



The Facts about the Treaty-Protected Fishery on Epekwitk (PEI)

WHAT ARE THE TWO MARSHALL DECISIONS? WHAT DO THEY SAY?

In 1993, Donald Marshall Jr. was charged and convicted of fishing and selling eels without a licence and fishing during the closed season with illegal nets.

Mr. Marshall appealed his conviction and argued that he fished and sold pursuant to a treaty right as set out in the Peace and Friendship Treaties signed between the British and the Mi'kmaq in 1760-61.

In September 1999, the Supreme Court of Canada (SCC) ruled in Donald Marshall Jr.'s favour and upheld his rights saying the Treaties are still valid. The Court affirmed the right of the Mi'kmaq to hunt, fish and gather in pursuit of a "moderate livelihood."

While the Court did not define "moderate livelihood" they did indicate that it was something more than subsistence and it allowed for necessities such as "food, clothing and housing, supplemented by a few amenities." It did not mean an open-ended accumulation of wealth.

The Court also stated that the treaty right is a communal right, so fishing had to be based on the rules set by the community. This decision is referred to as **Marshall 1**.

While the Court found that the DFO fisheries regulations violated the Mi'kmaq treaty right, in a second decision in November of that year known as **Marshall 2**, the SCC clarified that the federal government may limit the right through regulation but only for important public purposes, such as conservation or other compelling and substantial public objectives. However, any limitation of the treaty right must be justified by the government and it must be done with as little impact on the right as possible in meeting the objective. The federal government must consult with the Mi'kmaq before trying to impose limitations. This includes any attempt to limit the Mi'kmaq fishery to set seasons.



The Mi'kmaq have lived in Epekwitk (PEI) for 12,000 years and their priority for the resources has always been, and will always be, inherently based on conservation and sustainability. For centuries the First Nations have existed in accordance with the principle of "Netukulimk" – taking what you need and leaving the rest for future generations.



To learn more about the Treaty Protected Fishery visit:
lnuey.ca/fisheries