia, Prince Edward Island, parts of New Brunswick and Quebec, and later the island of Newfoundland, where there is debate for when the Mi'kmaq first came to Newfoundland (Martijn 2003). Mi'kmaw is the singular of Mi'kmaq and can be used as an adjective before a noun (the Mi'kmaw nation) (Acadia University 2017).

Sylliboy needed to stop to rest, but remembering the stories of other Indigenous peoples who froze to death after being abandoned by police, they pressed on. As Hartling explained in an interview with the Canadian Press, “If we stop moving, we’re going to die. If we go and just sit somewhere to rest and fall asleep, we’re dead” (Armstrong 2024). Eventually, they were able to flag down someone driving by on the highway and borrowed a phone to contact a friend who picked them up.

The treatment that Mi’kmaw fishers like Hartling and Sylliboy experienced sheds light on how the Canadian state responds when Indigenous peoples assert their right to self-determination. Across Canada, Indigenous communities have been in direct conflict with the Canadian state when asserting this right to self-determination over their territories. Scholars have termed these actions that assert Indigenous self-determination while simultaneously challenging settler colonial logics and institutions “Indigenous resistance” (Do 2023, 937; Stark et al. 2023). These Indigenous movements for self-determination have come into conflict with Canadian sovereignty and the international system of states.

Historically, Indigenous peoples have participated in many forms of resistance to the authority of the Crown. In these cases, Indigenous resistance to the Crown is generally construed as “criminal,” enabling the state to justify violent responses to Indigenous resistance as legitimate (Stark 2016, 2). While the official policies and practices of criminal enforcement institutions have changed, their colonial logic has persisted into the present (Crosby 2021; Chartrand 2019; Stark 2016; Comack 2012). In contemporary situations of Indigenous resistance to settler colonialism, the Canadian state continues to view most Indigenous resistance as a threat to settler society and responds with criminal enforcement as its primary tool to assert Canadian

sovereignty and remove these competing claims to authority (Pasternak and Ceric 2023; 509; Crosby 2021, 418; Simpson and Le Billon 2021, 111; Crosby and Monaghan 2018).

The criminalization and violence Indigenous peoples experience as a result of their resistance to Canadian authority stands in contrast to international norms related to Indigenous rights and self-determination. This research explores the relationship between shifting international norms and institutions applying a constructivist International Relations theory lens that demands a detailed examination of how shifting international norms affect state institutions. The actions of Hartling, Sylliboy, and many other Indigenous individuals asserting self-determination follow a pattern of Indigenous peoples participating in different forms of resistance to the authority of the Canadian state (Do 2023, 937). This Indigenous resistance against the Canadian state is part of a broader global movement for Indigenous rights that shapes the perceptions of norms related to self-determination.

By focusing on how the state's enforcement response to Indigenous resistance aligns with norms related to Indigenous rights and self-determination, this research examines how these norms impact Canadian institutions and highlight the challenges of translating these international norms into substantive institutional change. This approach bridges gaps between international relations and Indigenous politics, thus providing insight into how norms diffuse and transform institutional practices. The beginning of the chapter introduced Mi'kmaw moderate livelihood fishing as an example of Indigenous resistance that follows a pattern of Indigenous peoples' challenges to the authority of the Crown. The remainder of this chapter will include my positionality, research question, the theoretical and conceptual frameworks, the case selection justification, and a summary of the following chapters of this thesis.

## Research Question

The goal of the project is to explore the influence of the norms articulated in the Truth and Reconciliation Commission on Canadian institutions through a close examination of the Mi'kmaw moderate livelihood fishing conflict in Mi'kma'ki. This thesis examines the relationship between the norms articulated in the Truth and Reconciliation Commission and state responses to Indigenous resistance to analyze potential effects of evolving norms, particularly those related to Indigenous rights, on state institutions, particularly in a settler colonial liberal democracy. This research question is further broken down into subquestions:

1. What were the DFO and RCMP responses to Indigenous resistance during Mi'kmaw moderate livelihood fishing activities?
2. To what extent have the norms articulated in the Truth and Reconciliation Commission related to Indigenous rights and self-determination influenced the enforcement actions of the DFO and RCMP during Mi'kmaw moderate livelihood fishing activities?
  - a. In what ways have the DFO and RCMP acknowledged or integrated the norms from the Truth and Reconciliation Commission into their enforcement policies?
  - b. In what ways have the DFO and RCMP publicly referenced truth and reconciliation in their communications during Mi'kmaw moderate livelihood fishing activities?

In order to answer these questions, the response of the DFO and the RCMP will be examined, through a critical discourse analysis of their public statements, policy documents, recorded actions, and media coverage throughout Mi'kmaw moderate livelihood fishing activities.

This research hypothesizes that norms, identity, and ideas can explain institutional change. Changing norms related to Indigenous rights have the potential to reshape institutional

behaviour even in the face of entrenched colonial logics. Scholarship that has explored the Canadian "politics of recognition" approach to Indigenous-settler relations finds this approach has the objective of rendering Indigenous forms of authority and self-determination consistent with the Canadian state's assertion of sovereignty over Indigenous peoples, with state institutions using the language of reconciliation to ensure Indigenous visions for self-determination do not threaten the desired functioning of the Canadian liberal democratic state (Coulthard 2014, 68; Cornthassel 2012, 94). Furthermore, the literature establishes a consistent pattern of violence and criminalization that Indigenous peoples experience in resistance to the Canadian state which serves as the context that allows Mi'kmaw moderate livelihood fishing activities to represent a least likely test, where the historical role of policing institutions as the primary instrument of colonial violence against Indigenous peoples suggests that the TRC's influence would be least expected in these institutions (Do 2023, 994; Pasternak and Ceric 2023; 509; Crosby 2021, 418; Simpson and Le Billon 2021, 111; Crosby and Monaghan 2018). As a result, this research explores the role that changing norms play in driving institutional change.

Through an examination of public communications, policy documents, and recorded actions this research found a discursive influence on state institutions, which have adopted a discourse of reconciliation in policy rhetoric and consistently reference Indigenous rights as a normative commitment in public communications. However, when it comes to the institutional responses to Indigenous resistance, the DFO's and RCMP's enforcement practices continued an approach of surveillance, policing, criminalization, and violence against Mi'kmaw moderate livelihood fishers. This state response stands in contrast to institutional positions on reconciliation, revealing institutional resistance to the norms related to Indigenous rights and self-determination articulated in the TRC. This discrepancy between institutional positions on

reconciliation and institutional practices has produced a situation where the norms articulated in the TRC have been co-opted and used to shield the DFO and RCMP against criticisms of their handling of Mi'kmaw fishing rights.

Under the guise of advancing Truth and Reconciliation, the policies and practices of the DFO and RCMP have fallen short of providing many Mi'kmaq First Nations' the capacity to exercise their rights in accordance with their own priorities. However, the discursive influence of the TRC on state institutions reveals how norms related to Indigenous rights and self-determination challenge the institutional legitimacy of settler authority. By compelling institutions to legitimize their actions through commitments to norms related to Indigenous rights and self-determination in the context of historically violent and oppressive institutional responses to Indigenous resistance, these norms disrupt the reproduction of settler colonialism. The exposed contradictions between institutional rhetoric and practice hurts the legitimacy of settler colonial institutions and creates openings within these hegemonic power structures that provide avenues for Indigenous communities to occupy the authority lost by the state to further bring about self-determination in a subtle yet revolutionary transformation in global politics.

While this analysis looks at how norms, identity, and ideas drive institutional change, other explanations contribute to the institutional response to Indigenous resistance in the case of Mi'kmaw moderate livelihood fishing. In addition to social pressures associated with changing norms, the surrounding political context shapes the institutional response to Mi'kmaw moderate livelihood fishing. Since the Marshall Decision in 1999, the DFO has been caught in a political dilemma, forced to respond to the powerful political leverage exercised by commercial fishing communities, which hold significant economic and political influence, and the legal directives from mandate letters from the Prime Minister's Office, the TRC, and the Supreme Court's

decisions affirming Indigenous rights. This complicated balancing act is the background context of the relationship between norms and institutional change. Thus, while this research argues that changing norms drives institutional change, it also recognizes that these norms interact with various other factors that can reinforce or counteract their influence. As a result, institutional response to Mi'kmaw moderate livelihood fishing is a product of these intersecting pressures, with changing norms being mediated through political, economic, and social forces.

### **Theoretical Framework**

Decolonial theorists in International Relations (IR) have argued that the field does not reflect the voices, experiences, forms of knowledge production, and contributions of the vast majority of the world (Parasram 2023; Krishna 2018, 19; Chakrabarty 2008). Instead, IR has developed around a particular view of the world—originating in Europe—that tells a story of a world of competing states born from the 1648 Treaties of Westphalia. This construction of the world with territorial-based nation-states as the primary unit of analysis continues to remain the dominant perspective in IR (Parasram 2023, 356; 2014, 56; Taylor 1994). The attachment to state-based sovereignty is situated in Eurocentric ontological assumptions that fail to adequately capture the nuance of Indigenous people's political struggle for self-determination.

Constructivist IR theory, which emphasizes the role of identity, ideas, and norms in shaping international relations, provides a framework for understanding how Indigenous rights movements challenge these state-based understandings of sovereignty. Unlike conventional IR theories that focus more on material power and interests, constructivist IR highlights how ideational factors like norms, beliefs, and identities shape international outcomes. In IR, many constructivist studies have explained relations between states as socially constructed,



emphasizing that ideas and norms matter in international politics (Wendt 1999; Tannenwald 1999; March and Olsen 1998; Adler 1997). Norms are defined as a “standard of appropriate behavior for actors with a given identity” (Finnemore and Sikkink 1998, 891). Constructivist IR helps explain instances where interactions between states can not be easily reduced to the interests of powerful states, as norms can undermine strong states, leading to the preferences of the weak triumphing over stronger states (Finnemore and Sikkink 2001, 298). Although these constructivist frameworks, like the Risse et al. (1999) “spiral model” of human rights change or the Keck and Sikkink (1998) “boomerang model” of transnational advocacy networks, have offered adequate explanations for some aspects of the diffusion of norms related to global Indigenous rights, they struggle to explain the complexity of “collective” Indigenous rights, particularly those related to self-determination and land rights (Lightfoot 2016, 16).

In constructivist IR, institutions are understood as complexes of norms, rules, and practices that prescribe behavioural roles, constrain activity, and shape societal expectations (Keohane 1989, 3). Keohane explains that institutions can help facilitate cooperation among states by reducing transaction costs, providing information, and creating frameworks for repeated interactions. Finnemore and Sikkink emphasize that institutions are not merely passive actors but embody particular values and interests that benefit some actors over others (Finnemore and Sikkink 1998, 892). Institutions can often perpetuate existing power relations as they reinforce systemic inequalities, such as those rooted in racism or colonialism. Institutions matter because they provide the structure where norms are established, enforced, and modified. Norms can shape institutional behaviour and institutions can influence how norms are interpreted, implemented and contested. Norms isolate single standards of behaviour, while institutions are a collection of practices and behavioural rules structured together (Finnemore and Sikkink 1998,

891). For norms to have a lasting impact, an emergent norm must become institutionalized within sets of international rules and organizations. This institutionalization makes them a part of expected behaviour in international relations, allowing these norms to influence how states and other actors engage with each other.

Conventional IR perspectives on Indigenous relations have been criticized for undermining Indigenous political agency (Acharya 2014, 649). Decolonial and Indigenous scholars argue that these constructivist perspectives remain based on Eurocentric ontological assumptions that remove the agency of Indigenous peoples in their experiences of colonialism and confine Indigenous politics to the domestic realm (Beier 2005). Acharya explains that constructivist perspectives often position Indigenous peoples and those in the global south as passive recipients of the diffusion of norms predominantly from the West (Acharya 2014). Decolonial scholars also argue against the view of Indigenous politics as purely domestic (Midzain-Gobin 2023; Parasram 2023; Lightfoot 2016; Gilio-Whitaker 2015; Beier 2005; Manuel 1974). These authors argue that the domestication of Indigenous relations has minimized Indigenous governance systems, flattening Indigenous-state relationships in ways that obscure the complexity of both (Midzain-Gobin 2023, 3). The domestication of Indigenous relations brings about a homogenization of Indigenous peoples that masks the distinctiveness of treaty relationships and ignores applications of authority between different nations, ultimately leaving sovereignty in the hands of settlers (Midzain-Gobin 2023, 3).

Decolonial scholars have long argued for Indigenous peoples to be understood as nations within larger geopolitical realities that are “simultaneously within and beyond the conceptual limits of the state” (Gilio-Whitaker 2015, 866; Sarson 2022, 606). Anishinaabe scholar Sheryl Lightfoot (2016) has built upon these critiques of IR, arguing that norms related to Indigenous

rights represent an overlooked shift in IR that demands “a complete rethinking and reordering of sovereignty, territoriality, liberalism, and human rights” (Lightfoot 2016, i). Lightfoot's analysis examines the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as a transformative framework for Indigenous rights. The UNDRIP represents a global consensus for the minimum international standard of Indigenous peoples' rights and how Indigenous-state relationships should proceed (Lightfoot 2021b, 151). Article 3 of the UNDRIP establishes that Indigenous peoples have the right to self-determination (United Nations 2007, 4).

The Canadian state's support for the UNDRIP, although delayed, has placed pressure on Canadian institutions to abide by these international standards of Indigenous rights. For Lightfoot, the creation of the UNDRIP and Indigenous rights movements are more than just a new set of norms diffusing on the global stage. Instead, they represent a transformation in the structure and the practice of global politics that have marked the beginning of a “subtle revolution” toward new ways of doing global politics and new imaginings of an international political order (Lightfoot 2016, 16). Lightfoot's work represents a critical turning point in IR and Indigenous politics that this research builds upon.

When viewed through the lenses of both IR constructivism and Indigenous politics, norms related to Indigenous rights and self-determination break through the territoriality of nation-based sovereignty, redefining and decoupling self-determination from Westphalian understandings of sovereignty (Lightfoot 2021a, 971). This research builds upon decolonial and Indigenous scholarship to advance an international reading of Canada as a country made up of governing relations between and across multiple sovereign nations. This decolonial and constructivist lens allows for a detailed examination of how these shifting international norms affect the legitimacy of institutions and power structures.

## **Conceptual Framework**

This thesis examines the interaction between norms and institutions by exploring the relationship between the norms related to Indigenous rights articulated in the Truth and Reconciliation Commission and the institutional response to Indigenous resistance in the case of Mi'kmaw moderate livelihood fishing. In order to explore this relationship, this section positions the Truth and Reconciliation Commission as representative of international norms related to Indigenous rights and the DFO and RCMP as institutions within this relationship.

## **The Truth and Reconciliation Commission**

In 2015, with the establishment of the Truth and Reconciliation Commission (TRC) and the election of Prime Minister Justin Trudeau's Liberal Party, there was a clear change in direction in the Canadian popular discourse under the Trudeau government that is not seen in many other settler colonial states (Craft 2023; Robertson 2023, 51; Snelgrove and Wildcat 2023, 163; M'sit No'kmaq et al. 2021, 842; Kuokkanen 2019, 25; Laforest and Dubois 2017; Alfred 2015). Under Prime Minister Trudeau, the reconciliation and rights recognition framework has been a cornerstone of the government's relationship with Indigenous peoples (Lightfoot 2018, 166). The TRC serves as a set of norms intended to transform institutional practices and public attitudes across Canada (TRC 2015, 6-7). Since its release, the TRC's truth-telling and reconciliation process has become a central feature of Canada's response to settler colonialism.

The TRC originated as the result of a legal settlement agreement involving residential school survivors, representatives from the Assembly of First Nations and Inuit communities, the federal government, and the Catholic Church (TRC 2015). The purpose of the TRC report was to

establish the foundation for reconciliation between settlers and Indigenous peoples, highlight the resilience of Indigenous communities, and provide compensation for the past injustices that were endured (TRC 2015). In the TRC, 94 Calls to Action outline goals to help repair the harm of colonialism and show a path forward for reconciliation (TRC 2015). The TRC's Calls to Action are not merely a set of recommendations but represent a larger shift in normative expectations regarding Indigenous rights and self-determination (Lightfoot 2021b, 141). As a result, this reconciliation framework has imposed new obligations and expectations across Canada, which require involvement across all levels of government and federal institutions, including Canada's police forces (TRC 2015).

Reconciliation in the TRC is often presented in the context of "relationships" between Indigenous peoples and settlers (Wyile 2017, 605; TRC 2015, 6). According to the TRC, reconciliation involves four central steps: "awareness of the past," "acknowledgement of the harm that has been inflicted," "atonement for the causes," and "action to change behaviour" (TRC 2015, 6-7). The international norms of Indigenous rights and self-determination are embedded in this framework for establishing respectful relationships between Indigenous and non-Indigenous peoples, as well as in the TRC's calls to action. Particularly, in Calls to Action 43 and 44, the TRC directly links reconciliation to these changing international norms by calling for "federal, provincial, territorial, and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation" and "to develop a national action plan, strategies, and other concrete measures to achieve the goals of the United Nations Declaration on the Rights of Indigenous Peoples" (TRC 2015, 332).

The TRC is unlike any other previous Canadian initiative with its “gravitational-like pull on the Canadian public consciousness and politics” (Snelgrove and Wildcat 2023, 157). Since the release of the TRC, reconciliation has been accepted by Canadians and government officials as a normative ideal and guiding principle (Craft 2023; Robertson 2023, 51; Snelgrove and Wildcat 2023, 163; Sarson 2022, 609; Kuokkanen 2019, 25). In the TRC, the reconciliation process is explained as not just the responsibility of the government or just a one-time event, but instead, as explained in the calls to action, it is “a multi-generational journey that involves all Canadians” (TRC 2015, 209).

Data from national surveys reveal that Canadian residents generally support reconciliation and value it as an important undertaking (Angus Reid Institute 2015; Reconciliation Canada 2017). Scholars explain that in the same fashion, the reconciliation framework has been embraced as a normative ideal by political leaders across the country (Snelgrove and Wildcat 2023, 157, Wyile 2017). For example, Snelgrove explains that in 2019, Amnesty International criticized former Alberta Premier Jason Kenney for promoting resource extraction on Indigenous territory, citing concerns about the potential impact on reconciliation. In response, Kenney did not dismiss reconciliation as insignificant but instead argued that the natural resource projects themselves are a step toward meaningful reconciliation (Snelgrove 2023, 2). The former premier’s framing reveals the acceptance of reconciliation as a normative ideal in political discourse and its institutionalization as a goal in state policy. As a result, it is clear that the reconciliation and the TRC have become central to Canadian politics (Wyile 2017).

The TRC’s extensive work has established Indigenous rights and self-determination as influential norms in the domestic context that affect both public opinion and policy. The widespread recognition of the TRC’s calls to action provides concrete policy recommendations

that embody the norms it seeks to promote, making it a practical guide for institutional behaviour. In this way, the norms related to Indigenous rights and self-determination that have proliferated since the creation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) have been translated into a domestic context (Lightfoot 2021a, 148; 2018, 178; TRC 2015, 21). These changes in norms and obligations produce “sites of political and territorial contestation” in which Canadian and Indigenous governance structures collide (Sarson 2022, 609). Further, Lightfoot (2021b) explains that by linking itself to the UNDRIP, the TRC transformed the meaning of reconciliation, creating a “fundamental inseparability” between the Calls to Action and the UNDRIP (Lightfoot 2021b, 152). This direct link allows for an analysis of how norms related to Indigenous rights and self-determination, as articulated in the TRC, facilitate an exploration of the interactions between norms and institutions.

The TRC defines reconciliation as “establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples” through the process of four central steps: “awareness of the past,” “acknowledgement of the harm that has been inflicted,” “atonement for the causes,” and “action to change behaviour” (TRC 2015, 6-7). The conceptualization of reconciliation emphasizes these four central steps, and so, in order to explore the influence of the norms articulated in the TRC on institutional response to Indigenous resistance, this research will search documents for the influence of the four steps to reconciliation. These four steps can be operationally defined as texts and documents with the following indicators.

The indicators for *awareness of the past* are references to the integration of Indigenous perspectives and knowledge, promotion of cultural respect and understanding, and education and cultural awareness. The indicators for *acknowledgement of harm* are references to efforts to

decolonize policies, practices, and institutional structures, acknowledgments of past harms and injustices and the key words “Settler colonialism,” “colonialism,” and “decolonization.” The indicators for *atonement for causes* are references to the need for reparations, affirmations of the right of Indigenous nations to “self-determination,” “self-government,” or “sovereignty,” and support for Indigenous-led initiatives and Indigenous governance. The indicators for *action to change behaviour* are references to “nation-to-nation relationships,” commitments to respecting treaty relationships, dialogue or collaborative efforts with Indigenous peoples and references to the TRC’s “Calls to Action.” Additionally, references to the words “reconciliation,” “reconcile,” “reconciled,” and “reconciling,” “truth and reconciliation commission,” and “calls to action” will be collected.

These indicators reveal the influence of the norms articulated in the TRC as well as the influence of reconciliation more broadly on the enforcement practices throughout Mi’kmaw moderate livelihood fishing activities. The indicators test how TRC language and commitments are integrated into institutional operations and policies, revealing the ongoing process of the institutionalization of norms related to Indigenous rights. By operationalizing these concepts with these relevant indicators, this research is able to systematically assess how the TRC’s norms have discursively influenced the DFO and RCMP’s responses to Mi’kmaw moderate livelihood fishing activities. This approach ensures that the analysis remains grounded in the TRC’s framework while maintaining a thorough and systematic method for evaluating institutional enforcement practices.



## **Fisheries and Oceans Canada and the Royal Canadian Mounted Police**

Fisheries and Oceans Canada (DFO) and the Royal Canadian Mounted Police (RCMP) are pivotal state institutions responsible for resource management and law enforcement. Their interactions with Indigenous communities, particularly in the context of their responses to Indigenous resistance, make these institutions ideal subjects for examining how state institutions internalize and resist norms related to Indigenous rights and self-determination. This section will provide a brief history of these institutions' interactions with Indigenous peoples emphasizing how the DFO and RCMP make critical sites for examining the relationship between norms and institutions. Employing approximately 30 percent of police officers in the country, the RCMP is Canada's largest police force (Pasternak 2022, 76). This conceptual framework situates settler colonial policing as representing the front line in the exercise of colonial power. Historically, Canadian police services have played a large role in many of the practices of colonization that Indigenous peoples have experienced (Monchalin 2016, 262).

The RCMP has its origins as a British colonial force in Ireland and India. In Ireland, the colonial Royal Ulster Constabulary was not created to "solve crimes," but instead was tasked with suppressing activities that are deemed "potentially disruptive to the communal good" (Bell and Schreiner 2018, 116). This model was exported to Canada and other colonies to be used in international "civilizing" missions (Bell and Schreiner 2018, 117). Dickason explains that former Prime Minister Sir John A Macdonald's was particularly inspired by the British colonial Police force in India, and wanted to replicate the "all-white" police force to enforce Canadian law (Dickason 1992, 281). Compared to regular soldiers, the RCMP was seen as the preferred and cheaper option to enforce colonial rule, and thus, were deployed "as an instrument of war" (Pingeot and Bell 2022, 2479). The key distinction here is the difference between the actions of

military institutions in a temporary state of exception and the actions of policing institutions under normal constitutional rule (Spacek 2017, 168). With the process of colonialism led by state institutions under normal constitutional rule with the goal of nation-building there was no mechanism to end operations and return to a state of normalcy, and as a result the very instruments of colonialism remain firmly in place today.

As a result, Bell and Schreiner (2018) argue that the RCMP should be seen as an international military-like force tied to a civilizing mission which views Indigenous ways of life as threats to the state. In situations where Indigenous leaders and land defenders are cast as “terrorists and criminals,” it is evident that the RCMP is not simply a domestic police force but instead is tied to a larger civilizing mission that views Indigenous ways of life as threats to the state (Bell and Schreiner 2018, 120). In connecting the RCMP’s origins to the creation of a larger global project of a British-led white world order, the RCMP’s interactions with Indigenous peoples clearly become internationally relevant (Bell and Schreiner 2018, 124).

In addition to the RCMP, other legal institutions work together to create a “layered policing” apparatus to enforce Canadian authority across different aspects of society. Maynard explains that the healthcare system, public education system, child welfare agencies, and the Canada Border Services Agency, all exercise police power and use coercive means to enforce social policy (Maynard 2017, 186). The “vast and bureaucratic nature” of these systems has the effect of turning policing practices into “invisible and normalized aspects of modern administrative life” (Kaba and Ritchie 2022, 145; Delgado and Stefancic 2001). The DFO is an example of this “layered policing” or “soft policing” approach where DFO officers have the ability to enforce the law, arrest, detain, fine, and charge suspects just as other policing forces can.

Like the RCMP, the DFO is connected to the settler colonial project of imposing systems of settler law on Indigenous communities. The DFO is responsible for meeting Government of Canada priorities and departmental mandate commitments, which are outlined in the Minister's mandate letter. These priorities include "protecting Canada's 3 oceans and waterways, ensuring they remain healthy for future generations, and providing economic opportunities to Canadians and coastal communities" (DFO Mandate and Role 2021). Additionally, the mandate letter establishes advancing reconciliation as a priority for the DFO.

The RCMP and DFO play central roles in managing conflicts between the state and Indigenous communities. As a result, fishing activities are policed through a combination of both DFO and RCMP policies, practices, and strategies. Understanding why these institutions respond to Indigenous acts of resistance the way they do becomes clearer given the background context on systemic racism in policing, the historical origins of criminalizing Indigenous ways of life, and the continued settler colonial repression of Indigenous self-determination. This background knowledge of the police's historical and continual role as the primary instruments enforcing colonialism is the crucial context that makes police response to Indigenous resistance critical for understanding how changes in norms have contributed to limiting the authority of Canadian sovereignty. This understanding of policing Indigenous peoples as a form of colonial violence through which the legal authority of the state is actively established instead of as merely a matter of law enforcement is central to this research.

### **Case Selection: Mi'kmaw Moderate Livelihood Fishing**

This research examines the case of Mi'kmaw moderate livelihood fishing to explore the relationship between the TRC and institutional enforcement response. The findings from this

case contribute to international relations understandings of how norms influence institutional behaviour in the context of Indigenous resistance. This section will explain how the Canadian public discourse, the historical context of the enforcement activities, and the uncertain legal circumstances surrounding Mi'kmaw fishing activities make this case a critical “least likely” test to explore how norms affect the institutional response to Indigenous resistance.

George and Bennett explain that the case selection process is critical for theory-oriented case study research (George and Bennett 2005, 76). In selecting cases, a researcher may accidentally select cases that support a specific hypothesis, causing the process of selection to determine the differences in outcomes instead of the actual variables under examination (Halperin and Heath 2020, 193; Collier and Mahoney 1996; Teune and Przeworski 1970). To avoid this pitfall, George and Bennett recommend that researchers meet three essential requirements (George and Bennett 2005, 72). First, a researcher must clearly identify the “universe” of which a single case is an instance. Second, researchers must use a well-defined research objective to guide the selection of a single case rather than selecting a case on the basis of data availability. Third, the case study should focus on variables that are significant for the theory being tested.

Mi'kmaw moderate livelihood fishing activities are an example of Indigenous resistance that has provoked a state response. There are many instances of Indigenous resistance that have provoked a state response that researchers have used to examine how reconciliation has affected institutional response (Starblanket 2023; Craft 2023; Simpson 2023; Corntassel 2023; Robertson 2023; Simpson and Le Billon 2021; Bernard 2018). This research project initially considered multiple cases to examine reconciliation's influence on institutional responses to Indigenous resistance. However, the research was narrowed down to the single case of Mi'kmaw moderate

livelihood fishing because the Canadian public discourse, the historical context of the enforcement activities, and the uncertain legal circumstances surrounding Mi'kmaw fishing activities provide an opportunity for in-depth analysis of exactly how reconciliation has influenced Canadian institutions through detailed process tracing.

As previously mentioned, the Canadian public discourse has significantly shifted since the establishment of the TRC in a way that is not seen in many other settler colonial states (Craft 2023; Robertson 2023, 51; Snelgrove and Wildcat 2023, 163; M'sit No'kmaq et al. 2021, 842; Kuokkanen 2019, 25). This shift reflects a broader acceptance and integration of Indigenous rights and self-determination into the national consciousness and policy framework. The changes in norms and expectations that the TRC has produced require active involvement at all levels of government and federal institutions, including Canada's police forces, which have committed to respond to specific Calls to Action from the TRC (H Division Reconciliation Strategy 2021-2024; TRC 2015). With the public acceptance of the TRC, its institutionalization as a goal in state policy, and the "fundamental inseparability" between the TRC's Calls to Action and the UNDRIP, the Canadian state is a case in which the norms related to Indigenous rights and self-determination are highly visible, providing a rich context for analyzing the relationship between norms and institutions (Lightfoot 2021b, 152).

Mi'kmaw moderate livelihood fishing is not just a domestic issue brewing in Canada's Atlantic provinces over the lucrative fishing industry, but a conflict with global implications for the organization of sovereignty along different ontological starting points. Many Indigenous communities have been excluded fishing for a profit from despite a 1999 Canadian Supreme Court decision that affirmed their access to marine resources. Scholars explain that the 1990 *R. v. Sparrow* landmark Supreme Court decision confirmed that section 35 of the Canadian

constitution guaranteed the protection of Indigenous rights, including the right to fish (Francis 2023; Sparrow 1990). Additionally, the 1999 *R v. Marshall* decision further confirmed fishing rights, establishing that Donald Marshall Jr., a Mi'kmaw man, had the treaty right to fish to earn a livelihood (Francis 2023). This decision established that the Peace and Friendship Treaties the Mi'kmaq signed with the Crown in the 18th century gave them a treaty right to fish and sell their catch to earn a “moderate livelihood” for themselves and their families. The Crown has negotiated piecemeal agreements with First Nations across Mi'kma'ki but has yet to engage in broad negotiations related to the implications of the decision or how Mi'kmaw fishers may realize their treaty rights.

In response to this prolonged legal uncertainty, Mi'kmaw fishers have begun self-regulated fishing operations outside of domestic commercial fishing regulations. Stiegman and Pictou (2024) explain these self-regulated fisheries as an attempt to strengthen and assert their food sovereignty through revitalizing ontological situated cultural practices and drawing on the resurgence of the Mi'kmaw law and their treaty rights that were recognized in the 1999 *R. v. Marshall* decision. The Mi'kmaw self-regulated lobster fisheries operate in accordance with their own sovereign rights but outside of the limits of settler sovereignty. For example, the Netukulimk Livelihood Fisheries Policy and Protocol, developed by the Potlotek First Nation band, describes how the Mi'kmaw concept of Netukulimk is used as a guide for conservation outside of the neoliberal fishing industry and settler colonial resource management regime (Potlotek First Nation 2020; Stiegman and Pictou 2024, 3). These self-regulated Mi'kmaw fishing activities are not just civil disobedience but are examples of Indigenous peoples enacting their right to self-determination while challenging settler colonial hegemonic logics and

institutions by fishing in pursuit of a moderate livelihood outside of the rules prescribed by the Canadian state (Parasram 2023, 356).

Mi'kmaw fishing activities seeking a 'moderate livelihood' that appeal to Mi'kmaw sources of authority to fish instead of DFO authorization fit the definition of Indigenous resistance. Scholars explain that by challenging the assumption of Canadian sovereignty, the Sipekne'katik First Nation's opening up of a self-regulated lobster fishery and Mi'kmaw fishers like Hartling and Sylliboy's elver fishing outside of the rules prescribed by the Canadian state, are examples of Indigenous resistance (Stiegman and Pictou 2024; Parasram 2023; Francis 2023; Do 2023; Sarson 2022; Anguila-way et al. 2020). Through a regeneration of their own sovereign laws, the Mi'kmaq appealed back to fishing as a traditional way of life that has been a prominent feature of Mi'kmaw culture (Elegbede et al. 2023, 902). The self-regulated fishers assert Indigenous governance and self-determination using band-level jurisdiction and regulations instead of Canadian institutions. These actions challenge settler colonial commercial fishing logics and turn away from Canadian institutions (Stiegman and Pictou 2024, 8).

In response to Mi'kmaw fishing activities, the DFO and RCMP have increased enforcement against Indigenous fishers, including increased surveillance, confiscation of fishing equipment, and criminalization (Francis 2023, 31). Rather than addressing the dispute with consideration for the Mi'kmaq as self-determining peoples, the Canadian government defaulted to colonial practices, using policing as a form of colonial violence to subsume Mi'kmaw sovereignty under its authority (Parasram 2023, 364). The Canadian state's preference for using criminal enforcement in response to nonviolent Indigenous resistance reveals the continuation of settler colonial logics when Indigenous peoples contest Canadian sovereignty (Do 2023, 944).

Canadian state institutions frame Indigenous peoples as criminals and threats to national security to discredit Indigenous peoples' resistance to settler colonial logics (Gobby and Everett 2022). When RCMP officers are deployed, their physical presence on Indigenous territory serves as a physical reminder of the "fact of Canadian sovereignty" (Bell and Schreiner 2018, 123). Agencies like the RCMP and Canadian Security Intelligence Service have categorized some Indigenous resistance as "Aboriginal extremism" threatening national security using criminal enforcement and constant surveillance (Crosby and Monaghan 2012, 433). The violent and oppressive tactics used in response to Indigenous resistance follow this historic pattern of violence used against Indigenous peoples in order to reinforce settler colonial authority (Simpson and Le Billon 2021, 111; Stelkia 2020). This institutional enforcement approach should not be understood as simply administering the law, but instead as a "productive form of violence through which the legal authority of the state is actively established" (Simpson and Le Billon 2021, 111).

On the day of the opening of the Sipekne'katik First Nation's self-regulated lobster fishery in fall 2020, Mi'kmaw fishers were faced with violent racism as mobs threatened Mi'kmaw fishers, vandalizing fishing gear, destroying fishing infrastructure, and attacking Indigenous community members (Francis 2023, 6). This attack by a settler mob marks the height of the conflict and is a central focus of this research, but the conflict has continued since then, with many Mi'kmaw fishers continuing to be targeted and criminalized for exercising their fishing rights (Googoo September 25, 2023). This understanding of settler colonial policing further establishes the importance of the RCMP as a test of the potential effect of the changing norms articulated in the TRC on state institutions. The violence and criminalization that Mi'kmaw fishers face when exercising their treaty rights in resistance to the Canadian states is



the context that allows Mi'kmaw moderate livelihood fishing activities to serve as a least likely test, where the historical role of policing institutions as the primary instrument of colonial violence and coercion against Indigenous peoples suggests that the TRC's influence would be least expected in these institutions.

In addition to the historical role of policing institutions' enforcement response to Indigenous resistance, the legal uncertainty surrounding Mi'kmaw fishing activities makes the role of norms fundamental in guiding enforcement actions in this context. Legal scholars have explained that state attempts to regulate the Mi'kmaw moderate livelihood fisheries rest on shaky legal grounds (Metallic and MacIntosh 2020). The absence of clear legal rules, the discretionary power of enforcement officers, and judicial outcomes favouring Mi'kmaw fishers make it essential to scrutinize the normative frameworks that influence institutional enforcement practices.

The legality of Mi'kmaw moderate livelihood fishing is a highly contested subject. The Supreme Court of Canada has established that when enforcing regulations on Indigenous rights that infringe on treaty rights, including Mi'kmaw fishing rights, the Crown must pass the “Badger test,” undertake meaningful consultation with Indigenous peoples, and consider compensation for the infringement of rights (Canada Parliament 2022, 19).<sup>2</sup> In addition to these constitutional obligations, the DFO and RCMP do not have established departmental regulations to deal with Mi'kmaw fishing activities.<sup>3</sup> With the absence of explicit legal rules and no

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<sup>2</sup> R. v. Marshall, 1999 CanLII 665 (SCC), [1999] 3 SCR 456, para 7; R. v. Badger, 1996 CanLII 236 (SCC), [1996] 1 S.C.R. 771. The Badger tests asks: 1. Is there a valid legislative objective? 2. Does the legislation or action justify the infringement? And 3. Is the proposed solution the one that infringes the least on treaty rights?

<sup>3</sup> Tennant writes that in a 2018 court hearing, DFO officers testified under oath that “There’s no regulation to deal with moderate livelihood right now” (Tennant 2021). Further, former DFO minister Bernadette Jordan explains that the enforcement decisions come down to individual officer discretion, “I don't tell the fisheries officers how to do their jobs ... that will be up to the fisheries officers to determine what the best approach is” (CBC Radio March 9, 2021).

departmental regulations, the DFO and RCMP's enforcement practices are guided by individual and institutional norms, biases, and expectations.

The legal uncertainty surrounding the Mi'kmaw moderate livelihood fisheries has not stopped the DFO and RCMP institutional enforcement practices (Metallic and MacIntosh 2020). Mi'kmaw fishers exercising their fishing rights outside of DFO authorization continue to face criminal enforcement (Googoo September 25, 2023). DFO and RCMP officers can arrest and charge Indigenous fishers operating outside government regulations, seizing anything they suspect was used to commit a fisheries offence, tying up Mi'kmaw fishers in expensive court cases that can take longer than five years to resolve (Googoo September 25, 2023). More than 50 Mi'kmaw fishers have faced the courts with criminal charges for their moderate livelihood fishing activities.<sup>4</sup> However, the charges against Mi'kmaw fishers who are arrested often do not stick in court, as the Crown continually struggles to prove that Mi'kmaw fishers are violating the law. With the legal validity of police enforcement of Canadian fishing laws being disputed, many anticipate that one of these cases is bound to reach the Supreme Court of Canada. Nevertheless, the disputed legal status of the federal government's regulations of Mi'kmaw fishing activities makes institutional enforcement particularly significant.

Without a reliable legal basis to stand on, the policing of Mi'kmaw fishers partly depends on public perceptions and a shared belief in the legal validity of their conduct. The degree to which police and media communications feel required to appeal to reconciliation as a normative ideal in supporting police actions reveals how these norms constrain the scope of legitimate

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<sup>4</sup> In the 2023 Mi'kmaw journalist Maureen Googoo examined provincial court records and found 54 Mi'kmaq fish harvesters from Nova Scotia and New Brunswick before the courts for their acts of resistance (Googoo September 25, 2023). The Department of Fisheries and Oceans Canada released a statement confirming this list was accurate and added that over 1,000 lobster traps have been seized in Nova Scotia in 2023 (MacDonald 2023).

police conduct. Therefore, analysis of how institutional communications justify their enforcement practices related to Mi'kmaw resistance reveals how the norms embodied in the TRC are contesting settler colonial state legitimacy.

In this way, Mi'kmaw moderate livelihood fishing serves as a critical case study where the Canadian public discourse makes the norms related to Indigenous rights and self-determination highly visible. The historical role of policing institutions in oppressing Indigenous peoples suggests that the TRC's influence would be least expected in this context, and the legal uncertainty surrounding Mi'kmaw fishing rights activities makes the influence of norms highly relevant for the legitimacy of institutional enforcement practices. As a result, this case is particularly suited for this test as a high-stakes conflict where the success or failure of reconciliation initiatives would be evident.

As this thesis will demonstrate, findings from this least likely case study that illustrate a significant influence on institutional response indicate a substantial shift in institutional behaviour and suggest that the TRC has a broader impact on Canadian institutions. This analysis of the relationship between norms and institutions serves as a theoretically rich case study that contributes to international relations understandings of how norms influence institutional behaviour in the context of Indigenous resistance and the extent of the effects of these changing norms on the authority and legitimacy of the Canadian state.

### **Positionality**

I am a white settler Canadian who has lived predominantly on the traditional territory of the Anishinaabe people. Specifically, the Odawa, Ojibwe, and Potawatomi Nations which make up the Three Fires Confederacy, as well as the Wendat and the Haudenosaunee Nations who also

established ties to the land now known as Barrie, Ontario. My academic interests in political science have brought me to Mi'kma'ki where I completed the majority of this research as a scholar at Dalhousie University. As a settler, I have the privilege of learning about the ongoing colonial oppression faced by the Mi'kmaq from the safety of a classroom rather than in direct experiences. This research is partly the accumulation of my education experience that has been spent learning about Indigenous-settler relations, hearing land acknowledgements and statements of reconciliation, and grappling with my own complicity in a system that maintains the oppression of Indigenous peoples. My hope in this project is to challenge the predominant settler narratives of reconciliation, hoping to bring attention to how settlers have held up their end of the reconciliation relationship, and aiming to push us closer toward the respectful relationships that the Truth and Reconciliation Commission called for.

Throughout this research process I have wondered about reconciliation. What does reconciliation mean to me? This question is something that many different scholars, politicians, individuals have debated. To me reconciliation in mainstream discourse has been stretched far from what real reconciliation would entail. Reconciliation in the TRC had many positives and negatives, but the flaws in the TRC are nothing compared to the way in which reconciliation has been employed in Canadian institutions. Throughout my research process, I have seen different affirmations of reconciliation, reconciliation goals, reconciliation policies from the very institutions that lead the colonial oppression of Indigenous peoples. In Mi'kma'ki the DFO and the RCMP are the leading institutions employing heightened surveillance, policing, criminalization, and violence against Indigenous peoples all in accordance with their goals of truth and reconciliation. This discrepancy has been identified by many others and has become a focus in this thesis.

Throughout my research, I am continuously reminded of the devastating consequences that privileging Eurocentric ways of knowing in academia has for Indigenous peoples. Conservation concerns dominate the discourse surrounding Mi'kmaw fishing activities, with academics, scientists, commercial fishers, conservation officers, and Mi'kmaw fishers and resource managers all offering interpretations of the sustainability of fisheries. As this research will later demonstrate, Eurocentric understandings of sustainability and conservation have been directly leveraged by Canadian institutions in order to justify their policy objective of keeping Mi'kmaw moderate livelihood fishing under the commercial fishing regulations. In this way, Eurocentric forms of knowledge continue to be privileged.

As a non-Indigenous settler studying at a Canadian institution, I have inherited this legacy. Alfred (2015) explains that no one can escape this reality. Guha (2003) argues that the Eurocentric education we receive from the state has “warped our minds,” creating a narrow concept of freedom that is constrained by Western understandings of knowledge (Guha 2003, 45). Means (1980) explains how this process has served “to abstract the European mentality,” replacing the complexity of the universe with a “logical sequence” (Means 1980). For Means, by destroying and invalidating other forms of knowledge, the production of knowledge has been transformed into a “process of cultural genocide” that continues to be waged against Indigenous peoples (Means 1980).

Transformation is at the heart of Indigenous resurgence and that a large problem with much of academia is the way that these individuals teach or have ideas, but do not live them. This behaviour where someone can think and do all their work in their head, but nothing outside the academic realm is central to the constitution of these oppressive structures. Without transformative change that looks to dismantle the oppressive structures of settler colonialism,

rather than to rework them, reconciliation will forever reproduce colonial power relations that continue to harm Indigenous peoples.

## **Chapter Summary**

This chapter has introduced my theoretical and conceptual frameworks, the Mi'kmaw moderate livelihood fishing case, and the research questions. The following chapters will explore the case of Mi'kmaw moderate livelihood fishing in detail to illustrate how norms related to Indigenous rights and self-determination influence state institutions. These chapters will show how state institutions continue practices that reproduce settler colonial power and undermine Indigenous rights and self-determination. However, by compelling these institutions to justify their actions in alignment with the norms articulated in the TRC, these norms disrupt the ongoing reproduction of settler colonialism. This disruption creates openings within hegemonic power structures, providing opportunities for Indigenous communities to reclaim authority and advance their rights.

Chapter two provides a comprehensive literature review examining key scholarship in international relations, decolonial politics, Indigenous-settler relations, and Indigenous political theory. This chapter explores existing frameworks on norms, authority, and legitimacy in international relations, highlighting that while IR has provided valuable insights, it often fails to address the unique aspects of Indigenous rights and their challenge to state sovereignty. However, recent scholarship in global Indigenous politics marks a critical turning point in IR, offering new perspectives that this research aims to build on. Additionally, this chapter reviews scholarship on Indigenous resurgence and studies of Indigenous resistance and state response, positioning this thesis within this evolving body of work.

Chapter three details the methodology and research design used in this research. This section explains how a critical discourse analysis of DFO and RCMP public statements, policy documents, recorded actions, and media coverage allowed the norms from the TRC to be analyzed in terms of how they are interpreted, adopted, or ignored in DFO and RCMP response to Mi'kmaw fishing activities.

Chapter four provides a review of the relevant background context of the Mi'kmaq in Nova Scotia. The central purpose of this chapter is to provide context for the key events leading up to the beginning of the resurgence of Mi'kmaw moderate livelihood fishing related conflict beginning in 2017.

Chapter five provides the findings of the research that was conducted. The public statements, policy documents, recorded actions, and media coverage of the DFO and RCMP's response to the events that make up Mi'kmaw moderate livelihood fishing activities are described in this chapter. This empirical data explains how the DFO and RCMP have adopted the norms articulated in the TRC as a framework to provide legitimacy to their positions when addressing Indigenous-settler relations. This chapter aims to contrast the rhetorical commitments to reconciliation in public statements and the reconciliation-based policies in DFO and RCMP policy with the actual institutional response to Mi'kmaw moderate livelihood fishing activities.

Chapter six discusses the research findings and focuses on answering the previously asked research question and the sub-questions. This section explains the implications of the significant gap between discursive commitments and actual practices in response to Indigenous resistance. Chapter six includes the conclusion, which explains how the institutional acceptance and adoption of the TRC show how reconciliation and settler colonial violence are not contradictory but mutually reinforcing colonial logics. Additionally, this chapter concludes that

the surface-level influence of the norms related to Indigenous rights and self-determination still has the power to disrupt hegemonic assumptions of authority and push the boundaries between the international and domestic realms of international relations.



## Chapter 2: Literature Review

For a colonized people the most essential value, because the most concrete, is first and foremost the land: the land which will bring them bread and, above all, dignity.

— Frantz Fanon (Fanon 1963, 43)

### Introduction

Across Canada and throughout the world, Indigenous peoples continue to assert themselves as self-determining authorities on their territories. The Mi'kmaw struggle for self-determination is part of a broader global movement for Indigenous rights and sovereignty. However, Indigenous claims to sovereignty on their territories have come into conflict with the international sovereign state system. Previous situations of Indigenous resistance have often resulted in the Canadian state asserting its authority with violence and lethal force, like in the Kanesatake Resistance in 1990 or the Gustafsen Lake standoff in 1995 (Lambertus 2004; Alfred 1995). More recent situations where Indigenous resistance contests settler sovereignty the Canadian state's response has significantly varied from conflict to compromise (Sarson 2022, 602). International relations scholars have aimed to explain conflicts of sovereignty through conversations on norms, authority, and legitimacy. This literature review aims to connect these conversations in international relations to the growing scholarship in Indigenous political theory and Indigenous-settler relations that situate settler colonial policing in the context of ongoing colonial international relations.

This chapter will first review frameworks on norms in IR, highlighting that while IR has provided valuable insights, it often fails to address the unique aspects of Indigenous rights and their challenge to state authority. This review examines recent scholarship in constructivist IR theory that marks a critical turning point in IR that offers new perspectives that this research builds upon. The second part of this chapter explores theories of authority and legitimacy in IR. This section examines scholarship that explains how a shared belief in the legitimacy of settler

colonial authority is required for its survival and that the loss of this legitimacy creates opportunities for Indigenous communities to transform settler colonial power dynamics. Third, this review explores the literature on Indigenous resurgence. Understanding Indigenous resurgence is essential as it represents an alternative to state-driven reconciliation efforts and explains how Indigenous peoples' resistance can disrupt hegemonic assumptions of settler authority. The final section reviews Indigenous resistance and enforcement to offer insights into how Canadian legitimacy is being contested and challenged by Indigenous assertions of authority. This section establishes how scholars have examined how Indigenous resistance and changing norms work hand in hand to forge new pathways toward Indigenous self-determination.

This scholarship on Indigenous political theory and Indigenous-settler relations discusses how Indigenous assertions of self-determination in resistance to the Canadian state have been a strategy that Indigenous communities have practiced. Understanding this context is crucial as this research aims to connect Indigenous resistance literature with the scholarship from IR for deeper insight into how norms related to Indigenous rights and self-determination are shaping a transformative shift away from the current structure of international politics.

## **Norms Matter**

Constructivist IR scholars argue that relations between states are socially constructed with ideas and norms playing key roles in shaping international politics. Different scholars have argued that norms influence state behaviour (Klotz 1995; Katzenstein 1996), norms explain state actions that go against rational behaviour (Adler 1997; Kratochwil 1989; Katzenstein 1996; March and Olsen 1998), norms explain situations where states decide against benefit

maximization (Risse 2003; Rues-Smit 1997), and that state identities and interests are shaped by social interactions and shared ideas (Wendt 1999). When governments are uncertain in how to respond to a situation, following international norms is understood as a best practice that provides ready-made solutions (Wiebelhaus-Brahm 2020, 2).

Constructivist IR has provided frameworks for understanding norm emergence and diffusion. Finnemore and Sikkink's (1998) widely cited Norm-Life-Cycle model, explains that norms follow a linear progression, beginning with their introduction by norm entrepreneurs. Norm entrepreneurs frame, articulate, and facilitate the spread of these ideas. Finnemore and Sikkink explain that the efforts of norm entrepreneurs to change existing norms and rules depend on the degree to which they become embodied within social institutions in a three-stage process of norm diffusion, beginning with "norm emergence," then "norm cascade," and finally "internalization" (Finnemore and Sikkink 1998, 895). The first two stages are divided by a "tipping point" where a significant number of relevant state actors have adopted the new norm (Finnemore and Sikkink 1998, 895).

As societal attitudes shift, norms gradually infiltrate peoples' consciousness. The new norms begin to become internalized and institutionalized, causing pressure for conformity, the logic of appropriateness, and the desire for legitimacy, all to constrain the scope of legitimate state actions (Finnemore and Sikkink 1998, 892). For norms to be internalized, they require a level of congruence with a community's common sense political discourse (Finnemore and Sikkink 2001, 407). Scholars explain that the shift in norms and societal attitudes has contributed to recent success in resistance against extractivist industries (Sarson 2022, 609). For instance, Alton Gas's recent cancellation of a brine discharge pipeline project in Sipekne'katik First Nation after Indigenous peoples' acts of resistance (Waldron 2022, 13).

Despite these frameworks, there are significant gaps in IR scholarship regarding the unique aspects of Indigenous rights and their challenge to state sovereignty. Lightfoot's (2016) *Global Indigenous politics* is a critical turning point in international relations scholarship that this research builds upon. Lightfoot argues that norms related to Indigenous rights are more than just a new set of norms diffusing across the world, but are part of a transformation of the very structure of global politics (Lightfoot 2016, 16). Lightfoot explains two central problems with IR scholarship regarding norms related to Indigenous rights and self-determination. First, the literature on norms explains that norms diffuse from state to state. This is a problem because there is currently no state in which Indigenous collective land rights and self-determination exist to influence other states. Second, across all Western powers, the treatment of Indigenous peoples is just as oppressive as it is in any other state and, therefore, does not follow the spread of global human rights that Risse et al. (1999) describe (Lightfoot 2016, 16).

As a result of these problems, Lightfoot proposes a “transformational norm vector” that explains the unique aspects of Indigenous rights and their challenge to state sovereignty (Lightfoot 2016, 17). The transformative shift Lightfoot describes involves transitioning from the “state-centric norm space” to a potential future world order that does not revolve around or rely on state structures. Lightfoot explains that Indigenous peoples’ assertions of self-determination—without asserting statehood—challenge the territoriality of nation-based sovereignty. The full implementation of Indigenous rights and self-determination, as articulated in the UNDRIP, necessitates a redefinition of Westphalian understandings of sovereignty (Lightfoot 2021, 971). As Indigenous rights and self-determination gain traction on a global scale, they open up new ways of doing global politics and reconfigure the international political system (Lightfoot 2016, 16).

Lightfoot's work (2012; 2016; 2021a) explores how states engage in often contradictory practices in order to avoid committing to or implementing Indigenous rights. Lightfoot argues that revealing these contradictory behaviours provides evidence for the degree of fundamental change that global Indigenous politics requires. This research builds on Lightfoot's scholarship in exploring the relationship between the norms articulated in the Truth and Reconciliation Commission and state responses to Indigenous resistance. This relationship has potential implications for understanding the unique aspects of Indigenous peoples' challenges to state sovereignty and how norms related to Indigenous rights and self-determination are shaping a transformative shift away from the state-centric norm space norm across the globe.

### **Authority and Legitimacy**

International relations scholars have understood authority, legitimacy, and norms as central concepts to the dynamics of state behaviour, interactions between states, and the functioning of the international system as a whole. These concepts are usually confined to the analysis of nation-based states, but recently, scholars have applied international relations theories to Indigenous politics. This extension offers new insights into the dynamics of state behaviour and the functioning of the international system.

In conceptualizing the effects of norms on state structures and agents, international relations theories explain that compliance with a rule or norm comes down to coercion, self-interest, or legitimacy (Hurd 1999, 379). Legitimacy or a belief that the rule or norm is legitimate can cause someone to obey a rule when coercion or self-interest are absent (Tyler 2006). International relations scholars explain that the ability to create and enforce laws, make decisions, and maintain order falls to the sovereign state system with authority invested in nation

based territorial states (Agnew 1994). Weber explains that the state is a political association that successfully claims a monopoly on the legitimate use of violence within a geographical territory (Weber 1978). This legal-rational based authority requires a belief in the legitimacy of the state to make rules and its authority to enforce these rules. Hurd defines legitimacy, as “the normative belief by an actor that a rule or institution ought to be obeyed” (Hurd 1999, 381). This shared belief in the legitimacy of an institution is what gives it an apparent independent existence, thus, when this shared belief is in doubt, the institution loses its authority (Hurd 1999, 381). Like any other institution, police depend on legitimacy to function effectively. Thus, public perception and a shared belief in the legal validity of their conduct is essential to maintaining this legitimacy (Bonner and Dammert 2022, 630; Herbert 2006, 482).

In liberal democracies like Canada, the legitimacy of state authority is closely tied to the state’s responsiveness to societal expectations (Risse et al. 1999). Thus, when societal attitudes shift, there are corresponding pressures on the state to adjust its policies and practices. As societal attitudes shift, Finnemore and Sikkink (1998) theorize that norms gradually infiltrate one’s consciousness. These new norms become internalized and institutionalized, causing pressures to constrain the scope of legitimate state actions (Finnemore and Sikkink 1998, 892).

As previously mentioned, the TRC released its final report and 94 Calls to Action in 2015. The norms articulated in the TRC have become central to Canadian politics (Wylie 2017). Consequently, the TRC has imposed new obligations and expectations on Canadians—particularly the 94 Calls to Action, which require involvement across all Canadian institutions (TRC 2015). Canadian institutions have responded with public commitments to align their policies and practices with the TRC’s calls to action (Lightfoot 2018, 166; Wylie 2017, 606). The TRC has functioned as a framework through which institutional discourse related to

Indigenous peoples is filtered (James 2022, 43). The expectations outlined in the TRC have seen widespread acknowledgement and efforts to embed these in policy across Canadian institutions. These changing norms have contributed to opportunities for Indigenous peoples to exercise greater self-determination. The extent of the effects of changing norms on the authority and legitimacy of the Canadian state can be explored through an analysis of Indigenous resistance and state response.

### **Indigenous Resurgence**

Many scholars argue that the Canadian state has been limited to embracing the discursive symbolism of reconciliation instead of material change relating to land and self-determination (see selective endorsement Lightfoot 2012; de Costa 2017). Lightfoot explains that when it comes to the impact of reconciliation, there is a tension between the hard and soft rights, or as Corntassel and Holder characterize it, discursive versus material rights (2008). Discursive change and material change work hand in hand pushing states toward new ways of doing global politics in a new international political order (Lightfoot 2016, 4). The hesitancy to enact material change has encouraged Indigenous peoples to assert their autonomy over the state by calling back to their own traditional cultures, practices, and authorities in an approach that Indigenous scholars have described as a ‘resurgence’ (Coulthard 2014; Corntassel, 2012; Simpson 2011; Alfred 2005). The Canadian state’s response to this strategy highlights sites of contested sovereignty that show how changing international norms challenge the legitimacy of the settler colonial liberal democratic state.

Indigenous resurgence scholars question the effectiveness of working within the Canadian system and instead advocate for alternative methods to achieve the material change

that reconciliation frameworks have not provided (Von der Porten 2019; Coulthard 2014; Corntassel, 2012; Tuck and Yang 2012; Simpson 2011; Alfred 2005; 1999). First articulated by Kanien'kehá:ka scholar Taiaiake Alfred (2005), resurgence comes as a response to the recognition framework advanced by the Canadian government. Alfred explains recognition politics is the liberal conception driving Indigenous rights, land claims, reconciliation and other initiatives. Coulthard explains the politics of recognition as “the now expansive base of recognition-based models of liberal pluralism that seek to ‘reconcile’ Indigenous assertions of nationhood with settler state sovereignty via the accommodation of Indigenous identity claims in some form of renewed legal and political relationship with the Canadian state” (Coulthard 2014, 3).

Coulthard specifically argues against the possibility of decolonization through any settler-led frameworks (Coulthard 2014, 29). Coulthard explains that in these arrangements, the terms of recognition are usually determined by and in the interests of the ‘master’ (Coulthard 2007, 439). Such a system is only able to offer Indigenous peoples “white liberty and white justice” (Coulthard 2014, 39). Instead, Coulthard argues that Indigenous peoples should seek a form of “resurgence” through a regeneration and appeal back to traditional Indigenous knowledge, norms, and values (Coulthard 2014, 154–155). Plains Cree/Denesų́liné scholar Martineau’s definition of Indigenous resurgence describes resurgence as “renewal and re-emergence of vibrant Indigenous nations, societies, and Individuals in contention with colonialism, but not defined by it” (Martineau 2014, 1). Von der Porten et al. add a focus on “regeneration, expression, and reinvigoration of autonomous governance, nationhood, and cultural, political and spiritual practices” (Von der Porten et al. 2019, 62). Alfred explains that regeneration will occur when Indigenous peoples “self-consciously recreate our cultural practices and reform our



political identities by drawing on tradition in a thoughtful process of reconstruction” (Alfred 2005, 34).

These Indigenous scholars have taken issue with recognition-based models to achieve self-determination. Alfred claims that reconciliation puts the focus on cultural revitalization and healing instead of dispossession which is the root of the problem (Alfred 2005, 278). Alfred explains that reconciliation has been focused on the guilt that settlers feel rather than the damage that they have done. By centering processes like the suffering of residential schools, Alfred explains that the Canadian government can artificially “turn a page” to a “post-colonial” era, where the horrible actions done within residential schools belong firmly in the past.

Simpson’s argument describes the limitations of reconciliation as limited to only political awareness and symbolic gestures, highlighting the need for substantial changes (Simpson 2017, 192). Simpson explains that the TRC worked to neutralize Indigenous anger without addressing substantive issues like the return of land.<sup>5</sup> Similarly, Coulthard argues that the underlying motivation for reconciliation is to “extinguish” the broad and undefined rights and title claims of Indigenous peoples in order to implement a limited set of rights and benefits that will ensure a continued colonial status quo (Coulthard 2014, 66). Coulthard describes the TRC as part of a larger project of colonial distractions that focus on healing and overcoming the past in an attempt to normalize the settler colonial present. Coulthard’s understanding of the politics of recognition provides a framework for understanding the limitations of state-led reconciliation efforts and offers an alternative to state-driven methods to achieve self-determination.

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<sup>5</sup> While the Indigenous resurgence scholars do raise critical issues about reconciliation, the TRC is aware of the resurgence perspective and directly addresses it within the final report, “To some people, reconciliation is the re-establishment of a conciliatory state. However, this is a state that many Aboriginal people assert never has existed between Aboriginal and non-Aboriginal people” (TRC 2015, 6).

This literature emphasizes the limitations of state-led reconciliation efforts and the importance of Indigenous-led pathways to self-determination. Further supporting the resurgence school perspective, George (2017) explains that what the state has called ‘reconciliation’ is actually an unambiguous inclusion in the capitalist and liberal structure of Canadian society, drawing Indigenous peoples further into the colonial system (George 2017, 50). These scholars of the resurgence school explain that recognition frameworks do not work, as Canadian settler sovereignty is only possible through the elimination of Indigenous claims to authority. According to Wolfe’s “logic of elimination” (Wolfe 2006, 387), the Canadian state requires specific violence and dispossession upon Indigenous peoples in order to make way for Canadian sovereignty, and because colonialism is a “structure, not an event” (Wolfe 1999, 2), with settlers coming to stay, the violence and dispossession occurs not just in the founding moments of the Canadian state, but is “continually re-enacted to maintain the legitimacy of settler sovereignty” (Wolfe 1999, 163; Midzain-Gobin 2019, 19). This process is done through the twin strategies of assimilation and elimination. By highlighting how colonialism operates as a continuous structure, Indigenous resurgence literature provides a theoretical foundation for understanding the reproduction of settler colonial authority.

Assimilation involves policies that are geared toward the recognition of Indigenous land and political grievances to give the impression that things are getting better in order to extinguish more material challenges to the assumptions of prevailing settler sovereignty (Lightfoot 2012, 103; Coulthard 2014, 6). Elimination takes the form of the physical destruction and dispossession of Indigenous people. Scholars of the recognition school explain that the politics of recognition have often been portrayed as a departure from earlier periods of more obvious and physical forms of colonial violence. However, as Coulthard explains, the end goal of assimilation

remains the same, “Under such conditions, colonial domination appears ‘more subtle, less bloody’” (Coulthard 2014, 113, quoting Fanon 2004, 27). This literature on Indigenous resurgence helps explain why state institutions, even when adopting reconciliation rhetoric, continue to enact policies that reproduce settler colonial power dynamics.

### **Indigenous Resistance and Enforcement**

Before exploring how these changing norms contest and challenge Canadian sovereignty it is necessary to review research surrounding Indigenous resistance and police response. These scholars explain that Indigenous assertions of self-determination in resistance to the Canadian state has been a significant strategy that Indigenous communities have practiced. Understanding this context is crucial as this Indigenous resistance literature can be connected to scholarship on IR norms for a deeper understanding how Indigenous peoples are redefining and decoupling self-determination from Westphalian understandings of sovereignty.

Indigenous acts of resistance can be smaller everyday actions that unsettle prevailing colonial logics or larger organized activities involving land defence and governance practices that directly disrupt colonial authority (Coulthard 2014, 154-155; Simpson 2011; Alfred 2005; 1999). Do (2023) describes Indigenous resistance as actions that, large or small, “assert Indigenous ways of life, governance and self-determination while challenging settler colonial hegemonic logics and institutions” (Do 2023, 937). Indigenous resistance to the imposition of settler legal systems challenges the foundations of state sovereignty by asserting their own legal and political systems in place of settler-defined ones. This is the concept of refusal described by Simpson (2014), where Indigenous peoples actively reject state authority and turn away from

settler colonial structures, instead opting out of the institutions that maintain their impoverishment.

Notably recent examples include the Idle No More protest movements and the Wet'suwet'en land defenders challenging the Coastal GasLink pipeline. However, Wilkes (2004) explains that Indigenous resistance has been increasing in frequency since the 1990s with a variety of actions that aim to assert self-governing powers and strengthen Indigenous authority (Wilkes 2004, 450). The literature reveals that the most often used tactics are demonstrations, marches, blockades, occupying territory, and other similar actions that challenge settler logics and institutions in order to strengthen Indigenous authority (Do 2023, 397; Wilkes 2004, 487).

Many studies have examined police enforcement of Indigenous peoples from a sociology/criminology understanding, putting Indigenous issues in domestic context surrounding questions on systemic racism in policing (Rudin 2005; Comack 2012; Ruddell and Jones 2017; Alberton et al. 2019; David and Mitchell 2021), legal institutions (Friedland 2016; Hebert 2017; Roach and Rudin 2020), and incarceration (Chartrand 2019; Zinger 2023). Other scholars have placed the Canadian criminal justice system in the context of the historical subjugation of Indigenous peoples (Stelkia 2020; Monchalin 2016; Stark 2016). These scholars explain that historically, Indigenous peoples predominantly faced oppression from Canadian state institutions rather than from the Canadian military (Chartrand 2019). Expanding on the connections between the creation of the Canadian legal system and colonialism, a growing number of scholars have situated settler colonial policing in the context of ongoing colonial international relations (Pingeot and Bell 2022; Axster et al. 2021).

Settler colonial policing continues to be inseparably connected to the control and management of perceived threats to the liberal political economy and the order of modern state

power. These systems of control have historical roots in the myth of Indigenous peoples as “lawless” and the need to correct this alleged lawlessness by imposing settler legal systems that define Indigenous identity, regulate Indigenous behaviour, confine and contain Indigenous peoples in certain spaces, and incorporate Indigenous peoples into a system of law and order (Friedland 2016, 276; Simpson 2008, 215). This historical context has lasting implications as Crosby (2021) argues that Indigenous assertions of sovereignty are still being inserted into a domestic criminal context, leading to continuous and heightened surveillance, policing, criminalization, and violence. This literature on settler colonial policing provides further understanding of the broader context in which Indigenous resistance occurs.

Many scholars have examined police enforcement responses to Indigenous resistance (Pasternak and Ceric 2023; Crosby and Monaghan 2018; 2012; Crosby 2021; Hume and Walby 2021; Simpson and Le Billon 2021; Barker 2021; Ceric 2020; Yellowhead 2019). Many instances of Indigenous resistance have provoked an official state response (Do 2023; Crosby and Monaghan 2018). When the Canadian state interprets Indigenous resistance as particularly threatening to its authority, the response can involve conflict, violence, and criminal enforcement in order to coerce Indigenous communities to comply with the Canadian state’s authority. In contemporary examples of Indigenous resistance to settler colonialism, the Canadian state uses criminal enforcement as its primary tool to reassert its sovereignty (Crosby and Monaghan 2018).

The literature demonstrates that state response to Indigenous resistance continues a legacy of settler colonial suppression of Indigenous sovereignty (Crosby 2021; Hume and Walby 2021; Simpson and Le Billon 2021; Barker 2021; Ceric 2020; Stark 2016), often frames Indigenous peoples as criminals and threats to national security (Gobby and Everett 2022;

Crosby and Monaghan 2018; 2012; Bell and Schreiner 2018, 120; Monaghan and Walby 2017; Baker and Verrelli 2017; Proulx 2014), employs violent and oppressive methods (Shantz 2024; Crosby and Monaghan 2018; Monaghan and Walby 2017; Baker and Verrelli 2017; Proulx 2014), and domesticates Indigenous sovereignty disputes (Parasram 2023; Midzain-Gobin 2023, 7; Bell and Schreiner 2018, 120). These practices of using criminal enforcement in response to nonviolent Indigenous resistance reveal the continuation of settler colonial logics and the Canadian state's desire to maintain settler colonial authority when Indigenous peoples contest state sovereignty (Do 2023, 944). The violent and oppressive tactics used in response to Indigenous resistance follow a historic pattern of violence used against Indigenous peoples in order to establish the legal authority of the state (Simpson and Le Billon 2021, 111; Stelkia 2020; Monchalin 2016; Stark 2016; Crosby and Monaghan 2012, 433).

Scholars explain that Indigenous peoples are criminalized for their resistance to the Canadian state as an attempt to contain Indigenous assertions of sovereignty within a domestic context (Parasram 2023, 366; Bell and Schreiner 2018, 120). This domestication of Indigenous resistance makes the Canadian state's disregard for Indigenous self-determination simply a domestic issue for the Canadian state to work through according to its laws instead of a significant violation of the international norms of sovereignty (Parasram 2023, 366). As a result, despite shifts toward reconciliation and recognition frameworks, these authors contend that police response to Indigenous resistance continues to be characterized by the criminalization of Indigenous actions, the suppression of Indigenous sovereignty, and the deployment of violent and oppressive methods (Bosworth and Chua 2023; Axster et al. 2021; Crosby and Monaghan, 2018).

A deeper understanding of state response to Indigenous resistance offers insights into how Canadian legitimacy is being contested and challenged by Indigenous assertions of authority. Many scholars have explored Indigenous resistance as international sovereignty disputes. Midzain-Gobin (2019) explores the Unist'ot'en Action Camp established in opposition to the Coastal GasLink Pipeline. Midzain-Gobin explains that the Unist'ot'en Action Camp has engaged in bordering practices, including establishing a checkpoint on the road, creating protocols for those wishing to enter, and controlling traffic in and out of their territory (Midzain-Gobin 2019, 12). With the use of bordering practices, the Wet'suwet'en have repurposed the Western "tools" of sovereign power in order to contest Canadian sovereign authority (Midzain-Gobin 2019, 12). Midzain-Gobin argues that the Unist'ot'en borders should be understood as engaging in what Mohawk scholar Audra Simpson (2014) calls a "politics of refusal" that seeks to push forward toward a decolonial future, rejecting the need for the approval of the Canadian state and instead allows Indigenous peoples to act according to their own understandings of sovereignty (Midzain-Gobin 2019, 19).

The opposition to the Coastal GasLink Pipeline illustrates the interactions between changing international norms and Indigenous resistance. Coulthard (2014) explains that the long-term stability of settler colonialism depends on the "internalization" of forms of settler colonial power as much as it does on coercive force (Coulthard 2014, 31). The Unist'ot'en Action Camp represents a resurgence of Indigenous political identities by drawing on ontologically situated worldviews, asserting alternative forms of governance, and creating spaces where Indigenous laws take precedence. This Indigenous resistance disrupts settler colonial power structures that seek to internalize settler colonial power as changing international norms of Indigenous rights

and self-determination validate these alternative forms of sovereignty and governance, providing them legitimacy.

Similarly, Simpson and Le Billon (2021) look at the opposition to the Trans Mountain Pipeline, examining the disproportionate violence directed against Indigenous land defenders. Simpson and Le Billon explain that the conflicts are not simply over opposition to specific developments but instead are conflicts between legal and political orders grounded in different sources of legal authority. Simpson and Le Billon explain that reconciliation has been used as a strategy employed in an “attempt to reconcile the contradiction between the state’s claims to legal authority and its own unlawful foundations” (Simpson and Le Billon 2021, 118). The combination of Indigenous resistance and changing discourse on norms related to Indigenous rights challenges settler colonial power and compels the Canadian state to reconcile its position with these changing international norms.

In another example, Sarson (2022) explores how and when Indigenous authority prevails over state authority in examples of Indigenous resistance. For example, Indigenous resistance has succeeded in compelling the state to cede authority to Indigenous communities, particularly in the context of changing norms related to the United Nations Declaration on the Rights of Indigenous Peoples (Sarson 2022, 614). Sarson explains how these Indigenous nations have used the Canadian capitalist system to their advantage in their ability to hurt corporations and the Crown where it really hurts by threatening their profit and investments, as seen in the physical disruptions of economic activity with blockades and in dragging corporations into long, costly, and unpopular court battles with Indigenous people.

These examples demonstrate how Indigenous resistance and changing norms work hand in hand to forge new pathways toward Indigenous self-determination. Settler colonial power is



socially produced and requires a perpetually legitimating and defending of itself (Midzain-Gobin and McEvoy 2024, 4). Indigenous resistance that actively confronts settler colonial projects and asserts Indigenous sovereignty causes changing norms compel state institutions to re-evaluate and adapt their practices to reproduce settler authority (Midzain-Gobin and McEvoy 2024; Starblanket 2019; Crosby and Monaghan 2012). The reproduction of settler colonial power is not inevitable but instead is continuously challenged in dialectical relationships where the efforts of Indigenous peoples can have significant effects. As a result, Indigenous resistance and assertion and changing international norms play a crucial role in reshaping the dynamics of power and paving the way for Indigenous self-determination.

## **Conclusion**

Studying state enforcement institutions to further understand the impact of international norms has been done by many scholars (Bell and Schreiner 2018; Bonner and Dammert 2022; Gobby and Everett 2022; Axster et al. 2021; Simpson and Le Billon 2021; Crosby and Monaghan, 2018; Dafnos 2012). These scholars suggest that an analysis of institutional rhetoric and discourse has value in providing critical insight into dominant discourse and changing norms in the wider society (Dafnos 2012, 214). Since norms are “collective” understandings of what is considered acceptable or unacceptable behaviours, evidence of these moral assessments should be available in institutional and societal discourse (Hirsch 2014, 814; Klotz and Lynch 2014). Therefore, analysis of how the norms from the TRC are being interpreted, adopted, or ignored in the institutional response to Mi’kmaw fishing activities reveals larger implications for the Canadian government's commitment to reconciliation. With many critics doubting the government’s commitment to reconciliation—pointing to actions that do not seem to align with

reconciliation commitments—police response to Indigenous resistance becomes a test of the potential effect of the changing norms articulated in the TRC (Robertson 2023, 62; Macdonald 2020, 151; Simpson 2018, 85). The degree to which institutions accept and adopt the norms articulated in the TRC in the context of historically violent and oppressive institutional responses to Indigenous resistance reveals how these norms have become internalized in societal expectations and how norms related to Indigenous rights challenge the legitimacy of Canadian sovereignty.

## Chapter 3: Methodology

The word itself, ‘research’, is probably one of the dirtiest words in the Indigenous world’s vocabulary.

— Linda Tuhiwai Smith (Smith 2021, 1)<sup>6</sup>

### Chapter Overview

This thesis examines the overarching research question: “What is the relationship between the norms articulated in the Truth and Reconciliation Commission and state responses to Indigenous resistance to analyze potential effects of evolving norms, particularly those related to Indigenous rights, on state institutions, particularly in a settler colonial liberal democracy.”

This research question is further broken down into subquestions:

1. What were the DFO and RCMP responses to Indigenous resistance during Mi’kmaw moderate livelihood fishing activities?
2. To what extent have the norms articulated in the Truth and Reconciliation Commission related to Indigenous rights and self-determination influenced the enforcement actions of the DFO and RCMP during Mi’kmaw moderate livelihood fishing activities?
  - a. In what ways have the DFO and RCMP acknowledged or integrated the norms from the Truth and Reconciliation Commission into their enforcement policies?
  - b. In what ways have the DFO and RCMP publicly referenced truth and reconciliation in their communications during Mi’kmaw moderate livelihood fishing activities?

These questions invite an exploration of how norms shape institutions. To answer these questions, I performed a critical discourse analysis of the institutional response to the Mi’kmaw

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<sup>6</sup> Linda Tuhiwai Smith explains the term ‘research’ is inextricably linked to European colonialism. Research and the pursuit of “knowledge” have been employed as a justification for many unethical research projects conducted with little regard for the well-being or autonomy of the subjects being studied.

moderate livelihood fishing, examining DFO and the RCMP public statements, policy documents, recorded actions, and media coverage. Critical discourse analysis allows the norms from the TRC to be analyzed in terms of how they are interpreted, adopted, or ignored in DFO and RCMP response to Mi'kmaw fishing activities. The following section outlines the research methods in detail, explaining the use of critical discourse analysis on the institutional response to Mi'kmaw moderate livelihood fishing activities.

### **Decolonizing Research**

In this section, I discuss the importance of decolonizing research methodologies and how they inform this research approach. Attention to decolonizing research methodologies is critical because of the ongoing marginalization of Indigenous knowledge systems. This research aims to challenge these Eurocentric academic practices that have perpetuated settler colonialism. This aim is particularly important in the context of this research, which exemplifies how Eurocentric forms of knowledge continue to be privileged over Indigenous ontological and epistemological frameworks. Eurocentric knowledge paradigms have been used as tools of colonial oppression by the Canadian government to justify their limited approach to Indigenous rights.

For many Indigenous peoples around the world, the word “research” can be associated with traumatic lived experiences (Smith 2021, 1). The production of knowledge has been corrupted by a Eurocentric bias of what counts as “legitimate” knowledge. The commitment of academia to observational neutrality has had devastating consequences for Indigenous peoples and communities around the world (Smith 2021, 3). For years, “apolitical” research has privileged Eurocentric ways of knowing as “legitimate,” with the products of this scientific research used to facilitate the destruction of Indigenous lands and culture and further settler

colonialism as a structure of domination (Coulthard and Simpson 2016, 251). While good intentions and mindful research designs are a good first step, they are often insufficient.

Decolonial scholar Robbie Shilliam explains that decolonial science must “cultivate” not “produce” knowledge as “cultivation also infers habitation,” which requires the scholar to immerse themselves in their inquiry (Shilliam 2015, 25). Shilliam grounds his work within the mātauranga Māori (Māori knowledge systems), which a Eurocentric perspective would devalue and consider these ways of knowing inferior. Following Shilliam’s ‘knowledge cultivation’ methods, my research approach draws on the Mi’kmaw concept of “Two-Eyed Seeing,” as described by Elder Albert Marshall (Bartlett et al. 2012, 335). Marshall explains that “Two-Eyed Seeing refers to learning to see from one eye with the strengths of Indigenous ways of knowing and from the other with the strengths of Western ways of knowing and to using both of these eyes together” (Bartlett et al. 2012, 335), arguing that we must rely on both of these perspectives, using our eyes together to rely on the strengths of each perspective of knowing the world. Throughout my research, I have aimed to respect Indigenous ways of knowing and privilege these perspectives when appropriate.

In the process of analyzing my data, I have aimed to incorporate Indigenous perspectives through prioritizing Indigenous narratives and voices in the research context. This involves using Indigenous sources and focusing on how the social relations that control the production of the text and the social practices that inform the content of the text marginalize Indigenous worldviews. Throughout my research process, I have aimed to equally value Mi’kmaw ecological knowledge like Netukulimk and scientific data, as this project explored the complex realities of Mi’kmaw fishing practices and the regulatory environment of the commercial fishing industry. This approach is not about appropriating Indigenous knowledge but rather about

learning to see the strengths of Indigenous knowledges and worldviews from one eye and the strengths of Western knowledges from the other eye, using both these eyes together, for the benefit of all (Bartlett et al. 2012; 355). Throughout this process, I have tried to maintain awareness of my own positionality as a researcher and reflected on the perspectives that have come with my position as a settler.

### **Critical Discourse Analysis**

Critical discourse analysis is a research methodology employed by many social scientists who deal with textual and documentary data. Discourse analysis is a qualitative form of analysis which explores the ways in which “discourses give legitimacy and meaning to social practices and institutions” (Halperin and Heath 2020, 364). Discourse analysis is based on the idea that language is a fundamental part of social life and that a productive way of doing social research is through a focus on language (Fairclough 2003, 2). In critical discourse analysis (CDA), discourse is the central component of social processes (Fairclough, 2001). According to McGregor (2004), discourse is the text, talk, and media that express ways of knowing and experiencing the world. Knowledge is produced through discourse, which constitutes the social world and is also constituted through it (Fairclough 1995). CDA is a form of discourse analysis that “seeks to expose connections between language, power, and ideology” and aims to produce knowledge that enables people to emancipate themselves from forms of domination (Halperin and Heath 2020, 368).

CDA relies on a collection of techniques to analyze language use as a social and cultural practice that is flexible enough to allow for the integration of Indigenous knowledge to be used in understanding power within a settler colonial context (Antoine 2020, 83; Mullet 2018, 117).

Understanding the influence of truth and reconciliation requires analysis of the connections between language, power, and ideology. By utilizing CDA, researchers can uncover the ways in which discourse reflects and perpetuates power relations, including those related to reconciliation. Discourse can capture articulations of norm which makes CDA an ideal research method to understand how the norms articulated in the Truth and Reconciliation Commission have influenced the DFO and RCMP response to Mi'kmaw moderate livelihood fishing activities.

CDA explores how discourses are used to justify inequality through persuasive structures, such as word choice, evaluative statements about what is good and what is bad, or through structural emphases, like headlines in a newspaper (Mullet 2018, 119; Van Dijk 1993). This analysis of power and knowledge through language allows for an exploration of how the truth and reconciliation have influenced the DFO and RCMP response to Mi'kmaw moderate livelihood fishing activities (Wodak & Meyer 2009).

CDA is based on a collection of different techniques across different disciplines to study language use as a social and cultural practice (Fairclough 2001, 121). Researchers can discover deeper meanings of texts using analytical tools from fields such as “pragmatics, speech act theory, systemic functional linguistics” (Mullet 2018, 119). CDA scholars have various research strategies, with the leading approach used in social science research being the Dialectical-Relational Approach of Fairclough (Mullet 2018, 118). I draw on the methodical approaches from Norman Fairclough's Dialectical-Relational Approach to Critical Discourse Analysis (2002).

Fairclough's Three-Dimensional Model of CDA divides the analysis of text into three dimensions (Jørgensen & Phillips 2002, 68). Fairclough provides detailed methods for analyzing

speech events by breaking down the relationships between the text, the conditions of its social production, and the broader social context. In this method an instance of language use is broken down into the text itself, language use as a larger discursive practice, and language use as a sociocultural practice (Jørgensen & Phillips 2002, 68). Text analysis involves examining the internal relations in text, such as linguistic structures, grammar, voice, tone, and semantic relations (Fairclough 2003, 28). The analysis of language use as discursive practice examines how the texts are produced, distributed, and consumed, focusing on the intertextuality and discursive strategies. The final level of analysis of language use as a sociocultural practice is an examination of the broader social and cultural context that constitutes and is constituted by the discourse and whether the discursive practice of the text challenges or perpetuates power relations (Fairclough 2003, 28).

The public statements, policy documents, recorded actions, and media coverage of the DFO and RCMP's response to these events are evidence of how the norms articulated in the Truth and Reconciliation Commission have influenced the DFO's and RCMP's response to Mi'kmaw fishing activities. For example, the influence of reconciliation can be seen when the minister of Fisheries and Oceans releases a statement that says: "It's important that we continue to focus on a fishery that benefits Indigenous communities with good jobs across Atlantic Canada, while we work to advance reconciliation." (DFO March 16, 2022). In this way, the discourse of reconciliation is appealed to as a normative ideal in supporting and justifying the DFO's institutional approach to bringing Indigenous peoples into the commercial fishing industry.

Therefore, analysis of DFO and RCMP communications can be used to understand how changing norms constrain the scope of legitimate conduct and reveals the limitations of Canadian



authority. Scholars explain that public communications like press conferences and press releases contribute to the legitimization of institutional practices (Walby and Alabi 2022). Examining how the DFO and RCMP justify their actions and frame their response in these communications reveals the extent to which these actions align with or diverge from societal expectations. The degree to which institutional communications interpret, adopt, or ignore the norms articulated in the TRC reveals how these norms have become internalized in societal expectations.

### **Research Scope**

The research scope begins in 2017, with data collected from 2017 onward to explore how the discourses of the DFO and RCMP contributed to the build-up of tensions during Mi'kmaw moderate livelihood fishing activities. Additionally, instead of focusing solely on the height of the conflict in October 2020, the selection criteria continue beyond the October 2020 period until 1 June 2024 to explore how the discourses of the DFO and RCMP have continued to contribute to the ongoing Mi'kmaw fishing related conflicts that persist in 2024.

Some researchers exploring the Mi'kmaw moderate livelihood fishing activities focus only on the conflict surrounding the Sipekne'katik First Nation's moderate livelihood fishery operations in the fall of 2020. However, the conflict surrounding Mi'kmaw fishing activities has affected the exercise of fishing rights in Mi'kmaw communities outside of the Sipekne'katik First Nation and outside of the narrow fall 2020 time period. For example, an analysis of the arson of the Middle West Pubnico Mi'kmaw lobster fishing pound on 16th October 2020 would

be incomplete without attention to the nine other Mi'kmaw fishing structures that have been burnt down in suspicious fires.<sup>7</sup>

Therefore, to examine this seven-year period, a timeline of the key events throughout Mi'kmaw moderate livelihood fishing activities was constructed, containing individual key events that range from instances of Mi'kmaw fisheries-related vandalism to arsons of Mi'kmaw fisheries-related structures. I collected texts and documents covering these events published between January 1, 2017, and June 1, 2024. The texts and documents related to the DFO and RCMP's institutional response to these events explain how the norms articulated in the TRC have influenced the DFO's and RCMP's response to Mi'kmaw fishing activities.

This research uses a variety of sources of data, including publicly released Access to Information Requests and Freedom of Information and Protection of Privacy Requests of internal communications. Access to Information Reports and Freedom of Information and Protection of Privacy Requests provide insight into how these policies and practices unfold internally that may be difficult to get at through public communications or other conventional methods such as interviews. These internal communications reveal direct evidence of changes in institutional response due to the changing norms related to the TRC.

A CDA of public statements, policy documents, recorded actions, and media coverage related to the institutional response to Mi'kmaw moderate livelihood fishing activities demonstrate how the norms articulated in the Truth and Reconciliation Commission have influenced the DFO and RCMP and offers a window into how Canada's Truth and Reconciliation-based policies play out in real events. Therefore, this analysis has wider

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<sup>7</sup> [RCMP April 19, 2024](#); [RCMP December 3, 2021](#); [RCMP December 11, 2020](#); [RCMP November 6, 2020](#); [RCMP October 30, 2020](#); [RCMP October 5, 2020](#); [Sullivan 2019](#); [Julian 2017](#); [RCMP October 10, 2017](#). Of the nine Mi'kmaw fishing related suspected arsons reported to the RCMP only two people have faced charges.

implications on how changing international norms are challenging the legitimacy of the settler colonial liberal democratic state and pointing toward new ways of doing global politics.

## **Sources of Data**

Texts and documents related to Mi'kmaw moderate livelihood fishing activities have been collected. There were four types of data collected: public statements, policy documents, recorded actions, and media coverage of the DFO and RCMP's response to Mi'kmaw moderate livelihood fishing activities. Details further explaining each type of data collected with examples of the texts and documents are expanded on below.

The public statements collected can reveal critical information on the language and rhetorical strategies used by the DFO and RCMP in their communications regarding Mi'kmaw moderate livelihood fishing activities and how these positions align with TRC norms and recommendations. Public statements include official statements, news releases, social media posts, and press conferences. This data was publicly available on the DFO and RCMP websites and social media pages. Relevant public statements were meticulously collected by going through all available DFO and RCMP official statements and news releases published between January 1, 2017 and June 1, 2024 and collecting the items related to Mi'kmaw fishing activities. These texts include 19 official statements released by the DFO, 49 RCMP news releases, and 38 DFO news releases. The majority of RCMP news releases are unrelated police communications, but several news releases contain relevant information, such as the description of suspected crimes committed against Mi'kmaw fishers or information on reconciliation-based initiatives. The official statements and news releases published by the DFO were less frequent than RCMP news releases but were more related to Mi'kmaw moderate livelihood fishing activities.

Additionally, keyword searches on DFO and RCMP websites and social media accounts revealed other related public statements, including a press conference given by the RCMP Commissioner Brenda Lucki and 49 related social media posts.

Keyword searches on DFO and RCMP websites revealed the policy documents collected to determine how the DFO and RCMP have acknowledged or integrated TRC norms and recommendations into their policies and actions. The policy documents collected include seven DFO policy reports, two DFO discussion papers, and two RCMP policy documents. This data was collected from publicly available government of Canada publications and the DFO and RCMP websites. Policy documents provide the formal rules and guidelines that govern the organizational actions of the DFO and RCMP. Policy documents are authoritative texts that reflect institutional priorities and values. For example, the RCMP “H Division Reconciliation Strategy 2021-2024,” is a five page policy document that details the strategy the Nova Scotia RCMP has developed to implement TRC recommendations in their operational procedures. Analyzing policy documents through CDA can uncover critical information on the ideologies and power relations embedded within the policies and practices of the DFO and RCMP. A CDA of these policy documents reveals the ways that the DFO and RCMP have acknowledged or integrated TRC norms into actionable policies and how these policies affect Mi’kmaw moderate livelihood fishing activities.

Recorded actions are actions taken by the DFO and RCMP, such as enforcement activities, decisions made, and public interactions as recorded in media coverage and internal records and communication released by Access to Information Request and Freedom of Information and Protection of Privacy Requests. The texts and documents collected from Access to Information Request include five requests into the DFO files; two requests into the RCMP

files; and one request into the Crown-Indigenous Relations and Northern Affairs. Access to the DFO files and the Crown-Indigenous Relations and Northern Affairs file was gained through previously released Access to Information Requests that are published in the public database hosted by the Investigative Journalism Foundation (IJF 2024). Access to RCMP files was gained through Access to Information Informal Request Submission that I made to Open Government Canada to obtain a copy of these previously released RCMP Access to Information reports. These two files were directly released to me from the RCMP.<sup>8</sup>

Media coverage includes news articles and media reports covering the events and the institutional responses to Mi'kmaw moderate livelihood fishing activities. News media coverage includes news requests for comments, interviews with DFO and RCMP staff, and other institutional quotes found in these articles offer valuable information on how the norms articulated in the Truth and Reconciliation Commission have influenced the DFO and RCMP. Additionally, media coverage reflects and shapes public discourse. News media coverage reveals whose voices are represented in the dominant narratives surrounding Mi'kmaw moderate livelihood fishing and institutional response, including government officials, Indigenous peoples, and community members.

The media data was collected through the Factiva database and the Proquest Canadian Newsstream database using the keywords “Moderate livelihood” and “Mi'kmaq” accompanied by search parameters limiting the search to Canadian content within the dates starting January 1, 2017 and ending June 1, 2024. In total, the search found 524 news articles within these parameters. After filtering through the results, excluding duplicates and irrelevant articles, 196

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<sup>8</sup> The texts and documents collected from Access to Information Request include five requests into the DFO files A-2020-01420, A-2020-01421, A-2020-01422, A-2020-01431, and A-2020-00308; two requests into the RCMP files A-2021-01557 and A-2021-01560; and one request into the Crown-Indigenous Relations and Northern Affairs, file A-2020-00108.

news articles covering Mi'kmaw moderate livelihood fishing activities were collected during the selected time period.

In addition to the articles collected through the Proquest Canadian Newsstream database, Indigenous news sources were specifically examined to ensure that Indigenous perspectives were not excluded. The Indigenous news sources included APTN News, Mi'kmaq-Maliseet Nations News, Turtle Island News, and Ku'ku'kwes News. The same date parameters were used on the search tools available on these news websites to collect Indigenous news articles that covered Mi'kmaw moderate livelihood fishing activities. This produced a total of 35 additional news articles that were included for analysis. With the systemic privileging of settler colonial discourses, the necessity of a Two-Eyed seeing approach to data collection becomes apparent (Reid et al. 2020, 253). This inclusive data collection approach aims to disrupt these power-knowledge dynamics, respect the diversity of perspectives, and ensure a comprehensive understanding of Mi'kmaw moderate livelihood fishing.<sup>9</sup>

This data selection criteria provides a comprehensive view of the DFO and RCMP's communications, actions, and policies in response to Mi'kmaw fishing activities and how their responses have been affected by the norms and recommendations of the TRC. By examining a wide range of documents, the research aims to explore the institutional response to Mi'kmaw fishing rights activities and how the norms articulated in the TRC influenced this response.

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<sup>9</sup> That the Proquest search did not pick up any Indigenous news sources suggests the systemic privileging of settler-colonial discourses. The exclusion of more grassroots-style news sources like Ku'ku'kwes News from the database is unsurprising, but even APTN news articles were not picked up by the Proquest search. This exclusion is not merely an oversight but reflects deeper issues of discursive settler-colonial hegemony, where certain narratives are prioritized and others are marginalized. It also reflects how power operates through discursive practices, shaping what is considered legitimate knowledge surrounding Mi'kmaw moderate livelihood fishing activities.

## **Data Analysis**

The collected texts and documents were coded according to the method described by Fairclough (2003). The collected texts and documents were read closely, and themes related to the meaning and usage of “truth and reconciliation” were identified. Using Fairclough’s three-dimensional framework, the collected texts were analyzed at three levels: Textual Analysis, Discursive Practice, and Social Practice. The first step was to read the text in full. After this first read, the text was coded for key themes using mixed coding methods. Then, a closer reading focused on internal relations in text, such as vocabulary, word choice, grammar and linguistic devices, genre, difference, and modality. Then, the text was analyzed as a discursive practice examining external relations and interdiscursivity. This analysis is different from the textual analysis, instead looking at the social relations that control the production of the text and how social practices inform the content of the text. This level of analysis is where Indigenous worldviews were carefully considered in a process guided by Two-Eyed Seeing. Lastly, the text was analyzed as a sociocultural practice, by situating the text and its external discursive relations in wider society, the analysis examines whether the text and discursive relations challenge or reinforce the existing discourse.

The coding process first began with an inductive coding procedure, allowing the themes to emerge from the data itself. Later, the data was returned with specific deductive coding related to reconciliation developed through analysis of the TRC. Categories of themes were collected through NVivo qualitative data analysis computer software and sorted into corresponding files. The texts and documents containing these themes were later analyzed in greater detail. For example, a typical RCMP news release looks like this:

Figure 1. RCMP News Release August 6, 2021

## RCMP investigating after boats cut from their moorings in Weymouth

📅 August 6, 2021

📍 Weymouth, Nova Scotia

News release

Digby RCMP is investigating after receiving a report of boats being cut from their moorings at a wharf in Weymouth.

On August 5 at 7:57 a.m., Digby RCMP received a complaint of eight boats being cut from their moorings at a wharf in Weymouth sometime overnight. Police arrived at 8:09 a.m. and learned that ten boats had in fact been cut from their moorings and that all boats had been retrieved by their owners. None of the boats were damaged, however, a lobster crate containing approximately \$800.00 worth of lobster was stolen from one of the boats.

The investigation is ongoing and is being supported by RCMP Special Tactical Operations and Street Crime Enforcement investigators. Anyone with information concerning this incident is asked to contact the Digby RCMP at 902-245-2579. Should you wish to remain anonymous call Nova Scotia Crime Stoppers toll free at [1-800-222-TIPS \(8477\)](tel:1-800-222-TIPS), submit a secure web tip at [www.crimestoppers.ns.ca](http://www.crimestoppers.ns.ca), or use the P3 Tips App.

The RCMP in Nova Scotia have and will continue to take steps to ensure that those who unlawfully interfere with or threaten the safety of any person or property may be held accountable in accordance with the laws of Canada. The RCMP takes all matters seriously and fully investigates any complaints we receive.

File #: 2021-1149415

-30-

Source: RCMP News August 6 2021.

This press release details an investigation into 10 Indigenous-owned FSC fishing boats cut from their moorings.<sup>10</sup> This example shows how critical discourse analysis can draw out larger meanings and cultural narratives embedded within the RCMP press releases. The last paragraph in the news release declares that “The RCMP takes all matters seriously and fully

<sup>10</sup> Note CTV News Atlantic ([RCMP investigating after Mi'kmaq lobster fishing boats cut loose from wharf in N.S.](#)) reports that these boats were Indigenous Food, Ceremonial, and Social fishing boats. The identities of individuals can be left out of RCMP news releases, which is why it is necessary to complement institutional communications with media coverage to capture the full picture.



investigates any complaints we receive.” This final paragraph was included to portray the RCMP as a neutral or unbiased force, not taking sides in fishing conflicts but instead enforcing “the laws of Canada,” on those that threaten “any person or property,” with stress on the fact that the RCMP “takes *all* matters seriously,” and investigates “*any* complaints we receive” (RCMP August 6, 2021, emphasis added). The RCMP’s repeated use of the qualifiers “any person,” “all matters,” and “any complaints” is an attempt to emphasize the perspective of the RCMP as a neutral and independent entity that is simply enforcing the law. This deliberate emphasis intends to show Indigenous peoples that they can trust the RCMP to take their complaints seriously while also reassuring non-Indigenous fishers that by investigating crimes targeting Mi’kmaw fishers, they are not picking sides.

Looking beyond internal textual relations the RCMP’s framing demonstrates the centering of a settler-colonial relationship. In explaining the wrongful action in this situation as the damage to “property,” the RCMP imposes a Lockean view of the relationship between land, labour, and entitlement to property, rather than one grounded in Mi’kmaw worldviews, which might see the problem here as a violation of the L’nuwey Tplutaqan (Mi’kmaw legal principles) of living in “correct relations” that involve encouraging respectful behaviour in dealing with others (M’sit No’kmaq et al. 2021, 852). This discourse on threats to private property cannot be separated from the institutions of policing and the structure of the broader Canadian legal system as based on the protection of private property.

### **Methodological Limitations**

Many scholars have examined the framing of Indigenous acts of resistance and subsequent police response (Do 2023; Hume and Waly 2021; Baker and Verrelli 2017; Wilkes et

al. 2010). The literature on police communications reveals that police forces use trained media professionals to manage public views of criminal justice and have done so for decades (Walby and Alabi 2022, 32; Mawby 2014, 239). This means that in determining how the TRC influences police response to Indigenous acts of resistance during Mi'kmaw moderate livelihood fishing activities, my analysis of police communications will be limited to how trained media professionals employed by the RCMP frame Indigenous peoples' actions. While analysis of how trained media professionals interpret, adopt, or ignore the TRC is important, the perspectives of the officers on the ground who are tasked with policing the fisheries are missed. Resource limitations prevented interviews with officers (see Dafnos 2012).<sup>11</sup>

The actual implementation of institutional policies and practices does not always align with official rhetoric and discourse raising a second concern about the authenticity of police communication data. Scholars have questioned police communications for their reliability (Haigney 2021). In the legacy media, police reports are often uncritically reposted and quoted without questioning the official narrative offered by the police media spokesperson (Bonner and Dammert 2022, 642; Haigney 2021). While grassroots journalistic practices may rely on interviews and collecting their own sources, many others will skip this process (Haigney 2021). Accordingly, data collection includes analysis of published Access to Information Reports that provide insight into how these policies and practices unfold internally that may be difficult to get at through conventional methods, such as interviewing. Therefore, this research will rely on an expansive data collection method using multiple sources including officially published police

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<sup>11</sup> Dafnos explains with the closed nature of police organizations, one of the biggest obstacles in doing research on police is gaining access to these organizations (Dafnos 2012, 209). Dafnos explains that “outside-outsiders” who “are not affiliated with police forces or government bodies with policing responsibility” experience the greatest difficulties in their research (Dafnos 2012, 214). In these cases, even if access is not denied outright, outsider researchers are “viewed with suspicion” and forced to abide by restrictions set by upper gatekeepers (Dafnos 2012, 215). In addition to this, time constraints prevented conducting interviews.

communications (such as press releases, social media posts, and press conferences), police communications published in media coverage (interviews, quotes, and paraphrases), and police internal records (released in published Access to Information Reports).

However, Access to Information Reports have significant limitations that are exacerbated by the heightened security and sensitive information associated with policing records (Dafnos 2012, 216). This includes partially or fully withholding released records, which was a major difficulty I encountered in this process. As a result, my analysis of internal records was limited due to the institutional control over the documents as well as the heavily redacted information in the documents I received.

In addition to this limitation, CDA is limited for its potential subjectivity in interpretation. The discursive influence of the TRC I found is based on my own reading of policy documents and public statements. CDA is inherently interpretative, meaning that the researcher's perspectives, biases, and assumptions can always influence the analysis (Halperin and Heath 2020, 272). It can be difficult to definitively prove that the TRC directly causes these shifts. For example, many policy initiatives related to equity, diversity, and inclusion overlap with policies related to Indigenous inclusion. Additionally, political pressures, economic considerations, and legal constraints make it challenging to isolate the causal impact of norms related to Indigenous rights.

## **Chapter 4: The Background of Mi'kmaw Moderate Livelihood Fishing**

I don't need a fishing license; I have a treaty

— Donald Marshall Jr. 1993 (McMillan 2018, 113)

### **Chapter Overview**

This research begins with a review of the Mi'kmaq in Nova Scotia and the political landscape surrounding Mi'kmaw moderate livelihood fishing. The Mi'kmaw lobster dispute in the fall of 2020 was not a one-time event but a product of the settler colonial project that continues to poison the relations of everyone living in Mi'kma'ki. This chapter begins a historical review beginning in the 18th century and continues through the buildup of conflict in the surrounding Mi'kmaw moderate livelihood fishing. The central purpose of this chapter is to provide an overview of the key events leading up to the height of the conflict in 2020. This chapter describes the policy initiatives and events that have contributed to the flare-up of conflict beginning in 2017. This context provides the necessary background information for the analysis of public statements, policy documents, recorded actions, and media coverage of the DFO and RCMP's response to Mi'kmaw moderate livelihood fishing that follows in chapter four.

### **Settler Colonialism and the Peace and Friendship Treaties**

Since time immemorial, the Mi'kmaq have lived in Mi'kma'ki, engaging in diplomacy, creating agreements, and establishing treaties with the surrounding First Nations. For thousands of years, the Mi'kmaq managed their local resources to meet their community needs. The Mi'kmaw resource management system, Netukulimk, supported large settlements across the Atlantic area and the creation of far-flung trade networks (Allen 1994; Wiber and Milley 2007, 167). Netukulimk is the worldview through which the Mi'kmaq see all living and non-living creation as connected in a complex web of relations and, when practiced respectfully, provides

for the benefit of their communities as a whole (Stiegman and Pictou 2024, 9). Mi'kmaw scholars explain that Netukulimk is the process of supplying oneself or making a livelihood from the land by respecting and honouring “the integrity, diversity, and productivity of our environment, both for present and future generations” (Lefort et al. 2014, 17). Netukulimk implies a balance that requires “taking only what you need” (Barsh 2002, 16–17). Also included in Netukulimk is careful attention to human-to-non-human relationships that Mi'kmaw professor Tuma Young explains is unlike the Eurocentric conception of man having dominion over nature and instead is understood as a “mutual empowerment” (Young 2016, 87).

After European contact, the initial relationship between the Mi'kmaq and French settlers was one of mutual respect and military alliance (Metallic 2020, 424; Solicitor General Canada 1994, 28). However, the growing European presence on the Atlantic coast drew the Mi'kmaq into conflict in colonial wars between the French and British. The “Peace and Friendship Treaties” between the Mi'kmaq, Wolastoqiyik (Maliseet), and Passamaquoddy and the British Crown began with the Treaties of 1725 and 1726 with the goal of facilitating trade, attempting to secure loyalty, and ensuring the Mi'kmaq would cease hostilities towards British settlers. The Peace and Friendship Treaties contained no provisions that would cede land to the Crown (Wallace 2018). However, increased Mi'kmaw resistance to British rule and war between France and Great Britain in 1744 led to more conflict that was followed by a series of other agreements to secure peace in the Treaties of 1749, the Treaties of 1752, the Treaties of 1760 and 1761, and the Treaties of 1778 and 1779.

The Peace and Friendship Treaties explicitly guarantee hunting, fishing, and land-use rights for the descendants of the Indigenous signatories in exchange for peace (Wallace 2018). The Treaty of 1752 states, “...It is agreed that the said Tribe of Indians shall not be hindered

from, but have free liberty of Hunting and Fishing as usual...” (Treaty of 1752). Additionally, the Peace and Friendship Treaties contained provisions that established that Indigenous peoples could trade for “necessaries” (Donovan 2023). These treaties were not intended to impose any legal system on the Mi’kmaq but were established to mediate relations with the Crown (DFO Fact sheet on Peace and Friendship Treaties 2010). The Peace and Friendship treaties remain in the background of the conflict surrounding Mi’kmaq moderate livelihood fishing activities, as the Mi’kmaq fishers have frequently pointed to these historical agreements as justifications when the Canadian government has tried to control and restrict their fishing activities.

After Canadian Confederation, settler authorities disregarded the provisions in the Peace and Friendship Treaties that guaranteed that the Mi’kmaq could fish and hunt freely. While at first, many Indigenous legal systems were respected or tolerated by the new Canadian state, over time, they came to be perceived as a threat to Canadian nation-building (Metallic 2020). As a result of efforts to establish Canadian legal authority across the country, Indigenous legal systems were targeted, outlawed, and subverted. In 1868, the creation of the Fisheries Act established the federal minister of fisheries as the sole authority and decision-maker for fisheries resources. This exclusionary framework hurt Mi’kmaq access to fisheries and resources and continues to be enforced through criminal prosecution of individuals attempting to participate in fishery activities without DFO authorization (Von der Porten et al., 2019; Denny 2022, 2).

Under the new settler legal authority, any unauthorized fishing activities were deemed poaching, black market, or illegal operations, resulting in many Mi’kmaq fishers facing the full consequences of the criminal justice system. At first, the Fisheries Act of 1868 did not prompt immediate criminal enforcement, but as the economic value of fish increased, so did settler attention to fishery activities. With this increased attention came increased regulation and control

of Indigenous fishing activities. The Mi'kmaw fishers, who were once encouraged to sell their catch to settlers, became subject to Canadian regulations on fishing (Sharma 1996, 40; Francis 2023, 8).

Today, the governance and management of fisheries remain based on Eurocentric epistemology and management techniques that have had an unreliable ability to maintain sustainable aquatic populations (Fanning et al. 2011; Denny 2022, 3). Scholars explain that the “hierarchical” and “paternalistic” decision-making process of Canadian resource management is at odds with Indigenous ontologies and struggles when attempts to incorporate other knowledge systems are made (Denny 2022, 3). Indigenous peoples remained excluded from participating in fisheries governance under this regime for more than 100 years. By the beginning of the 20th century, settler enforcement activities eliminated nearly all Mi'kmaw fishing activities (Shideler 2022, 23; Wien 1986, 26).

The settler desire to control Indigenous peoples did not stop at the management of fishery activities. Less than ten years after the Fisheries Act, the infamous Indian Act of 1876 would be the next step in Canada's long history of subverting and undermining Indigenous peoples' self-determination through Canadian legislation and regulations that worked to divide, control, police, assimilate, and eliminate Indigenous peoples (Palmer 2014, 31; Paul 2006; Metallic 2020, 424; Denny 2022, 1). The Indian Act of 1876 was the legislative tool that the government used to control and regulate Indigenous peoples. The Indian Act confined Indigenous peoples to reserves, instituted patriarchal governance that displaced cultural forms of governance with Western processes, outlawed cultural practices, discriminated against women and their children, excluded Indigenous peoples from economic prosperity, created social division, and legislated

the annexation of Indigenous land (Metallic 2020, 424; Maynard 2017, 32; Palmater 2000; Denny 2022, 2).

The mistreatment of Indigenous peoples remains a part of the daily lives of the Mi'kmaq even today, as many of the instruments of settler colonialism remain firmly in place and continue to marginalize Indigenous peoples. The RCMP has gone through different reforms since its creation as a colonial force but remains the primary force policing Indigenous communities today (Pasternak 2022, 76). The Mi'kmaq and other Indigenous nations across Canada continuously fought hard for the recognition of their treaties with the Crown, leading to a series of landmark court decisions from the Supreme Court of Canada before the turn of the century.

### **The Marshall Decision**

As expressed in the Peace and Friendship Treaties, the Mi'kmaq have long argued that they have a right, as a nation, to the natural resources and, particularly, the fisheries within Atlantic Canada (Wiber and Milley 2007, 163). Under Canadian authority, the Mi'kmaq have had limited ability to exercise these rights, with the Canadian government refusing to recognize the rights contained in the Peace and Friendship Treaties (Wiber and Milley 2007, 163). For many years, Mi'kmaq individuals who attempted to cut trees, harvest wild animals, or fish commercial species were prosecuted as criminals in the Canadian justice system (Wiber and Milley 2007, 163).

With the Constitution Act of 1982, Indigenous peoples across Canada were given constitutional protections for “existing Aboriginal and Treaty Rights” under section 35(1). The Canadian Constitution Act, 1982, opened up a new avenue for Indigenous peoples to have their rights recognized, including the Mi'kmaq, who turned to the courts to argue their right to the



natural resources on their territories. This approach has led several Supreme Court of Canada decisions to affirm Aboriginal rights and treaty rights, particularly 1985's *Simon v. The Queen*, 1990's *R. v. Sparrow*, and 1999's *R. v. Marshall*.

In short, the 1985 Simon decision recognized the Peace and Friendship Treaties and acknowledged that the treaties were signed without surrendering land rights (Wiber and Milley 2007, 164).<sup>12</sup> The 1990 Sparrow decision affirmed that the Mi'kmaq had "Aboriginal rights" to hunt and fish for food, social, and ceremonial (FSC) purposes but remained prohibited from selling any catch (Sharma 1996, 76).<sup>13</sup> The 1999 Marshall decision recognized the Treaty right of the Mi'kmaq, Wolastoqiyik (Maliseet), and Passamaquoddy peoples to hunt, fish, gather, and trade for necessities and use natural resources to attain a "moderate livelihood" (Wiber and Milley 2007, 164).<sup>14</sup>

The 1999 Marshall decision was decided in response to the conviction of Donald Marshall Jr., a member of the Membertou First Nation in northern Nova Scotia, for fishing out of season with an illegal net and without a licence and selling his catch.<sup>15</sup> Marshall admitted to catching and intending to sell eels without a licence but argued that he possessed the treaty right to do so under the Peace and Friendship Treaties, which had been earlier affirmed in the 1985 Simon decision. In a landmark decision, the Supreme Court of Canada overturned lower court decisions to side with Donald Marshall, Jr., affirming the treaty's right to "obtain necessities through hunting and fishing by trading the products of those traditional activities" (Canada

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<sup>12</sup> *Simon v. The Queen*, 1985 CanLII 11 (SCC), [1985] 2 SCR 387.

<sup>13</sup> *R. v. Sparrow*, 1990 CanLII 104 (SCC), [1990] 1 SCR 1075. A specific legal term, "Aboriginal rights" refers to constitutional rights in Canada that are protected under s.35 of the *Constitution Act*, 1982.

<sup>14</sup> *R. v. Marshall*, [1999] 3 S.C.R. 456.

<sup>15</sup> Donald Marshall Jr. was wrongfully convicted of murder and spent over a decade in prison for a crime he did not commit. A 1989 Royal Commission into the conviction of Donald Marshall Jr. found systemic racism to be behind the unfair treatment Marshall experienced and led to fundamental changes in the criminal justice system in Nova Scotia (Royal Commission on the Donald Marshall, Jr., Prosecution 1989).

Parliament 2022, 17).<sup>16</sup> With this decision, Donald Marshall, Jr. was acquitted on all three charges. Many Mi'kmaw communities saw this decision as an affirmation of their fishing rights and began openly fishing without worrying about criminal enforcement or commercial fishing regulations (King 2011, 5; Wiber and Milley 2007, 168). However, some settler fishers protested the decision, sometimes violently.<sup>17</sup>

Following attacks on Indigenous fishers in Eskinuopitijk and the “Burnt Church Crisis,” the Canadian supreme court released the Marshall II decision—an amendment to the Marshall Decision reinforcing the legal position that Mi'kmaw fishing rights can be infringed upon for the purpose of conservation. Marshall II explains conservation is a responsibility that “is placed squarely on the minister,” but the minister is required to consult with Indigenous peoples about the “limitations on the exercise of treaty and aboriginal rights,” and pass “the Badger test,” which establishes the conditions that governments may justify restrictions on the exercise of treaty rights.<sup>18</sup> Regarding fishing seasons, the court explained that a closed fishing season must be “justified for conservation or other purposes. In the absence of such justification, an accused who establishes a treaty right is ordinarily allowed to exercise it.”<sup>19</sup> Further, *R. v. Sparrow* 1990

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<sup>16</sup> *R. v. Marshall*, [1999] 3 S.C.R. 456, para. 54.

<sup>17</sup> The “Burnt Church Crisis” was an eerily similar situation to the events of the 2020 Mi'kmaw lobster dispute. In reaction to the Marshall Decision, commercial fishers that were convinced Mi'kmaw fisheries would damage commercial lobster stocks, protested the Indigenous right to fish on wharfs of various fishing communities across the Atlantic provinces in the fall of 1999 (King 2011, 5; Wiber and Milley 2007, 173). In New Brunswick, commercial fishers demanded that the federal fishing regulations be enforced on a Mi'kmaw moderate livelihood fishery in Eskinuopitijk. On October 3, 1999 groups of commercial fishers on boats attacked Mi'kmaw fishers from Eskinuopitijk, targeting hundreds of Mi'kmaw moderate livelihood lobster traps, destroying fishing gear, and intimidating fishers (King 2011, 5; Wiber and Milley 2007). The DFO was also involved in this violence targeting Mi'kmaw fishers, ramming Mi'kmaw boats, assaulting fishers with batons and confiscating lobster traps (Jordan 2000).

<sup>18</sup> *R. v. Marshall*, 1999 CanLII 665 (SCC), [1999] 3 SCR 456, para 7; *R. v. Badger*, 1996 CanLII 236 (SCC), [1996] 1 S.C.R. 771. The Badger tests asks: 1. Is there a valid legislative objective? 2. Does the legislation or action justify the infringement? And 3. Is the proposed solution the one that infringes the least on treaty rights?

<sup>19</sup> *R. v. Marshall*, [1999] 3 S.C.R. 533, para 21.

establishes that if there is an infringement on these rights, the Crown must consider compensation for this breach (Canada Parliament 2022, 19).<sup>20</sup>

Tensions in Mi'kma'ki did not ease until 2002 with the signing of an “agreement in-principle” between the people of Eskinuopitijk and the federal government. In addition to this agreement, the Marshall Response Initiative, launched by the DFO in 2000, was an initiative that provided communities with “licences, vessels and gear in order to increase and diversify their participation in the commercial fisheries and contribute to the pursuit of a moderate livelihood” (Canada Parliament 2022, 22). The Marshall Response Initiative would purchase fishing licenses from retiring commercial fishers and transfer these licences to interested Mi'kmaw bands (Shideler 2022, 100). The communal-commercial licences were allocated by the Band Council of the First Nation to individual fishers either as independent operators or as employees of the band (Wiber and Milley 2007, 171). These “communal-commercial” licenses would provide many Mi'kmaw bands with some access to fisheries and a source of revenue since their launch (Pannozzo and Baxter 2020).

Following the expiration of the Marshall Response Initiative in 2007, the Atlantic Integrated Commercial Fisheries Initiative was launched by the DFO, providing funding to Mi'kmaw communities in order to build fishing capacity. These two initiatives included over 550 million in spending, supplying fishing licences, vessels, gear, training, and capacity building to increase Mi'kmaw participation in commercial fisheries (Canada Parliament 2022, 22). However, these initiatives did not serve as an implementation of rights-based fisheries and even “created inequities between First Nation communities” (Canada Parliament 2022, 23). The 2022 Canadian Senate report, “Peace on the Water,” describes these two initiatives as the federal

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<sup>20</sup> *R. v. Sparrow*, [1990] 1 S.C.R. 1075.

government's attempt "to buy, essentially, peace on the water" in exchange for fishing boats, licences, and fishing quotas in regional fisheries (Canada Parliament 2022, 23).

The Atlantic Integrated Commercial Fisheries Initiative framework remained in place until the Rights Reconciliation Agreements in 2017. These agreements increased Indigenous access to commercial fishing and provided benefits to many people in Mi'kmaw communities. This contributed to a period of calm where some individual Mi'kmaw fishers enjoyed access to fishing through the commercial framework while other Mi'kmaq continued to be denied their moderate livelihood fishing rights. Many Mi'kmaw fishers continued to attempt to practice their moderate livelihood fishing rights, often facing criminal enforcement. The failure of the project to assimilate fishing activities into commercial fishing industries set the stage for the Mi'kmaw lobster dispute, where Mi'kmaw fishers refused to continue to be denied their moderate livelihood fishing rights. As the Rights Reconciliation Agreements began in 2017, so did a renewal of tensions leading up to the Mi'kmaw lobster dispute, marking the start of the analysis in this thesis.

## **Chapter 5: Empirical Data**

Harvesting for moderate livelihood purposes is not permitted outside of the commercial seasons.

— Fisheries and Oceans Canada (DFO August 25, 2023)

### **Chapter Overview**

This chapter explains how the institutional communications, policies, and practices of the DFO and RCMP have adopted the norms articulated in the TRC as a framework to provide legitimacy to their positions when addressing Indigenous-settler relations. This research found a discursive influence of the norms articulated in the TRC on state institutions which have adopted a discourse of reconciliation in policy rhetoric and consistently reference Indigenous rights as a normative commitment in public communications. However, this discursive influence from the norms related to Indigenous rights and self-determination stands in contrast to the actual practices of the DFO and RCMP in response to Indigenous resistance. With Indigenous resurgence theory suggesting that the influence of norms related to Indigenous rights is limited to the discursive symbolism of reconciliation instead of material change, this chapter juxtaposes the discourse and practices of state institutions throughout their response to Mi'kmaw moderate livelihood fishing activities to assess the discursive and material influence of the TRC.

The first section of this chapter describes the state enforcement response to Mi'kmaw moderate livelihood fishing activities. This section begins in 2017, detailing how DFO and RCMP have responded to Mi'kmaw moderate livelihood fishing activities over the years, describing what happened and the actions that the DFO and RCMP took in response. Next, these practices are juxtaposed with the discourse in DFO and RCMP public communications and policy, demonstrating contradictions in the institutional response to Mi'kmaw moderate livelihood fishing activities. The second section looks at DFO and RCMP policy documents.

This describes how the DFO and RCMP acknowledged and integrated TRC norms and recommendations into their policies. This analysis found three key themes in both DFO and RCMP policy that demonstrate how the influence of the TRC has been reduced to rhetorical elements in policy documents. The final section of this chapter describes the influence of norms related to Indigenous rights on institutional communication. This section explores official DFO and RCMP statements, news releases, social media posts, and press conferences, revealing two competing narratives of reconciliation throughout enforcement response to Mi'kmaw moderate livelihood fishing activities as well as the themes of disregard for Indigenous people's safety and discourse that demonizes Mi'kmaw fishers.

### **State Enforcement Response to Mi'kmaw Moderate Livelihood Fishing**

This section describes Mi'kmaw moderate livelihood fishing activities and how the DFO and RCMP have responded to these acts of resistance. This research describes state enforcement actions from 2017-2024. By focusing on the enforcement response to Mi'kmaw moderate livelihood fishing activities, this section will highlight the material influence of norms related to Indigenous rights and self-determination. While the norms articulated in the TRC have compelled state institutions to outwardly legitimize their actions through public commitments to reconciliation and acknowledgements of Indigenous rights and self-determination in policy documents, this section will describe how these institutions continue enforcement actions that impede Indigenous self-determination and reinforce settler colonial dominance.

## 2017 The Rising Tides of Conflict

Beginning in 2017, the Canadian government looked “to advance reconciliation in the fisheries,” and began different initiatives to increase Indigenous access to commercial fishing. These include Rights Reconciliation Agreements signed with Mi’kmaq, Wolastoqiyik (Maliseet), and Peskotomuhkati First Nations and the reallocation of Snow Crab and Arctic Surf Clam quotas to Mi’kmaw fishers (DFO Our response to the Marshall decisions 2024; Canada Parliament 2022, 23; DFO August 15, 2019; Francis 2023, 13; DFO April 17, 2017; DFO September 7, 2017). These agreements mandate that the signatory nations forfeit their right to take the government to court over fishing rights while agreements are signed. Due to the agreement’s restrictive conditions (Donovan 2023), only seven Rights Reconciliation Agreements have been signed since the initiative’s creation (DFO Our response to the Marshall decisions 2024).

These initiatives drew opposition from much of the commercial fishing industry. After the discovery of a pile of dried-up, dead lobsters that were dumped in the woods near Weymouth, N.S., commercial fishers blamed Mi’kmaw fishers and organized protests against Mi’kmaw fishing activities (CBC News September 17, 2017).<sup>21</sup> Later in the year, Mi’kmaw fishers were targeted in a series of suspicious fires that remain unsolved. In October, a Mi’kmaw fishing boat was destroyed by a targeted arson, and again on December 25, a suspicious fire

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<sup>21</sup> The triggering effect of this event on commercial fishers is perhaps best demonstrated in a commercial fisher’s recollection of this event: “The FSC fishing has always been a problem, even in the 1990s, but 4-5 years ago it got a lot worse. They turned it into a commercial enterprise, were taking a lot more lobster than they were supposed to. It’s dangerous for sustainability, nobody knows how big the catch is, not even DFO. . .they don’t make them keep logbooks like us. We have an idea about how large the FSC landings are because we watch them directly. They don’t even throw the berried females back, they dump them in fucking ditches! The true story about all this is one of a native run black market. Adding moderate livelihoods to this will be a disaster.” (Shideler 2022, 123).

destroyed a lobster pound used and owned by Mi'kmaw fishers (RCMP October 10, 2017; Googoo December 27, 2017; Julian 2017).

In response to protests, the DFO sided with commercial fishers, declaring that there were “clear indications” of illegal Mi'kmaw fishing activities, and explained their focus on catching those who buy “the illegal lobster” from Mi'kmaw fishers (Patil 2017). This was when the DFO launched “Project Magnet,” a sting operation involving DFO officers marking lobster traps used by Sipekne'katik First Nation fishers, returning at night with divers to microchip lobsters caught in the marked traps, and then tracking the microchipped lobsters to arrest people who bought the lobster caught by Mi'kmaw fishers (Cuthbertson 2018). This strategy of targeting those who purchase from, or support Mi'kmaw fishing efforts has been a consistent feature of DFO and RCMP enforcement practices (DFO September 14, 2023)

### **2018 The Calm Before the Storm**

In the summer of 2018, commercial fishing groups and five First Nations began a series of informal meetings to discuss the fishing activities where they affirmed commitments to conservation and peace (Cuthbertson 2018). The meetings contributed to a quieter fishing season in 2018. The only reported interruptions to Mi'kmaw fishing activities were from the DFO itself. Mi'kmaw fishers who continued to fish under both moderate livelihood and FSC fishing rights faced enforcement from the DFO and RCMP. For example, on November 26, 2018, the DFO seized eight crates of lobster, twenty lobster traps, and the truck used by three Sipekne'katik First Nation fishers (Googoo January 10, 2023). The three Sipekne'katik First Nation fishers were



arrested and charged for allegedly violating FSC fishing license rules by fishing out of season.<sup>22</sup> Mi'kmaw fishers continued to fish under both moderate livelihood and FSC fishing rights facing, uncertainty about enforcement activities at any time.

## **2019 Brewing Conflict**

In 2019, the DFO began a series of reconciliation-based initiatives, most notably the DFO-Coast Guard Reconciliation Strategy, a commitment to a “whole-of-department, long-term approach to advancing meaningful Reconciliation with Indigenous peoples” (DFO-Coast Guard Reconciliation Strategy 2019). This strategy commits to supporting “food, social, ceremonial (FSC) and commercial fish access” but makes no mention of the right to fish for a moderate livelihood (DFO September 2019). These new reconciliation-based initiatives were met with resistance by Mi'kmaw communities, who rejected settler authority and began a series of self-regulated fishing activities (Stiegman and Pictou 2024, 8).

In May, Natoaganeg (Eel Ground) First Nation began a self-regulated Snow Crab fishery in northeastern New Brunswick without DFO authorization (Bissett 2019; Weldon 2019). In response, DFO fishery officers seized 31 traps on the opening day of the Natoaganeg treaty fishery and declared that it was “illegal to purchase, sell or possess any fish caught” by the Natoaganeg First Nation (Weldon 2019). In a similar move, the Listuguj Mi'gmaq First Nation in Quebec announced they would exercise their right to fish for a moderate livelihood, launching a moderate livelihood fishery with self-regulated lobster law and lobster management plan that included the intention to sell a portion of the treaty fishery's catch (Jones et al. 2024; Googoo

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<sup>22</sup> These charges, like most charges against Mi'kmaw fishers, were dismissed in Nova Scotia provincial court in January of 2023 as the Crown could not prove the Mi'kmaw fishers did not have legal authority to fish lobster (Googoo January 10, 2023).

October 4, 2019). Following these communities' lead, Chief Sack of Sipekne'katik First Nation sent a letter to inform DFO minister Jonathan Wilkinson of the Sipekne'katik First Nation's plans to catch and sell lobster (Googoo October 4, 2019).

In response, the DFO and RCMP increased enforcement of Mi'kmaw fishing activities, leading to multiple arrests of Mi'kmaw fishers and seizures of Mi'kmaw fishing gear and lobster traps (see Table 1.). In addition to this increased enforcement, Mi'kmaw fishers report multiple targeted attacks, including stolen traps and gear and the destruction of fishing boats. For example, in August, over 100 lobster traps and other gear were stolen from Membertou First Nation in just one night (Googoo September 25, 2023; RCMP News December 28, 2019; Moore 2019).

Table 1. Institutional Enforcement Actions 2019

<b>Date</b>	<b>Location</b>	<b>Enforcement Action</b>
August 9 2019	St. Mary's Bay, N.S.	DFO seized 10 lobster traps, arrested, and charged Sipekne'katik First Nation fishers
August 19 2019	Woods Harbour near Barrington, N.S.	DFO seized 10 lobster traps, Wasoqopa'q First Nation member arrested and charged with fishing for and possession of lobster without authorization
August 26 2019	Cheticamp in Inverness County, N.S.	Elsipogtog First Nation fisher arrested and charged with three fishery violations for snow crab fishing
September 7 2019	Cape Breton, N.S.	DFO seized 32 crates of lobster from Mi'kmaw fishers, who were arrested and charged
October 3 2019	St. Peter's Bay, N.S.	DFO arrested and charged a Potlotek First Nation member for lobster fishing activities
October 5 2019	Near Pictou Landing First Nation	DFO arrested and charged two Pictou Landing First Nation members for lobster fishing
December 13 2019	Sheet Harbour N.S.	DFO seized traps belonging to Mi'kmaw fisher

Source: Googoo September 25, 2023; Sullivan 2019; Googoo August 20, 2019.

## **2020 the Mi'kmaw lobster dispute**

Mi'kmaw fishers continued to face harassment and criminalization as the fishing season continued through the start of the year. When the lobster fishing season ended, many Mi'kmaw

fishers participated in elver fishing, leading to a variety of arrests, with individuals facing a maximum fine of \$500,000 and two years in prison (Googoo September 25, 2023). This influx of Mi'kmaw fishers using FSC and moderate livelihood rights prompted the DFO to shut the Elver fishery down out of “poaching” and “violence” concerns (Withers 2023).

In an ambitious step, the Sipekne'katik First Nation launched a self-regulated moderate livelihood fishery. Sipekne'katik was motivated by a lack of progress in negotiations to implement the Marshall decision in official DFO agreements, instead turning away from the DFO for authorization (Jones et al. 2024, 32; Donovan 2023; Sarson 2022, 615; Anguila-way et al. 2020, 11). The process began with consulting, developing, and implementing their own management plans for the lobster fishery according to Indigenous principles of conservation (Jones et al. 2024, 32). In a ceremony marking the 21st anniversary of the Marshall Decision, the Sipekne'katik First Nation opened its moderate livelihood fishery with ten lobster licences in accordance with phase one of the moderate livelihood fishery (Shideler 2022, 112). Along with the Sipekne'katik First Nation moderate livelihood fishery, the Potlotek First Nation and Pictou Landing First Nation launched their own moderate livelihood fishery operations later that fall (Conners 2020, Ryan 2020), all of which had a comprehensive fisheries plan, like the Netukulimk Livelihood Fishery Plan, which outlines specific approaches to environmental sustainability, seasons, and oversight (Shideler 2022, 113).

Many commercial fishers immediately reacted to these fisheries with confrontations and harassment of Mi'kmaw fishers. On the first day of Sipekne'katik First Nation's moderate livelihood fishery, Mi'kmaw fishers were intimidated by commercial fishers, with at least 50 Mi'kmaw lobster traps cut loose (APTN 2020). The lack of a clear federal statement emboldened commercial fishers to act (McKinley and McKeen 2020). The days that followed saw waves of

commercial fishers cutting Mi'kmaw trap lines, hauling traps out of the water, and intimidating fishers in convoys of boats and trucks. On October 5, a suspicious fire destroyed a boat belonging to a Mi'kmaw fisher in Comeauville, N.S. (RCMP October 5, 2020).

Tensions peaked on October 13th when an angry mob attacked a lobster pound in New Edinburgh, where two Mi'kmaq were working. The mob of approximately 200 people barricaded the Mi'kmaq inside, throwing rocks at the building, cutting its power, breaking windows and igniting a van owned by a Mi'kmaw fisher (RCMP October 14, 2020). RCMP officers arrived and escorted the Mi'kmaq from the building and then stood by as the mob broke into the pound, stealing lobster catch and damaging the facility. Later that day, the mob arrived at another lobster pound in Middle West Pubnico that was associated with Mi'kmaw fishers. Again, the crowd vandalized the pound, slashed the tires of a Mi'kmaw owned truck, threatened the Mi'kmaw fishers, barricaded them inside, and stole lobster catch. During this violent conflict, Canadian authorities failed to intervene to prevent violence and the destruction of Indigenous infrastructure.<sup>23</sup> Days later, a fire broke out at the Middle West Pubnico plant on October 17th, destroying the entire lobster pound (Bundale 2020). The RCMP released a video of the incident in hopes of identifying suspects, leading to the arrest of 25 people, including two charged with arson (RCMP October 30, 2020).<sup>24</sup> Hate-motivated violence continued throughout the rest of the lobster season, including an unresolved attempted murder of two Mi'kmaw moderate livelihood fishers who were shot at when checking on their moderate livelihood lobster traps (Beswick 2020).

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<sup>23</sup> One of the Mi'kmaw fishers explained “Once the RCMP showed up, I thought we would be able to get out of there, but the RCMP just stood there” (McKinley and McKeen 2020).

<sup>24</sup> Those accused of ransacking the lobster pound had their cases referred to a restorative justice initiative, and one of the two arson charges was withdrawn in a move Sipekne'katik First Nation Chief Mike Sack called “a double standard” (Moore 2022).

## 2021 The Conflict Continues

In 2021, the conflict continued with the introduction of the DFO’s “Moderate Livelihood Fishing Plans,” which would allow Mi’kmaw harvesters to create harvesting plans, fish, and sell their catch (DFO March 3, 2021). However, these fishing activities would have to be done during the commercial fishing season, according to commercial fishing regulations, and with departmental authorization.<sup>25</sup> This requirement has deterred many communities from signing, with less than half of the Mi’kmaq First Nations having signed agreements. With this new agreement framework in place, former DFO minister Jordan released a statement declaring, “Anyone caught harvesting lobster outside the commercial fishing season this year will have to contend with fisheries officers, says federal Fisheries Minister Bernadette Jordan” (CBC Radio March 9, 2021). The seizures of traps would continue to happen to Mi’kmaw fishers exercising moderate livelihood fishing rights. Additionally, Mi’kmaw fishers would continue to face harassment from commercial fishers, including the sinking of a Mi’kmaw fishing boat, theft of lobster, and ten Mi’kmaw fishing boats being cut loose from their wharf (RCMP July 31, 2021; RCMP August 6, 2021). On November 25th, another suspicious fire broke out at a Mi’kmaw-related lobster pound in New Edinburgh, N.S. (RCMP November 26, 2021).

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<sup>25</sup>According to DFO, the seasonal conservation requirements are “informed by science” (DFO Fishing seasons for inshore lobster fisheries 2021). However, these commercial fishing seasons are not necessarily required for conservation. Shideler notes that “DFO defends its seasonality and effort control measures not specifically because of concerns around stock sustainability, but in order to not flood markets with lobster at any one time of year, and to therefore keep prices high for the industry.” The rotational seasons approach is seen as “brilliant for markets” and superior “from a capitalist perspective” to Maine’s year-round lobster fisheries where markets have flooded causing prices to crash (Shideler 2022, 144).

## **2022 Tensions Continue**

In 2022, the Mi'kmaw lobster dispute continued, with Mi'kmaw fishers being arrested by DFO and RCMP officers for their moderate livelihood fishing activities. Mi'kmaw fishers continued to fish, including for elvers. The moderate livelihood agreements allowed some Mi'kmaw nations to fish for elvers through a quota reallocation (Withers 2023). These elver fishing activities attracted more attention from enforcement officers, leading to the arrests of more Mi'kmaw fishers who were often charged with violations under the Fisheries Act for their unapproved fishing activities (Googoo September 25, 2023). Many of the charges throughout the dispute would not stick in court as the Crown continually struggled to prove that Mi'kmaw fishers did not have legal authority to fish (Googoo January 10, 2023). Eventually, the DFO would again close the commercial elver fishery partway through the 2022 season out of concerns for poaching and violence (Withers 2023).

## **2023 The Return of Violence**

In 2023, Mi'kmaw fishers continued to face harassment from commercial fishers and enforcement officers. The lack of DFO and RCMP support left many Mi'kmaw fishers to “fight it out on the river,” with other commercial fishers (Tutton 2023). The incidents of violence increased with Sipekne'katik First Nation members threatened with a gun by a “biker gang,” Mi'kmaw fishers in Weymouth North were assaulted and had their traps stolen, and a confrontation over elvers led to a man being charged with uttering threats and two Sipekne'katik First Nation members being charged with assault with a weapon (Googoo September 25, 2023; James 2024). The violence grew and culminated with a 38-year-old Eskasoni First Nation man

who was shot in an elver fishing dispute on April 5, 2023 (Googoo April 8, 2023). The Eskasoni First Nation man was hospitalized while the alleged suspect remains at large.

In response to the “violence and rampant overfishing by unauthorized harvesters” Joyce Murray, the Federal Fisheries and Oceans Minister, again shut down the elver fishery (Withers 2023). This continued violence prompted the DFO to step up its enforcement activities, reportedly seizing 464 lobster traps over the summer (DFO September 1, 2023). Conservative MP from West Nova, Chris d'Entremont, wrote a letter to the DFO demanding a crackdown on the “increasing incidents of lobster poaching,” claiming that the DFO has allowed “criminals to wreak havoc upon our legal lobster fishery” (d’Entremont 2023).<sup>26</sup>

## **2024 The New Normal**

In 2024, Mi’kmaw fishers continue to be targeted by vandalism. For instance, in Louisbourg, an Eskasoni First Nation moderate livelihood fisher found 70 of their lobster traps sabotaged (Ayers 2024). In Saulnierville, another suspicious fire broke out at a commercial structure that RCMP suspects is related to Mi’kmaw moderate livelihood fishing activities (RCMP April 19, 2024; Fairclough 2024). Further, in spring 2024, the RCMP confirmed investigations of several crimes related to the dispute, including a Molotov cocktail being thrown into a house, gunshots being fired at a house, threats, assaults, mischief and most notably, the use of a front-end loader to plow through a building (Ayers 2024).

The commercial elver fishery was again not opened for the 2024 season. With this closure, the DFO ramped up enforcement of elver fishing activities, and from March 6 to June

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<sup>26</sup> D'Entremont has been a consistent political voice for commercial fishers, pressuring the DFO in 2020 to take action on Mi’kmaw fishers. In 2020 D’Entremont wrote in a letter co-signed by New Brunswick MP Richard Bragdon, “Your failure to take concrete action over the past year is unacceptable and a slap in the face to Nova Scotians” (MacDonald 2020).

10, the DFO arrested over 169 people, seized 488 nets, 29 vehicles, and 396 kilograms of elvers (DFO Elver Enforcement Outcomes to Date 2024). These numbers include enforcement of non-Indigenous fishing activities, but many of the 169 people arrested were Mi'kmaw fishers using their moderate livelihood rights (Googoo April 3, 2024). This includes Blaise Sylliboy and Kevin Hartling, who experienced racism and extreme violence at the hands of DFO enforcement officers (Cuthbertson 2024). Despite the public outrage at DFO enforcement activities, DFO officers have continued with their questionable enforcement activities, including the arrest of a Sipekne'katik First Nation fisher who reported being tackled and hit with pepper spray (Blackburn 2024).

#### **State Enforcement Response 2017-2024**

The institutional response to Indigenous resistance involved negotiated agreements to implement Mi'kmaw fishing rights, and when these agreements proved unsuccessful, criminal enforcement of non-DFO authorized Mi'kmaw fishers. The institutional response to Indigenous resistance focused on negotiations, collaborations, and institutional agreements. From the initial creation of the Rights Reconciliation Agreements to the interim understandings reached to fish in pursuit of a moderate livelihood, institutional agreements have been a central focus in responding to moderate livelihood fishing activities. The DFO has created a variety of different initiatives that work to achieve compromises with the Mi'kmaq to implement rights. With these institutional agreements, the DFO and RCMP have maintained a strategy of criminally enforcing federal regulations on Mi'kmaw fishing activities. This enforcement includes non-Indigenous people who purchase from or support Mi'kmaw fishing efforts.



Outside of legal agreements, the general institutional response to Mi'kmaw moderate livelihood fishing activities has been to criminalize any non-authorized Mi'kmaw fishers for their fishing activities. Since 2017, partly in response to commercial fisher protests, institutional enforcement officers have stepped up the enforcement of Mi'kmaw fishing activities. The persistent enforcement of these fisheries continued as Mi'kmaw fishers asserted their sovereignty over fisheries in 2020. While at first enforcement officers would hold off, the self-regulated Mi'kmaw fishers would quickly face sporadic and unpredictable enforcement activities involving the confiscation of hundreds of thousands of dollars of fishing equipment, arrests of those involved, and long and expensive legal processes. When Mi'kmaw fishers tried self-regulated fishing again in 2021, enforcement officers would come out in full strength, waiting on the water for “whenever the First Nations decide they want to go out” (CBC Radio March 9, 2021). When Mi'kmaw fishers turned to elver fishing, the same approach was applied. This approach using continuous and heightened surveillance, policing, criminalization, and violence against non-DFO authorized Mi'kmaw fishers has remained the DFO and RCMP's principal approach to dealing with Mi'kmaw moderate livelihood fishers.

This institutional approach during Mi'kmaw moderate livelihood fishing activities has been focused on ensuring the “orderly management of fisheries” (DFO May 30, 2024), however, this process of keeping the peace has been inconsistent at best and violent at worst. DFO situation reports circulated in September 2020, leading up to the anti-Indigenous mob riots on October 13, 2020. In these reports, the DFO reported that a “High potential for conflict continues,” with the threat of those protests turning violent described as “likely” (AI-2024-02562). Despite their own predictions, internal records show no intention that the DFO and RCMP enforcement officers considered strengthening protections for Mi'kmaw fishers and

instead reveal a sustained focus on their objective to enforce the Fisheries Act against the Mi'kmaq.

This approach has not been based on “solving crime,” but instead aims to enforce an order based on heteropatriarchal white supremacy that views Indigenous resistance as disruptive to the communal good. In this case, Mi'kmaw fishers engaging in informal economies are deemed unworthy of police protection, who instead focus on protecting private property and “legitimate” businesses like commercial fisheries with DFO authorization. While some of the people who targeted Mi'kmaw fishers with violence, intimidation, and theft were arrested for their crimes throughout the entire lobster dispute, the majority of those arrested throughout the dispute were Mi'kmaw fishers attempting to pursue their moderate livelihood fishing rights. For Mi'kmaw fishers, the institutional response is far from an approach based on the principles of reconciliation, with DFO and RCMP officers themselves being among the primary perpetrators of violence against Indigenous peoples. This response raises significant concerns about the DFO's institutional practices and whether enforcement officers' actions are consistent with the rule of law (Francis 2023, 6).

### **The Influence of Truth and Reconciliation on Institutional Policy**

This section will describe the ways in which the DFO and RCMP have acknowledged or integrated TRC norms and recommendations into their policies. This section begins with the analysis of the DFO's policy documents, exploring three key themes found throughout DFO policy. These three themes reveal how the TRC's transformative agenda has been minimized in DFO policies into rhetorical practices that have suppressed the implementation of Indigenous sovereignty under the guise of advancing reconciliation with Indigenous peoples. The second

half of this section describes the analysis of the RCMP's policy documents related to Indigenous peoples and Mi'kmaw fishing activities. Another three themes are identified in RCMP policy that reveal how reconciliation policies are devised to provide legitimacy to RCMP positions when addressing Indigenous-settler relations. This section demonstrates the many ways in which the DFO and RCMP have—at least rhetorically—acknowledged and integrated TRC norms and recommendations into their policies.

### **A Critical Review of DFO Policy**

The review of DFO policy documents related to moderate livelihood fishing reveals three key themes, attention to conservation, a focus on the economic benefits of commercial fisheries, and consistent use of a discourse of reconciliation, that reflect the institutional priorities and values of the DFO. By examining these themes, this research reveals how the influence of the TRC has been reduced to rhetorical elements in DFO policy documents. The superficial institutionalization of reconciliation-based policies are state attempts to normalize the settler colonial status quo by claiming to address the rights and self-determination of Indigenous communities without substantive change. The following section will expand on these three themes to demonstrate the DFO's policy perspectives toward Mi'kmaw moderate livelihood fishing.

## Conservation in DFO policy

Conservation is a major theme throughout DFO policy related to the Mi'kmaw fishing activities. The DFO explains that conservation and maintaining sustainable oceans and fisheries is a top priority. For example, take this excerpt from a DFO policy document:

Fisheries and Oceans Canada continues to work in close collaboration with provincial, territorial, and Indigenous governments, in consultation with marine stakeholders and industry, to conserve and protect our oceans for the benefit of future generations (DFO Key Media Lines 2023).

This quote exemplifies typical DFO attention to conservation, which can include mentions of “collaboration” with Indigenous governments. Throughout DFO policy documents the DFO consistently positions conservation as one of their primary concerns. This theme is to be expected in fisheries and ocean management policy related documents, but the DFO policy documents also include references to different understandings of conservation.

In the conservation policies, the DFO acknowledged that the Mi'kmaq seek “true co-management” of fisheries resources. The inclusion of Mi'kmaw forms of conservation in DFO policy review documents show that the DFO is aware of Mi'kmaw desires to exercise treaty rights in accordance with their ontologically situated conservation knowledges:

“They also want co-management of the resource to reflect a holistic approach – not just management of individual fish stocks for the purpose of fishing on any given year – but management of fish and fish habitat in the context of healthy waterways, the impact of fisheries and other industries and uses, and with a view for long-term sustainability. This is Netukulimk. The environment, natural resources, and waterways provide all of the necessities of life and you take only what is needed.” (DFO Indigenous Program Review 2019, 7)

The awareness of Netukulimk and different forms of conservation that can exist in the fisheries reveals that the continued exclusion and enforcement Mi'kmaw fishers face is not due to a lack of understanding of Mi'kmaw conservation practices. The persistent exclusion of Mi'kmaw

fishers illustrates a deeper issue. Instead, this exclusion reflects a reluctance to relinquish the authority and control that fisheries management provides the Canadian government over Indigenous peoples. This authority perpetuates a colonial relationship, where the decisions in the Indigenous-settler dynamic are still predominantly made by settlers. DFO conservation policies demonstrate the limitations of the norms articulated in the TRC, which involves efforts that remain primarily rhetorical. These actions reveal the ongoing struggle between state institutions and Indigenous communities over legitimate authority over fisheries.

### **Economic Benefits of Commercial Fishing**

Another central theme in DFO policy documents is the economic benefit of commercial fisheries. In these policies initiatives, to implement Mi'kmaw fishing rights are described as providing important economic benefits to both Indigenous communities and the Canadian economy as a whole. For example:

Mi'kmaq and Maliseet commercial fishing enterprises support jobs in their communities and benefit the economies of Atlantic provinces and Canada as a whole. Continuing to build and improve on this program's success will only increase the social and economic benefits (DFO Indigenous Program Review 2019, 7).

This quote from the DFO's Indigenous Program Review highlights the positive economic benefits of DFO's implementation of Mi'kmaw fishing rights. However, the DFO's focus on economic benefits has left other issues unaddressed, namely a focus on self-determination. The DFO's continued emphasis on economic benefits and integration into existing commercial structures suggests that, despite recent policy changes that provide more flexibility in these arrangements, their approach to reconciliation still prioritizes economic assimilation over true self-determination.

For example, the Atlantic Integrated Commercial Fisheries Initiative that began in 2007 has been a controversial policy for the DFO. While some praise the initiative for its ability to increase Indigenous access to commercial fishing, this initiative maintains absolute settler authority over Mi'kmaw fishing. Nevertheless, the DFO has provided strong praise for the economic benefits it has provided Mi'kmaw communities:

This program has been very successful. While participation is voluntary, 34 of the 35 eligible First Nations now take part; benefitting 40,000 people and the local economy. Over the past decade, commercial fishing enterprises have also built and are implementing their strategic business plans. Today, these enterprises generate \$110 million in annual gross revenues and support 1,675 local jobs. (DFO Indigenous Program Review 2019, 6)

In the DFO's explanation, the success of this program is not based on whether the implementation of treaty fishing rights has been fully accomplished, nor is it judged according to the objective desires of Mi'kmaw fishers; instead, this program is deemed "very successful," because of the financial benefits that it has provided to Indigenous peoples and, most importantly, the Canadian economy. While economic benefits have been great for some Mi'kmaw fishers, the result of this program falls short of reconciliation that provides Indigenous peoples with the ability to exercise their rights in accordance with their own priorities.

Again, we can see the DFO's policy documents present the economic inclusion of Mi'kmaw individuals into the commercial fishing industry as evidence of a successful implementation of treaty rights and positive step toward reconciliation:

Supported by these programs, the cumulative revenue (landed value and diversification) for these First Nations' commercial fishing enterprises since 2000 is now over \$2 billion and annual value of communal commercial landings has increased from \$3 million in 1999 to nearly \$170 million in 2019 (DFO Our response to the Marshall decisions 2024).

By reporting the increase in landed value going from \$3 million in 1999 to nearly \$170 million in 2019, the DFO programs to implement the Marshall decision are framed as a success despite

the continued criminalization of Mi'kmaw fishers for their fishing activities. By removing sovereignty from the conversation, the DFO's purely economic framing of these initiatives ignores the importance of fishing self-determination for Mi'kmaw ways of living and entire identity as Mi'kmaq.

Further, the DFO's understanding of reconciliation as economic inclusion has involved rebranding pre-existing policy strategies as steps toward reconciliation. For example, take this excerpt from the Aboriginal Fisheries Strategy 2012 policy document:

The AFS (Aboriginal Fisheries Strategy) program has resulted in: better monitoring of Aboriginal fishing; improved co-operation on enforcement; more selective fishing; and the creation of approximately 1300 seasonal jobs per year since 1993 in such areas as commercial fishing, processing, monitoring and fishery enhancement activities (DFO 2012).

This quote from a pre-TRC-era policy document shows that economic inclusion has been a priority in the DFO's Mi'kmaw fishing strategy long before the TRC. The only difference is that with the influence of the TRC, the creation of 1300 jobs to support Mi'kmaw inclusion into the commercial fisheries becomes branded as a focus area in the DFO's reconciliation strategy to "enhancing economic opportunities and capacity" for Indigenous peoples (DFO Reconciliation strategy 2019).

While beneficial in some respects, the DFO's focus on the economic benefits of commercial fishing fundamentally misinterprets the motivation behind Mi'kmaw moderate livelihood fishing activities. The DFO's approach ignores the significance of revitalizing ontologically situated cultural practices and drawing on the resurgence of the Mi'kmaw law, focusing solely on economic aspects. This narrow focus on economic self-sufficiency as equivalent to self-determination effectively disregards Indigenous worldviews and continues a practice of "neoliberal Aboriginal governance" that appears to support Indigenous peoples but, in

reality, serves the agenda of a neoliberal welfare state that entrenches colonial power dynamics rather than dismantling them (See Macdonald 2011, 257-258). As a result, DFO's focus on the economic benefits illustrates the discursive influence of norms related to Indigenous rights that are rhetorically acknowledged but not substantively implemented into policies.

### **A Discourse of Reconciliation in DFO Policy**

The final theme in DFO policy documents is the adoption of a discourse of reconciliation. The influence of the TRC can be seen in the discourse of reconciliation that has spread throughout the majority of DFO policy documents related to Indigenous peoples or Mi'kmaw fishing activities. This has manifested in direct references to the TRC, the incorporation of the TRC reconciliation steps into policy, including awareness of the past, acknowledgements of harm, and the formation of different policies that were taken to change behaviours.

The DFO has various policy documents that directly reference the TRC. The clearest influence of reconciliation being incorporated in policy is in the DFO Reconciliation Strategy 2019. This policy document outlines the strategy that the DFO has taken to implement reconciliation, outlining long-term objectives, reconciliation principles, indicators, and action areas that show how the DFO intends to advance reconciliation. This document establishes three long-term objectives to fulfill the commitment to reconciliation: "strengthened Indigenous-Crown relationship," "recognized self-determination," and "reduced socio-economic gaps" (DFO Reconciliation Strategy 2019). The first two commitments align with the TRC's framing of reconciliation as a relationship between Indigenous peoples and settlers and the TRC's contention that the protection and exercise of the Indigenous right to self-determination is the "strongest antidote to further violation of their rights" (TRC 2015, 6; 209). However, the third



long-term objective, “reduced socio-economic gaps,” is something that the DFO has sought to include itself (DFO Reconciliation Strategy 2019). This inclusion of reducing socio-economic gaps between Indigenous peoples and settlers seems like an appropriate step toward reconciliation, but when viewed in the context of Indigenous resurgence theory and the DFO’s larger strategy of assimilating Mi’kmaw fishing activities into the commercial fishing industries, we can see how this objective is less about promoting Indigenous peoples’ position in society and more about using the language of reconciliation to legitimize the economic assimilation of Mi’kmaw fishers into the fishing industry.

The treaty rights to fish for a moderate livelihood are conspicuously absent from the Reconciliation strategy policy document in 2019, despite the inclusion of references to FSC treaty rights. The lack of reference to the treaty right to fish for a moderate livelihood that was affirmed in the 1999 court decision is a persistent theme throughout DFO policy. For example, returning to the DFO’s long-term reconciliation objective of “reduced socio-economic gaps,” the description given for this goal would see that Indigenous groups “have appropriate food, social, ceremonial (FSC) and commercial fish access” (DFO Reconciliation strategy 2019). The DFO’s mention of “commercial fish access,” instead of moderate livelihood fishing as an avenue to reduce socio-economic gaps, shows the DFO’s larger unwillingness to affirm Indigenous rights in ways that give Indigenous peoples actual authority and control over fisheries management.

Evidence of the influence of the TRC can be seen in DFO’s rhetorical and discursive aspects within policy documents, which have been blanketed in the language of reconciliation.

For example, the TRC and the DFO share similar definitions of reconciliation:

Table 2. Definition of Reconciliation

TRC Definition of Reconciliation	DFO Definition of Reconciliation
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The Commission defines reconciliation as an ongoing process of establishing and maintaining respectful relationships.	We acknowledge that reconciliation is a long-term commitment rooted in Canada’s commitment to build a renewed relationship with Indigenous peoples.
Source: TRC 2015, 16	Source: DFO Reconciliation Strategy 2019

In this example, we can see both definitions of reconciliation view reconciliation as an “ongoing process,” or “long-term commitment,” that involves “establishing and maintaining,” or a “commitment to build,” “respectful,” or “renewed” relationships with Indigenous people. While the DFO’s policy documents mirror the TRC’s language of reconciliation, the alignment of these definitions does not necessarily translate into meaningful changes in practice. Instead, the similarity between the two definitions highlights the central argument of this thesis that the relationship between norms related to Indigenous rights and state institutions manifests as a discursive influence that uses the language of reconciliation to legitimize institutional actions and appear aligned with contemporary norms.

The influence of the four TRC reconciliation steps can also be seen in the DFO’s policy documents. This influence on DFO policy can be seen in statements that offer an acknowledgement of harm “It also means recognizing the Department’s and Canada’s historical relationships with Indigenous peoples, including court cases and other events which defined these relationships over time” and statements that reflect an awareness of past “Our guiding principles start with remembering and acknowledging the historic relationship we have with Indigenous peoples” (DFO Reconciliation strategy 2019). However, the most explicit influence of the TRC can be seen in the DFO’s plan to “Ignite a culture change” (DFO Reconciliation strategy 2019). This cultural change idea comes from the action to change behaviour in the TRC’s steps toward reconciliation (TRC 2015, 6). The TRC explains “Reconciliation must inspire Aboriginal and non-Aboriginal peoples to transform Canadian society” with actions that

“change both minds and hearts” (TRC 2015, 8; 234). The influence of the TRC can be seen in this excerpt from Indigenous Program Review 2019:

At the same time, the timing is optimal for a cultural change to begin by approaching the renewal of these programs through the lens of truth and reconciliation – and the long-term goal of a balanced relationship between the Government of Canada and Indigenous Nations (DFO Indigenous Program Review 2019, 2).

The desire to “Ignite a culture change that reflects truth and reconciliation,” is a prominent feature throughout the DFO’s policy documents and is “critically important” to the success of the DFO’s reconciliation strategy (DFO Indigenous Program Review 2019, 3; 9).

In sum, DFO policy documents related to Indigenous peoples and Mi’kmaw fishing activities reveal three key themes that inform their understanding. Conservation is a key theme for the maintenance of sustainable fisheries. The economic benefits of commercial fishing are a frequent theme that describes the policy initiatives to implement Mi’kmaw fishing rights as providing important economic benefits to both Indigenous communities and the Canadian economy as a whole. Through this economic benefits narrative, the DFO has framed the integration of Mi’kmaw individuals into the commercial fishing industry as a resounding success even though this initiative has not provided Mi’kmaw fishers with the ability to exercise their rights in accordance with their own priorities. The final theme in DFO policy documents is the adoption of a discourse of reconciliation. This has manifested in direct references to the TRC, the adoption of the TRC’s language, and the incorporation of the TRC reconciliation steps. This final theme shows how the TRC’s transformative agenda has been minimized into rhetorical strategies that are used to suppress the implementation of Indigenous sovereignty under the guise of building a renewed relationship with Indigenous peoples.

## **A Critical Review of RCMP Policy**

The review of RCMP policy documents related to reconciliation and the moderate livelihood fisheries reveal three key themes. These include an adoption of a reconciliation discourse, the promotion of Indigenous cultural awareness and visibility, and efforts related to increasing Indigenous representation. Like any other institution, police depend on legitimacy to function effectively (Bonner and Dammert 2022, 630). Thus, public perception and a shared belief in the legal validity of their conduct is essential to maintaining this legitimacy (Herbert 2006, 482). These reconciliation policies are devised to provide legitimacy to RCMP positions when addressing Indigenous-settler relations.

### **RCMP Reconciliation Discourse**

Like the DFO, since the TRC was established in 2015, the RCMP has adopted the discourse of reconciliation into official policy. The RCMP has various policy documents that directly reference the TRC. The Divisional Reconciliation Strategies are the most explicit influence of reconciliation being incorporated in the RCMP's policies. These Divisional Reconciliation Strategies involve regional RCMP divisions in each province and territory developing their own "reconciliation strategy." The Nova Scotia region is the H Division of the RCMP, which has a full reconciliation strategy plan that is a "framework to guide its objectives going forward" (H Division Reconciliation Strategy 2021-2024). The norms and recommendations from the TRC have been directly incorporated into these RCMP divisional initiatives.

The direct influence of the TRC can be seen in the Nova Scotia region Reconciliation Strategy, which makes references to the TRC including the use of direct quotes, links to the

TRC, and mentions of “the Truth and Reconciliation Commission's Calls to Action,” (H Division Reconciliation Strategy 2021-2024). Again, in another policy document, the TRC is directly mentioned:

The Truth and Reconciliation Commission’s (TRC) "Calls to Action”, and the “Calls to Justice” of the Missing and Murdered Indigenous Women and Girls (MMIWG) Inquiry, have led to a greater awareness among Canadians to account for the harm inflicted in the past, and to respect Indigenous people, communities and culture (Summary of the Evaluation of the RCMP’s Reconciliation Actions 2016-2021).

The direct references to the TRC in this example show how the norms related to Indigenous rights have imposed new obligations and expectations on Canadian institutions, in this case with the 94 Calls to Action, which have been a powerful mobilizing technique.

The RCMP has adopted the norms related to Indigenous rights articulated in the RCMP. The influence of the four steps to reconciliation in the TRC can be seen in the framing of the RCMP’s reconciliation policies. The RCMP’s reconciliation policies include influence from all four steps, awareness of the past, acknowledgement of harm, the requirement for atonement for the causes of harm, and actions to change behaviour.

RCMP policy describes a commitment to acknowledging past harms and taking steps toward reconciliation. A key aspect of the influence of the TRC is the acknowledgement of harm, which has been a part of the RCMP’s reconciliation strategy. The RCMP’s apology given in 2018 by Commissioner Brenda Lucki and the former Commissioner Robert Paulson's statement to the Assembly of First Nations "to put words into action" are examples of the RCMP’s acknowledgements of harm (H Division Reconciliation Strategy 2021-2024; RCMP June 25, 2018). Commissioner Lucki’s 2018 acknowledgement of harm is specifically framed as a step toward reconciliation, “I want this apology to be one more step in the RCMP's commitment to Reconciliation” (RCMP June 25, 2018). This framing of apologies within the

context of reconciliation aligns with the TRC's calls for acknowledging past harm and reflects the impact of the norms articulated in the TRC on shaping institutional discourse (TRC 2015, 208; 210). These reconciliation efforts are described as integral to RCMP operations, which indicates a shift in institutional priorities towards addressing Indigenous rights.

Another aspect the RCMP's policies include are references to the requirement for atonement for the causes of harm to Indigenous peoples. The restorative justice initiative is an example of the RCMP's attempt to atone for the harm it has done to Indigenous people. In response to Call to Action 30, which calls for an elimination of the overrepresentation of Indigenous peoples in custody, the RCMP established an initiative to increase the number of referrals to the Mi'kmaw Legal Support Network (TRC 2015, 172). RCMP policies include references to their response to the Missing and Murdered Indigenous Women and Girls Inquiry, which has called out the RCMP for its institutional sexism and lack of regard for the bodily autonomy of women, especially Indigenous women.<sup>27</sup> In a direct example of influence from the TRC, the RCMP's policies include a direct quote from the TRC in reference to the need for reparations:

Reparations for historical injustices must include not only apology, financial redress, legal reform, and policy change but also the rewriting of national history and public commemoration. (H Division Reconciliation Strategy 2021-2024).

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<sup>27</sup> Included in their reconciliation efforts webpage is a paragraph about "Sexual Assault Case Reviews," that claims that the RCMP is "taking action to strengthen police training and awareness, investigative accountability, victim support, and public education and communication." What is left out from their website is the fact that this review followed an explosive report by the Globe and Mail revealing how police routinely disregard sexual assault allegations across the country (Doolittle 2017). Further, there are no details on the investigation's results. The report revealed that the RCMP has misclassified roughly 1 in 7 (12.5 % or 1260 cases) of all reported sexual assault cases in 2016, leading to the reopening 242 sexual assault investigations (RCMP May 4, 2022, 3). As Kaba and Ritchie explain, when it suits their interest, police departments have been known to reduce crime rates by deeming criminal complaints 'unfounded,' (Kaba and Ritchie 2022, 51). Essentially, the RCMP has a practice of routinely 'misclassifying' rape cases as 'unfounded' in order to make it appear that they are better at solving sexual crimes than they actually are.

The inclusion of the need for reparations raises a question about the accountability of the RCMP with its historic and ongoing role as the primary instrument of colonial violence on Indigenous peoples. However, outside of this reference to the need for reparations and policy initiatives that aim to increase the use of restorative justice, the RCMP does not provide much to atone for the harm caused to Indigenous peoples or to support the right of Indigenous nations to self-determination.

Like the TRC's influence on the DFO's policies, older Indigenous-related policies have been recontextualized into reconciliation-based policies. For example, the Commanding Officer's Mi'kmaq and Indigenous Advisory Committee was an initiative established in 1990 but was presented in the H Division Reconciliation Strategy as a step toward reconciliation that would "enhance relationships with Indigenous communities" (H Division Reconciliation Strategy 2021-2024). This practice of rebranding pre-existing policies as reconciliation-based initiatives seen in both the RCMP and DFO demonstrates the finding that reconciliation has become the latest colonial reconfiguration, with the Canadian state attempting to reorder itself to account for critiques about the treatment Indigenous peoples face that is designed to reproduce settler colonial power.

### **Indigenous Cultural Awareness and Visibility in RCMP Policy**

The promotion of Indigenous cultural awareness and visibility is another major focus throughout RCMP policy. These efforts demonstrate a clear alignment with the TRC's norms. While these policy aspects including many of the education and cultural awareness training can be attributed to Equity, Diversity, and Inclusion programs, they also address key TRC Calls to Action and norms related to awareness of the past (Building an Accessible RCMP 2023-2025).

Policies related to the promotion of Indigenous cultural awareness and visibility have manifested in several different ways. A major focus in the RCMP reconciliation strategy is education and cultural awareness. These include community events like the Sisters in Spirit Vigils or the Moose Hide Campaign and training programs like the Unconscious Bias, Anti-Racism, and Anti-Discrimination training courses (Building an Accessible RCMP 2023-2025; H Division Reconciliation Strategy 2021-2024). Also included is a focus on increasing Indigenous visibility in the creation of a Sweat lodge, the raising of a Mi'kmaw flag, and the eagle feather initiative (H Division Reconciliation Strategy 2021-2024). These initiatives align specifically with the TRC's Call to Action 57, which calls for “the government to educate public servants on the history of Aboriginal peoples” (TRC 2015, 219).

### **Indigenous Representation in the RCMP**

The final theme is the efforts taken to increase Indigenous representation. Like cultural awareness and visibility, these initiatives can be partly attributed to Equity, Diversity, and Inclusion policy goals. The RCMP has implemented different recruitment and community engagement strategies to “enhance the representation of Indigenous employees across the organization” (Summary of the Evaluation of the RCMP’s Reconciliation Actions 2016-2021). This involves “recruitment activities for increased Indigenous representation,” like the Pre-Cadet Training Program, Depot Youth Program, and localized recruitment sessions in Indigenous communities. (H Division Reconciliation Strategy 2021-2024). Part of this theme are efforts that the RCMP has taken to engage in dialogue and collaborative efforts to strengthen relationships with Indigenous peoples. For example, the H Division Reconciliation Strategy 2021-2024



describes strengthening relationships with Indigenous communities as “an ongoing priority for the Nova Scotia RCMP” (H Division Reconciliation Strategy 2021-2024).

In sum, the review of RCMP policy documents reveals three key themes. These include an adoption of a reconciliation discourse, the promotion of Indigenous cultural awareness and visibility, and efforts related to increasing Indigenous representation. These examples clearly show that the norms articulated in the TRC have influenced the RCMP’s policies. Whether it is direct attempts to respond to calls to action, using the language and discourse articulated in the TRC, or recontextualizing old policies as truth and reconciliation-based initiatives, the influence of the TRC on RCMP policy is evident. The other themes included the promotion of Indigenous cultural awareness and visibility, as well as efforts related to increasing Indigenous representation. While cultural awareness, visibility, and representation do align with some norms related to Indigenous rights, they cannot be described as direct evidence of the TRC’s influence on the RCMP’s policy.

### **The Influence of Truth and Reconciliation on DFO and RCMP Policies**

This analysis has shown that the DFO and RCMP have acknowledged the TRC and have adopted a discourse of reconciliation in policy rhetoric. This includes directly taking from the language of the TRC, following through on some of the steps to reconciliation, and the incorporation of key aspects of reconciliation into policy commitments. In institutional policy documents the DFO and RCMP incorporated key aspects of reconciliation into policy commitments. This includes the RCMP’s H Division Reconciliation Strategy that works as a “framework to guide its objectives going forward,” and the DFO’s 2019 reconciliation strategy (H Division Reconciliation Strategy 2021-2024; DFO-Coast Guard Reconciliation Strategy

2019). These policy documents have aimed to integrate TRC norms and recommendations into their policy frameworks.

The influence of the TRC can be seen in many different ways, such as statements that offer an acknowledgement of harm, statements that reflect an awareness of the past, and actions to change behaviours. The policies to “ignite” a culture change in the DFO is a clear example of the TRC’s actions to change behaviours influence on institutional policy (DFO Reconciliation strategy 2019). The attention to conservation, a focus on the economic benefits of commercial fisheries, and consistent use of a discourse of reconciliation in DFO policies reveal how the TRC’s transformative agenda has been minimized in DFO policies into rhetorical practices that have suppressed the implementation of Indigenous sovereignty under the guise of advancing reconciliation with Indigenous peoples. The adoption of a reconciliation discourse, the promotion of Indigenous cultural awareness and visibility, and efforts related to increasing Indigenous representation in RCMP policies illustrate how the influence of norms in the TRC has been selectively incorporated into policies that are devised to provide legitimacy to RCMP positions when addressing Indigenous-settler relations.

While the influence of the norms in the TRC has primarily served to reinforce existing colonial power dynamics in DFO and RCMP institutional policies, this does not necessarily mean that reconciliation discourse is wholly iniquitous. Integrating the language of reconciliation into institutional policies, even if it is only superficial, raises awareness about Indigenous rights and treaty responsibilities, can influence public opinion, and lays the groundwork for future, more transformative changes. However, instead of influencing DFO and RCMP policies in ways that transform colonial power dynamics, the norms articulated within the TRC have been co-opted to reinforce existing institutional positions that will ensure a continued colonial status quo.

This co-optation reveals the resilience of settler colonial power, demonstrating how institutions can neutralize transformative agendas to normalize settler colonial authority. For instance, the RCMP's approach to reconciliation has been limited to promoting Indigenous cultural awareness, visibility, and representation in officers, which were policy objectives that preceded the TRC. Similarly, the DFO has repackaged older Indigenous-related policies as evidence of their reconciliation-based policies. By claiming to address the rights and self-determination of Indigenous communities in institutional policies while exercising continuous and heightened surveillance, policing, criminalization, and violence against non-DFO authorized Mi'kmaw fishers that were established earlier in chapter five, the institutionalization of norms related to Indigenous rights have the effect of reproducing colonial power dynamics rather than dismantling them. This finding highlights the need for a more critical approach to reconciliation that focuses on the structural challenges that prevent the full realization of Indigenous rights within state institutions.

### **Institutional Rhetoric of Truth and Reconciliation**

This section will explain the positions on the Mi'kmaw moderate livelihood fishing that the DFO and RCMP have articulated and explore how the DFO and RCMP have publicly referenced truth and reconciliation in their communications. This analysis of the institutional rhetoric and discourse in public communications has value in providing insight into dominant discourse and changing norms in the wider society. The data analysis of DFO and RCMP communications reveal four central themes. These themes are the adoption of a discourse of truth and reconciliation, a recontextualization of reconciliation, the disregard for Indigenous peoples' safety and demonizing Mi'kmaw fishers.

The adoption of the norms articulated in the TRC in DFO and RCMP communications is a predominant feature throughout enforcement response to Mi'kmaw moderate livelihood fishing activities. This influence has manifested in commitments to reconciliation, the adoption of the language of the TRC, and a focus on consultation. In institutional communications, the influence of the TRC results in statements that often deploy reconciliation in support of institutional positions. This can be seen in a focus on collaboration, the positioning of settler authority as superior, and the repurposing of moderate livelihood fishing into economic assimilation. Despite the influence of the TRC on institutional communication, crimes targeting Indigenous peoples are still presented without context as random attacks, threats to Indigenous peoples are downplayed, and false equivalencies are made between Indigenous victims and their perpetrators. Lastly, even with the positive discourse on reconciliation, the data shows a pattern of criminalizing Mi'kmaw fishers.

### **Reconciliation Influence**

The influence of the norms related to Indigenous rights articulated in the TRC can be seen in the discourse of reconciliation that is clear throughout the majority of DFO and RCMP communications related to Mi'kmaw moderate livelihood fishing. This influence can be seen in commitments to reconciliation and the adoption of the language of the TRC, and a focus on consultation. The way institutional communications have appealed to reconciliation as a normative ideal in legitimizing enforcement activities reveals how these norms have imposed new obligations and expectations on Canadian institutions. With these new obligations and expectations imposed on Canadian institutions, Indigenous resistance challenges settler colonial

power and compels the Canadian state to reconcile its position with these changing international norms.

The DFO and RCMP frequently reference commitments to reconciliation throughout their institutional communications. These commitments are often made in the headlines or leading statements of institutional communications. For example, the first sentence of DFO public communications read:

Table 2.

Leading Sentence	Source
“Fisheries and Oceans Canada (DFO) is committed to reconciliation and the orderly management of the lobster fishery for all harvesters.”	(DFO May 30, 2024)
“The Government of Canada remains committed to advancing reconciliation with Indigenous peoples and working with First Nations to uphold their Indigenous and Treaty rights to fish, as affirmed by the Supreme Court of Canada, and protecting fishery resources for the benefit of all.”	(DFO April 14, 2023)
“The Government of Canada is committed to its relationship with Indigenous peoples and to honouring the Peace and Friendship Treaties between our nations.”	(DFO August 14, 2021)
“The Government of Canada is committed to a renewed relationship with Indigenous peoples, based on the recognition of rights, respect, cooperation, and partnership.”	(DFO September 6, 2019)

The inclusion of reconciliation commitments in these leading statements emphasize the fact that reconciliation is a top priority in institutional response to Mi’kmaw fishing activities.

In communications related to crimes targeting Indigenous people, the DFO and RCMP use statements affirming their commitments to reconciliation to legitimize their responses. For example, in an October 20, 2020, RCMP press conference on the Mi’kmaw fishery dispute commissioner Brenda Lucki was asked a question about serious concerns that have been raised about RCMP officers captured on video standing by as acts of violence were playing out. Her response emphasizes the commitment to reconciliation:

We will hold those to account who continue to pursue criminal activity. Also committed to that we are committed to the reconciliation with Indigenous people through proactive

communication and engagement with the Indigenous and strengthening the trust and the relationship (RCMP October 20, 2020).

In her response to harsh concerns about RCMP officers' actions, the RCMP Commissioner affirms the commitment to the reconciliation with Indigenous peoples in defending enforcement actions. These reconciliation commitments attempt to reassure people that the RCMP is not an institution of colonial violence but instead is a part of the process of reconciliation that is objective and impartial in holding those that pursue criminal activity to account.

Again, in response to crimes committed that were intended to damage Sipekne'katik First Nation property and intimidate Indigenous fishers, a DFO department spokesperson released a statement to the Canadian Press presenting the DFO as objective and impartial. The DFO statement explains: "The Government of Canada is firmly committed to advancing reconciliation, implementing rights-based fisheries, and ensuring that every person feels safe on the wharf and on the water" (The Canadian Press Aug 5, 2021). This statement highlights how the DFO presents itself as an institution that promotes justice and equity. The mention of ensuring the safety of every person stresses the DFO's role in protecting all parties, presenting an image of fairness and impartiality, and not taking sides in the dispute.

In institutional communication, the adoption of the language used in the TRC has been employed in responses to Mi'kmaw fishing activities. For example, in a DFO News release, statements are made that take from the TRC's awareness of the past and integration of Indigenous perspectives and knowledge:

We recognize coastal Indigenous communities share ties to the oceans that span thousands of years. Their partnership and traditional knowledge are integral to ensuring meaningful protection and management of our oceans, and strengthening our marine safety system and environmental response (DFO June 21 2018).

In this statement, the DFO recognizes the ties to the oceans that Indigenous communities share and the importance of “traditional knowledge,” in ocean management. These statements directly align with the TRC’s focus on increasing awareness of the past and awareness of the “knowledge of Indigenous nations who continue to make such a strong contribution to Canada,” (TRC 2015, 22).

The influence of the TRC again can be seen in institutional communications, which often refer to actions to change behaviours. For example, the DFO has referenced its goal of “igniting a culture change” in news releases and describes actions taken to change behaviours like reconciliation education for employees:

The new strategy is an internal guide that will support employees in understanding why and how effective Reconciliation is so significant in their day-to-day work. This approach is one of the first of its kind among federal government departments. This is a practical plan of action. (DFO June 21, 2019).

The DFO’s emphasis on the work it has taken to try and change behaviours in day-to-day work aligns with the norms related to Indigenous rights articulated in the TRC.

Like the DFO, the RCMP has also highlighted its actions to change behaviours in its communications. In response to a question on the RCMP’s response to the Mi’kmaw moderate livelihood fishing a statement provided by RCMP commissioner Lucki referenced the actions the RCMP has taken to work toward reconciliation:

Times are changing and we need to change with those times so we’ve brought in a culture awareness and humility course that is mandatory for all employees of the RCMP. We are co-developing with Indigenous and racialized communities an anti-racism training that will be mandatory for all communities. We have introduced the blanket exercise at the training academy. We’ve done a lot of work toward reconciliation. (RCMP October 20, 2020).

Referencing reconciliation in response to a question about improper enforcement activities allows the RCMP to present themselves as actively addressing both past and present injustices

and to present in an image of progressiveness and accountability. Emphasizing the steps taken to change action aligns with the TRC and intends to show a commitment to meaningful change.

This framing provides legitimacy for RCMP officers' actions, even in controversy.

### **Reconciliation Recontextualized**

In institutional communications, the influence of the TRC results in statements that often recontextualize reconciliation to support institutional positions. In these communications, the DFO and RCMP have used the norms related to Indigenous rights to advocate for institutional objectives in the name of reconciliation. This has manifested in a focus on collaboration, the positioning of settler authority as superior, and the repurposing of moderate livelihood fishing into economic assimilation.

In institutional communications there is a focus on collaboration and consultation. The TRC explains that “meaningful consultation” is an important part of reconciliation (TRC 2015, 143). The DFO and RCMP emphasize this focus on collaboration and consultation in their public communications. A DFO statement explains this commitment to “consistent, sustainable and collaborative fisheries arrangements” as critical to its goal of “achieving reconciliation and implementing treaty rights” (DFO May 20, 2022). The DFO’s emphasis on consultation serves to maintain control over Indigenous peoples by framing state-directed processes as collaborative efforts. While Mi’kmaw leaders have claimed that the DFO has a “take it or leave it” approach to imposing seasonal and commercial regulations on Mi’kmaw fishers in fisheries negotiations, the DFO has framed these negotiations as a collaborative step toward reconciliation (Forester 2020).

The DFO’s emphasis on reconciliation and collaboration has been used to call for an end to moderate livelihood fishing activities. In this statement, the DFO responds to the growing



moderate livelihood fishing activities in 2020 and describes that fishery officers will “take action” no matter who is doing the fishing to enforce “long-term sustainability,” while maintaining the commitment to reconciliation and implementing treaty rights:

If fishery officers are concerned about excessive fishing negatively impacting long-term sustainability of lobster, they will need to take action – whoever is doing the fishing. I am asking that everyone respect DFO’s role. Let officers do their jobs. We do not want to escalate tensions, but rather to ensure that all fishing is conducted in a safe, orderly, and sustainable manner.

This Government is firmly committed to advancing reconciliation, and implementing Treaty Rights. That has not changed. We need to work out these differences at the table, not on the water. We need to sit down nation-to-nation. We need to do this through respectful, constructive dialogue (DFO November 13 2020).

In this statement, the DFO emphasizes the “need” for collaboration to implement treaty rights, not through the methods that Mi’kmaw communities have determined but through “respectful, constructive dialogue.” The emphasis on collaboration shows how reconciliation is co-opted to delegitimize the ways the Mi’kmaq have exercised their fishing rights in favour of the DFO’s framework that has had limited success in actualizing these rights. By demanding that the implementation of treaty rights is done through a “dialogue” defined by the DFO, the state maintains control over the process and, inevitably, the outcomes. This approach to implementing rights only within a state-defined framework undermines Indigenous sovereignty and does not align with TRC commitments.

In institutional communications, the DFO and RCMP have emphasized their position as the sole authority to determine what are legitimate or illegitimate moderate livelihood fishing actions. This discourse reinforces settler authority as superior to Indigenous authority and is inconsistent with the Marshall 1999 decision and the meaning of truth and reconciliation. For example, in reference to lobster traps belonging to Mi’kmaw fishers using a DFO-authorized moderate livelihood licences were destroyed in a targeted attack, the DFO released a statement

saying, “For the fourth year in a row, this fishery is authorized to take place during the commercial seasons in Lobster Fishing Areas (LFAs) 26A, 27, 28, 29, 30, and 31A.” (DFO May 30, 2024). This statement has the effect of reinforcing the status quo where moderate livelihood fishing is allowed but only within the context that the DFO has mandated. In this statement, the DFO presents the targeted intimidation and harassment of Mi’kmaw fishers as especially unlawful because the Eskasoni First Nation fisher that was targeted actually was authorized by the DFO. When non-authorized fishers are targeted, statements are rarely released.

The DFO often publicly describes the state-authorized moderate livelihood fisheries in a positive way that highlights these authorized fisheries as not affecting commercial fishing activities and conservation:

DFO also authorizes moderate livelihood fisheries for four First Nations in southwest Nova Scotia. The department has said the fisheries do not affect the lobster stocks because the trap allocations come from those that have previously been removed or retired from the same LFAs (Ayers 2024).

This statement demonstrates the DFO’s position as the sole authority to determine legitimate fishing activities and contributes to the stigmatization of fishery activities that are not authorized by the DFO. The statement affirms DFO authorized moderate livelihood fishers as a non-threat to ongoing fishing activities and conservation. However, the qualification for the moderate livelihood fisheries to be DFO authorized contributes to the stigmatization and harms other moderate livelihood fishery activities. The self-regulated fisheries are left out of conservation effects even though they are just as much of a non-threat to conservation as the DFO authorized ones are. This consistent practice where state authorization is what determines what fisheries are sustainable or free from harassment reinforces the positioning of settler authority as superior to Indigenous sovereignty.

Throughout institutional communications, reconciliation is used to recontextualize the implementation of moderate livelihood fishing into commercial fishery participation. The discourse of reconciliation supports Indigenous fishing participation but does not go further. In institutional communication, reconciliation is consistently repurposed from a pathway toward Indigenous self-determination and sovereignty to a collaborative approach to commercial fishery inclusion, making the process of economic assimilation a part of reconciliation. This is done in many ways throughout institutional communications, including using a reconciliation frame to describe signed agreements and statements made in support of moderate livelihood fisheries that are qualified by assimilation into these settler economic management systems.

In this statement, DFO Minister Joyce Murray describes the DFO authorized moderate livelihood fishing plans that require all moderate livelihood fishing activities to operate within the commercial season through a TRC reconciliation frame:

Indigenous reconciliation is a high priority for me and for our government. This understanding with Pictou Landing First Nation to commence a moderate livelihood fishery this spring marks a significant step toward improving relations with First Nations communities and implementing Treaty rights (DFO April 29, 2022).

The first part of the statement affirms reconciliation as a high priority. The understanding between the DFO and Pictou Landing First Nation is described as a significant step toward reconciliation, even when it would require placing limits on Pictou Landing First Nation's sovereignty and ability to exercise treaty rights. This agreement may work for Pictou Landing community members, but the fact remains that the majority of Mi'kmaw First Nations remain excluded from these agreements and that Mi'kmaw fishing activities that are governed through and by state-regulated channels perpetuates a colonial relationship with the superiority of settlers who continue to make the decisions in the Indigenous-settler dynamic.

Institutional communications frequently affirm support for reconciliation, the implementation of treaties, and moderate livelihood fisheries, but qualify their support for only those moderate livelihood activities that have assimilated into settler economic management systems. For example, in a statement released on lobster fishing in St. Mary's Bay, the DFO describes its reconciliation commitment but recontextualizes this commitment as only to FSC and DFO-authorized moderate livelihood fishing:

Fisheries and Oceans Canada (DFO) is committed to a renewed relationship with Indigenous peoples based on recognizing rights, respect, collaboration, and partnership. As part of that commitment, we are working with First Nations harvesters so that they can exercise their Supreme Court-affirmed Treaty right to fish through various DFO-authorized fisheries. These fisheries include food, social and ceremonial (FSC), and communal commercial fisheries, including interim understandings reached to fish in pursuit of a moderate livelihood (DFO September 1, 2023).

This statement shows how reconciliation commitments are limited to state approved initiatives and not self-regulated fishing activities.

In the DFO's reconciliation process of "collaborative approaches to fisheries access and management," moderate livelihood fishing manifests as DFO authorized moderate livelihood fisheries. This perspective excludes self-regulated moderate livelihood fisheries, such as the Sipekne'katik First Nation or Natoaganeg First Nation fisheries, making these non-authorized moderate livelihood fisheries illegal activities that go against the will of the Supreme Court:

We work together with Indigenous communities to negotiate collaborative approaches to fisheries access and management that support community members who want to fish in pursuit of a moderate livelihood, as affirmed in the Supreme Court of Canada's Marshall decisions (1999) (DFO May 30, 2024).

By associating reconciliation with the select Mi'kmaw nations that made DFO-authorized moderate livelihood agreements, reconciliation contributes to a process of economic assimilation.

In another example, DFO Minister Bernadette Jordan explains this hardline in a March 2021 statement:

The government has to have a clear plan in place. That is what we are putting forward for this year. We need to make sure that we are not seeing the same type of challenges that we saw last year on the water or on land. We want to make sure that the fishery is sustainable for everyone for generations to come. And we need to make sure that we're doing this in a regulated way (CBC Radio March 9 2021).

The DFO's language in these examples works to specially label non-authorized Mi'kmaw fishers as outside the protection of the DFO, providing legitimacy to perspectives that encourage individuals to interfere with the non-authorized fishing activities.

### **Indigenous Peoples' Safety**

Institutional communications have the disturbing practice of a consistently disregarding concerns for Indigenous safety. This negligence is seen in institutional communications in the ways targeted crimes are presented without connection to the targeted attacks surrounding Mi'kmaw moderate livelihood fishing activities, threats to Indigenous peoples are downplayed, and false equivalencies are made between Indigenous victims and their perpetrators. The following examples demonstrate how the DFO and RCMP fail to prioritize

A persistent theme seen is that when events are related to Mi'kmaw moderate livelihood fishing activities, institutional communications do not establish this connection. The deliberately withholding information about patterns of targeted attacks on Mi'kmaw fishers has several potentially negative effects on the safety of Indigenous people. For example, this April 19, 2024, RCMP news release describes a suspicious fire that "follows a series of criminal acts in the Meteghan area" (RCMP April 19, 2024), with no mention of any relation to the larger dispute. There is no information provided or connection to other hate-related crimes targeting Indigenous

peoples. This arson targeting a moderate fishery-related commercial building is presented instead as a suspicious “fire at a commercial structure” in a series of criminal activities in the area. A connection to the other Mi’kmaw fishing structures that have been burnt down in suspicious fires since the beginning of the conflict or just any connection to the conflict would have been worthwhile and a good step toward protecting Mi’kmaw fishers.

Social practices in police communications mean that information is often withheld, and only select details are included. However, there are multiple incidents where these connections are made. For example, this RCMP news report identified the victim as an Eskasoni First Nation man, “upon arrival at the scene, RCMP officers learned that a 38-year-old Eskasoni man had suffered a gunshot wound to his leg after an altercation with a 29-year-old Dartmouth man” (RCMP April 6, 2023). When the RCMP refuses to identify victims as Indigenous in targeted crimes, the RCMP is making a deliberate choice to withhold information about hate crimes. The decision not to publicize information about hate-motivated crimes targeting Mi’kmaw fishers reflects the RCMP’s disregard for Indigenous peoples’ safety.

In another example, a RCMP news release describes an assault and theft targeting Mi’kmaw fishers while leaving out any connection to the lobster dispute or moderate livelihood fishing and without identifying the victim as Indigenous:

On August 2, 2023, Digby RCMP responded to a report of an assault and a theft at a wharf in Weymouth North. RCMP officers learned that four people had stolen a lobster crate, filled with lobster, from a boat at the Weymouth North wharf. When the four people were confronted by the property owner, they dumped the lobster back into the water and threw the empty crate at the owner, striking them on the arm. The four people then fled the area in a boat (RCMP August 30, 2023).

By refusing to connect new crimes targeting Mi’kmaw fishers to the larger context of harassment, theft, assault, and other violence that Mi’kmaw fishers experience in exercising their

moderate livelihood fishing activities, the RCMP can cover up their ineffectiveness in addressing an issue that they have been unable or unwilling to control.

Another example can be seen in the RCMP withholding information about Mi'kmaq targeted arsons in November 2021. When the Mi'kmaw lobster pound, which was the scene of intense anti-moderate livelihood fishing protests on October 15, 2020, was burnt down in November 2021, the RCMP news release described the lobster pound as a “commercial fish plant” and failed to make any connections to Mi'kmaw moderate livelihood fishing or the string of suspicious fires and hate crimes that have targeted Indigenous fishers (RCMP November 26, 2021). The November 2021 fire remains unresolved.

Further, in DFO's May 30, 2024, statement condemning tampering with fishing activities, there is no mention of the 110 traps that were sabotaged or the threatened Mi'kmaw fishers. Leaving out connections to the important context of targeted attacks on Mi'kmaw fishers that prompted the statement in the first place shows a refusal to take Indigenous safety concerns seriously. By failing to mention the patterns of anti-Indigenous hate crimes, Indigenous fishers were unknowingly taking on additional risks to exercise their treaty fishing rights. In another example in an RCMP internal document titled “Update 5 Fishery Dispute ‘Moderate livelihood’ Richmond County,” released in an Access to Information and Privacy report, the reports of Mi'kmaw fishers that their lobster traps were being cut and vandalized were not taken seriously. The RCMP internal reports reveal that these targeted crimes were dismissed as traps that were lost due to “lines being improperly tied,” with the RCMP not following up with any further investigation (AI-2024-02562).

The current institutional approach employed by the DFO and RCMP has tried to appease both commercial fishers and Indigenous communities. This can be seen in institutional

communications that make equivalencies between Mi'kmaw fishers and their perpetrators and the failure to stand with Mi'kmaw fishers. Rather than focus on the continued pattern of attacks on Mi'kmaw fishers, these statements report conflict as back-and-forth, reciprocal violence, downplaying the targeted and one-sided nature of the conflict.

When Mi'kmaw fishers are harassed and attacked, institutional authorities do not always take the necessary steps to condemn targeted attacks on Indigenous fishers. When they do take these steps, DFO and RCMP condemnation of targeted attacks on Indigenous fishers has been adamant in describing attacks as directed at both sides. For example, when groups of commercial fishers intimidated and vandalized traps from Sipekne'katik fishers after the launch of their self-regulated moderate livelihood fishery, DFO Minister Bernadette Jordan released a statement saying, "In Canada, anyone can participate in peaceful protests and that process is fundamental to our democracy" (DFO September 18, 2020). Despite these targeted attacks, the only individual that faced consequences for the September 17th confrontations was a Sipekne'katik band councillor who was charged with unsafe vessel operation (RCMP November 30, 2020).

Even when statements of support are made, the DFO has made equivalences between those targeting moderate livelihood fishers and their Indigenous victims. For example, on May 25, 2024, a group of fishers targeted Mi'kmaw lobster traps off Louisbourg, Nova Scotia. Approximately 110 traps belonging to multiple Eskasoni First Nation moderate livelihood fishers were destroyed, and other Mi'kmaw fishers were reported to be threatened (Ayers 2024). In response to the vandalism and harassment of Mi'kmaw fishers, the DFO is careful not to publicly side with Mi'kmaw moderate livelihood fishers in the release of a statement on May 30, 2024, with a headline that reads, "Fisheries and Oceans Canada strongly condemns tampering with moderate livelihood and commercial lobster fishing in Eastern Nova Scotia" (DFO May 30,



2024). These significant relations of equivalence set up between commercial and Indigenous lobster trap tampering are unmerited given the one-sided nature of these confrontations and the consistent targeting of Mi'kmaw traps.

### **Criminalizing Mi'kmaw fishers**

In institutional communications, there is a significant disconnect between the TRC's articulated norms and the DFO and RCMP's institutional practices that portray Mi'kmaw fishers negatively. While the DFO and RCMP have publicly committed to reconciliation, the portrayal of Mi'kmaw fishers as criminals or black market fishers in public communications contrasts these commitments. DFO and RCMP communications have consistently publicized their stance that Mi'kmaw fishers who pursue their moderate livelihood fishing rights without DFO authorization are illegal. This discourse has the effect of associating Indigenous fishing with criminal activity, encouraging vigilantism, and undermining Indigenous peoples' cultural practices.

The DFO and RCMP regularly release statements leading up to Mi'kmaw fishers' planned self-regulated fishing activities, directly speaking out against these Mi'kmaw actions. For example, the day before Sipekne'katik First Nation launched their moderate livelihood fishery, the DFO minister issued a news release declaring, "Until an agreement is reached with DFO, there cannot be a commercial fishery outside the commercial season" and "Fishing without a licence is a violation under the Fisheries Act and anyone fishing outside the activities authorized under a licence may be subject to enforcement action" (Tennant 2021). By describing the actions of Mi'kmaw fishers as "a violation under the Fisheries Act" and "subject to enforcement action," institutional communications associate Indigenous fishing with criminal

activity and provide legitimacy to anti-Indigenous vigilante perspectives. While these fishing activities may technically be in violation of DFO rules, legal scholars argue that the Marshall decision means that these actions by DFO officers to regulate the moderate livelihood fishing activities are unconstitutional (Metallic and MacIntosh 2020).

In another example, the day before Sylliboy and Hartling experienced racism at the hands of DFO enforcement officers in 2024 the DFO released a statement against elver fishing activities:

Unauthorized fishing is a threat to the sustainability of fish stocks and undermines the livelihoods of law-abiding fish harvesters. The elver fishery is not open for 2024 in Nova Scotia and New Brunswick, therefore any harvesting is unauthorized. Should anyone choose to fish for elver they will be subject to enforcement action as per the Fisheries Act and the Maritime Provinces Fishery Regulations (DFO March 25, 2024).

Without directly mentioning the Mi'kmaq or moderate livelihood fishing, this statement was clearly intended to include Mi'kmaw moderate livelihood fishing as part of the “threat” that is undermining the “law-abiding” fish harvesters’ “livelihoods.” In this statement, we can see the DFO’s concern for the livelihoods of commercial fishers at the expense of the Indigenous right to moderate livelihood.

A particularly troubling practice is directly relaying information that describes Mi'kmaw fishing activities as illegal when these fishers are targeted in attacks. For example, following an assault and theft that targeted Sipekne'katik First Nation fishers on August 2, 2023, the DFO released a statement that wrote:

Harvesting for moderate livelihood purposes is not permitted outside of the commercial seasons. Accordingly, the sale of lobster harvested outside of the commercial season is not authorized and subject to enforcement action (DFO August 25 2023).

When commercial fishers target Mi'kmaw fishers, institutional statements like this provide support for vigilante actions and delegitimize Indigenous peoples' actions by describing the moderate livelihood fishing activities as “not permitted.”

In a 2021 interview with CBC radio, DFO Minister Bernadette Jordan threatened Mi'kmaw fishers with enforcement activities if they decided to engage in self-regulated fisheries activities as they did in 2020:

Our fisheries officers, the C and P [conservation and protection] officers will be on the water whenever the First Nations decide they want to go out. We are hearing that they could go out as early as next week, which is about two months ahead of ... the regular season. Fisheries officers will be there to enforce the Fisheries Act, which is what they do for everybody. That is their job. And they will be doing that.” (CBC Radio March 9, 2021).

Describing enforcement officers as ready and waiting on the water “whenever the First Nations decide they want to go out,” criminalizes Mi'kmaw fishers without acknowledging the complexity surrounding the moderate livelihood fishing treaty right. The continued criminalization of moderate livelihood fishing activities demonstrates the selective implementation of the TRC's norms in institutional communications. This significant disconnect between norms related to Indigenous rights and the DFO and RCMP's institutional practices that portray Mi'kmaw fishers negatively reveals a superficial commitment to reconciliation. As a result, institutional discourse portrays Mi'kmaw fishers negatively has the effect of associating Indigenous fishing with criminal activity, encouraging vigilantism, and undermining Indigenous peoples' cultural practices. This criminalization is part of the Canadian state's broader strategy to

control and suppress Indigenous sovereignty by inserting it into a domestic criminal context and reveals the DFO and RCMP's continuous role in many of the practices of colonization.

### **The Influence of Truth and Reconciliation on DFO and RCMP Discourse**

The research findings indicate that the norms related to Indigenous rights outlined in the TRC have significantly shaped institutional communications. These institutional communications have consistently emphasized reconciliation as a normative commitment, which has played a pivotal role in supporting institutional legitimacy. The relationship between norms related to Indigenous rights and institutions involves a substantial discursive influence on state institutions.

The influence of the TRC has manifested in many different commitments to reconciliation. This influence can most clearly be seen in commitments to reconciliation and the adoption of the language of the TRC. The DFO and RCMP frequently reference these commitments to reconciliation throughout their institutional communications. Reconciliation commitments are often made in the headlines or leading statements, presenting institutional commitments as a top priority in institutional response to Mi'kmaw fishing activities.

Further, in institutional communication, the language used in the TRC has been adopted in statements made in response to Mi'kmaw fishing activities. In news releases, statements that align with the TRC have been made, particularly in the goals of awareness of the past, actions to change behaviour, and integration of Indigenous perspectives and knowledge (DFO June 21, 2018). By emphasizing the steps taken to change action, the DFO and RCMP have taken steps to bring communication in line with the principles of the TRC and intend to show a commitment to meaningful change.

However, throughout the response to Mi'kmaw moderate livelihood fishing activities, repeated references to reconciliation commitments in DFO and RCMP communications reveal an emphasis not on Indigenous rights but on institutional legitimacy. Literature on police communications explains that police public relations divisions work to help legitimize government practices (Walby and Alabi 2022, 31). In responding to concerns about RCMP officers not taking action to prevent harm to Mi'kmaw fishers, the RCMP commissioner affirmed the commitment to reconciliation with Indigenous peoples in defending enforcement actions (RCMP October 20, 2020).

The reconciliation commitment works to reassure people that the DFO and RCMP are not institutions of colonial violence but instead are part of the reconciliation process that is objective and impartial in holding those who pursue criminal activity to account. Through presenting crimes targeting Mi'kmaw fishers as isolated and individual incidents, downplaying threats to the safety of Indigenous people, and creating false equivalencies, institutional communications have prioritized institutional legitimacy over protecting Indigenous safety. These dominant reconciliation frames are effective at reaffirming police legitimacy while at the same time undermining the right to fish for a moderate livelihood and Indigenous sovereignty.

As discussed, the DFO and RCMP primarily use heightened surveillance, policing, criminalization, and violence to deal with Mi'kmaw moderate livelihood fishers. With this oppressive institutional response and the historical use of violence against Indigenous peoples in response to Indigenous resistance, this analysis revealed a substantial discursive influence of the norms related to Indigenous rights throughout DFO and RCMP institutional policies and communications in an instance where it was least expected. This discursive influence suggests that the effects of evolving norms are successful at shifting the common sense understandings of

political issues in a settler colonial liberal democracy and, as a result, shape political agendas and discourse in the long term. In the context of constructivist IR theory, this finding supports the argument that norms can influence institutions. The DFO and RCMP illustrate that while norms can shape discourse, institutional inertia and resistance to change can co-opt and neutralize normative pressures that hinder the ability of norms to drive concrete institutional change. However, the ability of TRC norms to shape discourses and political agendas raises awareness about Indigenous rights and treaty responsibilities and lays the groundwork for future, more transformative changes.

## **Chapter 6: Conclusion**

Making sense of the disproportionate violence directed against Indigenous land defenders on the frontlines of conflicts over resource extraction and circulation requires us to think of these not just as conflicts over specific developments but also as conflicts between legal and political orders grounded in different sources of legal authority.

— Simpson and Le Billon (Simpson and Le Billon 2021, 118)

### **Chapter Overview**

This chapter will summarize the findings and describe the wider implications of the data analysis, explaining what the effect of the norms articulated in the Truth and Reconciliation Commission on institutional response to Indigenous resistance means for Canada's reconciliation framework and international relations sovereignty, authority, and legitimacy. This influence of reconciliation on institutional response to Indigenous resistance has implications for understanding reconciliation in Canada and how these recognition-based reconciliation frameworks interact with Indigenous resistance. This analysis also has implications for Indigenous sovereignty, as the analysis shows how Indigenous communities have the power to disrupt assumptions of hegemonic authority and push the boundaries between the international and domestic realms of international relations.

### **Summary of Findings**

My analysis of DFO and RCMP public communication found a discursive influence on institutional rhetoric. This can be seen in the adoption of a discourse of reconciliation within public communications, which involved commitments to reconciliation, the adoption of the language of the TRC, and a focus on consultation. Whether in response to perceived RCMP failures or in the headlines and leading sentences of Mi'kmaw moderate livelihood-related

communications, these commitments to reconciliation are included almost every time. However, the analysis of these communications also found a disregard for indigenous safety. This includes communications that present crimes targeting Mi'kmaw fishers as isolated and individual incidents, communications that downplay threats to the safety of Indigenous peoples, and communications that create false equivalencies between hate crimes and Mi'kmaw fishers exercising their rights. Further, the DFO and RCMP consistently publicized their stance that Mi'kmaw fishers who pursue their moderate livelihood fishing rights without DFO authorization are illegal, providing legitimacy to vigilantes and anti-indigenous hate. As a result, the alignment of the rhetoric of the TRC and institutional communication does not necessarily translate into meaningful changes in practice.

My analysis of DFO and RCMP Policy again found that the DFO and RCMP have acknowledged the TRC and incorporated reconciliation in institutional policies. This includes directly taking from the language of the TRC, following through on some of the steps to reconciliation, and incorporating key aspects of the TRC into policy commitments. The clearest example of the influence of norms related to Indigenous rights is in the divisional reconciliation strategy for the RCMP and the DFO coastguard reconciliation strategy for the DFO. A key finding in DFO and RCMP policy is that older Indigenous-related policies have been blanketed in the language of reconciliation to be recontextualized into reconciliation-based ones.

Finally, my analysis of DFO and RCMP practices found continuous and heightened surveillance, policing, criminalization, and violence targeting Indigenous fishers and non-



indigenous community members associated with Mi'kmaw fishing activities. Since 2017, partly in response to commercial fisher protests, institutional enforcement officers have stepped up the enforcement of Mi'kmaw fishing activities. In 2020 Mi'kmaw fishers would face sporadic and unpredictable enforcement activities on the self-regulated fisheries. Since 2020, fishers have continued to experience enforcement in both lobster and elver fishing activities. While some of the people who targeted Mi'kmaw fishers with violence, intimidation, and theft were arrested for their crimes throughout the entire lobster dispute, the majority of those arrested throughout the dispute were Mi'kmaw fishers attempting to pursue their moderate livelihood fishing rights.

### **Reconciliation and the Maintenance of Settler Colonial Power**

State response to Mi'kmaw moderate livelihood fishing provides a window into how the influence of the TRC on Canadian institutions plays out in sites of political and territorial contestation of Canadian sovereignty. On the surface, the frequent references to truth and reconciliation, Indigenous rights, and Indigenous sovereignty contrast that of the past, where these concerns were dismissed, and the country's colonial history was denied. However, the reconciliation framework has not transformed colonial power dynamics. This is not to say there have been no concrete changes. The Rights Reconciliation agreements, interim Moderate Rights Fishery agreements, and other reconciliation-based initiatives have provided economic benefit and access to fisheries for some Mi'kmaw nations.

However, many Mi'kmaw nations remain unable to exercise their rights in accordance with their own priorities. These agreements do not adequately allow the Mi'kmaq to exercise their fishing rights in accordance with their self-governance aspirations and long tradition of

community management approaches to conservation (Wiber and Milley 2007, 167). The DFO's emphasis on inclusion into commercial fishing serves to maintain control over Indigenous peoples by entrenching Indigenous ways of life within state-directed processes in ways that reproduce colonial power dynamics rather than dismantling them.

This research found that the relationship between norms related to Indigenous rights articulated in the TRC and state institutions involves embracing a discourse of reconciliation in policy rhetoric and consistent references to Indigenous rights as a normative commitment in public communications. Despite this discursive influence on state institutions, state enforcement response continued an approach of surveillance, policing, criminalization, and violence against Mi'kmaw moderate livelihood fishers. This substantial disparity between discursive commitments and actual practices highlights the state's resistance to fully adhering to norms related to Indigenous rights.

The influence of the TRC on DFO and RCMP communications has resulted in a discursive influence where the norms articulated in the TRC have been used in institutional communications to delegitimize the ways the Mi'kmaq have exercised their fishing rights in favour of the maintenance of a system where the DFO remains in charge. Throughout institutional communications, reconciliation is used to reinforce prevailing institutional perspectives that moderate livelihood fishing activities are only acceptable in the form of commercial fishery participation. This perspective excludes self-regulated moderate livelihood fisheries, such as the Sipekne'katik First Nation, making these non-DFO-authorized moderate livelihood fisheries illegal. As a result, this reconciliation frame has worked to normalize sustained police surveillance and control across these unceded territories.

Throughout policy documents, Canadian institutions have aimed to “maximize” this integration of Mi’kmaq into the commercial industry. These reconciliation-based initiatives aim to make commercial fishing a more appealing avenue for Mi’kmaw individuals looking to exercise treaty rights to fish for a livelihood (DFO Atlantic Integrated Commercial Fisheries Initiative 2019). By funding and integrating Mi’kmaw individuals into commercial fishing through the negotiated fisheries agreements, the Canadian government can suppress the implementation of Indigenous authority over natural resources in favour of increasing Indigenous representation in commercial fishing, all under the label of reconciliation.

The consistent use of reconciliation throughout the institutional response to Indigenous resistance has damaged the credibility of broader reconciliation efforts. The struggle between Indigenous peoples and the state has been centred on the control of resource management. The reconciliation frameworks have uncentered the sovereignty aspect in place for reconciliation for a reason. As Coulthard explains, with reconciliation at the center, the struggle for freedom becomes a process of healing and overcoming a legacy of historic abuse instead of one focused on dismantling abusive colonial structures (Coulthard 2014, 109). For the Mi’kmaq, reconciliation was a discursive tool used by the state to transform Indigenous peoples’ attempts to assert sovereignty into agreements that would assimilate Mi’kmaw fishers into the commercial fishing industry.

The failure of reconciliation to positively support Indigenous peoples’ self-determination has set both the DFO and RCMP back in relationships with Indigenous people and has risked the efforts of state institutions that are attempting to engage in meaningful nation-to-nation relationships with Indigenous peoples. As a result, the influence of reconciliation has been a “political sleight of hand,” where the Canadian state has advanced soft rights while, at the same

time, carrying out the larger project of extinguishing Indigenous peoples' legal and political authority and self-determination through incorporation in settler determined agreements (Snelgrove and Wildcat 2023, 158).

The institutional acceptance and adoption of the reconciliation shows how reconciliation and settler colonial violence are not contradictory but instead are mutually reinforcing colonial logics. Wolfe (2006) reminds us that settler colonialism is a structure, not an event, that is continuously reproduced in everyday incidents of dispossession and violence that maintain the legitimacy of the settler colonial system. In this way, we can see that reconciliation has become the latest iteration of settler colonial logic that works to rhetorically affirm Indigenous legal and governance orders while simultaneously ignoring them.

The response to Mi'kmaw moderate livelihood fishing activities demonstrates the marriage between reconciliation and settler authority over resource extraction. Throughout the dispute, DFO and RCMP officials have used settler colonial violence against Indigenous acts of resistance that challenged the Canadian monopoly to determine legitimate fishing activities while using reconciliation as a tool to justify their actions. This can be seen in response to the criticism of institutional enforcement of Mi'kmaw moderate livelihood fishing activities, where the DFO and RCMP highlight their commitment to reconciliation to defend their enforcement activities, portraying their institution as part of the solution rather than the problem. When Mi'kmaw fishers have challenged institutional authority, the state has responded with an emphasis on "collaborative" arrangements as a path to reconciliation that serves to delegitimize Mi'kmaw exercises of sovereign authority. In the use of reconciliation as a discursive tool to maintain state authority, disregard Indigenous safety, and criminalize Indigenous resistance, the role of reconciliation as a mutually reinforcing colonial logic is evident.

## **Challenging Settler Colonial Authority**

The structural dispossession of Indigenous peoples is continuously reinforced and upheld by Canadian legal and political institutions. The failure of reconciliation to support Indigenous sovereignty is based on the state's desire to maintain control over Indigenous peoples and Indigenous land. The colonial settler system demands control over Indigenous peoples and Indigenous land. In Mi'kma'ki, this has manifested in contradictory ways. While the Mi'kmaq are criticized by the government and commercial fishers for allegedly over-exploiting their land and resources in their attempts to assert their sovereignty, at the very same time, the Mi'kmaq are also criticized for under-exploiting their lands and resources in their attempts to assert sovereignty in opposition to the Alton Gas pipeline (Bernard 2018, 300). These antithetical criticisms of the simultaneous over and under-exploitation of land reveal the larger sovereignty question behind these two events. Despite the focus on conservation and sustainability, the Canadian state's opposition to Mi'kmaw fishing activities perpetuates the historic colonial relationship whereby Canada maintains statist authority over Indigenous peoples, land, and resources while providing insignificant delegated authority to Indigenous peoples.

For Mi'kmaw fishers, authority over fishing activities is more than just the ability to decide how and when to fish. Instead, it is connected to their entire ways of living and entire identity as Mi'kmaq (Bailey and Charles 2024, 107; Jones et al. 2024, 31). By maintaining control over the terms in which treaty rights are implemented, the Canadian government attempts to subvert Indigenous assertions of sovereignty into subordinate legal and political relations that reinforce colonial power dynamics. This institutional response of creating new and different legal agreements has allowed for a further actualization of the right to fish for a moderate

livelihood than in communities that have not signed. However, the problem remains that they must depend on the goodwill of the Canadian state to uphold these arrangements rather than having self-determination over fisheries recognized as an inherent aspect of these Indigenous communities.

The least likely test of the influence of reconciliation provided by Mi'kmaw moderate livelihood fishing activities highlights the influence of the TRC's norms on deeply entrenched institutional behaviours in the DFO and RCMP. Despite the persistent influence of the TRC in discursive aspects of institutional policy and communications, the TRC is much less impactful when it comes to significant changes within the institutional operational procedures because of internal resistance to norms related to Indigenous rights. The many commitments to Indigenous rights within policy documents and public communications have not seemed to materialize in supporting the implementation of treaty rights or building true nation-to-nation relationships that respect sovereignty. The persistence of practices that contribute to the disruption of Indigenous rights and self-determination reveals the limitations of the reconciliation framework in fostering transformative change.

This analysis highlights the resistance of state institutions as a structural challenge that prevents genuine reconciliation and full implementation of Indigenous rights in settler colonial liberal democracies. The discursive influence of the norms articulated in the TRC on state institutions indicates that evolving norms successfully shift the common sense understandings of political issues within a settler colonial liberal democracy. This evidence of discursive change, despite continued resistance, highlights the powerful potential of norms related to Indigenous rights to shape institutional behaviour. However, a gap remains between discursive commitments

made by the DFO and RCMP and their actual practices. The discursive effect's significance lies in its ability to expose these contradictions, creating openings for Indigenous resurgence. Even if concrete changes in institutional practices have not yet materialized, the exposure of these gaps highlights vulnerabilities in settler colonial authority and signals potential pathways for transformative change.

The state's hold on authority is not a totalizing or unchangeable aspect of reality. Instead, the influence of the TRC on institutional response to Mi'kmaw moderate livelihood fishing activities has shown us that colonial power must be reproduced. The reproduction of settler colonial power is not a guarantee but instead is continuously challenged in dialectical relationships where the efforts of Indigenous peoples can have significant effects. Snelgrove and Wildcat (2023) explain how colonial power consistently seeks new strategies to reproduce itself. For Snelgrove and Wildcat, reconciliation is a moment of a colonial reconfiguration, with the Canadian state attempting to reorder itself to account for critiques of injustice against Indigenous peoples. This adaptability of colonial power is key to the survivability of settler colonialism but also marks the pathway for its demise. The influence of reconciliation on the discursive aspects of institutional response to Indigenous resistance reveals openings within colonial power structures.

Elder Albert Marshall explains that reconciliation, resurgence, and decolonization are not mutually exclusive but overlapping and simultaneously connected processes (M'sit No'kmaq et al. 2021, 844). Lightfoot describes this process as a subtle revolutionary transformation of the international political system, where Indigenous communities asserting their political authority are leading changes that are more than just a new set of norms diffusing on the global stage.

Instead, both material and discursive change work hand in hand together to forge new understandings of how international politics can be done. By compelling state institutions to adopt a discourse of reconciliation and legitimize their actions through commitments to Indigenous rights, the discursive influence of norms related to Indigenous rights and self-determination disrupts the reproduction of settler colonial authority. The exposed contradictions between rhetoric and practice challenge the institutional legitimacy of settler authority. Settler colonial authority requires a belief in the legitimacy of the state to make rules and its authority to enforce these rules. A shared belief in the legitimacy of settler colonial authority is required for its survival. When this shared belief is in doubt, as a result of exposed contradictions between institutional rhetoric and practice, settler colonialism loses its legitimacy. The loss of the legitimacy of settler colonialism creates openings within settler colonial hegemonic structures for Indigenous communities to achieve self-determination.

Relying on Mi'kmaw tradition, knowledge, and authority, the Mi'kmaq have reinvested the legitimacy lost by the Canadian state into Indigenous forms of sovereignty. By engaging in these fishing activities, the Mi'kmaq are not merely participating in economic practices or recreational behaviour but are actively challenging and redefining the concept of sovereignty itself. The Mi'kmaw fishing activities work to strengthen the international legal framework for Indigenous rights and pressure other states to align their policies with these norms related to Indigenous rights and self-determination.

## **Conclusion**

At the time of writing, it has been over three months since Kevin Hartling of Membertou First Nation and Blaise Sylliboy of Eskasoni First Nation were subject to an extreme act of



violence, racism, and disregard for human life. The DFO minister, Diane LeBouthillier, committed to investigating the incidents publicly. However, the officers who put Hartling and Sylliboy in harm's way remain employed by the DFO and have yet to face accountability. While their words might differ, the DFO and RCMP have failed to implement their commitments to reconciliation in their actions.

The influence of the Truth and Reconciliation Commission has been limited to rhetorical changes while the DFO, RCMP, and the Canadian government maintain the same strategies that the 1999 Marshall decision deemed inappropriate. Through an examination of public communications, policy documents, and recorded actions, the institutional acceptance and adoption of the norms articulated in the TRC was clear. However, when it comes to the institutional responses to Indigenous resistance, this analysis reveals the limits of the influence of the TRC. The norms articulated in the Truth and Reconciliation Commission have been used to shield the DFO and RCMP against criticisms of their handling of Mi'kmaw fishing rights. Under the guise of advancing Truth and Reconciliation, the policies and practices of the DFO and RCMP have steadily eroded the Mi'kmaw First Nations' capacity to manage their fisheries, practice cultural and ceremonial activities, and exercise self-determination.

Under the guise of advancing Truth and Reconciliation, the policies and practices of the DFO and RCMP have steadily eroded the Mi'kmaw First Nations' capacity to manage their fisheries, practice cultural and ceremonial activities, and exercise self-determination. However, the discursive influence of the TRC on state institutions reveals how norms related to Indigenous rights and self-determination challenge the institutional legitimacy of settler authority. By compelling institutions to legitimize their actions through commitments to norms related to Indigenous rights and self-determination in the context of historically violent and oppressive

institutional responses to Indigenous resistance, these norms disrupt the reproduction of settler colonialism. The exposed contradictions between institutional rhetoric and practice hurts the legitimacy of settler colonial institutions and creates openings within these hegemonic power structures that provide avenues for Indigenous communities to occupy the authority lost by the state to further bring about self-determination in a subtle yet revolutionary transformation in global politics.

## A Story about Reconciliation

There were two people, Peter and John. One day Peter steals John's bicycle.

Then, after a period of some months, he goes up to John with outstretched hand and says, "Let's talk about reconciliation."

John says, "No, let's talk about my bicycle."

"Forget the bicycle for now," says Peter. "Let's talk about reconciliation."

"No," says John. "We cannot talk about reconciliation until you return my bicycle."

"Then let's talk about you renting the bicycle – I'd be willing to loan it to you for a small amount each month," Peter says.

"Why would I pay to rent a bicycle that is already mine?," says John.

"How about this: you could manage all of the rentals for this bicycle. I'll make you the manager and we can both benefit through reconciliation," says Peter.

"But you stole my bike. Why don't you return it?," says John.

Peter says, "We shouldn't let a misunderstanding like this ruin our friendship. Let's move forward. It's time to forgive and forget."

— Andrew Rigby, 2001

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