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Ripples of Resilience: The Political Ecology of Mi'kmaq Fisheries and Resource Management

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International Environment and Development Studies

Table of Contents

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Acknowledgement

Abstract

This thesis examines the governance of Mi'kmaq lobster fisheries in Canada, analyzing the intersection of environmental governance, Indigenous rights, decoloniality and the concept of "moderate livelihood." Utilizing a Political Ecology framework, it delves into the socio-environmental dynamics and power relations affecting Indigenous lobster fisheries. The study traces the Mi'kmaq's historical struggles for sovereignty and fishing rights, highlighted by legal landmarks like the Sparrow and Marshall decisions. It critiques the "moderate livelihood" framework for restricting Indigenous access to resources and advocates for a shift towards recognizing and integrating Indigenous knowledge and inherent resource management rights. The thesis suggests adopting co-management through the Two-Eyed Seeing approach to blend Indigenous knowledge with Western practices for sustainable, equitable fisheries management.

Keyword: political ecology, moderate livelihood, Indigenous peoples, Mi'kmaq, lobster fisheries, co-managament, Two-Eyed Seeing, Traditional Ecological Knowledge

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1. List of Abbreviations

Abbreviation	Full Term
CPRM	Common-Pool Resource Management
DFO	Department of Fisheries and Oceans
FOC	Fisheries and Oceans Canada
FSC	Food, Social, and Ceremonial
LFA	Lobster Fishing Area
MFWC	Mi'kmaq Fish and Wildlife Commission
PE	Political Ecology
TES	Two-Eyed Seeing
TACs	Total Allowable Catches
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

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2. Introduction

The management and regulation of fisheries embody a complex system within which marine species serve a dual role: they are organized as vital resources that sustain economies and livelihoods, and they concurrently contribute to the organization of societal structures. The transformation of fish from an ecosystem component to a valuable resource in the form of fisheries has played a role in structuring the sociological systems in Canada (Cohen & Biro, 2023). The reliance on these resources extends beyond the necessities of sustenance and financial benefit, encompassing a sense of identity and pride (Castañeda et al., 2020). Therefore, disputes over fishing rights have been a major factor in conflicts related to recognizing the rights of Indigenous Peoples.

Fish and fishing are central to Indigenous cultures across Canada. Indigenous communities have harvested lobster for food and trade since long before European settlement (Cohen & Biro, 2023; Elegbede et al., 2023). The 1999 Supreme Court's Marshall Decisions confirmed the Mi'kmaq's treaty rights to hunt, fish, and gather for a moderate livelihood, stemming from the historical Peace and Friendship Treaties (PFT) of 1760–1761. The concept of a moderate livelihood has since become a focal point for discussions and negotiations between Indigenous communities, commercial fisheries and the Canadian government, aiming to define and implement what constitutes a fair and sustainable living from these natural resources (Elegbede et al., 2023; House of Commons Canada, 2021). There has been ongoing tension and dispute over the interpretation and implementation of these rights, especially around the issue of what constitutes a moderate livelihood and the regulation of fisheries to ensure sustainability. The Mi'kmaq have argued for their rights to not only fish for Food, Social and Ceremonial (FSC) purposes but also to engage in self-regulated fisheries, which has led to confrontations with non-Indigenous fishers and the government, usually accompanied by conservation narratives (Williams & Wien, 2022). The Mi'kmaq have been exercising self-management governance systems and conserving the fisheries resource for millennia, practicing their Traditional Ecological Knowledge (TEK) (Cohen & Biro, 2023; Warrior et al., 2022). This refers to the Mikmaw traditional law, Netukulimk, aiming for a sustainable fishery that supports economic community needs and conserves species and the environment for future generations, aligning with sustainability goals (Boulianne, 2022; Warrior et al., 2022).

The tensions and challenges that arise from the implementation of treaty rights, entwined with conservation concerns, highlight the intricate relationship between

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environmental governance, Indigenous rights and resource management. Within this context, the framework of political ecology (PE) unravels the intricate web of socio-environmental dimensions and power relations that shape the ongoing dialogue around Indigenous lobster fisheries. PE underscores that power dynamics are intrinsic to the conflicts over natural resources (Robbins, 2012). In this thesis, I am to provide insight into the Mi'kmaq's challenges in lobster fishing by examining the interplay between power and environmental governance. By examining the Mi'kmaq's assertion of sovereignty and sustainable practices against commercial fishing interests, PE reveals the complexity of "people + their environment" (Benjaminsen & Svarstad, 2021). It brings to light the reality that despite the dependence of humans on their environment, not all humans are allowed to benefit equally. PE may clarify how environmental governance in Mi'kmaq lobster fishing navigates the balance of use, conservation, and distribution, highlighting the challenge of meeting human needs, maintaining ecosystems, and managing economic disparities.

This thesis aims to critically analyze the discourse and to explore the power dynamics in environmental governance associated with Mi'kmaq lobster fisheries. Inspired by the framework of PE, I investigate the discourse of moderate livelihood through the lens of environmental governance. For further analysis, I employ Power and Decolonization theories, concepts of Indigenous rights and sovereignty, and Common-Pool Resource Management (CPRM). The PE approach provides a comprehensive framework that will serve as the cornerstone of my paper. It will primarily serve as an analytical tool to examine the historical context of policymaking and conflicts. However, I recognize that PE sometimes falls short in its practical application, which is why I am proposing to fortify it with insights from environmental governance and management strategies. By merging PE with environmental governance, I aim to enrich my analysis with both theory and concrete evidence. This dual approach will strengthen my work's analytical core and offer readers a clear, well-illustrated examination of the Mi'kmaq communities' dynamics.

Initially, I present the methodology used for conducting this paper. Next, I will continue with the conceptual framework, in which I define PE and relevant theories, concepts and their relevance to analyzing Mi'kmaq Fisheries and Resource Management. Then, I delve into the discussion section that presents a critical analysis of the topic from pre-contact era to post Marshall decision. Finally, I present concluding remarks and possible suggestions and solutions to the struggles over lobster fisheries. These analyses will focus on answering the following research question: How the concept of moderate livelihood has influenced the

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governance of lobster fisheries in terms of resource allocation and management concerning Mi'kmaq communities.

3. Methodology

I begin this section by disclosing my positionality as a member of the Turkic Qashqai, an Indigenous group from the mid-south region of Iran. This personal background shapes my research focus on understanding how power dynamics affect resource allocation and management within Mi'kmaq Indigenous communities. Despite the diversity of Indigenous cultures worldwide, they face a unified struggle against global power dynamics that both overtly and covertly marginalize them, undervaluing their lifestyles in a capitalist-dominated world (Boulianne, 2022; Shrinkhal, 2021).

In selecting the topic for my thesis, I was influenced by a deep personal interest in the traditions and knowledge of First Nations. My time as an exchange student at Acadia University, situated on traditional Mi'kmaw land, further provided me with a unique opportunity to a more profound connection to the subject matter. While reading about the Mi'kmaq community's struggles in online news articles, I came across the specific topic of lobster fisheries. Further, the same topic was suggested to me after discussing my interests with professors at Acadia University. Initially, my intention was to engage directly with Mi'kmaq communities through interviews, aiming to ensure a faithful depiction of their perspectives and concerns regarding lobster fisheries. However, the conclusion of my discussions with Dr. John Colton enlightened me concerning the ethical dimensions of conducting research in the community as, historically, academic and scientific research on Indigenous peoples has been harmful and fruitless to them. Despite laying the groundwork for community engagement by participating in events (e.g., 'Glooscap First Nation Mawio'mi'), the ethical considerations of conducting interviews combined with the limited time available to foster meaningful, authentic relationships within the community, have, at this point in my academic journey, hindered me to proceed as initially planned. While acknowledging the potential naivety in hoping my bachelor's thesis could raise awareness about an issue, my persistent desire to make a positive impact still persisted. My interest was in understanding and identifying the most pressing concerns within the Mi'kmaq community—those issues that the community members themselves believe need broader attention and wider awareness. Thus, attempting to address those struggles leads to the formulation of my research question: how the concept of moderate livelihood has influenced

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the governance of lobster fisheries in terms of resource allocation and management concerning Mi'kmaq communities.

In this vein, I found adopting PE as a framework for investigating the challenges of Indigenous communities to be particularly insightful, owing to its comprehensive and multidisciplinary approach. Reflecting on my studies, I recognize that PE's interdisciplinary nature, blending geography, anthropology, sociology and environmental science, offers a nuanced understanding of the complex issues these communities face, much like the Mi'kmaq's struggles with treaty rights and commercial fisheries for a moderate livelihood (Robbins, 2012). Embodying what Paul Robbins (2012) calls the "hatchet and seed" approach, this framework has helped me critically dissect environmental injustices related to the Mi'kmaq. Simultaneously, it has allowed me to sow the seeds for constructive solutions through environmental governance insights. I adopt an explanatory approach, incorporating primary and secondary data, along with the use of qualitative and quantitative methods.

3.1 Explanatory Method

This thesis adopts an explanatory methodological approach to critically analyze the Mi'kmaq lobster fisheries. I seek to explain the underlying power dynamics in environmental governance associated with Indigenous lobster fisheries in Canada. To achieve this, I draw on secondary data analysis together with both qualitative and quantitative research methods.

3.2 Data Analysis

Essential to the secondary data analysis for this thesis are foundational works in PE, specifically "Environment and Society: A Critical Introduction" by Paul Robbins, John Hintz, and Sarah A. Moore, alongside "Political Ecology: A Critical Engagement with Global Environmental Issues" by Tor A. Benjaminsen and Hanne Svarstad. These texts form the conceptual backbone of my examination. For detailed understanding pertaining to Mi'kmaq fisheries, this research principally consults "Organizing Nature" by Alice Cohen and Andrew Biro, and "Contested Waters: The Struggle for Rights and Reconciliation in the Atlantic Fishery," with Fred Wien and Rick Williams as editors. These publications provide an in-depth look into the historical, societal and legal aspects that currently influence the management of the lobster fishing industry. For further analysis, I delve into official government documents, concentrating specifically on data from policies discussed in the House of Commons Canada. Moreover, the research presented in April Fowler's "Where is the Lobster? An Exploration of the Lobster as a Being in Fisheries Management in Nova

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Scotia, Canada ", and Camille Boulianne's "Fostering Netukulimk: The Mi'kmaw Right to Fisheries Conservation and Co-Management", have been especially enlightening. These papers not only captured my interest with their unique approaches but also significantly broadened my perspective, enriching my analysis of Mi'kmaq's relationship with lobster and fisheries management.

3.3 Qualitative and Quantitative Methods

To adequately describe, interpret and assess different environmental governance systems and their conflicts, qualitative methods are usually indispensable, as suggested by Benjaminsen and Svarstad (2021). Qualitative method is essential for describing and making normative assessments of different models of environmental governance and related conflicts (Caggiano & Weber, 2023). This method offers a nuanced perspective that is critical for understanding the complex socio-environmental issues. Historically, scholars have employed a wide array of qualitative methods to unravel human-environment relationships and manage resources across various ecological problems and social contexts. These methods are not just tools but are integral to understanding the dynamics of socio-environmental issues (Benjaminsen & Svarstad, 2021; Caggiano & Weber, 2023). This paper focuses particularly on qualitative research in the context of resource management, governance, institutions and politics. By embracing qualitative methods, I aim to provide a richer understanding of the complex interplay between human systems and the natural world, forming a solid foundation for insightful and impactful environmental research.

However, in PE research, quantitative methods can often yield significant insights when used alongside qualitative data (Benjaminsen & Svarstad, 2021). Quantitative data will bolster the qualitative findings and provide a solid empirical foundation for assessing the socio-economic repercussions of lobster fishing on Mi'kmaq communities. This will encompass data on catch volumes, economic profitability and changes in the socio-economic conditions of Indigenous fishers before and after the Marshall Decisions in 1999. Additionally, quantitative analysis will help to uncover the ecological status of fish populations, encompassing factors such as species population dynamics and habitat conditions. Considering these methods, this study delves into the interplay between policy, environmental governance and Indigenous rights, concentrating on the Mi'kmaq's assertion of sovereignty and sustainable practices. It will explore the practical implications of the moderate livelihood concept on Mi'kmaq communities, offering a focused overview of its impact on resource management within the lobster fisheries.

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4. Conceptual Framework, Theories and Key Concepts

4.1 Political Ecology

PE is an interdisciplinary field that has burgeoned since its emergence in the 1980s. Unlike a singular theory or method, PE operates as an approach, merging social and natural sciences to critically analyze power dynamics and challenge existing views on the environment and development. PE is rooted in political economy, particularly Marxian theories, highlighting the interplay between politics, power, and economics, and integrates cultural ecology from anthropology to understand societal dynamics (Benjaminsen & Svarstad, 2021; Robbins, 2014). PE fosters a holistic understanding of socio-environmental challenges by refusing to examine environmental and societal elements in isolation. It acknowledges that environments and societal perceptions of environmental changes are inherently social, shaped by varying interests, power struggles and differing interpretations of landscapes and resources (Benjaminsen & Svarstad, 2021; Robbins, 2014). This recognition is crucial in understanding that humans, as organisms, both depend on and alter their environment.

Defined as the study of power relations in environmental management, PE highlights the unequal costs, benefits, and the distinct winners and losers in environmental conflicts. It adopts a historical perspective to comprehend environmental changes and conflicts over time, recognizing the importance of understanding the past to grasp the present and future implications. The field often focuses on conflicts, examining both the material struggles over land and resources, and the interpretative battles over the meanings and narratives surrounding these issues (Benjaminsen & Svarstad, 2021; Robbins, 2014).

PE is also critical of established knowledge within environmental studies, questioning assumptions and widely accepted narratives. It scrutinizes the interface between science and policy, probing which ideas are translated into policies and why certain ideas gain traction among policymakers while others do not. Despite having limited policy influence - which has been debated as its shortcoming - the field is engaged in an internal debate about becoming more policy-relevant and practical. PE is explicitly normative and political, and is committed to uncovering and challenging the underlying assumptions in environmental discourse and practice (Benjaminsen & Svarstad, 2021; Robbins, 2014). In their insightful work, Benjaminsen and Svarstad (2021) present ten syntheses in PE, offering a deeper understanding of socio-environmental interactions and conflicts. From these, I have selected

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a few key areas to guide my research's trajectory. These include 'Social Realism and Constructivism', analyzing the perception of environmental issues; 'Normative and Empirical Analyses', which delve into the theoretical and practical aspects; examining the roles of individuals and systems; 'Temporal Connections', which explore the historical context and future implications and "Critical and Constructive Contributions", which explores the critical and practical forces of PE. Additionally, I will give special attention to 'Different Types of Power' within the following section of power theories, and 'Three Aspects of Environmental Governance' and 'Agency and Structure' in that of the Environmental Governance to delve into the dynamics at play in environmental governance. In PE, the prevalent epistemological approach is critical realism or soft structuralism, which evolved from integrating realism[1] and constructivism[2]. While traditional science theories view realism and constructivism as incompatible, critical realism seeks a middle ground. Constructivists delve into the varied perceptions surrounding an environmental issue, while realists concentrate on the issue itself, devoid of its social interpretations. PE scholars strive to bridge this divide by examining both the empirical aspects of an environmental problem and the social narratives surrounding it (Forsyth, 2003; Neumann, 2005; Robbins, 2020). Moreover, PE adopts a normative perspective, emphasizing core values such as human rights, justice and environmental sustainability. This contrasts with the typical portrayal of research as neutral and objective. PE argues that objectivity in studying environmental issues is unattainable, emphasizing instead the necessity for thorough empirical research and transparency regarding methodologies, rather than striving for neutrality. Furthermore, in conducting a thorough research, the analysis of historical evidence is critical. In the realm of PE, time is a significant dimension. This involves a dual focus on specific contemporary environmental issues and a historical examination of the origins and reasons behind a particular situation. In the historical investigations, environmental data is gathered, aiming to encompass as extensive a time span as feasible in order to understand the underlying factors influencing ongoing trends (Benjaminsen & Svarstad, 2021; Robbins, 2014). In studies of conflicts, adopting a historical approach is specifically essential for gaining insights into the evolution and underlying causes of these conflicts.

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[1] Realism asserts that an objective reality exists outside of human perception, which can be described and analyzed without bias. This concept is widely embraced in the natural and quantitative social sciences to represent reality impartially (Benjaminsen & Svarstad, 2021).

[2] Constructionism examines how people and societies create their own realities through discourse and narratives, suggesting that reality is constructed through shared observations and discussions, allowing for multiple valid realities to coexist (Benjaminsen & Svarstad, 2021).

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Moreover, PE serves as both a critical framework and an increasingly proactive force aiming to influence policy and societal transformation through constructive contributions. This dual nature of PE is what Robbins et al. (2014) metaphorically refers to as "the hatchet and the seed". The "hatchet" represents PE's critical edge, actively dissecting and challenging conventional environmental study approaches, while the "seed" symbolizes its commitment to societal change by sowing innovative ideas and perspectives (Benjaminsen & Svarstad, 2021; Robbins, 2014).

PE engages in scrutinizing power dynamics and challenging commonly accepted narratives, often highlighting issues like environmental degradation, social injustice and human rights violations. Simultaneously, they propose constructive pathways towards a more equitable and sustainable future. This balance between critique and constructive change— between the "hatchet" and the "seed"—is a defining characteristic of PE will be a focus withing this study.

4.2 Environmental Governance

PE critically analyzes the role of power in environmental governance, focusing on its ties to injustice and environmental degradation, examining the management of the natural world by humans, addressing both seemingly untouched landscapes and those heavily marked by human activity (Benjaminsen & Svarstad, 2021). Benjaminsen and Svarstad (2021) suggests that environmental governance encompasses three critical aspects: conservation, use, and distribution. PE prioritizes these facets, aiming to balance environmental sustainability with social justice and human rights. While conservation often dominates discussions in environmental studies, PE emphasizes a more equitable approach, considering the human rights and social justice implications of use and distribution. This perspective is particularly relevant when addressing issues like industrial fishing, which adopts the narrative of conservation and manipulates it to its advantage, undermining the sustainable practices of Indigenous communities. This is consistent with the findings for the case of Mi'kmaq fisheries. In environmental governance, the concept of "use" emphasizes the critical role of human engagement with nature in meeting diverse needs and aspirations. "Conservation" seeks to preserve natural resources for future generations, while "distribution" focuses on the economic impacts and disparities caused by different uses of nature. These three aspects of environmental governance are shaped through agency and influenced by social structures, which either limit or facilitate actions. Normative analyses in this context involve setting sustainable goals and assessing their success. PE delves into these aspects, requiring an

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understanding of both the social and natural dimensions of the subjects of use and conservation.

Environmental governance is often a reflection of agency, meaning the ability of various actors to take actions. These actions are both constrained and enabled by social structures. Benjaminsen and Svarstad (2021) suggest that in examining the origins of environmental issues, identifying both the key actors (individuals, organizations, businesses, government bodies etc.) and the social structures that influence their perspectives and approaches to environmental problems is critical. Social structures shape the capacity of these actors to act, encompassing elements like social norms, which are the formal and informal rules guiding behavior. Within social structures are institutions which provide formal frameworks for action through laws and policies, and discourses, which represent collective ways of understanding and discussing issues. These various elements collectively influence how environmental governance is shaped and enacted.

Thus, Environmental governance is crucial to this paper's topic as it directly impacts how decisions regarding lobster fisheries management and Mi'kmaq communities' moderate livelihood are made and executed. This concept challenges and necessitates the reform of existing governance frameworks to ensure they are inclusive, equitable, and sustainable. nsuring the coexistence of Indigenous knowledge, rights, and practices alongside the Canadian system of natural resource management. Recognizing and addressing the complexities inherent in environmental governance is crucial for attaining justice, sustainability, and proficient management, particularly in the realm of lobster fisheries. This approach is vital for the broader objective of harmonizing Indigenous rights with environmental conservation efforts.

4.3 Power Theory

Power is a fundamental concept within PE, focusing on disputes concerning land and resource utilization. Such research delves into the origins and progression of these conflicts. When examining power dynamics, scholars use three primary frameworks: theories centered on individual actors and two approaches oriented around structural aspects. As suggested by Svarstad et al. (2018), a comprehensive understanding of power in particular instances requires consideration of components from each of these perspectives.

In examining the Mi'kmaq conflicts over resources, an actor-oriented approach is highly relevant as it involves analyzing how various actors impact environmental governance and determine the extent of their success and the factors contributing to their achievements

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and setbacks. The following actor-oriented power theories are the main focus of this study, defining the power as:

- The capacity to achieve desired outcomes, sometimes without relying on others Russell (1938, as cited in Benjaminsen & Svarstad, 2021). For instance, in a wealthy society, individuals can typically meet basic needs like hunger and thirst on their own. However, exercising power generally entails interactions with other people.

- The capacity of individuals to achieve their objectives in spite of opposition from others Weber (1964, as cited in Benjaminsen & Svarstad, 2021).

- The ability of one individual (A) to influence another (B) to act against their initial will. This power reaches its peak when someone is compelled to do something they strongly oppose Dahl (1957, as cited in Benjaminsen & Svarstad, 2021).

- Intentional, relational and focused on results. This means power is deliberate action aimed at achieving specific outcomes within interactions between two or more individuals. If only two of these aspects—intent, relationship, or effect—are present, Engelstad considers it a weaker form of power Engelstad (1999, as cited in Benjaminsen & Svarstad, 2021).

However, as will be further elaborated upon, in the case of Mi'kmaq fishery and Industrial fishery's conflicts, several actors are involved, striving to achieve diverse outcomes.

Additionally, regarding structural forms of power, economic structures significantly shape actions and power dynamics. Marxist political economy emphasizes on power in the global capitalist system, where power primarily lies with those owning means of production[3]. In natural resource conflicts, economic conditions often define what different groups can or cannot do (Benjaminsen & Svarstad, 2021). These conflicts can reflect broader economic organization issues, with involved parties trying to influence these larger structures, like companies lobbying for legal changes to acquire natural resources. Likewise, social structures limit and enable actions. In social structures perspective which is associated with the constructivism, power is understood as the ability to influence and mold the perspectives of others so that they come to align with what they consider to be their own interests.

Steven Lukes' theory of power is a comprehensive approach to understanding how power operates in society, broken down into three dimensions. The one-dimensional view of power is actor-oriented and focuses on observable conflicts and who prevails in decision-

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[3] Means of production in political economic (and Marxist) theory are the infrastructure, tools, machinery and other necessities for producing goods and commodities (Benjaminsen & Svarstad, 2021).

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making scenarios. It is essentially about who can get others to do what they want, often through overt means like force or persuasion. The two-dimensional view expands on this by including the ability to control agendas and prevent certain issues from being discussed. This aspect of power involves not just winning open conflicts but also manipulating and setting the terms of the debate, often through covert means. The third-dimensional power is structure-oriented moves beyond the actions of individuals to consider how social forces and institutions shape or constrain people's perceptions, cognitions and preferences. It suggests that power can shape what people consider normal, possible and acceptable, often without their awareness (Lukes, 2005). This third dimension is about the embedded power in societal norms, beliefs and ideologies that can determine the playing ground rather than just the players on it. This form of power is less about overt conflict and more about the psychological and ideological control of people's desires, thoughts and beliefs. Within the framework of poststructuralist power perspectives, discursive power exists and prevails when influential individuals or groups create narratives and successfully persuade other actors or groups to accept and maintain these narratives (Benjaminsen & Svarstad, 2021). Gramsci, an Italian Marxist noted that ordinary people's views often reflected the interests of their rulers, making alternative perspectives seem implausible. Foucault introduces the concept of governmentality, which has been increasingly applied in the field of PE to understand the dynamics of power in environmental management, as referenced by various scholars (e.g., Agrawal, 2005; Fletcher, 2010; Johnsen & Benjaminsen, 2017). This concept revolves around the idea that governments shape citizens' behavior through discourse, aligning them with governmental priorities (Foucault 1991; Foucault 2008). Foucault (2008) and Fletcher (2010) further categorize governmentality into four types relevant to environmental governance: "Disciplining" which refers to governments inducing citizens to adopt specific norms and ethics; 'Truth' that governs through universal or religious principles; the 'Neoliberal rationality' and 'sovereign power' do not rely on individuals accepting state narratives but rather see the benefit in conforming due to incentives or defined rules and sanctions, respectively (Benjaminsen & Svarstad, 2021). These governmentality types may function independently, in conjunction or in conflict, and are utilized not just by states but also by entities like universities, political parties and corporations (Li, 2007)

The nine power resources outlined by Benjaminsen and Svarstad (2021) provide a deeper understanding of the actor and structure-oriented power dynamics from which a few are relevant to this study. Economic resources, including financial capital and business ownership, significantly impact economic developments. Those holding these assets, like

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large industries, wield considerable influence through such power resources. Control and ownership over land and natural resources represent a form of economic power crucial in environmental governance. David Harvey (2003) terms the underlying process that furthers capitalist expansion through stripping people of their production means, forcing them into market-dependent labor, as «accumulation by dispossession» or new-imperialism. This includes practices like blue grabbing, where powerful entities dispossess former users and accumulate capital (Benjaminsen & Bryceson, 2012). Similarly, Bennett et al. (2015) explain ocean grabbing as the domination by influential economic groups over critical decisions in fisheries, including usage, conservation and management of marine resources.

These explanations collectively emphasize the range of activities by significant players in the marine sector that limit the access and rights of smaller entities. Essentially, while the ocean plays a crucial role in enhancing the economic, social and ecological aspects of nations, it also fosters competition and conflict among stakeholders competing for dominance over access and control, often leading to the marginalization of less powerful groups (Bennett et al., 2015). Power can also be wielded through political resources, which encompass the ability to shape policies, legislation and government budgets. Control over bureaucracies is also a type of power resource, allowing entities such as companies to exert substantial influence on certain aspects of the government (Benjaminsen & Bryceson, 2012). Moreover, discursive resources encompass the capacity to present specific issues in a manner that gains approval from other participants. Some actors are skilled at achieving broad consensus for their claims, even when research indicates that their assertions lack empirical backing (Ostrom, 1990). This becomes particularly evident in the context of Mi'kmaq fisheries and management, as will be shown in the upcoming discussion section. Another relevant practice of power is "Weapons of the Weak" or "everyday forms of resistance", introduced by Scott (1985). It focuses on cases of unequal power dynamics, where individuals employ their own strategies to resist exploitation, highlighting that such resistance can wield significant influence. For instance, individuals may feign support for a project but engage in subtle, everyday forms of resistance in practice. These power resources are frequently distributed unevenly among different categories like ethnicity, gender, age, class and nationality. This suggests that certain ethnic groups, for example, may face limited opportunities when it comes to disputes related to land and natural resources.

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4.4 Decolonial Theory

Decolonial theory emerged out of African anti-colonial movements and discussions on colonialism in Latin America, frequently utilized by Indigenous activists in the Americas. It broadly describes various movements in different formerly colonized regions committed to to tackle worldwide inequality (Duvisac, 2022). Decolonial theory contends that the economic, political, cultural and intellectual abuses of colonialism have deeply embedded global systems of racism, patriarchy and economic exploitation, leading to the existing inequalities. Therefore, decolonial actions are essential for addressing inequalities both worldwide and locally (Bhambra, 2014).

Decolonial theory draws a line between coloniality and colonialism. Coloniality suggests that the current political, economic, social and knowledge systems are still fundamentally shaped by colonial relationships. On the other hand, colonialism is the historical act of European and Western powers dominating non-Western territories politically, socially and culturally from the 15th to the mid-20th century (Maldonado-Torres, 2007; Wynter, 2006). Decolonial theory primarily examines the impact of European and Western expansion, particularly in relation to capitalism's evolution. For instance, the concept of private property, originating in the United Kingdom, became a global norm through colonialism and is now a cornerstone of modern society and capitalism (Robbins, 2014). This spread of Western private property norms is an example of coloniality. Decolonial interventions, therefore, might involve promoting alternative forms of property ownership, like collective or community-based models to replace colonial-era private property systems and foster more equitable structures (Benjaminsen & Svarstad, 2021). Furthermore, coloniality is deeply embedded not only in societies but also within individuals, including those once colonized. This demonstrates that coloniality operates at both community and personal levels (Maldonado-Torres, 2007; Wynter, 2006).

Another key concept in decolonial theory is the epistemic reconstitution involves acknowledging that colonialism involved more than just the seizing of land, economic exploitation and political control; it also inflicted epistemic and cultural harm. This means that colonialism led to the suppression or devaluation of Indigenous knowledge and traditions (Hwami, 2015; Tuck & Yang, 2012). Therefore, decolonial efforts include the re-establishment of these knowledge systems, focusing on alternative ways of reshaping the societal, economic and political institutions.

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Thus, decolonial theory is one of the approaches that offer visions for emancipatory futures, focusing on altering the structures that sustain disparities. This transformation involves analyzing the effects of historical Western imperialism on modern systems (coloniality). Encouraging individuals and organizations to examine their roles in perpetuating these systems (including a critical look at the sources of knowledge and perspectives they rely on). And urging them to prioritize and empower the narratives, experiences and epistemologies of those oppressed by colonialism and coloniality (Mignolo & Walsh, 2018; Mignolo, 2011; De Lissovoy, 2019). By doing this, the possible solutions are more likely to shape new worlds that are fairer and more liberating. Decolonization theory thus is a lens through which the structural inequality in society can be studied in a fundamental sense. A decolonial analysis, for instance, reveals the marginalization of First Nations, who, despite their original status, have become secondary or tertiary in their own lands. Highlighting the colonial legacy, it notes that by 1999, Mi'kmaw people owned less than 0.5% of the fishing fleet, underscoring limited access to traditional fishing grounds (Barsh, 2002). This situation points to the need for decolonial approaches to reframe power dynamics and resource management, emphasizing the importance of Indigenous sovereignty and self-determination. Without adequate access to resources, the realization of these rights remains challenged. The theory's emphasis on recognizing and rectifying historical injustices sets a necessary foundation for the subsequent discussion on Indigenous rights and sovereignty. Decolonial theory, therefore, serves as a vital lens to understand the depth and scope of the challenges faced by Indigenous communities, underscoring the need for their empowerment and the restoration of their rights. The next section will show how decolonial ideas, which aim to fix past wrongs and change unfair systems, are key to understanding and supporting the rights and independence of Indigenous communities.

4.5 Indigenous Right and Sovereignty

The principles of decolonial theory naturally leads to the critical discussion of Indigenous rights and sovereignty in section. This transition is not merely thematic but is rooted in the decolonial imperative to confront and address the legacies of colonialism, which have profoundly affected Indigenous peoples. Indigenous rights and sovereignty are integral to the decolonial project, representing a concrete application of its principles. These rights encompass not just the restoration of land and resources but also the reclamation of cultural, linguistic and governance autonomy – areas severely impacted by colonialism. In achieving Indigenous rights, it is crucial to address the historical and ongoing dispossession and

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advocate for the restoration of resource rights to Indigenous peoples. Reclaiming Indigenous cultures, languages and practices (cultural restoration) that have been suppressed or eroded by colonialism (Borrows, 2002). Moreover, Indigenous rights intersect with environmental governance in having inclusive, representative and fair systems for managing natural resources. Indigenous communities have their own systems of governance and management for the environment and natural resources (Borrows, 2002). The recognition of these governance structures, knowledge and rights within broader environmental governance frameworks are essential for achieving equitable and sustainable management of natural resources (Zurba & Papadopoulos, 2021). Additionally, while Indigenous rights have their own distinct standing, they are inherently related to environmental justice [4] due to the emphasis on equitable treatment and access to environmental and cultural resources (McGregor et al., 2020). Advocating for Indigenous rights is crucial in pursuing environmental justice, as it involves addressing inequalities and injustices faced by Indigenous peoples in relation to environmental policies and practices.

Indigenous rights and sovereignty refer to the legal, cultural and historical claims and recognitions that Indigenous peoples hold (Ignace et al., 2023). These rights are founded on the principle that Indigenous groups should have the autonomy to inhabit their ancestral lands, uphold their cultural practices and self-govern (United Nations (General Assembly), 2007). Among the key components of Indigenous rights, this paper focuses on the concept of self-determination—referring to allowing communities to govern themselves and manage their internal affairs—and on legal recognition, which involves integrating Indigenous laws and customs into the national legal framework. (McGregor et al., 2020; Shrinkhal, 2021).

Self-determination within the realm of Indigenous rights and sovereignty. Self-determination, a fundamental principle in international law and human rights conventions, refers to the inherent right of Indigenous peoples to decide their political fate and freely advance their economic, social and cultural development (United Nations (General Assembly), 2007). It underscores the importance of empowering Indigenous populations to shape their future. This principle is pivotal in recognizing Indigenous communities' autonomy and in addressing the historical and ongoing injustices they face globally. For indigenous peoples, self-determination means having the authority and freedom to govern themselves without external influence and to maintain and develop their distinct cultural

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[4] Environmental justice seeks to ensure equal environmental protection and involvement for all, regardless of socio-economic background, race, or ethnicity. It focuses on equitable access to clean resources and incorporating marginalized voices in decisions to avoid unequal environmental impacts (McGregor et al., 2020).

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identities, languages and traditions. It encompasses the right to manage their resources, and to participate fully in the political, economic and social life while maintaining their cultural distinctiveness (Shrinkhal, 2021; United Nations (General Assembly), 2007). In the context of Indigenous sovereignty, self-determination involves recognizing the inherent authority of Indigenous nations to govern themselves according to their laws, customs and governance structures (Shrinkhal, 2021). Indigenous sovereignty challenges the idea that state sovereignty is absolute and instead promotes a model of shared sovereignty or coexistence where Indigenous governance systems and laws operate alongside those of the state (Shrinkhal, 2021, Stacey, 2018).

Numerous international and national treaties, agreements and legal frameworks have been established to recognize and affirm the rights of various groups. Regarding International Law, particularly under the United Nations, the concept of self-determination is recognized in both the UN Charter and the International Covenant on Civil and Political Rights, highlighting the fundamental right of peoples to determine their own future and form of governance (United Nations (General Assembly), 1966). Additionally, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) serves as a pivotal document outlining and affirming the comprehensive rights of Indigenous peoples, including sovereignty (United Nations (General Assembly), 2007). At the national level in Canada, these principles are reflected through cases that have progressively pushed the judiciary toward recognizing and implementing Indigenous rights (Cohen & Biro, 2023). For instance, cases such as Calder et al. v. Attorney-General of British Columbia (1973), R. V. Sparrow (1990), R. V. Van Der Peet (1996) and R. V. Marshall (1999). However, Indigenous rights and sovereignty are yet to be achieved. (Durand-Moreau et al., 2022; Shrinkhal, 2021; Stacey, 2018).

In sum, Indigenous rights and sovereignty are vital for protecting the unique cultures, languages and ways of life of Indigenous peoples and are recognized to varying degrees around the world. The history of Indigenous rights in Canada is one of resilience and resistance in the face of policies aimed at assimilation and eradication of cultures. It is a history marked by both conflict and cooperation, with an ongoing journey towards reconciliation and recognition of rights.

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4.6 Traditional Ecological Knowledge

TEK [5] is an accumulated reservoir of wisdom and convictions that have been passed down through generations via cultural inheritance (Battiste & Henderson, 2000). It revolves around the intricate interplay between living beings, encompassing both humans and the natural world (Inglis, 1993). TEK characterizes societies with an enduring history of resource utilization practices and connections to their surroundings. This knowledge system is a vital component of the long-standing tradition of resource utilization practices as highly adaptable and constantly evolving (Robbins & Berkes, 2000). Its holistic perspective considers the interconnectedness of all elements within an ecosystem, reflecting a deep appreciation for the intricate web of life. TEK can be specific to a particular local or Indigenous area, or have a broader scale. It is typically shaped by the culture and context of a particular community, transmitted orally, and often not formally documented in written form. In contrast to formal Western facts-based knowledge sources, TEK is informal. Passed through generations, this adaptive knowledge system integrates cultural and ecological practices, evolving with environmental interactions (Berkes, 2018). It is vital for sustainable ecological management, embodying the interplay between communities and nature and fostering adaptive strategies over time. Unlike reductionistic and mechanistic approaches, TEK takes a more comprehensive view of the environment (Inglis, 1993; Kimmerer, 2002; Robbins & Berkes, 2000).

TEK involves traditional resource management, drawing on local or Indigenous communities' deep knowledge for sustainable natural resource use (Rai & Mishra, 2022). Exploring TEK as ecological wisdom has become key in managing natural resources, contributing to decisions that enhance resilience and sustainability within social-ecological frameworks. TEK, integral to Native communities, underscores the synergy between Indigenous practices and modern environmental management, suggesting their combined potential to boost environmental stewardship and sustainability (Rai & Mishra, 2022; Menzies, 2006).

However, when defining Traditional Knowledge, one needs to be cautious as attempting to establish a single universal definition for all Indigenous knowledge is a form of colonization, since it enforces a process of universalization upon Indigenous worldviews,

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[5] In my thesis, I employ the terms Traditional Knowledge, Mi'kmaq Ecological Knowledge (MEK), Indigenous Scientific Knowledge and Indigenous Ecological Knowledge interchangeably to encompass a broad spectrum of indigenous wisdom and practices.

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which are intricately linked to specific ecologies and communities (Battiste & Henderson, 2000). The uniqueness of Indigenous research methodologies lies in their roots within community and familial teachings, which operate independently of the standards and categories established by Western academia (Boulianne, 2022). Indigenous knowledge integrates spirituality, unlike Western science, which often excludes it (Boulianne, 2022). This divergence underscores a clash between the concept of sacred ecology integral to Indigenous perspectives and the "commodity-based" approach of Western environmental management. In the case of Mi'kmaq lobster fisheries, the Supreme Court of Canada has attempted to incorporate Traditional Knowledge within the Western legal framework which has inturn let to infringements on Aboriginal and treaty rights (see section 5.3).

4.7 Common-Pool Resource Management

CPRM refers to the systematic governance and organization of resources such as fisheries, forests and grazing lands, which are collectively utilized by numerous individuals and are inherently vulnerable to overuse and depletion. This management approach is particularly concerned with resources that are communally shared and, therefore, are at risk of the "Tragedy of the Commons," a scenario where individual users acting in their own self-interest deplete a shared resource such as fisheries, forests and grazing lands, leading to collective detriment (Benjaminsen & Svarstad, 2021; Ostrom, 1990; Robbins et al., 2014).

Elinor Ostrom made profound contributions to the understanding of CPRM, directly challenging the "tragedy of the commons" as proposed by Garrett Hardin. Hardin's theory posited that common resources were inevitably prone to overuse and destruction. In stark contrast, Ostrom's research, rooted in meticulous real-world observations, revealed that communities are capable of effectively managing shared resources autonomously, without the need for privatization or heavy-handed government intervention [6] (Benjaminsen & Svarstad, 2021; Robbins et al., 2014). Her analytical approach, which integrated insights into human behavior, institutional dynamics and empirical evidence, laid a robust framework for understanding the sustainable management of shared resources by communities. Influencing a wide range of policies and practices in environmental governance and community resource

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[6] The theory of the commons is a game theory in which individuals make decision for their own interests which creates collective consequences that are non-optimal for everyone (Robbins et al. 2014). Hardin believes that only two ways are to manage cooperative behavior on common property, either to have an "environmental super-police state, [coercion]", or "private property rights over all environmental systems or objects, [privatization]" (Robbins et al., 2014, p.54). The tragedy of the commons suggested that individuals acting in their self-interest would inevitably overuse and deplete shared resources.

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management, Ostrom (1990) highlighted the importance of developing institutions that facilitate collective action. Standing in opposition to Hardin's pessimistic outlook, Ostrom argued that the tragedy of commons could be avoided through social institutions [7] that encourage cooperative behavior among individuals, offering a more viable and optimistic approach to maintaining environmental commons (Robbins et al., 2014).

Ostrom (1990) proposes multiple "design principles" inherent in effective CPRM through her extensive research. These principles encompassed specific elements such as well-defined boundaries, locally adapted rules, consistent monitoring, scaled sanctions for those breaking rules, mechanisms for resolving conflicts, and the acknowledgment of community rights to self-organize. She highlights the significance of community-based governance and the capacity of users to develop and enforce their regulations. Ostrom (1990) was a proponent of polycentric governance structures, advocating for a system with various overlapping authorities at different levels, managing common resources in contrast to centralized or hierarchical models. She posited that such decentralized systems offer greater flexibility, adaptability to local nuances, and a higher propensity for evolutionary learning. Her empirical work drew from actual case studies and was interdisciplinary, merging insights from economics, political science, sociology, and ecology, effectively bridging the gap between theoretical constructs and real-world application. Ostrom's research contested the prevailing economic notion that solely private ownership or state intervention could avert resource depletion, demonstrating instead that communal management could also be a viable and sustainable solution under appropriate circumstances (Benjaminsen & Svarstad, 2021).

In sum, the key characteristics of CPRM include a focus on integrating local and traditional knowledge alongside contemporary practices, emphasizing substantial community involvement and collective action (Ostrom, 1990). This approach seeks to implement rules and agreements tailored to manage the consumption and conservation of these shared assets effectively. The discussion section will explore how implementing CPRM systems can contribute to achieving Indigenous rights and sovereignty in the case of the Mi'kmaq fisheries.

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[7] "Institutions are norms and rules that govern collective action, specifically those rules of governing common property environmental resources, such as rivers, oceans, or the atmosphere" (Robbins et al. 2014, p. 320).

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5. Results and Discussion

5.1 Historical Context and Analysis

Understanding the history of the Mi'kmaq people is fundamental when addressing lobster fisheries and the concept of the moderate livelihood. The historical interactions between the Mi'kmaq, European settlers and the Canadian government provide context for the recent tensions and policy debates. A historical analysis offers critical insights into the cultural significance of lobster fishing in Mi'kmaq tradition, underlining its role beyond a mere economic activity. It also sheds light on the longstanding legal and treaty rights, stemming from 18th-century agreements, which are central to current discussions on Mi'kmaq fisheries. This background is crucial for understanding the socioeconomic dynamics affecting Mi'kmaq communities, highlighting the necessity for an expanded interpretation of the right to a moderate livelihood for addressing the restoration of what has been eroded over years of marginalization and neglect. This approach acknowledges the depth of loss and the need for substantive measures to facilitate recovery and the flourishing of Mi'kmaq culture, economy and societal well-being. An understanding of this history is also crucial in recognizing and addressing biases and perspectives in contemporary discourse, ensuring that policies developed are informed, equitable and do not replicate past errors. Hence, the history of the Mi'kmaq is integral to a comprehensive, balanced and informed analysis of lobster fisheries in academic research.

5.1.1 Pre-Contact: Prior to 1500

The Mi'kmaq [8], also known as, Micmac, or L'nu'k, meaning "the people" in their language, are Indigenous peoples and among the original inhabitants of the Atlantic Provinces of Canada [9]. Their traditional territory, known as Mi'gma'gi or Mi'kma'ki, includes the coastal areas of Gaspé and the Maritime Provinces east of the Saint John River,

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[8] Pronounced as Meeg-maw and literally meaning "The Family" (Elegbede et al., 2023; Fox, 2006). "Mi'kmaq," ending in 'q,' signifies 'the people' as a noun. The correct spelling "Mi'kmaq" is used both for the collective group and in plural form. However, "Mi'kmaw" is the spelling adopted when it functions as an adjective or refers to a single individual (Boulianne, 2022). The Mi'kmaq originally referred to themselves as "L'nu'k" (Boulianne, 2022). Historical documents sometimes refer to the Mi'kmaq as Gaspesians, Souriquois, and Tarrantines. "Mi'kmaq" translates to "my kin-friends" or "my brothers!" in their language, a greeting extended to the French upon first contact. The French termed them "Notres nikmaqs," which evolved into "Mi'kmaq" in English over time (Boulianne, 2022, p. 19).

[9] Atlantic Canada (Atlantic provinces), is the region of Eastern Canada comprising the provinces located on the Atlantic coast: New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island, excluding Quebec.

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extending predominantly into Nova Scotia and New Brunswick (Encyclopedia, 2022; Wien, 2022). This region is home to 30 Mi'kmaq nations, 29 of which are located in Canada. Oral history and archeological evidence suggest that the Mi'kmaq have lived in Mi'kma'ki for over 10,000 years, with a pre-contact world characterized by seasonally patterned habitation and resource harvesting (Encyclopedia, 2022).

Figure 1

The Map of Atlantic Provinces

Note. The areas shown in color are the Atlantic Provinces, including Laborador, Newfoundland, Prince Edward Island, Nova Scotia and New Brunswick.

From *Poverty Map of Canada's Atlantic Provinces*, *2011*, (https://en.m.wikipedia.org/wiki/File:Atlantic_provinces_map.png). CC BY-SA 3.0 DEED.

Historically, Mi'kmaq communities were organized around bay or river settlements with households related by alliance and kinship. As nomads arranged into family-centric clan units or Bands by the Indian Act, the Mi'kmaq cultivated a vibrant culture deeply rooted in their local surroundings and available resources (Elegbede et al., 2023; Milley & Charles,

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2008). Like many pre-industrial societies, the Mi'kmaq relied heavily on nature for their livelihoods. The Mi'kmaw economy was centered around seasonal hunting, fishing and gathering (Wien, 2022). It is estimated that in the pre-contact era, over 90 percent of their food supply came from ocean resources (Milley & Charles, 2008). Consequently, the Mi'kmaq emphasized the importance of a deep spiritual connection with all living beings, particularly the spirits of animals (Wien, 2022). Similar to other Indigenous peoples, the Mi'kmaq hold the belief that animals willingly sacrificed their lives for human survival. The sustainability of this relationship, however, was dependent on adherence to the sacred principles that guided it. These principles included proper disposal of animal and fish bones and avoiding excessive hunting (Wien, 2022). In their subsistence-based economy, there was minimal opportunity for accumulating surplus and shortages did exist and were a common occurrence, subject to varying conditions leading to periods of hardship and starvation (Wien, 2022). However, this lifestyle fostered a resilient culture, mirroring natural cycles. The reliance on nature for sustenance gave rise to a deep spiritual insight into their surroundings, myths to explain natural events and established social norms and ethical codes to guide proper gathering methods and tactics (Milley & Charles, 2008).

     The Mi'kmaq community managed their resources through a system where harvesting regulations were tied to the annual cycles of fishing and hunting. These regulations specified details like when and where harvesting could occur, and who was involved. Decisions within the community were made through consensus across seven territorial districts, known as sakamowiti (Milley & Charles, 2008). These districts, functioned as political entities centered around familial structures. The chiefs of these districts, who were elected from within, along with their families, played a role in the annual Mawiomi or Council. This council was overseen by the Kijsakamou or Grand Chief and the Kijkatin or Grand Kaptin. However, these leaders acted more as facilitators of discussion rather than governors. Decisions regarding resource management were made by families and communities in a grassroots democratic manner, not through top-down directives from the Sante Mawiomi (Grand Council) (Milley & Charles, 2008). Clan migrations were influenced by various factors, including weather, resource availability and travel routes. However, principles like compassion, sharing, and a deep connection to nature, which were emphasized in the Sante Mawiomi, also guided these movements (Milley & Charles, 2008). The Mi'kmaq people embrace a holistic and interconnected approach to governance, politics, economy, and spirituality, encapsulated in the philosophy of Netukulimk. This worldview emphasizes the sustainable utilization of the Creator's gifts, aiming not only for the well-being of both the

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community and the individual but also for the preservation of resources for future generations. This enduring philosophy continues to be acknowledged and esteemed in contemporary times, reflecting its timeless relevance and significance (Milley & Charles, 2008). Netukulimk harvesting practices are not just methods of resource collection, but also embody actions of self-empowerment, autonomy, and legal affirmation, demonstrating a pathway towards achieving justice, sovereignty, and the right to livelihood and independence (McMillan, 2022). Based on this, the Mi'kmaq's environmental management practices are aligned with Ostrom's principles of CPRM system which emphasize that local communities could effectively manage resources without central government control or privatization. This demonstrates a decentralized and community-based approach to resource management, as practiced by a society with a strong emphasis on annual migrations, territorial districts, and familial political units. Ostrom suggested that effective commons management often involves rules and decisions made at the local level, tailored to the specific needs of the community and the resources they manage, much like the Mi'kmaq management system which allows districts and families to make their own resource management decisions. She stressed the importance of involving those affected by resource management rules in the decision-making process, a principle reflected in the Mi'kmaq system through consensus-building within communities and districts, as opposed to top-down approaches. Ostrom also recognized the critical nature of allowing communities to organize their own management systems without external interference, a degree of autonomy and self-organization that is apparent within the Mi'kmaq districts. Furthermore, she suggested that complex resource systems are best managed in a layered manner, with small local units nested within larger ones, mirroring the Mi'kmaq structure where families form districts, which then participate in a Grand Council, indicating a multi-layered approach to governance and resource management (Ostrom, 1990). Moreover, Ostrom notes that clearly defined boundaries for resource use and community-based monitoring and enforcement are crucial. Here, instead of boundaries set by people for people, the boundaries are set by the nature and followed by all. However, based on the governing structure, the territorial districts and family units also would serve as a way to define those boundaries and enforce rules. Regarding the effective management systems and the need for ways to resolve conflicts quickly and fairly, the annual Mawiomi or Council gathering and the roles of the Grand Chief and Grand Kaptin, seems to be serving as such mechanisms in this system. In essence, the Mi'kmaq management system embodies many of Ostrom's principles for effective community-based resource management, focusing on local control, consensus decision-making, and a multi-layered structure of governance.

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Arguably, the very existence of Indigenous peoples and their management systems has consistently disproven theories such as the tragedy of the commons. This sustainable way of environmental management suggests that Indigenous communities were never the primary contributors to resource depletion. Yet, they still face conservation narratives and policies that obstruct their efforts to reclaim and revive their sustainable lifestyles. While the notion of moderate livelihood is touted as a victory in recognizing Indigenous rights, it offers minimal restitution compared to the extensive cultural and resource losses these communities have endured for centuries.

5.1.2 European Contact: 1500 – Mid 1900s

Their proximity to the Atlantic meant the Mi'kmaq were among the first to encounter European explorers, traders and fishermen. Their interaction began in the 1550s when fishermen started using the coast to dry fish (Encyclopedia, 2022; Milley & Charles, 2008). These interactions eventually fostered trade, with the Mi'kmaq exchanging local goods like furs and handcrafts for European items including iron goods and foodstuffs. The fur trade further altered their way of life, shifting from subsistence hunting and gathering to trapping and trading furs (Fox, 2006). The main focus of these trades was primarily on harvesting just enough to fulfill immediate local needs (Williams & Wien, 2022). For the Mi'kmaq, the fur trade also came with negative features such as growing dependence on European food and clothing, the undermining of traditional roles and increased intertribal hostilities. As the fur trade waned, they were able to return to a more balanced and seasonably varied lifestyle, but pressures on their traditional lands increased, as did exhortations to settle and take up farming (Williams & Wien, 2022). Additionally, the Mi'kmaq were also drawn into the French-English conflicts of the time. Yet, Europeans had more than trade to offer. From about 1500 to 1600, European diseases caused severe depopulation and socio-cultural disruption, with some estimates suggesting a loss of up to half the Mi'kmaq population (Encyclopedia, 2022; Coates, 2000). Followed by the settler economy boom post-American Revolution and genocidal policies, their survival was severely threatened. The European colonial expansion in the Atlantic provinces, thus, led to Europeans greatly outnumbering the Mi'kmaq (Williams & Wien, 2022). The Mi'kmaq were pushed into marginal areas as settlers chose lands near rivers, the sea, and fertile soils. Displacement and colonial policies not only resulted in their isolation but also limited their access to resources. The Mi'kmaq were forced into inland reserves, alienating them from their traditional livelihoods and leading to high

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unemployment and reliance on social support. Their language and culture were further suppressed, particularly in education, with economic advancement often requiring assimilation into non-native contexts. Tensions continued, particularly between Mi'kmaq fishers seeking autonomy and government officials, enforcing non-native fishing regulations, leading to ongoing conflicts (Milley & Charles, 2008; Williams & Wien, 2022). However, upon the arrival of Europeans to the shores of Mi'kmaq territory, the Mi'kmaq extended their principles of domestic law through a series of treaties, first with the French and later the English. From 1725 to 1794, the British Crown initiated and repeatedly renewed "Treaties of Peace and Friendship" with various Indigenous groups, including the Mi'kmaq in Atlantic Canada. These treaties, primarily established for peace and friendship, set up shared duties and responsibilities between the Crown and these Indigenous nations, specifically aiming to protect the Mi'kmaq way of life amidst the superior political and military power of the British (Callaghan et al., 2022). An example of these treaties is the 1726 treaty that concluded a three-year conflict between New England and the Wabenaki coalition (which included the Mi'kmaq), and it was sparked by New England fishermen aggressively entering the coastal waters of Nova Scotia. This agreement prohibited the British from disrupting the native communities' traditional fishing, hunting and farming practices. Furthermore, a subsequent treaty in 1752 reinforced the 1726 terms, guaranteeing the Mi'kmaq tribe unhindered freedom to hunt and fish as they traditionally had (Williams & Wien, 2022). The 1970s marked a significant turning point for the Mi'kmaq people. During this era, their leaders actively pushed for the acknowledgment and application of the Peace and Friendship Treaties (PFT) from the 1700s. This advocacy led to a pivotal Supreme Court ruling in the case of Calder et al. v. Attorney-General of British Columbia in 1973. This decision affirmed the existence of treaty and Aboriginal Rights, including fishing rights, setting a precedent for future legal and rights recognition. This era also saw the establishment of key Mi'kmaq organizations like the Union of Nova Scotia Indians and the Assembly of Nova Scotia Mi'kmaw Chiefs, enhancing areas like education, healthcare and economic development (Williams & Wien, 2022). Notably, albeit historically flawed, the federal policies began supporting the Mi'kmaq's rebuilding efforts as they were pushed forward by Mi'kmaw leadership in their quest for self-determination. This turnaround in the federal approach to Indigenous communities emerged from court decisions recognizing Aboriginal and Treaty Rights affecting community development, governance, income generation and urban presence contributing to the growth of some communities.

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The establishment of the Confederation in 1867 included a clause in the British North America Act stating that the federal government would oversee "Indians and lands reserved for Indians." However, the government's involvement extended far beyond managing relationships with First Nations, into regulating and controlling their internal matters. Consequently, the Indian Act is laden with regulations dictating the structure of Indian governments, which cultural practices were prohibited, and what permissions were needed for commercial activities (Williams & Wien, 2022). The federal government enacted damaging policy choices, perpetuating exclusions that led to the establishment of residential schools in 1880 and the introduction of the pass system [10]. One of their most harmful decisions was the centralization of Mi'kmaw communities within the province during the 1940s. This policy was publicized to bring administrative efficiency, economies of scale and better service provision, while it had moral and racist justifications similar to those for residential schools (Williams & Wien, 2022). It resulted in forced and misled relocations, destroying local economies and self-sufficiency caused by lack of employment opportunities in these new locations, exacerbating the community's problems. Moreover, rather than allocating resources to regenerate the economies and social structures of First Nations, the federal government sought to superficially address the issue by providing welfare provisions that further eroded their autonomy and self-determination, leading to stigmatization and discrimination (Williams & Wien, 2022). Such government initiatives indicate that historically, the government's policy regarding Indigenous communities was inherently discriminatory.

Given the historical analysis of European Contact, it is evident that the imposition of European governance structures, particularly in the management of natural resources and land, significantly impacted Indigenous societies. European colonization has also impacted the Mi'kmaq people's environmental governance, particularly in the areas of use and distribution, regarding the initial trade practices and subsequent shift towards fur trading and their displacement to less suitable geographical areas, respectively. This historical context can be analyzed through the critical analysis of power dynamics in environmental governance, as it showcases how external forces (European settlers) disrupted Indigenous practices, leading to ecological and social imbalances. The struggle for recognition and implementation of Indigenous rights and sovereignty is also evident throughout the Canadian

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[10] A policy requiring Indigenous peoples to obtain a pass from an Indian agent to leave their reserve, even temporarily.

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history. The Mi'kmaq's engagement in treaties was an early form of asserting their sovereignty, although these were often undermined by colonial powers. In the context of the Mi'kmaq, the decolonial theory illustrates how early interactions with European explorers and traders in the 1500s initiated significant changes in their way of life. The forced shift from a self-sustaining economy to a dependency on European goods and the enforced displacement into reserves and the systematic suppression of their language and culture highlight the broader strategies of colonialism aimed at undermining Indigenous autonomy and erasing cultural identities. The Mi'kmaq's fight for recognition and implementation of their treaty rights in the 1970s, leading to landmark court decisions and the formation of influential Mi'kmaq organizations, represents a significant step in their journey towards self-determination and rebuilding their community. This narrative of the Mi'kmaq, when viewed through the lens of decolonial theory, exemplifies the pervasive and enduring effects of colonial systems and the ongoing efforts to challenge and transform these structures for a more equitable and autonomous future. The establishment of the PFT can be considered the first decolonial attempt by the Indigenous peoples to protect their way of life amidst the growing European dominance.

Thus, the European colonization process significantly disrupted Mi'kmaq power structures, replacing them with colonial systems. Colonial systems replaced local rules and governance, evident in the imposition of the Indian Act and the establishment of Residential Schools. These changes dismantled traditional power structures and forcibly integrated Indigenous communities into a system that sought to erase their cultural identity and autonomy. The Mi'kmaq were subjected to policies that undermined their traditional governance, cultural practices, and economic systems, reflecting a significant power imbalance. The enactment of policies like the Indian Act highlights how power was wielded to control and assimilate Indigenous populations. The treaties, while initially meant to protect Mi'kmaq rights, often resulted in further encroachment and regulation of their traditional practices. Moreover, while these historical treaties and ruling were to recognize the Indigenous rights and sovereignty of the Mi'kmaq, the emergence of moderate livelihood in the 21st century suggests their insufficiency. However, in more recent history, there has been a noticeable shift towards recognizing and respecting the sovereignty of the Mi'kmaq people, which will be discussed further.

5.1.3 Moving Forward with Sparrow and Marshall

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This paper primarily focuses on the Sparrow and Marshall decisions in its examination of court rulings and their implications. These decisions are particularly chosen becuase of their relevancy to the fisheries in Atlantic Canada, especially concerning the Mi'kmaq people, and hold significant influence over the management and policies of the lobster fisheries. In 1990, the landmark Sparrow decision by Canada's Supreme Court established a crucial precedent in Aboriginal rights. Originating from the case of Ronald Edward Sparrow, a Musqueam First Nation member convicted of illegal fishing, the ruling affirmed the Aboriginal right to fish for food, social and ceremonial (FSC) purposes under section 35 of the Constitution Act, 1982 [11] (Milley & Charles, 2008; R. v. Sparrow, 1990). However, this right was granted to them within the bounds of conservation goals, which still prevails in the narratives of non-Indigenous fisheries opposing the moderate livelihood practice. This situation reveals an exertion of power, where authoritative entities—likely influenced by colonial perspectives—assert their knowledge or judgment as superior to Indigenous practices. These practices, predating European contact, embody what is today recognized as sustainable living. This reflects a deep-seated mistrust in Indigenous communities, doubting their ability to live in harmony with nature, despite the fact that they were not the initial exploiters of their environment. This power dynamic is further reinforced through political influence and the shaping of policies and legislation, representing a passive yet potent excercise of power.

Nonetheless, the Sparrow Decision introduced a set of guidelines, referred to as "the Sparrow Test," to assess if government interference with Aboriginal rights could be justified, especially if those rights were acknowledged by the Constitution Act of 1982 (Milley & Charles, 2008). The decision led to renewed interest in fishing among Indigenous communities. However, it also led to the development of the Aboriginal Fisheries Strategy (AFS) by the Government of Canada and imposed top-down regimes of governmental management. The AFS aimed to support Mi'kmaq Bands through financial assistance and a federal licensing regime with little attention to fisheries management activities, which sparked internal disputes and reduced Mi'kmaq authority over their fishing activities (Elegbede et al., 2023; Milley & Charles, 2008; Wiber & Milley, 2007). By developing their own management systems, these communities subtly resist and undermine government authority, embodying "weapons of the weak" through strategic non-cooperation and assertion

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[11] Section 35 of the Canadian Constitution Act, 1982 acknowledges and upholds the aboriginal and treaty rights of Canada's Indigenous peoples. These rights are collective and communal, with individuals benefiting from community-owned rights like hunting and fishing (Callaghan et al., 2022).

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of independence. This advocacy gave rise to regional initiatives such as the Mi'kmaq Fish and Wildlife Commission (MFWC) (Wiber & Milley, 2007). These commissions focused on enhancing resource management capacity and integrating Mi'kmaq people into regional fishery management, overseeing various natural resources including fisheries, wildlife, forests and minerals (Milley & Charles, 2008). However, the MFWC, like other Mi'kmaq fishery management initiatives in Atlantic Canada, was financially dependent on government funding, particularly from the AFS program and the Department of Fisheries and Oceans (DFO). This dependence created a challenging situation for the chiefs and staff of the Mi'kmaq regional management organization. If they worked to establish an independent fishery management system within their communities, it could be seen as conflicting with the established Fisheries Act's management structures, risking their funding. Conversely, if they focused on implementing the federal management system, it could go against the aspirations of the Mi'kmaq communities and lose political support. The AFS's influential role in the development of Mi'kmaq management systems was evident, as it controlled the process through the reliance of Mi'kmaq communities on external funding (Milley & Charles, 2008). All in all, the Sparrow Decision was the beginning of affirming Aboriginal fishing rights and inadvertently catalyzed a movement towards greater self-determination and resource management among the Mi'kmaq and other Indigenous communities.

While the Sparrow Decision affirmed the Mi'kmaq's Food, Social, and Ceremonial (FSC) rights, their commercial interests had yet to be recognized. In 1999, in R. v. Marshall, the Supreme Court affirmed the Mi'kmaw right to livelihood, as set out in the treaties of 1700s. This transformative decision led to a redistribution of access to natural resources, amplifying Mi'kmaw economic development and autonomy (McMillan, 2022). The Marshall Decision recognized the treaty right of the Mi'kmaq, Maliseet and Passamaquoddy peoples to rely on natural resources for a moderate livelihood and a "communal level of benefit" (Wiber & Milley, 2007).

In 1971, Donald Marshall Jr., a Mi'kmaw from Nova Scotia, was wrongfully convicted of murder at age 17. Years later, he faced charges again, this time for unlicensed commercial fishing and fishing outside of season. Defending himself, Marshall asserted the Mi'kmaq's treaty-based rights to commercial fishing (Milley & Charles, 2008; Williams & Wien, 2022). His eleven-year imprisonment (1971–82) before proving his innocence highlighted systemic racism within Canada's justice system, especially against Indigenous Peoples. This case, among the first notable wrongful convictions in Canada, led to a Royal Commission of Inquiry, which resulted in significant legal reforms and the exposure of

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systemic issues in justice administration (McMillan, 2022). Marshall's case depicts the persistent discrimination and racism against Canadian Indigenous peoples into the 21st century.

Marshall's fishing and selling eels, seen by him as exercising his treaty right to earn a livelihood, was contested by the federal government, the Crown's successor in the PFT (McMillan, 2022). Donald Marshall's role in asserting his Indigenous identity and treaty rights through fishing activities, highlighted a significant shift from a history of oppression to one of empowerment and self-determination. His legal trial symbolized a crucial test of his Nation's Treaty Rights. This case paved the way for transitioning from a history of dependency and oppression to a sustainable community development, enabled by the exercise of Treaty and Indigenous Rights and the validation of TEK. This marked a significant change in the dynamics of colonial relations.

The 1999 Marshall decision acknowledged the rights of Mi'kmaq, Maliseet, and Passamaquoddy peoples to engage in both commercial and subsistence fishing in Atlantic Canada, leading to significant changes in the region's fisheries (Milley & Charles, 2008). It presented a chance to reclaim their livelihood through traditional resource harvesting, which had been previously denied to them. Providing them with the opportunity to further their skills in fishery management and policy, integrating their cultural philosophy of Netukilmk to promote a community-based approach (Milley & Charles, 2008). Although this ruling also caused conflicts between Mi'kmaq and non-native communities (marked by intense physical and emotional strife), it led to a collaboration between Mi'kmaq First Nations and non-native small-boat fishery communities in the Canadian Maritimes (New Brunswick, Nova Scotia and Prince Edward Island). By advocating for community-based management and the integration of TEK to enhance fishery conservation and compliance, both groups demonstrate that previous views of the decision as a threat to the livelihoods of non-native fishers were misguided (Milley & Charles, 2008; Wiber & Milley, 2007). However, the federal government has shown limited support for non-native community-based fishery management. Similarly, Mi'kmaq efforts to establish a community-centric management system are hampered by reliance on federal assistance and a repeat of post-colonial dependence patterns (Milley & Charles, 2008). Although the Marshall and Sparrow rulings confirmed Mi'kmaq fishing rights and necessitated justifying regulations based on conservation, government agreements have yet to fully acknowledge the value of community-led management for sustainable fisheries. Nonetheless, it raises the question of who the entities evaluating these justifications are and on what basis or reasoning they are deemed valid.

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This historical analysis demonstrates how, from the very foundation of Canada, the rights and sovereignty of Indigenous communities were significantly impacted. A consistent pattern emerges throughout the history between the Federal government and the Indigenous nations of Canada, marked by a recurring theme of partial recognition and commitment to the treaties and rights of Indigenous people. This pattern reflects what might aptly be termed "half-hearted conditioned rights", illustrating the Federal government's tepid and restricted approach to acknowledging Indigenous sovereignty. The government, in this context, appears to be tokenistic in its approach. This could be seen as the government being performative, as it seems to set goals without following through with the necessary means to achieve them, leaving the people in a precarious and dependent state. Given the historical context, a crucial question arises: How can one ensure that the Marshall Act and the concept of a moderate livelihood genuinely differ in their long-term effectiveness and impact, unlike their predecessors?

5.2 Lobster – Animal, Identity or Profit?

5.2.1 I Feel, Therefore, I Am – Lobster as a Being

Nova Scotia is home to the American Lobster, which is referred to as "jakej" in the Mi'kmaq language and scientifically identified as Homarus americanus (see Figure 2). This lobster is part of the Decapoda order in the crustacean family. Its habitat stretches across the northwest Atlantic, from the coast of North Carolina to Newfoundland and Labrador. As noctornal creatures, they spend most daylight hours hidden under rocks or in crevices, and is commonly found in waters less than 50 meters deep, though it has been observed at depths surpassing 500 meters. Notably, the largest populations are located within Canada around Nova Scotia. The American lobster is known for its longevity and can grow up to 60 centimeters in length and weigh over 18 kilograms. It possesses a hard exoskeleton that varies in color from brown to olive green, possibly speckled with red, orange, or black. This species features five pairs of walking legs, with the most prominent being the large claws (chelipeds). It also has two pairs of antennae, an abdomen equipped with pleopods (feathery appendages) and a tail composed of a central telson and four fins (uropods). The lobster undergoes multiple molting phases, primarily in warmer waters, crucial for its growth and development. Regarding the reproduction process, females carry fertilized eggs under their abdomens for about 9-12 months before releasing larvae, a critical process for population maintenance. According to Atema (1986), female lobsters choose their mates, usually

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selecting the dominant male in the area. The mating occurs post-molting, with the male transferring sperm to the female's seminal receptacle using two swimmerets. Males compete for prime dens on the sea floor, attracting females for mating through physical dominance and chemical signals. After mating, the female leaves, often replaced by another, in a cycle that reinforces her role in the social hierarchy. Lobsters have a planktonic phase lasting 3-10 weeks, followed by a post-larval stage where they settle on the sea floor. They progress through early benthic, juvenile, and adult stages, remaining reproductive until death. Moreover, lobsters demonstrate seasonal migration habits, relocating to shallower areas in summer and deeper waters in winter. These migrations, predominantly occurring during their breeding stage, cover limited ranges - typically from just a few kilometers to around 20 kilometers over their mature lifespans (Wien & Williams, 2022; Government of Canada, Fisheries and Oceans Canada, 2020).

Figure 2

Americal Lobster (Homarus americanus)

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Note. The provided illustration shows the American Lobster (*American Lobster (Homarus Americanus) Illustration From Zoology of New York, 1842 – 1844, by James Ellsworth De Kay (1792-1851).*, 1844). From Rawpixel, (https://www.rawpixel.com/image/329371). Copyright CC0.

In the midst of ongoing conflicts surrounding lobsters, there's a tendency to overlook their existence as sentient beings, with their intrinsic values and independent lives, reducing them merely to resources, commodities and elements in political discourses. Throughout my research for this paper, I found only one paper "Where is the Lobster? An Exploration of the Lobster as a Being in Fisheries Management in Nova Scotia, Canada" by April Fowler (2022) that adopts a biocentric and sentientism viewpoint in addressing the current conflicts related to the topic of this paper. This approach moves beyond mere antropocentric perspectives and diverges from most research which analyze the lobster with relation to human societies. Moreover, chapter three of the " Organizing nature: Turning Canada's Ecosystems into Resources " by Cohen & Biro (2023) also brings into light the comodification of lobster, the process in which fish (refering to marine species), as ecosystem components, becomes resources, a use object for human consumption. In 2021, in their studies, Review of the Evidence of Sentience in Cephalopod Molluscs and Decapod Crustaceans, Birch and colleagues recognized lobsters as sentient beings with the ability to experience sensations such as "pain, pleasure, hunger, thirst, warmth, joy, comfort and excitement" (Birch et al. 2021, 7). This recognition of lobsters paves the way for their inclusion in animal rights legislation, but also it necessitates a change in the methods used by fisheries in handling lobster deaths. Now the question is, who treats the lobster with more care, Indignous communities or commercial fisheries?

A decolonial perspective sheds light on the historical narrative that colonialism, coupled with capitalism, laid the foundation for anthropocentrism (Fowler, 2022; Gribben & Fagan, 2016). This worldview, which places humans at the center of the universe, gained momentum alongside the Industrial Revolution and the pursuits of modernization and development, often sidelining the intrinsic worth of other species and the environment, treating them primarily as resources for human exploitation. Sentientism, in contrast, represents a paradigm shift away from anthropocentrism. It advocates for the recognition and moral consideration of all sentient beings, not just humans (Linzey & Linzey, 2018). This approach challenges the colonial legacy by promoting a more inclusive and equitable view of our moral circle. Recognizing the lobster as a sentient being symbolizes a step towards

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decolonization. This perspective acknowledges the harms inflicted by colonial systems on both human and non-human beings and calls for a reevaluation of our ethical responsibilities. Expanding this view further, decolonizing our relationship with nature involves dismantling the deeply ingrained beliefs and structures that have perpetuated human dominance and exploitation of the natural world (Adams & Mulligan, 2003). It requires rethinking development models that prioritize economic growth over ecological sustainability and social equity. Embracing sentientism challenges the anthropocentric and exploitative narratives that have been normalized by colonial and capitalist frameworks. This shift paves the way for a more holistic and interconnected understanding of our place in the world, fostering a culture that values coexistence and mutual respect among all forms of life.

Decoloniality represents a transformative path towards acknowledging and respecting Indigenous rights, which in turn, can have a profound impact on animal rights. While the direct relationship between decolonial theory and animal rights might not be immediately evident, given that historically, humans have been the colonizers of other humans, there exists an indirect connection. This connection stems from the fact that colonization has often led to the exploitation of ecosystems and the diverse species inhabiting them (Adams & Mulligan, 2003). Such exploitation is not just a byproduct of colonization but also a reflection of a mindset that views nature and animals merely as resources to be used for human benefit (Benjaminsen & Svarstad, 2021; Robbins et al., 2014). Decoloniality thus involves challenging dominant narratives and structures that commodify and exploit nature. For instance, lobsters, trapped in the commercial industries, exemplify the disregard for marine life's intrinsic value and the broader issue of environmental degradation. Decolonizing lobsters goes beyond addressing commodification; it requires a shift in perspective to see them as part of a larger ecological system deserving respect and protection. This involves examining the intersectionality between Indigenous rights, animal rights, environmental governance, and sustainability, learning from Indigenous sustainable practices to heal the wounds of colonization and capitalism on both human and non-human life (Benjaminsen & Svarstad, 2021; Robbins et al., 2014).

Decolonial theorists argue against the Eurocentric view of capitalism as a global, all-encompassing system and emphasize the existence of diverse forms of life and non-capitalist ways of living that offer alternatives to the capitalist model (Kothari et al., 2019). These alternatives often include Indigenous approaches that demonstrate non-extractive relations to nature and emphasize different values and practices. This perspective is crucial in understanding the commodification of natural beings, like lobsters, in capitalist systems with

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contrast to Indigenous practices that are based on relationality and respect for non-human entities. The commodification of lobsters means transforming them from beings with intrinsic value into mere resources for human consumption (Robbins et al., 2014). This perspective aligns with decolonial critiques of capitalism and its role in perpetuating colonial exploitation. Indigenous approaches, which often emphasize relationality and respect for non-human beings, contrast with exploitative commercial practices. The acknowledgment of lobsters as sentient beings resonates with Indigenous worldviews that often recognize the personhood and rights of non-human entities. This perspective challenges anthropocentric approaches and aligns with decolonial aims to decenter human dominance and recognize the agency and value of all beings.

5.2.2 Hand in Claw – The Ties of Lobster and Mi'kmaq People

The relationship between Mi'kmaq communities and lobsters extends far beyond mere economic interactions; it encompasses a deep, multifaceted connection rooted in cultural, historical and environmental aspects (Elegbede et al., 2023). The Indigenous rights are intrinsically intertwined with the rights of animals due to the profound spiritual connection Indigenous peoples share with the natural world. This deep bond, characterized by respect and coexistence, underscores the importance of considering animal rights alongside Indigenous perspectives to fully grasp the complexities of environmental stewardship (Fowler, 2022; Wien, 2022). The interdependency between Indigenous communities and animals is significant and a comprehensive understanding of Indigenous rights necessitates considering animal rights as an integral component.

Traditional Mi'kmaq hunting stories depict a symbolic conversation between the hunter and the specific animal, emphasizing a mutual relationship in hunting (Hornborg, 2016). These narratives often portray animals, including lobsters, as willingly offering themselves as gifts which are echoed in Mi'kmaq's management plans (Fowler, 2022). In decolonial theory, nature's agency is linked to allowing nature to convey its own narrative, countering the uniformity and dominance of Eurocentric or anthropocentric viewpoints (Fowler, 2022). In this context, Mi'kmaq stories present non-human animals as distinct characters, highlighting their unique identities and roles rather than the creation of homogenized identities as objects of exploitation within colonial societies (Fowler, 2022; Robbins et al., 2022).

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The Mi'kmaq relationship with lobsters is an example of TEK. TEK represents an accumulated body of knowledge, practice, and belief, concerning the relationship of living beings with their environment, handed down through generations. The Mi'kmaq's narratives of animals willingly offering themselves encapsulate a reciprocal and respectful relationship with nature intrinsic to TEK. This viewpoint enhances our grasp of environmental stewardship and highlights the need to integrate Indigenous wisdom and practices into modern environmental discussions and policies (Rasmussen, 2023). The relationship between Mi'kmaq communities and lobsters, as well as the broader context of Indigenous rights and environmental stewardship, is connected to the concept of Netukulimk. In environmental governance, the principles of Netukulimk, as recognized by the Mi'kmaq, emphasize sustainable resource management intertwined with a profound respect and spiritual connection with nature. This approach aligns with the Indigenous conservation perspective, where the term transcends mere resource preservation. For the Mi'kmaq, conservation embodies a deep connection to fish stocks, encompassing socioeconomic, political, spiritual and cultural values integral to the community, reflecting the holistic essence of Netukulimk (King, 2011). This approach aligns with the principles of environmental governance, which increasingly values inclusive and holistic frameworks. Thus, by integrating the Mi'kmaq's TEK, governance structures can transcend conventional resource management strategies, adopting a more comprehensive, rights-based approach that respects Indigenous sovereignty and ecological interdependence.

5.2.3 Economics of Lobster – An Overview of Lobster Fishing Industry

The American lobster (Homarus americanus) holds significant importance for the Mi'kmaq community. It has been a crucial fishery since the 1800s due to its year-round availability, popularity, nutritional value and high market demand. It forms the community's economic backbone and is a key player in Atlantic Canada's coastal fisheries, contributing over 50% of the global lobster supply (Elegbede et al., 2023). The commercial lobster industry is a significant segment of the Atlantic region's seafood exports, accounting for about one-third of these exports. Fisheries play a vital role in Canada's formal economy. In 2017, the economic value of this industry was estimated at approximately CAD 2.1 billion, underscoring its substantial impact on the region's economy (Elegbede et al., 2023). This sector employs over 75,000 Canadians, with about two-thirds based in the four Atlantic provinces (Cohen & Biro, 2023). Lobster fishing, particularly in the Maritime provinces,

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stands out as one of the most lucrative forms of fishing (Poliandri, 2003). By 2019, the landed value of lobster in the Maritimes alone was approximately $1.7 billion, accounting for 47% of the total value for all species in the region. This highlights the significant economic contribution of lobster fishing to the fisheries sector. Nontheless, most fishing jobs in Maritimes are seasonal, typically lasting around 26 weeks per year. Consequently, over 90% of fish harvesters rely on Employment Insurance benefits during the off-season to supplement their income (Williams & Wien, 2022). Despite this seasonality, the inshore fishery has become a dynamically growing sector in the rural coastal economy of Atlantic Canada.

The table shown under Figure 3 provides an insightful look into the current state and economic impact of commercial fisheries, focusing on the value of inshore fishing enterprises and the general economic shifts in the industry. It details the number of people employed in fish-harvesting jobs (including captains and crew) [12] and their average fishing incomes for 2018, indicating that lobster enterprises mainly generated substantial incomes for fish harvesters that year. Additionally, the table charts the changes over a decade (2009-2018) in total harvester incomes, catch volumes, landed values for all species, and the total value of international exports, specifically for the Maritime provinces (Nova Scotia, New Brunswick, and Prince Edward Island) and Quebec. This comprehensive data clearly shows the industry's evolution and current status.

Figure 3

Economic Indicators of the Maritime Fishing Industry in Nova Scotia and Quebec (2009-2020).

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[12] In Atlantic Canada, inshore fishing fleet sizes differ by fishing type and location. Small boats with one or two crew members target lobster near the shore, whereas larger vessels with three to five people set traps in deeper offshore areas (Williams & Wien, 2022).

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CATEGORIES	VALUES
%CHANGES IN CATCH VOLUMES (TOTAL LANDINGS IN METRIC TONNES), MARITIME PROVINCES AND QUEBEC, 2009-2018	-16%
%CHANGES IN TOTAL LANDED VALUE (IN CONSTANT DOLLAR), MARITIME PROVINCES AND QUEBEC, 2009-2018	+110%
%CHANGES IN VALUE OF SEAFOOD EXPORTS AS TOTAL VALUE INTERNATIONAL EXPORTS (IN CONSTANT DOLLAR), MARITIME PROVINCES AND QUEBEC, 2009-2018	+105%
%CHANGES IN TOTAL HARVESTER INCOMES (IN CONSTANT DOLLAR), MARITIME PROVINCES AND QUEBEC, 2009-2018	+124%
AVERAGE LANDED VALUE PER LOBSTER, NS, 2018	$238,364
AVERAGE FISHING INCOME, NS, 2018	$38,300
NUMBER OF HARVESTERS, NS, 2018	11,340
NUMBER OF CORE (FULL-TIME) AND INDIPENDENT CORE LICENCE HOLDERS, NS, 2020	3,210
LOBSTER LICENSE HOLDERS, NS, 2020	2,969

Note. This table shows data on nine categories, presenting values in percentage changes, Dollar (adjusted for inflation in 2018) and numbers. The focus of this table is priliminary on Nova Scotia (NS) as a reference point for the Maritimes and years of 2009-2018, 2018 and 2020. Adapted from "An Overview by Commercial Fisheries" by Rick Williams, in Fred Wien and Rick Williams, *Contested Waters: The Struggle for Rights and Reconciliation in the Atlantic Fishery* (pp. 4-7). Copy right 2022 by the Nimbus Publishing Limited.

The data presented by Figure 3 highlights the significant economic growth achieved not through increased production (since the percentages change in total landings has a negative value) but through enhanced market values of its products. Despite landing fewer fish, the industry's market value has more than doubled, with harvesters receiving equitable shares of this growth. The expansion is attributed to changing consumer preferences, advantageous trade agreements, and rising demand from China's growing middle class (Wien & Williams, 2020). Yet, the industry's future, contingent on sustainable harvesting and geopolitical stability, faces a demographic challenge: an aging population and out-migration in fishing communities threatening the workforce, with 40% of fish harvesters expected to retire this decade and insufficient young replacements (Wien & Williams, 2020).

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In Atlantic Canada, the commercial fishery has experienced conflict among inshore small-boat fishers, industrial-scale fishing companies and government managers, with both sectors of the industry leveraging their political influence and negotiation skills to sway the top-down management decisions in their favor (Wiber & Milley, 2007). Non-Indigenous inshore fisheries, comprising local small-scale and commercial fishers, fear for their livelihoods in the face of rulings such as the Marshall decision, intensified by industrial fisheries' struggles with global market shifts, resource depletion and rising costs. This underperformance endangers investments and risks of fish plant closures and job losses in coastal communities (Wiber & Milley, 2007). Consequently, corporate leaders argued for government management focused on economic returns and continued lobbying for increased control and access to fisheries through permanent private allocations. This is a perspective that aligns with Hardin's ideas of coercion-privatization for strict access control (see Footnote 6). Nevertheless, regarding access, historically, the government has shown a preference for large, commercial non-Indigenous enterprises, often at the expense of Indigenous communities who were frequently denied licenses (Barsh, 2002). However, the focus of moderate livelihood was ostensibly to address the commercial interests of the Mi'kmaq people, aiming to significantly enhance their access to these fishing opportunities (Marshall, 1999). This approach was meant not only to recognize and support their economic pursuits in the fishing industry but also to integrate their traditional rights and cultural practices into contemporary fisheries management. This concept was to create pathways for the Mi'kmaq to more actively participate in the fishery, potentially leading to greater economic empowerment and a stronger voice in managing these vital resources.

5.2.4 Lobster in Law – the Governing of Lobster Fisheries

Canadian fisheries governance is intricate. Under the Constitution Act of 1867, the federal government is granted the authority to oversee fisheries along the coastline and inland which is mainly undertaken by Fisheries and Oceans Canada (FOC), also known as the Department of Fisheries and Oceans (DFO), with the federal Fisheries Act of 1868 being their primary legislative framework for governing. Asides from the open ocean, provincial governments hold significant authority, particularly over fishing rights in inland waters and the foreshore (Cohen & Biro, 2023). While the government establishes fishing regulations, it is mostly private individuals and organizations that participate in actual fishing activities. They make operational decisions within the confines of these regulations. The complexity of

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fishing is amplified by the variety of fishing segments (Inshore and Offshore) and the range of licenses (commercial, recreational, and Aboriginal) issued by the DFO, creating three distinct fishing sectors, which often target the same species (Cohen & Biro, 2023; Fowler, 2022).

Commercial fisheries typically operate under a system where Total Allowable Catches (TACs) are set annually by the DFO based on scientific recommendations to ensure biological sustainability. These TACs determine the individual quotas for each harvester, which fluctuate in direct proportion to the TACs. In such a system, First Nations integration is through purchasing licenses and quotas from existing commercial entities. This system allows entry into the fishery without altering the existing fleet composition or diminishing others' catch shares (Wien & Williams, 2022). However, lobster fishing does not involve TACs or specific quota allocations. Instead, lobster stocks are managed through various initiatives and biological control measures, such as restricted fishing days, trap limits, vessel size limitations, minimum carapace size requirements, prohibitions on catching female lobsters, and mandatory escape hatches in traps for smaller lobsters. Lobster fishers, each holding a license for a specific Lobster Fishing Area (LFA), compete within their local area to catch as many legal-sized lobsters as possible, using a fixed number of traps and within a limited fishing season. Under the Marshall rulings, there are nineteen distinct LFAs, and each license holder is confined to fish within their designated area (Wien & Williams, 2022). LFA is collaboratively managed through advisory committees These committees, established over several decades, have crafted specific regulations and fishing strategies that account for each local area's unique ecological, climatic, and market conditions. They have implemented diverse rules including varying fishing seasons, carapace size requirements, and trap designs. Stakeholders such as fish harvesters, processing firms, First Nations fishing bodies, and environmental organizations are all part of these LFA committees. However, most committee members are commercial fishers who, along with the DFO, play a significant role in the decision-making process (Wien & Williams, 2022). LFA 34, located in Southwest Nova Scotia, is the largest lobster fishery, featuring 944 full-time (core) license holders. Each of these licensees can operate up to 400 traps during a season that extends from late November to the end of May. In contrast, LFAs in Cape Breton have shorter, two-month seasons and utilize between 250 to 275 traps. These variations between the areas are due to factors such as the differing sizes of lobster populations, local seasonal weather conditions, and strategies to adapt to various market conditions, including spreading production throughout the year to prevent market oversupply (Wien & Williams, 2022).

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Lobster fishing in LFAs involves complex dynamics. Each LFAs comprise multiple ports housing various lobster enterprises. These areas, especially near shorelines with high productivity, have an extremely high density of lobster traps. Fishermen have developed informal strategies and rules for this competitive environment, typically setting traps based on proximity and historical patterns. In some regions, fishing grounds are segmented into small, individually owned "berths" that are transferred with the fishing license upon retirement (Wien & Williams, 2022). In this CPRM system, the lobster fishery strictly adheres to these territorial norms, and setting traps in another's area can lead to conflicts regardless of racial factors, such as the cutting of lines. Introducing new harvesters is challenging due to the steep learning curve and lack of training for the informal regulations in place and is compounded by racial tensions (Wien & Williams, 2022). First Nations can either acquire lobster fishing licenses through the DFO's program, supporting Rights Reconciliation Agreements, which includes funding for licenses, vessels, and gear; or by purchasing licenses from retiring commercial fishermen through their band-owned fishing companies or by purchasing their own share of the market, although the last one has become more difficult due to increased license values (Wien & Williams, 2022). However, this situation highlights a significant reliance on government and commercial fisheries for the Mi'kmaq community to gain entry into lobster fishing. When First Nations acquire a local license, the number of traps in the water remains the same, but challenges arise in finding available fishing grounds and integrating into established fishing patterns and norms. If a Nation buys a license from one port and fishes from another within the same LFA, it can be perceived as increasing fishing pressure, threatening the sustainability of the local lobster population (Wien & Williams, 2022). Thus, while acquiring licenses is vital for First Nations, they also face numerous management and operational challenges in establishing successful lobster fisheries.

Currently, the lobster fishing industry in Atlantic Canada is predominantly managed and regulated by the government, specifically the DFO, with no enforcement or compliance roles granted to the Mi'kmaq communitie (Elegbede et al., 2023). This approach conflicts with the Marshall Decision, which affirmed the Mi'kmaq people's right to fully utilize lobster fisheries for communal commercial gains (Elegbede et al., 2023; McMillan & Prosper, 2016). The srouce of this contradition has been the Supreme Court's November 1999 Marshall II decision that granted the federal and provincial governments an authority to regulate treaty rights. Although regulations affecting these rights must adhere to constitutional standards, they are often justified on conservation grounds. This rationale, widely seen as the primary

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basis for the government's limitation of treaty rights, has been leveraged by non-Indigenous fisheries to shape policies in their favor. Other possible reasons for regulation might include maintaining the economic sustainability of the current non-Indigenous fishery (Elegbede et al., 2023; McMillan & Prosper, 2016).

The appearance of the Marshall II decision was a foreseeable outcome, considering the Canadian government's history of offering only half-hearted conditioned rights to Indigenous peoples. Marshall II emerged to address concerns from non-Indigenous fishers and others regarding the extent and implications of the original ruling. In this pivotal decision, the Supreme Court clarified that while Indigenous peoples, such as the Mi'kmaq, possess treaty rights to hunt, fish, and gather, these rights are subject to regulations imposed by federal and provincial governments. This ruling significantly affects the Indigenous rights and sovereignty of the Mi'kmaq communities. The government's regulatory authority indicates that, although Indigenous treaty rights are acknowledged, they may still be regulated by the government. This introduces a complex layer to the exercise of these rights, compelling Indigenous communities to maneuver through regulatory frameworks that could further restrict their ability to fully exercise treaty rights, thus impeding the complete realization of self-determination. Consequently, this decision underscores the necessity for continuous dialogue and consultation between Indigenous communities and government authorities regarding the regulation of treaty rights, particularly in sectors like fisheries management, which involve shared resources.

5.3 Why Moderate?

Initiating my analysis of the concept of moderate livelihood from a PE perspective, I begin by exploring the meaning of the term "Moderate". The word "Moderate", as defined by the Cambridge Dictionary (n.d.), encompasses meanings such as "neither small nor large in size, amount, degree, or strength", "to (cause to) become less in size, strength, or force; to reduce something", to "keep standard", "to make something less strong" as verb, and "some, but not as much or as great as desired" as adjective. Other dictionaries share these core definitions, with the Oxford Dictionary (n.d.) adding, "staying within limits" in its definition as adjective, and Collins Dictionary (n.d.) defining it as, "If you moderate something or if it moderates, it becomes less extreme or violent and easier to deal with or accept" and Merriam-Webster (n.d.) defining the word as "having average or less than average quality" or "limited in scope or effect" as an adjective and "to lessen the intensity or extremeness of" as verb. Drawing from these definitions, thus, it seems to be easier to "accept" and "deal with" the Mi'kmaq if

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they have a moderate livelihood. The notions of "keeping standard", "limited", "making less" and keeping one from reaching a "desired" state do not seem to be used accidentally in terms of the concept of moderate livelihood. The term has, after all, been established by native English speakers, making it difficult to dismiss the possibility of an underlying intention to maintain power and control over Indigenous peoples, or simply put, to perpetuate internalized (or modernized) colonialism. This is while given the evident history, Indigenous peoples have been living sustainably and in harmony with nature for immemorial which raises a question: Why isn't the term "Moderate" applied to commercial fisheries, which arguably could benefit from moderation in their exploitation of natural resources? The power of language, particularly in the discourse surrounding the term "Moderate," reveals inherent restrictions and control, reflecting the structure-oriented covert forms of power. The term "Moderate," especially in the context of resource management and PE, is loaded with implications of control and power. It often serves as a justification for maintaining the status quo and exerting influence over resources and populations. This concept is not just theoretical; it has practical implications in real-world scenarios, as seen in the management of natural resources and the imposition of the conservation discourse.

After the Marshall rulings, DFO confiscated Mi'kmaq fishermen's gear, including lobster traps in the name of conservation and resource management (Elegbede et al., 2023). Conservation is often used to maintain control (Giles et al., 2016). The fishery has seen increased militarization, favoring those aligned with the government. This pattern of climate conflict, involving conservation and displacement illustrates a complex interplay of structural and discursive power, alongside Foucault's concept of governmentality (Fowler, 2022). Conservation has increasingly become a mechanism through which the government and non-native fisheries exercise control over the Mi'kmaq, serving as a vivid embodiment of how power dynamics unfold in the realm of environmental governance. This manipulation effectively exercises control, aligning closely with the concept of "accumulation by dispossession," where conservation tactics serve not just as environmental stewardship but as strategic measures to consolidate control over resources at the expense of Mi'kmaq's livelihoods. By framing conservation efforts in this manner, these entities craft a narrative that justifies the displacement and marginalization of Indigenous communities, revealing a nuanced form of power that transcends direct conflict and embeds itself within the very discourse of environmental governance.

Conservation has evolved into a tangible manifestation of the concept of restriction (on access) inherent in the term "Moderate", transforming into a discourse through which

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power is exerted by the government and non-native fisheries over the Mi'kmaq. While the conservation of species is essential to ensure the very existence of Indigenous treaty rights, Canada has historically failed to protect the productive capacity of Indigenous territories (Boulianne, 2022; Collins & Murtha, 2010). As a result, Indigenous peoples in Canada have seen their treaty right to fish infringed upon for conservation concerns, without having any control over the policies that have led to unsustainable fishing practices. As conservation is one of the only reasons the Mi'kmaw treaty right to fish can be limited, it is used ostensibly to deem Mi'kmaw fisheries as illegal and limit Mi'kmaq people's access to the fisheries, even when conservation concerns are not supported by scientific evidence. A study suggested that the DFO might use conservation issues to stir conflict between indigenous and non-Indigenous fishers, undermining the Mi'kmaq (King, 2011) which showcases a blend of power dynamics. It implies a strategic manipulation of environmental policies and narratives to influence economic conditions and public perceptions, aiming to control the debate around fisheries management and Indigenous rights covertly (structural power). By framing conservation in a way that potentially divides Indigenous and non-Indigenous communities, the government and DFO exhibit their ability to shape agendas, mold public cognitions, and maintain dominance over the narrative without direct suppression of dissenting voices (discursive power). Conservation has been co-opted as a strategic tool by the government and non-native fisheries to subtly impose limitations and exert control over the Mi'kmaq, embodying a nuanced application of Steven Lukes' two-dimensional and three-dimensional views of power. This approach manipulates the discourse surrounding fisheries management and Indigenous rights, shaping public debate and perceptions without directly silencing dissent. By framing conservation in a way that ostensibly seeks moderation, these entities subtly guide the narrative, thereby influencing the perceptions and priorities of both Indigenous and non-Indigenous communities. This strategy reveals a sophisticated form of governance that utilizes environmental stewardship as a means to maintain power dynamics, subtly altering how conservation is understood and practiced in the context of Mi'kmaq fisheries.

Taking the Canadian state as a case study, the influence of the British Empire and the continuation of a settler-colonial commonwealth have profoundly impacted resource use in Canada. The state's designation of lobsters as a resource of importance, extends its power over the non-human world, intertwining with the capitalist system prevalent in Canada (Simpson, 2019). This relationship between the state and resources, termed resource nationalism by Bremner and Johnston (2009), has led to conflicts with Indigenous groups

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like the Mi'kmaq, who utilize resources in ways not aligned with the state's interests (Fowler, 2022). The struggle over treaty rights and resource access is exemplified by the Marshall case and the ensuing debate over defining moderate livelihood. This ambiguity in rights, as noted by Brown (1995), can perpetuate marginalization, trapping Indigenous groups within settler-colonial confines. The exploration of rights for non-human entities, like lobsters, must therefore include marginalized groups such as the Mi'kmaq. PE and decolonial theory highlight how rights-based language can lead to oppressive discourses and how such discourses as moderate livelihood, hidden in fisheries management plans, contribute to oppression. This intersection of language, power, and resource management is a crucial area for exploration in understanding and addressing the dynamics of power in the case of Mi'kmaq fisheries (Fowler, 2022).

The subsequent sections are divided into three key steps that examine the groundwork necessary for offering a resolution to the disputes surrounding (lobster) fisheries and putting an end to longstanding marginalization of Mi'kmaq (and other First Nations) communities. The Step One section critiques the inadequate legal recognition of Mi'kmaw rights and knowledge. It underscores the need for decolonizing legal approaches by respecting the philosophical differences between Indigenous and Western systems, advocating for true reconciliation. Lastly, it points to the Canadian government's legal inconsistencies and neglect of treaty obligations, emphasizing the importance of acknowledging Indigenous sovereignty and the inherent right to self-management, urging a shift towards honoring the coexistence of Mi'kmaw and Canadian legal traditions. In Step Two, I critique Canada's historical legal marginalization of Indigenous peoples and advocates for legal pluralism through recognition of the TEK, especially Netukulimk, a Mi'kmaw concept of sustainable, spiritually connected resource management, as pathways to integrating Indigenous governance and ecological practices within Canadian law. Finally, in Step Three, I emphasize the need for genuine recognition of Indigenous knowledge in state decision-making, advocates for co-management as a pathway to equitable governance, and introduces Two-Eyed Seeing (TES) as an approach to harmoniously integrate Indigenous and Western knowledge systems, aiming for collaborative, adaptable environmental management.

5.3.1 Step One – Decolonizing the Right to Fish: Embracing Mi'kmaw Rights and Knowledge in the Quest for Legal Equity and Self-Management

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Yet, moderate livelihood remains ill-defined, leading to escalating disputes over its meaning (Hogan, 2020). Moderate livelihood was essentially reduced to participation in commercial fisheries, adopting the same framework for Indigenous peoples as for non-Indigenous individuals, with less emphasis on recognizing moderate livelihood as a distinct right to fish (Elegbede et al., 2023). Moderate livelihood's inherent and covert constrains apply to the utilization of the treaty rights. The Court ruled that the PFT granted the Mi'kmaq the right to exchange their catch for "necessaries". This was extended to a contemporary right to trade their catch for a moderate livelihood. However, the Court failed to consider the fundamental reasons why the Mi'kmaq historically fished and traded only for 'necessaries.' They did not seek wealth through their fishing practices, adhering instead to the principle of netukulimk, which emphasizes taking only what is needed. (Barsh, 2002). This principle emphasizes the duty to sustain, safeguard and respect fish and all living entities (Henderson, 1995). Highlighting this interaction with nature, it simply says, do not disturb animals you do not need. If they are not needed, leave them be. It is unjust to kill them without necessity. Allow them to roam freely (Boulianne, 2022). Nevertheless, the Court failed to consider that the roles of management and regulation might exist within the Mi'kmaw legal framework, where harvesting is intrinsically linked to the guardianship of fish and marine resources (R v Marshall, 1999). This is while, the Western resource management systems reflect a specific worldview and are part of a political-economic structure that is neither universally applicable nor neutral. The terminology itself suggests commodification and control over nature, a concept that is alien from an Indigenous standpoint. As Aboriginal people are encouraged to engage in moderate livelihood, they adopt this perspective. The fight for self-determination must confront the enlightenment ideology that fueled European colonialism. This ideology encompasses the belief in terra nullius, viewing the world as an untouched wilderness ready for exploitation (Burnett & Read, 2012; Fowler, 2022). It promotes a view that relegates authentic Indigenous cultures to history, holds a scientific ideology that disconnects nature from culture for environmental control (Burnett & Read, 2012).

Canada's development has been significantly shaped by European and British colonial influences, resulting in a distinctive scenario where these colonial forces have persisted through a historical pattern of settler colonization. This unique context has increased emphasis on decolonization in these regions, adding complexity to the discourse around the rights and agency of both non-Europeans and non-human animals. Decolonization, aimed at restoring Indigenous traditions, lives and lands, becomes particularly relevant in contexts like the Mi'kmaq community and their interactions with Eastern Canadian fisheries (Fowler,

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2022). This focus on decolonization is essential in understanding the dynamics of Indigenous rights within PE (Robbins, 2020). As PE critically examines how environmental practices impact different human groups and is vital in understanding non-human nature in Canada, exploring concepts like blue grabbing and the commodification of resources leading to ecocide (Dunlap, 2021; Fowler, 2022). The Canadian Supreme Court's stance on treaty rights plays a significant role in these dynamics, often portraying Indigenous groups like the Mi'kmaq as unsuitable for sustainable marine conservation and resource management (Fowler, 2022). Mi'kmaw ethnographer Sarah King (2011) delves deeper into this, highlighting how Canadian policies often freeze Indigenous rights, impacting the enforcement of rights in Mi'kmaw lobster fishing plans. This paternalistic hierarchy, born from processes of territorialization and commodification, is key to understanding the complex interactions and agency of the lobster, a highly valued marine resource in Canada. Decolonization and PE collectively shed light on the pitfalls of Canada's "resource desiring machine", a term coined by Michael Simpson (2019) in the context of Alberta's tar sands bitumen. This concept refers to the settler-driven transformation of natural elements into coveted resources, exemplifying the intertwined nature of resource exploitation and genocidal violence against Indigenous people, a phenomenon also observed globally through the genocide-ecocide nexus (Dunlap, 2021; Fowler, 2022). Such an approach in resource management in Canada underscores the critical need for integrating decolonization within the framework of PE (Fowler, 2022). The continued challenges, such as governmental regulations and conflicts with non-Indigenous fishers, further underscore the incomplete nature of these legal recognitions, emphasizing the ongoing need for decolonial perspectives in achieving self-determination, sovereignty and rights for Indigenous peoples. Decolonizing involves recognizing the historic Indigenous–settler relationship and revealing the relational dynamics between Indigenous and Western science (Boulianne, 2022). This process requires acknowledging the distinct philosophical foundations of Indigenous laws and the knowledge systems that have shaped Indigenous communities. Mi'kmaw law has its own unique philosophical foundations, distinct from those of Canadian law. Understanding Mi'kmaw law and acknowledging Mi'kmaw knowledge systems are critical steps towards dismantling the colonial legacies that have long marginalized Indigenous perspectives (Boulianne, 2022). Recognizing the deep philosophical differences between Indigenous and Canadian legal systems is essential for moving towards true reconciliation and respecting the rights and worldviews of Indigenous peoples. Indigenous laws, including those of the Mi'kmaq, are grounded in different worldviews with unrelated historical, ontological and epistemological

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origins, creating entirely different concepts of legality (Boulianne, 2022). This understanding is crucial as it underlines the foundational difference in legal philosophies between Indigenous and Canadian systems. The management systems of Mi'kmaq, are based on collectives, participatory democracy, cooperation and kinship. These systems are grounded in a spiritual philosophy emphasizing the interconnectedness of the environment, cosmos, plant, animal and human realms. Cheryl Knockwood (2019), a Mi'kmaw scholar, articulates that for reconciliation to succeed, Canada must understand and respect the Mi'kmaw worldview in relation to Mother Earth. Mi'kmaw knowledge has been ignored throughout Canadian history, marking a significant knowledge difference. This ignorance extends to the broader context where Indigenous ways of knowing have been marginalized. A historical decolonial analysis reveals that Canadian law has generally worked against Indigenous knowledge systems, suppressing Indigenous knowledge through colonialism (Boulianne, 2022). An example of such an attempt is the actions taken by the Supreme Court and the government to integrate Indigenous law into Western legal frameworks (Anker, 2014). Employing Western legal mechanisms to interpret Indigenous law significantly distorts it by removing it from its inherent cultural and societal framework. The Supreme Court has subtly undermined the "quasi-federal" framework established in PFTs between First Nations and the Crown, which recognized their sovereignty (Boulianne, 2022). Instead, this framework has been replaced by a few institutions in a complex web of federal and provincial jurisdictions, passing the responsibilities back and forth resulting in unclear outcomes (e.g., in granting financial services) and suffering of the Indigenous communities (Boulianne, 2022).

To grasp the colonial power dynamic that perpetuates the Canadian legal framework, I delve into the legal and ethical responsibilities of the Canadian Crown (the government) when it interacts with Indigenous peoples. From the beginning, the Supreme Court framed Aboriginal and treaty rights from the perspective of the "doctrine of discovery". The doctrine of discovery, endorsed implicitly in Canadian law and explicitly in the Marshall Decision, is founded on the erroneous belief that the Americas were an empty wilderness — "discovered" upon European arrival — justifying European dominion over Indigenous peoples (Boulianne, 2022). In Sparrow, the Court affirmed its commitment to the doctrine of discovery, indicating that although British policy recognized Indigenous peoples' rights to inhabit their ancestral lands, the Crown holds ultimate sovereignty, legislative power and title to these lands [13] (R v

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The Supreme Court of Canada has never presented any evidence of fair and truthful land acquisitions from Indigenous communities, merely presuming that the Crown acquired its title solely by legal authority (Boulianne, 2022).

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Sparrow, 1990). This colonial viewpoint caused the Court to deliberately sidestep acknowledging the self-governance elements of Aboriginal and treaty rights. Understanding Mi'kmaw treaty rights, from a Canadian legal standpoint, requires consideration of treaty federalism and the Mi'kmaq people's inherent sovereignty (Boulianne, 2022). Consequently, I interpret Mi'kmaw rights and sovereignty as the right to self-govern their lobster fisheries. Indigenous sovereignty, embodies the inherent authority of a nation to rule itself and is a fundamental right that enables a nation to maintain its existence and shape its identity. Self-governance represents merely one aspect of exercising Indigenous sovereignty (Boulianne, 2022). Self-governance is often seen as the transfer of powers from the central government to local levels of authority, or simply put, decentralizing power (Boulianne, 2022).

The challenge for the Mi'kmaq nation to fully utilize its treaty rights stems from the state's unwillingness to relinquish its control over the law, science and knowledge and the reluctance of the Supreme Court to recognize Mi'kmaq self-governance (Boulianne, 2022). This issue calls for an examination of treaty federalism and the historical treaties as agreements between sovereign nations, advocating for treaty rights to be seen through self-governance rather than just distributive justice. Canadian government actions have often obstructed the Mi'kmaq's self-management efforts, notably in fisheries, despite declarations supporting Indigenous self-governance. Understanding Mi'kmaw treaty rights demands recognition of treaty federalism and the Mi'kmaq's inherent sovereignty. The PFTs illustrate the establishment of a legal order respecting both the Mi'kmaw and British legal systems, fostering a shared legal and social order based on mutual responsibilities rather than dominance (Henderson, 2000). These treaties are crucial to Canada's constitution and the legitimacy of Crown authority, which hinges on fulfilling treaty promises to First Nations, emphasizing the importance of recognizing the overlapping and coexistence of British and Mi'kmaw legal systems for a harmonious cohabitation and the legitimacy of settler settlements on Indigenous land (Boulianne, 2022).

Treaty federalism in Canada originated from the British Crown's strategic use of treaties to establish settlements on Indigenous lands, recognizing Indigenous governance in the "new world" (Boulianne, 2022). These treaties, deeply embedded in both British (later Canadian) and Indigenous legal traditions, require that laws from both sides be considered in treaty interpretation, highlighting the complexity of defining Aboriginal rights amidst differing legal systems (Walters, 1992). The Canadian legal approach to Aboriginal rights often overlooks Indigenous legal traditions, despite the ethical and political necessity to incorporate both perspectives for a fair interpretation of Crown-Indigenous treaties,

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underscoring their historical importance and the need to integrate Indigenous legal practices (Boulianne, 2022; Walters, 1992).

Furthermore, these treaties are viewed as commitments to future generations and to Mother Earth, underlining the importance of maintaining respectful interactions with the land, living beings, and ecological systems. For the Mi'kmaq, the PFT symbolizes an ongoing reciprocal relationship with nature, consistent with the principle of netukulimk, and represents a vow to conserve and share communal lands and waters (Boulianne, 2022). These agreements encompass mutual political and military support and the sharing of resources, aiming to ensure equal trading opportunities, thus laying the groundwork for a complex relationship between the Mi'kmaq, the British Crown, and the environment (Boulianne, 2022).

The Mi'kmaw possess a constitutional right to independently manage their fishing activities. The foundational principle of establishing the PFT is a nation-to-nation relationship, which necessitates those rights derived from the PFT be viewed through the lens of self-determination, rather than through the doctrine of discovery (Boulianne, 2022). By redefining PFT rights from the standpoint of self-governance and Mi'kmaw legal principles, the Mi'kmaq are entitled to support themselves via their fisheries and embrace the obligations inherent in fishing rights: the preservation and health of the fish populations (Boulianne, 2022). Thus, the treaty rights of the Mi'kmaw to fish encompass, among other things, the self-management right of their fishing industries.

Central to the relationship between the Crown and Indigenous peoples in Canada, particularly in acknowledging Indigenous rights to self-management, is the term The Honour of the Crown (Boulianne, 2022). This principle arises from the history of colonialism, where European sovereignty was asserted over lands already occupied by Indigenous peoples. It is based on this principle that the Crown must act honorably in all its dealings with Indigenous peoples, these duties include recognizing and supporting Indigenous rights to self-management (Boulianne, 2022). Thus, it mandates that the Crown's (Canadian government) powers are exercised in a way that respects Indigenous peoples' right to manage their own affairs, particularly in areas like fisheries management, which is crucial for preserving their culture and sustenance. The Honour of the Crown is not a legal claim that can be brought forward by itself but is a standard that affects how the Crown's obligations to Indigenous peoples must be fulfilled. The Honour of the Crown justifies the Crown's sovereignty and its ability to legislate over First Nations . It is used to legitimize the historical imposition of European laws and customs over Indigenous peoples and sets limits on the Crown's power,

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requiring that interactions with Indigenous peoples be conducted in a way that is legitimate and respectful of their rights (McMorrow, 2018). Therefore, there is a significant obligation on the part of the Crown to engage in meaningful and sincere consultation with the Mi'kmaq regarding decisions that affect their rights to self-management and to accommodate their interests (Wiber & Milley, 2007). This is particularly relevant in the management of natural resources, where the Crown must engage in meaningful dialogue with Indigenous communities to ensure that their rights to self-manage their resources are respected. Despite expectations for consultation and accommodation by the Crown, the conduct of the DFO concerning Mi'kmaw fisheries has been inadequate (Wiber & Milley, 2007). The department has not lived up to the required standards of "honorable" consultation and accommodation. This suggests a failure to properly engage with the Mi'kmaq in a manner that respects their rights and title, falling short of the ethical and possibly legal obligations expected by the "Honour of the Crown". The DFO has largely failed to fulfill its obligation to conduct consultations and make accommodations in a manner that upholds the Crown's honor (Boulianne, 2022). Despite their constitutional responsibilities, the DFO has ignored the Mi'kmaq's claims to manage their own fisheries and their efforts to maintain the sustainability of fisheries for a moderate livelihood. For example, the Sipekne'katik First Nation developed a conservation plan compatible with DFO's regulations, yet the DFO has not recognized their treaty-based fisheries as legitimate. This action was a response to a lawsuit initiated by 12 Mi'kmaq communities demanding the Crown to engage in negotiations regarding their treaty fishing rights, which has seen little progress over nearly a decade (Acadia First Nation v. Canada (Attorney General), 2013). As a result, the Sipekne'katik First Nation proceeded without Crown approval, asserting their rights to self-management and governance.

Furthermore, in exploring the complex landscape of rights for Indigenous peoples in Canada, it is pivotal to understand the dichotomy between delegated and inherent jurisdiction. Delegated jurisdiction encompasses the powers and rights conferred upon Indigenous groups by a higher authority, notably the state or government, through established legal and governmental frameworks (McNeil, 2007). This essentially means that the authority exercised by these groups is granted to them, situating their powers within the confines of state recognition and delegation. Contrastingly, inherent jurisdiction originates from the deep-rooted sovereignty and self-determination that Indigenous peoples inherently possess (Boulianne, 2022; McNeil, 2007). This form of jurisdiction is not a gift from the state but a recognition of the historical and ongoing existence of Indigenous nations. It is a sovereignty

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that predates any European colonial presence, deeply embedded in the rich tapestry of their culture, governance and historical lineage. The inherent jurisdiction springs from the very fact of Aboriginal nations' long-standing presence in North America before European colonization. It is a testament to their enduring sovereignty, independent of external validation. Treaty rights recognize the latter's own laws and governance. Thus, exercising treaty rights is an expression of Indigenous sovereignty and inherent jurisdiction, reflecting a nation-to-nation relationship rather than one that is solely mediated or granted by the state. The dual nature of jurisdiction for Indigenous peoples in Canada: one part that is granted by the state and another that is inherent to their status as sovereign nations predating European colonization. This distinction underscores the importance of acknowledging Indigenous sovereignty and self-determination in discussions about Indigenous rights. Thus, in recognizing the restriction of the Mi'kmaw right to livelihood, recognizing the Mi'kmaq nation's inherent right to self-government and their treaty right to the self-management of their fisheries is essential, as self-government embodies the self-determination for First Nation, enabling them to reclaim sovereign powers beyond the state's restrictive delegated authorities.

There exists a disparity between the legal, ethical and actual actions concerning the Mi'kmaq. Treaty Commissioners consistently reassured Indigenous peoples that there were no plans to disrupt their traditional ways or livelihoods (R v Marshall, 1999, para. 6). However, significant shifts in Canada's approach to Indigenous policies emerged in the late 19th century and beyond. Rather than interacting with Indigenous groups as sovereign entities as was done during the negotiations of the PFT, the Crown began to view them as subjects to be governed by law, implementing numerous statutes aimed at their assimilation into Canadian society, such as the Indian Act (Boulianne, 2022). This shift marked a departure from the historic nation-to-nation treaty engagements with Indigenous communities, which became increasingly incongruous with the legal paradigms established by the Crown. As settlement expanded and policies evolved, the treaty's Indigenous–settler connection steadily weakened, with treaty commitments being systematically neglected 363. When Indigenous groups started to demand their treaty rights in Canadian courts, they faced arguments that their treaties were invalid because they supposedly lacked the "authority" to enter into such agreements initially (R v Sylliboy, 1929). It wasn't until the 1982 that the constitutional significance of treaties was acknowledged, yet the narrative of Crown sovereignty over "Indigenous subjects" continued to dominate judicial narratives (R v Sparrow, 1990). Despite such acknowledgments, actions by the DFO contradict these

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principles, as evidenced by the ongoing barriers to the Mi'kmaq's attempts to exercise their treaty right to self-manage their fisheries, highlighting a gap between policy declarations and their implementation.

The DFO presented the Mi'kmaq with an ultimatum: either sign Interim Fisheries Agreements (IFAs) to participate in the commercial market, thereby adhering to DFO regulations and potentially compromising their treaty rights, or face penalties and arrests for 'illegal' fishing activities. This approach aims to assimilate the Mi'kmaq into a hierarchical fisheries management system with minimal concessions (Boulianne, 2022). This strategy, along with past mistreatments under such a system, has led some communities to reject IFAs, losing access to funding and support for developing alternative management models. The DFO's insistence on imposing IFAs without room for negotiation measures fails to meet the standards of respectful consultation and accommodation. Furthermore, by refusing to recognize any management power over the fisheries by entities other than itself, the DFO violates principles of Honor of the Crown and avoids fair dealings, insisting on control over any changes within the fisheries sector (Boulianne, 2022). Following the Sparrow Decision, the DFO launched the AFS program, assigning quotas to Indigenous fisheries without considering stock abundance or community needs, leading some communities to reject these agreements in favor of self-managed fisheries. Despite efforts by communities like the Acadia First Nation to run their own fisheries management programs, the DFO unilaterally imposed quotas to prevent the sale of catches to non-Indigenous people, contradicting the government's self-government rhetoric. After the 1999 Marshall decision, the DFO began negotiating IFAs to incorporate Mi'kmaw fishers into the commercial sector, though these required adherence to DFO rules and raised concerns about affecting treaty rights. The Atlantic Policy Congress cautioned against IFAs, fearing they might undermine existing treaty rights by potentially extinguishing older agreements through new contractual commitments (Boulianne, 2022). Chief Maloney argued that the IFAs with the Mi'kmaq were superficial and restricted them by incorporating them into the DFO's existing regulatory framework, rather than genuine Mi'kmaq-Crown negotiations. The Minister initially described IFAs as a provisional measure for Aboriginal fisheries following the Marshall Decision, yet two decades have passed without the introduction of alternative agreements in the Maritimes (Boulianne, 2022). The IFAs led to divisions among the Mi'kmaq, with some groups accepting the agreements for financial and commercial gains, while others sought to preserve their treaty fishing rights and manage fisheries based on their own laws and values. The Supreme Court of Canada highlighted the distinct nature of Indigenous collective rights

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versus common law property rights, emphasizing the mismatch between the communal Mi'kmaw treaty rights and the individual quota systems employed by the DFO. In response to the clash between Mi'kmaw law and DFO regulations, several Mi'kmaw communities implemented their own supplementary rules, while the Sipekne'katik First Nation initiated a self-regulated lobster fishery, leading to conflict and acts of violence from non-Indigenous fishers (Boulianne, 2022). In this case, the Indigenous communities' efforts to assert their fishing rights and manage resources according to their traditions, despite federal regulations, represent a covert resistance to external control, leading to tension and conflict with non-Indigenous fishers. This is a clear instance of using cultural and regulatory self-determination as a form of opposition and can be seen as an example of "weapons of the weak".

Following the Marshall Decision's acknowledgment of Mi'kmaw treaty rights, the DFO initiated financial support programs to enhance the Mi'kmaq's engagement in fisheries. This move, initially perceived as a constructive step towards implementing Mi'kmaw treaty rights, paradoxically serves as a strategy for integration and control over Mi'kmaw fisheries, compelling their assimilation into existing state frameworks, fostering the emergence of Aboriginal citizens who shape their identities and rights in connection to the Canadian state, a phenomenon referred to as "Aboriginalism" (Burnett & Read, 2012, McMillan & Prosper, 2015; Wiber & Milley, 2007). Through these initiatives, the DFO endeavors to mold Mi'kmaw treaty fisheries into a framework designed for non-Indigenous commercial fisheries, mandating adherence to conventional regulations such as season timings, equipment limits, and vessel constraints (Wiber & Milley, 2007). Furthermore, these financial agreements incorporate a clause that restricts signatory communities from claiming their treaty rights for a decade, presenting a challenging dilemma for Mi'kmaw communities torn between financial support for fisheries access and their sovereign rights to manage fisheries under section 35 (Canada, House of Commons, 2021). Contrary to New Zealand, Canada lacks a dedicated platform for the adjudication of historic Indigenous-Crown treaties, placing the treaty interpretation solely on Canadian courts and excluding Indigenous perspectives (Boulianne, 2022). The Sparrow case marks a pivotal moment in interpreting section 35 rights, subtly altering the nature of section 35 from a jurisdictional element of Canadian federalism, shifting treaty interpretation from a nation-to-nation basis to a sovereign-to-subject framework (Boulianne, 2022).

Over two decades since the Marshall ruling, the Mi'kmaq continue to wait for government to endorse their self-governance rights. In terms of fisheries, post-Marshall initiatives have predominantly aligned with integrating the Mi'kmaq into the hierarchical

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structure of Canadian governance, rather than establishing a genuinely self-regulated Mi'kmaw fishery. The government's response to the Marshall Decision limited the Mi'kmaq First Nations' ability to control their fishery. This approach has fostered increased reliance on the conventional Canadian management frameworks and economic goals set for the fisheries. Despite the communal and spiritual significance of Mi'kmaw fisheries, and their goals for self-governance, which contrast with the commercial fishing model, the government has overlooked these differences, attempting to assimilate the Mi'kmaq into the commercial fishing sector (Boulianne, 2022). The path ahead involves the establishment of a pluralistic legal framework that harmoniously blends Canadian law with Indigenous legal traditions, allowing for their coexistence.

5.3.2 Step Two – Decentralizing the Power: Reimagining the Governance

Historically, Canadian state law has approached Indigenous peoples not by inquiring about their role or space within Indigenous frameworks, but rather by questioning how Indigenous peoples fit within its own structures. This approach has effectively given the legal system a sort of monopoly, over defining the terms of engagement with Indigenous peoples and their legal rights (Boulianne, 2022). Despite Canada's persistent promises of political reconciliation, it continues to ignore the plurality of legal traditions present in Canada and the rights that flow from historical nation-to-nation treaties (Wiber & Milley, 2007).

However, a promising avenue towards decentralizing power and dismantling the remnants of colonization ideologies embedded within Canada's legal and constitutional frameworks is offered by legal pluralism (Boulianne, 2022). Legal pluralism fosters an environment where Indigenous voices and authorities are integral to governance. This approach paves the way for recognizing and actualizing Indigenous rights and sovereignty. The significance of legal pluralism cannot be overlooked in the examination of Canadian constitutional law and treaty relations. While treaties do not serve as the origin of legal pluralism in Canada, they are historical evidence and a reminder that the nation's foundation was built upon Indigenous legal traditions. Legal pluralism challenges the monolithic view that law originates exclusively from the state, as articulated by Patrick Glenn (2008), advocating for a broader recognition of legal sources that encompass a wider array of cultures and perspectives. Instead of portraying individuals as simply "law-abiding" entities shaped entirely by legal systems and viewing law as something external to be studied, legal pluralism sees law as a form of knowledge that both reflects and constructs realities, positing

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individuals as active creators of law (Kleinhans & MacDonald, 1997). Legal pluralism restores agency and subjectivity to those within the legal system, suggesting they have the power to influence, alter, and reshape the legal frameworks they are part of. It questions how Indigenous individuals navigate and influence multiple legal systems and how these systems can coexist and be shaped by the actions of their participants. Rather than exclusively questioning which legal frameworks are relevant to Indigenous populations, a pluralist view asks: in what ways do Indigenous peoples experience law in their daily lives? How are they able to function as legal entities within multiple legal systems? And how can the coexistence of these various legal systems be facilitated through the conduct of the individuals subject to them? (Boulianne, 2022).

Bridging these two distinct knowledge and legal systems, the practice of Netukulimk by Mi'kmaq illustrates a profound example of legal pluralism in action, demonstrating how Indigenous worldviews contribute uniquely to the broader legal landscape. Netukulimk is central to Mi'kmaq's resource use. This spritual worldview differs significantly from modern Western concepts, which often view humankind as separate from and owner of nature's resources (Wiber & Milley, 2007). Netukulimk serves as a cornerstone principle in Mi'kmaw law and knowledge systems, guiding communities in structuring their management initiatives with a focus on renewal and shared stewardship of resources (McMillan & Prosper, 2015). While there exists no word in English that fully captures the mutual aid and interconnectedness between humans and the natural world as understood by the Mi'kmaq, "Netukulimk" will be used in this thesis when referring to Mi'kmaw or Indigenous management practices (Boulianne, 2022).

First Nations, including Mi'kmaq, maintain a profound and spiritual bond with their environment. Mi'kmaq bear the duty to nurture the Earth, which they regard as both their own flesh and kin, a perspective that enriches their environmental stewardship practices (Boulianne, 2022; Fowler, 2022).This recognition of being part of a complex network of relationships with the land and its creatures fosters a cycle of mutual respect, accountability and a sense of obligation to sustainably steward their environment. Mi'kmaw spirituality, deeply rooted in the earth, posits that if nature is regarded as sacred, humanity need not seek salvation beyond it, fostering a unique reciprocal relationship with the land and ecosystems (Wiber & Milley, 2007). This sacred bond is a cornerstone of the broader Mi'kmaw principle of Netukulimk. Mi'kmaw Law and Netukulimk, transcends conventional legal frameworks, reflecting instead a worldview that perceives knowledge as insights into the dynamics of change (Boulianne, 2022). Mi'kmaw law, infused with spirituality, territory, consciousness,

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and creation narratives, underpins a meticulously structured system that guides their harvesting practices, ensuring sustainability for future generations.

Netukulimk underlies Mi'kmaw traditional knowledge systems and represents a theoretical framework central to studying Mi'kmaw fisheries management initiatives (King, 2011; McMillan & Prosper, 2015). Netukulimk embodies resource management, emphasizing respect for the past, responsibility in the present, and the preservation of the future (Elegbede et al., 2023). It is a concept that embodies sustainability in the Mi'kmaw language, defined by the Mi'kmaq Grand Council, the Union of Nova Scotia Indians, and the Native Council of Nova Scotia as the "Mi'kmaq way of harvesting resources without jeopardizing the integrity, diversity, or productivity of our environment" (Boulianne, 2022, p. 18). For the Mi'kmaq, Netukulimk is more than a management system; it is a way of life that includes a web of interconnected rights and responsibilities (Prosper et al., 2011; Wiber & Milley, 2007). It encompasses models, theories and methods for maintaining sacred and sustainable relationships with the environment that cannot be sidelined. This approach to environmental stewardship, deeply ingrained in TEK [14] as contained in Mi'kmaw law, plays a significant role in preserving marine ecosystems. In contrast, Canadian law often refers to environmental stewardship as "resource management", a term that fails to align with Indigenous worldviews. Aboriginal peoples do not simply manage resources; they manage their space. This spatial consciousness shapes cultural resource utilization and innovation, viewing animals and plants not as mere resources to be harvested but as relatives (Henderson, 1995). This entails a complex network of human-animal and himan-plant relationships, interconnections and mutual responsibilities (Prosper et al., 2011). The relationship with these beings was traditionally expressed through various ceremonies and rituals, conveying Mi'kmaq respect and gratitude for all fosrms of earthly life, which are today referred to in English as "resources". Despite the deep-rooted principle of Netukulimk in Mi'kmaw culture, which has guided the Mi'kmaq since time immemorial in a fisheries management system based on conservation and interdependence between humans and other life forms, the government has been reluctant to recognize Indigenous knowledge as scientific knowledge. This exclusion of Indigenous knowledge and institutions from decision-making processes highlights a significant gap between Mi'kmaw and Canadian approaches to environmental governance.

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[14] Russel Lawrence Barsh, an ecologist with expertise in Indigenous ecological knowledge, characterizes Indigenous knowledge as "Indigenous science" to underscore its systematic and empirical nature (Barsh, 2000).

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The skepticism of Westerners towards the sacred and spiritual dimensions of TEK is rooted in a misconception of Indigenous spirituality, often mistakenly conflated with religion (Boulianne, 2022). It is important for Western perspectives to recognize that Indigenous knowledge systems have evolved within unique social and political contexts (Barsh, 2000). Therefore, it is unrealistic to expect that Indigenous knowledge can be divorced from its inherent sacredness and spirituality. Nevertheless, TEK remains largely overlooked by environmental regulatory bodies in the Maritimes, a discrepancy that can be attributed to the philosophical divergences between Mi'kmaw and Canadian approaches to fisheries management. Mi'kmaw philosophies are rooted in principles of kinship, sustainability (emphasized through concepts like Netukulimk), respect for fish and their habitats, and a spirit of generosity (Boulianne, 2022; Wien & Williams, 2022). In contrast, governmental strategies prioritize procedural correctness, scientific evidence, compartmentalization, economic gains, and conservation efforts. The Mi'kmaq community's approach to managing fisheries is inherently collective, blending practices, social norms, and oral traditions, whereas government strategies derive their authority from legal mandates and procedures (Boulianne, 2022). A notable resistance to incorporating TEK becomes apparent, particularly concerning the sacred and spiritual dimensions of Mi'kmaw knowledge, with repeated assertions that these aspects have no place in broader regulatory frameworks. However, the sacred and spiritual facets are inseparable from the broader spectrum of Mi'kmaw knowledge, underscoring that TEK is not merely an adjunct to Western science but is deeply interwoven with unique social and cultural contexts, complete with its own frameworks, theories, and methodologies (Mulrennan, 2013).

5.3.3 Step Three – Livelihood Without Moderate: Co-management of fisheries through the Two-Eyed Seeing Method

Recognizing TEK as a valid source of information and values is a key step in fostering a fair management partnership between Indigenous communities and the government. This body of knowledge encompasses the interactions between living entities, including humans, and their environment. It is a product of various sources such as traditional teachings, empirical observations, and spiritual revelations and its specific content varies among different Indigenous cultures (Boulianne, 2022). TEK represents a deep-rooted collection of knowledge and practices developed and transmitted over generations through adaptive processes of knowledge accumulation, characterizing communities with a long

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history of resource utilization (Berkes et al., 2000; Reid, et al, 2020). This concept of knowledge extends beyond mere ecological understanding to include the intricate relationships shared among all life forms (Giles et al., 2016). Frances Abele (2007) highlights that TEK is characterized by three interconnected facets: it is anchored in a distinct historical, social and political context; it is profoundly localized; and it is imbued with significant ethical and cosmological dimensions. The designation of Indigenous knowledge as "traditional" does not mean it is unchanging (Reid, et al, 2020). Rather, it is deeply embedded in the experiences of Indigenous communities, making it inherently adaptable and responsive to transformations, making it uniquely suitable for co-management initiatives (Kealiikanakaoleohaililani & Giardina, 2016; King, 2011). This form of knowledge represents a comprehensive way of engaging with and understanding the world.

However, incorporating TEK into the state's decision-making processes without acknowledging the comprehensive sociocultural contexts and values of Indigenous peoples is fundamentally flawed and unsustainable (Giles et al., 2016; Stevenson, 2004). This approach often leads to the selective use of TEK, where elements are taken out of context and merged with Western scientific frameworks, limiting the meaningful contribution of Indigenous knowledge and perspectives in resource management (Stevenson, 2004). Resistance to this integration method is evident, such as Inuit hunters rejecting the term 'stock' due to its absence in Inuktitut (Inuit language), reflecting a disconnect with their conceptual framework (Stevenson, 2004).

To address such conflicts over fisheries in the Maritimes, establishing a co-management system between the Mi'kmaq and the Western knowledge and legal systems could facilitate coordination between the two, protect Mi'kmaq rights against infringement, promote sustainable fisheries, reflect the right of fisheries self-management and bolster the recognition of Mi'kmaw treaty rights (Boulianne, 2022). Co-management embodies the collaboration between government and local stakeholders in resource management, marrying power-sharing and responsibility with an emphasis on democratizing decision-making, fostering conflict resolution and enhancing stakeholder engagement (Berkes et al., 2000; Boulianne, 2022). This approach serves as a governance model and aligns with Indigenous perspectives on mutual aid and treaty-based governance, reflecting a comprehensive strategy for inclusive environmental management (Armitage, 2008; Mills, 2019). In Canada, while co-management is not officially recognized as a treaty right, there is consideration for acknowledging Indigenous peoples' special environmental rights. The right to partake in decision-making stems from their self-determination right, with the UNDRIP (United Nations

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General Assembly, 2007), urging for the inclusion of Indigenous laws and practices in decision-making related to their ancestral lands (Boulianne, 2022). This discussion suggests that Indigenous communities should be involved in developing environmental policies.

However, a common critique aimed at co-management initiatives is that they frequently overshadow TEK and make decisions about Indigenous peoples using Eurocentric procedures (Mulrennan, 2013). In fact, co-management initiatives often relegate TEK to a secondary position, neglecting Indigenous institutions, laws and the processes that produce this knowledge (Mulrennan, 2013). However, to address this, the government needs to create an intelectual and structural capacity, for Indigenous legal traditions and be open to questioning their own place in the Indigenous world (Anker, 2014; Boulianne, 2022).

The problem with existing co-management efforts in Canada lies in their inability to fundamentally change the underlying frameworks and logic of decision-making to include both Indigenous and Western perspectives (Prosper et al., 2011). This leads to a scenario where knowledge is merged rather than allowing for the coexistence of different knowledge systems (Nadasdy, 2005; Stevenson, 2004). It also results in Indigenous knowledge being used to reinforce Western scientific approaches and centralizing control in administrative bodies instead of in Indigenous communities. To honor the essence and integrity of Indigenous knowledge, it is vital to maintain both Indigenous knowledge and Western science within their own realms, engaging them in a dialogue and consensus driven decision-making process to enhance insights into ecosystem changes (Berkes et al., 2000; Reid, et al, 2020). To prevent the creation of a co-management framework that places TEK beneath Western scientific knowledge, I advocate for a model that equally values TEK and Western science. This is achieved through the adoption of knowledge coexistence, as suggested by "Two-Eyed Seeing" method. Coined by Mi'kmaw Elder and scholar Albert Marshall, TES merges Mi'kmaw and Western knowledge in collaborative projects, encouraging the researchers to appreciate Indigenous knowledge and perspectives with one eye, and Western knowledge and perspectives with the other, aiming to blend these views for everyone's benefit (Marshall, 2004). This approach is to show that Canadian law, as a blend of colonial and Indigenous laws, recognizes the differences between Western and Indigenous legal systems without viewing them as irreconcilably opposite, highlighting that Indigenous knowledge transcends being merely the counterpart to Western knowledge (Boulianne, 2022). Rather than viewing differences between knowledge systems as a problem, TES regards these differences as valuable assets that can benefit everyone, fostering a two-way exchange of perspectives and knowledge (Mulrennan, 2013). Instead of trying to merge or

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harmonize incompatible knowledge systems, TES advocates for the harmonious coexistence of these diverse knowledge paradigms (Berkes et al., 2000). Indeed, it focuses on the shared objectives of these systems: enhancing our comprehension of the world, an objective that is undoubtedly more attainable with a plural coexistence. This enhanced collaborative approach, consequently, aids in fostering socio-ecological resilience (Reid et al., 2020). To implement TES successfully, a blend of processes and structures is necessary, tailored to the specific context and the willingness of those involved.

However, current co-management efforts in Canada fail to fundamentally alter decision-making structures to reflect both Indigenous and Western paradigms, often resulting in the assimilation of TEK into Western science frameworks, which concentrates power in administrative bodies rather than in Indigenous communities (Nadasdy, 2005; Prosper et al., 2011; Stevenson, 2004). Co-management not only aligns with the Mi'kmaq's goals for self-governance and control over their territories but also enhances the DFO's operations by incorporating local insights, which can improve the management of delicate and evolving ecosystems (Boulianne, 2022). Fisheries practices, deeply intertwined with dynamic local ecosystems, increasingly depend on local community involvement for effective management and monitoring (Berkes et al., 2000). Top-down management approaches are becoming outdated, as they lack the flexibility to adapt to rapid environmental changes and often overlook minor ecological variations (Armitage et al., 2008). In contrast, collaborative efforts are crucial for fostering innovation and adaptability. Initiatives like Indigenous-Crown co-management represent a solution that combines the strengths of both centralized governmental structures and community-based approaches, addressing the need for shared management with Indigenous communities who have constitutionally recognized rights over at-risk areas (Boulianne, 2022). While, reconciling two significantly different knowledge systems poses various logistical, conceptual and communication-related challenges, the TES approach places TEK and Western science on an equal footing, avoids centralized decision-making power, and utilizes TEK collaboratively through knowledge coexistence (Boulianne, 2022). The TES promotes long-term collaborations among all stakeholders, fostering a comprehensive and adaptable decision-making framework that transcend the limitations of merely integrating or incorporating Indigenous knowledge into Western scientific paradigms. Instead, it seeks to create a co-management model that combines both Indigenous and Western ways of knowing, avoiding the pitfalls of assimilation and fostering a more inclusive and respectful dialogue between different knowledge systems (Reid et al., 2020). This model emphasizes the importance of acknowledging the distinct contributions of each perspective to

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environmental management, advocating for effective co-management through communication that encourages participants to reevaluate their perspectives (Berkes, 2008).

Key structural aspects for achieving TES include a balanced nomination process for board members from Indigenous nations and government agencies, community involvement in these nominations to ensure board legitimacy and reserving a place for a knowledge holder on the board (Boulianne, 2022). The current application of Indigenous knowledge in boards lacking this representation has led to misunderstandings (White, 2020). Thus, to foster knowledge coexistence, it is crucial to move away from Western-dominated decision-making towards a consensus-based approach.

6. Responding to the Research Question

Reflecting on the comprehensive analysis provided through the lens of PE, this research aimed to dissect how the concept of moderate livelihood has shaped the governance of lobster fisheries, particularly in relation to resource allocation and management concerning Mi'kmaq communities. The exploration unraveled the multifaceted implications of the term moderate livelihood, its legal interpretations, and its real-world impacts on the Mi'kmaq's rights and livelihoods. The concept of moderate livelihood emerges not merely as a legal term but as a pivotal point around which discussions of sovereignty, environmental stewardship and Indigenous rights orbit. The analysis revealed that, despite its seemingly benign intentions, the term harbors limitations that inherently restrict the Mi'kmaq's access to resources and their ability to self-manage their fisheries, bringing into attention the issues around "use" and "distribution" in environmental governance. The embedded power dynamics within the term "Moderate" underscore a colonial legacy of control and assimilation, subtly perpetuating a narrative where Indigenous practices are deemed secondary to commercial fisheries interests. In addressing the research question, several key findings surfaced. Legal ambiguities and constraints, impact on resource allocation and management, decolonial and PE perspectives, and a possible pathway forward for an equitable fishery.

The term moderate livelihood is mired in legal ambiguity, leading to contentious interpretations that have often sidelined the Mi'kmaq's traditional and sustainable fishing practices. This legal gray area has facilitated the government's continued control over fisheries management, often under the guise of conservation, without adequately recognizing or incorporating Mi'kmaq sovereignty and rights.

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The governance frameworks, have favored a top-down approach to resource management. This approach has sidelined the Mi'kmaq's ecological knowledge and sustainable practices, limiting their participation in decision-making processes and curtailing their rights to manage their resources in accordance with their cultural practices and legal rights.

Through a decolonial lens, the research highlighted the need to transcend the colonial underpinnings of resource governance and embrace a model that recognizes the Mi'kmaq's inherent sovereignty and rights. The PE perspective further emphasized the importance of addressing power imbalances in environmental governance, advocating for a holistic approach that respects both Indigenous knowledge systems and sustainable resource management practices. The management of lobster fisheries by the Mi'kmaq communities exemplifies Ostrom's principles in action. Integrating TEK with sustainable practices, the Mi'kmaq approach, particularly through co-management and the TES model, showcases a successful blend of Indigenous knowledge and Western management techniques. In essence, Ostrom's model and the Mi'kmaq's practices demonstrate the viability of alternatives to top-down management, advocating for a governance model that integrate diverse knowledge systems. This approach underlines the potential for holistic and inclusive environmental governance strategies that emphasizes community empowerment and the integration of Indigenous wisdom into resource management, as exemplified by the TES model.

The exploration of co-management and TES as potential pathways forward suggests a shift towards more inclusive governance models. These models promise to better align with Mi'kmaq rights, knowledge, and sustainability goals, proposing a framework where Indigenous and Western knowledge systems coexist and inform resource management practices equitably.

In sum, the concept of moderate livelihood has played a significant role in shaping the governance of lobster fisheries, often to the detriment of Mi'kmaq communities. By embracing decolonial approaches and recognizing the value of Indigenous knowledge and rights, there is potential to move towards more equitable, sustainable, and just fisheries governance. This shift not only addresses the injustices faced by the Mi'kmaq but also opens the door to a more resilient and sustainable future for lobster fisheries in the region, aligning with broader environmental and social justice goals.

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7. Conclusion

From pre-contact era through European colonization and into the present day, the Mi'kmaq have navigated a challenging landscape marked by loss, marginalization and the struggle for sovereignty and self-determination. The Sparrow and Marshall decisions are pivotal, affirming Mi'kmaq rights to fish for subsistence and economic reasons, integrating traditional practices into Canadian law. After the Marshall Decision, Canada's formerly assimilationist policy framework has transformed into a deceptive politics of recognition, leading to a recognition by assimilation. Despite differences between Canadian and Mi'kmaw legal systems, Canadian law can engage with Indigenous traditions by revisiting treaties that initially permitted European settlement on Indigenous lands. Yet, for effective collaboration, Canadian institutions need to embrace power sharing. Reconciliation demands Canada recognize that its settlement was enabled by historic treaties with Indigenous peoples, and it is vital to restore these eroded connections. In this context, Canadian constitutional law allows for Mi'kmaq fisheries self-management, enabling joint marine ecosystem management by the government and the Mi'kmaq. The American Lobster serves as a vital component of the marine ecosystem and symbolizes identity, livelihood, and a point of contention within and between Indigenous and non-Indigenous communities.

This paper reveals the complex dynamics between economic interests, legal structures and lobsters' value as sentient beings. It highlights the Mi'kmaq's deep, reciprocal relationship with lobsters, challenging anthropocentric and capitalist views. This analysis highlights the lobster industry's economic importance to Atlantic Canada and its sustainability challenges. Legal aspects reveal governance tensions, notably around Indigenous rights and sustainable marine resource management. The examination of the concept of moderate livelihood within the context of lobster fisheries governance reveals a complex interplay between legal ambiguity, colonial legacies and the marginalization of Indigenous rights and knowledge. This exploration has underscored the significant limitations imposed by the term "moderate livelihood" on the Mi'kmaq communities' access to resources and their ability to engage in self-managed, sustainable fishing practices. Exploring "moderate livelihood" in lobster fisheries governance highlights the clash between legal vagueness, colonial impacts, and Indigenous rights. The term "Moderate" limits Mi'kmaq access to resources and sustainable fishing, imposing unjust restrictions on Indigenous livelihoods and perpetuating a colonial mindset that seeks to control and diminish traditional practices maintained by Indigenous peoples for generations.

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This paper asserts that the term "Moderate" should not qualify the livelihoods of Indigenous peoples. The examination of legal frameworks and Indigenous rights demonstrates that Indigenous communities have an inherent right to a livelihood that is unrestricted and acknowledged. It calls for a shift away from the moderate livelihood framework towards one that fully acknowledges Indigenous peoples' rights to manage their resources is both a legal and moral imperative. Embracing this perspective requires a fundamental transformation in how Indigenous livelihoods are viewed and supported within legal and policy frameworks. The study, through a decolonial lens, emphasizes the need to rethink colonial resource governance, advocating for recognizing and integrating Mi'kmaq sovereignty and practices. It argues for a respectful, sustainable coexistence with nature, addressing power imbalances in environmental governance by combining Indigenous and sustainable management knowledge. It critiques the colonial control still shaping resource governance, urging a shift towards inclusive governance models that recognize the Mi'kmaq's inherent rights and contributions to sustainable resource management. The potential pathways forward, including the adoption of co-management systems through the Two-Eyed Seeing approach, highlight the importance of integrating Indigenous knowledge systems with Western management practices to achieve equitable, sustainable outcomes. This method embodies the Ostrom's community-led governance, offering a viable alternative to centralized management. Acknowledging Indigenous sovereignty and rights is crucial for restoring Mi'kmaq culture and economy, showcasing the effectiveness of inclusive, decolonized environmental governance. The push for a Mi'kmaq fishery based on self-governance and indigenous principles, through co-management and the Two-Eyed Seeing model, signals a move towards fairer governance. This approach recognizes Mi'kmaq rights and knowledge, promoting a collaborative resource management that supports Indigenous rights and environmental sustainability. Reimagining lobster fisheries governance through co-management aims for a sustainable and just future for Mi'kmaq communities and the fisheries.

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