

Ojibwa Fisheries, Commercial Fisheries Development and Fisheries Administration, 1873-1915: An Examination of Conflicting Interest and the Collapse of the Sturgeon Fisheries of the Lake of the Woods¹

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Introduction

On 3 October 1873, after days of intense deliberations, representatives of the federal government and the Ojibwa people concluded Treaty Three at the Northwest Angle where the boundaries of Ontario, Manitoba and Minnesota now converge. The Ojibwa signed Treaty Three with much reluctance, surrendering an estimated 55,000 square miles of land in northwestern Ontario to the federal Crown.² The treaty commissioners, however, assured them that they would "forever have the use of their fisheries."³

This paper contends that 19th century fisheries management policies and jurisdictional disputes, and the uncontrolled development of the non-Native commercial fisheries, were causal to the collapse of the self-sustaining Ojibwa sturgeon fisheries of the Lake of the Woods and the Rainy River.⁴ The destruction of this valuable sustaining Aboriginal resource less than thirty years after the treaty was signed diminished the Ojibwas' Aboriginal and treaty rights to fish and repudiated the treaty commissioners' "outside promise"⁵ that they would have the use of their fisheries in perpetuity.

The Population Biology and Ecology of Sturgeon

No other freshwater fish in Canada is as large as the lake sturgeon (*Acipenser fulvescens*).⁶ Mature sturgeon taken today weigh from ten to eighty pounds, although much larger specimens are sometimes caught.⁷ Sturgeon are a long-living fish that reach sexual maturity late in life, as late as twenty years or more depending on location and conditions. Typically,

male and female sturgeon spawn every two to three years and four to six years respectively. Depending on locality, these infrequent spawning intervals become more intermittent with age.

Late maturation and infrequent spawning have not encumbered reproductive success. The lake sturgeon is a fish of great antiquity, dating back to the Devonian Period. It has, in fact, retained anatomical features characteristic of that period, including body plates (rather than scales), a large cellular swim bladder, a cartilaginous skeleton and a shark-like caudal fin.⁸ Lake sturgeon feed on bottom-dwelling flora and fauna in shoals of lakes and rivers, and their once large zoo-geographical distribution in North America included the Lake of the Woods and its tributary waters.⁹ So abundant were sturgeon in this watershed that early fur traders in the area referred to it as "sturgeon country" and to its Aboriginal inhabitants as "sturgeon Indians."¹⁰ When Evermann and Latimer published their 1890s survey of the fisheries of the Lake of the Woods, they fittingly described it as "the greatest sturgeon pond in the world."¹¹

Significantly, the sturgeon of the Lake of the Woods and Rainy River shared a common brood stock, which patterned their predictable migratory movements in these waters.¹² Migration commenced at the mouth of the Rainy River and proceeded westward along Minnesota's coastal shoals, then northward and eastward along the international boundary line back to the mouth of the river in preparation for spawning (see Figure 1). Spawning occurred upstream at the Manitou and Long Sault Rapids (and other less desirable locations along the river¹³) for three to four weeks during May and June.¹⁴ Accordingly, these rapids attracted Ojibwa settlement, and much fishing and trading activity.¹⁵

Ojibwa Sturgeon Fisheries

The Algonquian-speaking people of the Canadian Shield have often been depicted in the literature as big-game hunters whose reliance on freshwater fish was occasional, either when big-game became scarce or when other resources could not be readily secured.¹⁶ Holzkamm, Lytwyn and Waisberg have recently challenged this assumption.¹⁷ They contend that "many rivers and lakes in the region contained large scale fisheries that were an important part of the seasonal round of resource activities for Native people."¹⁸ Their study, focused on the Rainy River during the fur trade period, asserts that riverine sturgeon fishing by the Ojibwa people "was not undertaken only when big game was scarce. Rather, it was an activity of great significance to Ojibwa subsistence, commerce, society and religion."¹⁹ In the Rainy River each spring, the abundance of spawning sturgeon, captured with spears, hook and line, weirs, seines and other types of Aboriginal harvesting gear, attracted as many as 1500 Ojibwa to the river at the Manitou and Long Sault Rapids to fish and to renew social, political, economic and spiritual ties.²⁰

In combination with other species of fish and game, sturgeon comprised

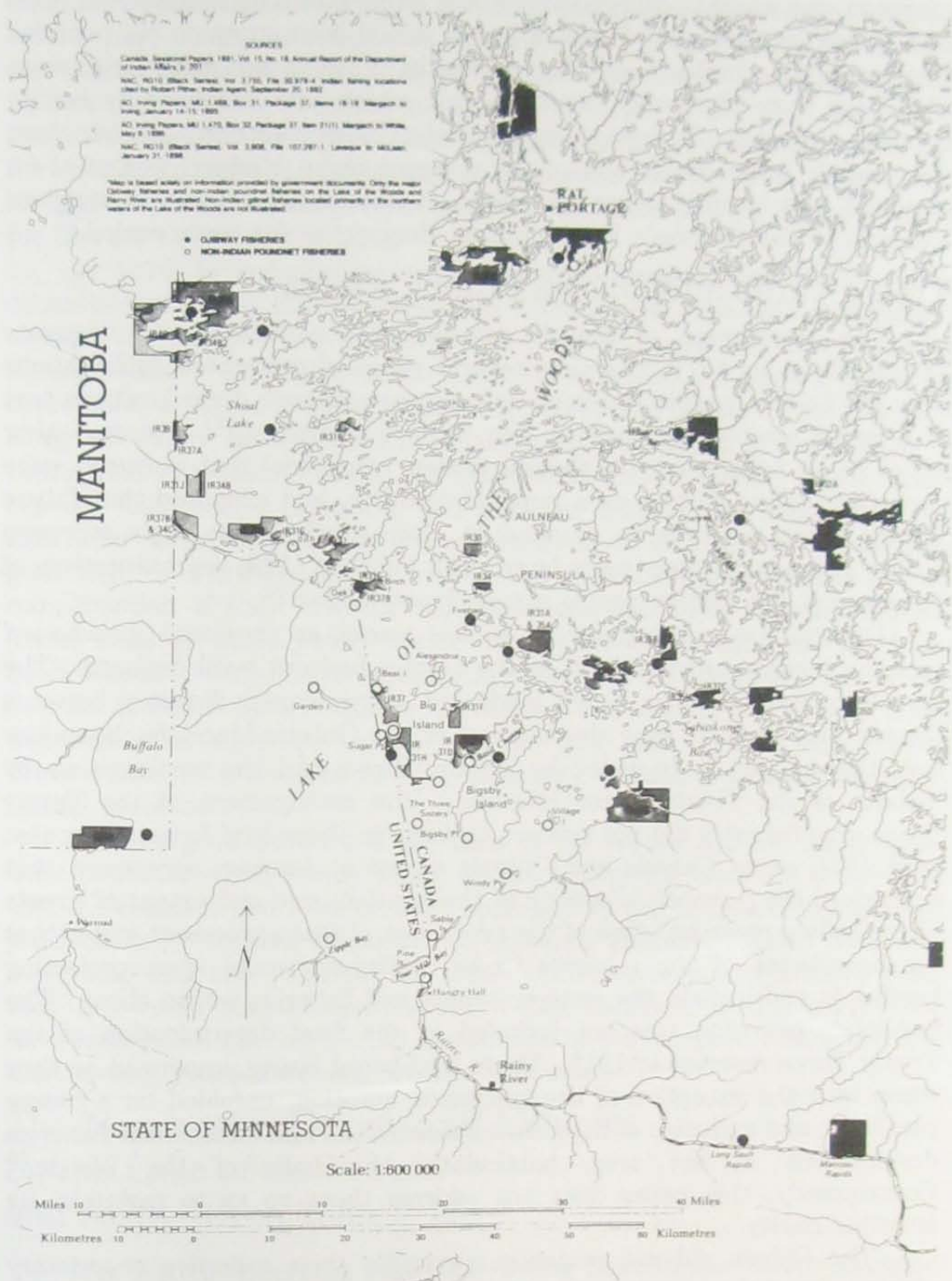


Figure 1: Locations of Major Ojibwa Fisheries and Non-Native Poundnet Fisheries on the Lake of the Woods and the Rainy River, 1890-1895

a significantly large share of the Ojibwa diet.²¹ Notably, little of the sturgeon was wasted. Sturgeon flesh was either eaten immediately or dried and stored for later use. Some of it was mixed with sturgeon oil, pounded into a type of pemmican and then packed in sturgeon skin bags for storage. Skin bags were also used for storing oil, which was rendered by boiling sturgeon in water. Sturgeon eggs (or caviar) were consumed and isinglass, the inedible inner membrane of the sturgeon swim bladder, was used for glue and as a binding agent for paint. A substantial amount of isinglass was sold to the Hudson's Bay Company during the fur trade period.²²

Treaty Three and Ojibwa Fishing Rights

The government of Canada established a commission to negotiate Treaty Three in 1871, following several years of protracted deliberations with the Ojibwa people to secure safe passage through their lands as part of a larger strategy to open up the west to settlement.²³ Among other issues to be negotiated, the federal Crown recognized that sturgeon were important to the Ojibwa as a regional resource, and proposed that future Treaty Three reserves be situated in close proximity to their sturgeon fishing grounds.²⁴ Two years later, on 3 October 1873, representatives of Canada and the Ojibwa people signed Treaty Three.²⁵

Ontario was not a signatory to this treaty, as provincial jurisdiction over the territory surrendered by the Ojibwa had not been declared. The uncertain status of the ceded lands led to prolonged disputes between Canada and Ontario over the location of the Ontario-Manitoba boundary line, title to the lands ceded by Treaty Three, and the confirmation by Ontario of the Treaty Three reserves. The management of the Treaty Three area fisheries did not become an issue in these land-focused disputes until 1894, when Canada and Ontario signed a statutory agreement that authorized the province to concur in the location, size and extent of Treaty Three Indian reserves. One of the provisions of that agreement stated that the boundaries of the reserves to be confirmed would span projecting headlands and include the waters, islands and fisheries within them. The headlands provision was not included in the final determination of the Treaty Three reserves in 1915. These land-based issues, important as they were, with the exception of the headlands question, unfolded on a course parallel to and exclusive of fisheries administration and commercial fisheries development in the area, particularly the Lake of the Woods.²⁶ Consequently, this paper does not address them so as to maintain its storyline clarity.

The Ojibwa did not evidently surrender their collective proprietary rights to the fisheries when they signed Treaty Three in 1873.²⁷ They had probably agreed to *share* their fisheries with traders and advancing settlers (commercial fishing on the Lake of the Woods did not commence until 1884), thereby expanding to non-Natives the domain of generalized reciprocity that was so fundamental to their hunting, gathering and

horticultural pursuits. The Ojibwa depended heavily on the sturgeon for subsistence and trade, making it doubtful that a surrender of the fisheries would have been contemplated by them.²⁸ Treaty Three's fisheries provisions, however, remain silent on the question of propriety rights. Ojibwa access to the resource is affirmed in terms of the right to "pursue their avocations of hunting and fishing throughout the tract surrendered as hereinbefore described, subject to such regulations as may from time to time be made."²⁹ The federal government also agreed to provide "twine for nets for the use of the said Indians."³⁰

In 1874, in consultation with Simon J. Dawson, one of the treaty commissioners, and Robert Pither, the Indian agent, the Ojibwa arranged to have the reserves surveyed adjacent to their traditional river and lake fishing areas.³¹ On 18 November 1875, for example, the Ojibwa signed an agreement with the federal government accepting selected tracts of land along the Rainy River as Indian reserves. A note typed in the margin of that agreement indicated that "it is understood that the fishing at the rapids opposite this reserve [Manitou, and a similar notation for Long Sault and one other Reserve that was not specified] is to be open to the Indians generally."³² Furthermore, it was agreed that the Ojibwa would receive compensation if their riverine fisheries were destroyed by contemplated "canal locks or other public works" construction to circumvent the Long Sault Rapids.³³ The 1875 agreement, reflecting the long-term use of the riverine fisheries by the Ojibwa throughout the region, in spirit at least, was consistent with the federal government's 1871 position that Treaty Three reserves be situated in close proximity to their traditional sturgeon fishing grounds.

The sturgeon fisheries of the Lake of the Woods and the Rainy River were bountiful when Treaty Three was signed, giving credence to the view that the resource had been carefully managed by the Ojibwa on a sustained yield basis.³⁴ Indeed, respectful co-existence prevailed under their sole ownership and use. Though the treaty commissioners had assured them that they would "forever have the use of their fisheries," neither party could have anticipated the commercial destruction of the sturgeon that began less than twenty years after that promise was made.³⁵

The Non-Native Commercial Fisheries on the Lake of the Woods and Rainy River, 1884-1915

Non-Native fishermen began harvesting Lake of the Woods sturgeon (and other fish) on a commercial basis by 1884.³⁶ Since the pre-1894 fisheries records are incomplete, it is difficult to ascertain where commercial fishing on the lake first occurred and what species were being targeted for harvesting.³⁷ Moreover, the records do not reveal whether the fisheries were prosecuted by Canadian or American fishermen.³⁸ In subsequent

years, however, there is little doubt that Canadian and American fishing and fish packing operations had become inextricably controlled by American fishing interests. American produced fish and fish products (primarily sturgeon and sturgeon roe), in the absence of transportation facilities in Minnesota, were being shipped by barges to the Canadian firm of D.F. Reid and Company, located at Rat Portage (now Kenora), for packing, freezing and transportation via the Canadian Pacific Railway to markets in the United States and abroad.³⁹ Reid's operations thus became central to the growth and development of the Canadian and American-based commercial fisheries on the Lake of the Woods.

Non-Native commercial fishermen who operated their fisheries in the Canadian waters of the Lake of the Woods throughout the 1880s were apparently not licensed,⁴⁰ nor had local fishery overseers been appointed to enforce the federal and provincial fisheries statutes.⁴¹ Even though early commercial fishing activities incurred negligible pressure on the resource base, former Treaty Three commissioner Simon Dawson nonetheless expressed the view in 1885 that it was being overexploited "and depriving [settlers and Indian] people of the means of living. ..."⁴² Dawson, who was a member of Parliament, and senior officials in the Department of Indian Affairs, including Deputy Superintendent General Lawrence Vankoughnet, continued to voice their concerns on this issue.⁴³ Over the next three years, they proposed that the fisheries of the Lake of the Woods be retained for exclusive Indian use, although not, as Dawson stated, "to such an extent as to prevent settlers catching fish for domestic use but certainly in such a manner as to guard against the use of destructive appliances which fish traders use in securing car loads of fish for export."⁴⁴

Late in 1888, the Marine and Fisheries department, apparently attentive to Dawson and Vankoughnet's concerns, revoked an experimental gillnet licence that had been issued to Reid earlier that year. This was followed by the commercial closure of the Canadian fisheries on 1 January 1889.⁴⁵ In accordance with Dawson's recommendations, only settlers and Indian people were permitted continued and unfettered access to the fishery resource. Indian agents were appointed fishery overseers *ex officio* in August of 1889 to "protect the Indian rights in the fisheries."⁴⁶ They were instructed by the Deputy Superintendent General of Indian Affairs not to give "advantage to other fishermen that would be prejudicial to the interests of the Indians or that would in any degree lessen the supply of food which they derive from the fisheries."⁴⁷

There was no corresponding closure of the American-based fisheries. American fishermen continued to set their poundnets⁴⁸ (see Figure 2) at the mouth of the Rainy River to intercept the sturgeon as they migrated to their upstream spawning grounds at the Manitou and Long Sault Rapids.⁴⁹ The mouth of the river had become a strategic fishing location by 1890, when commercial fishermen began to harvest sturgeon more for their eggs than for their flesh and air bladders (isinglass) in response to the

burgeoning demand for caviar in the United States and Europe.⁵⁰ The spring fishery at the mouth of the river yielded comparatively greater caviar returns for the commercial fishing industry because sturgeon harvested at other times of the year and at different locations on the Lake of the Woods appear to have produced inferior quality eggs.⁵¹ Additional fishing stations using poundnets were subsequently established at various points on the lake along the sturgeon migration route. While these more dispersed lake fisheries were not as lucrative as the Rainy River in terms of procuring top quality caviar, they were nonetheless sufficiently profitable to warrant continued operation.⁵² Many of the lake fisheries were established near or within Ojibwa fishing grounds.

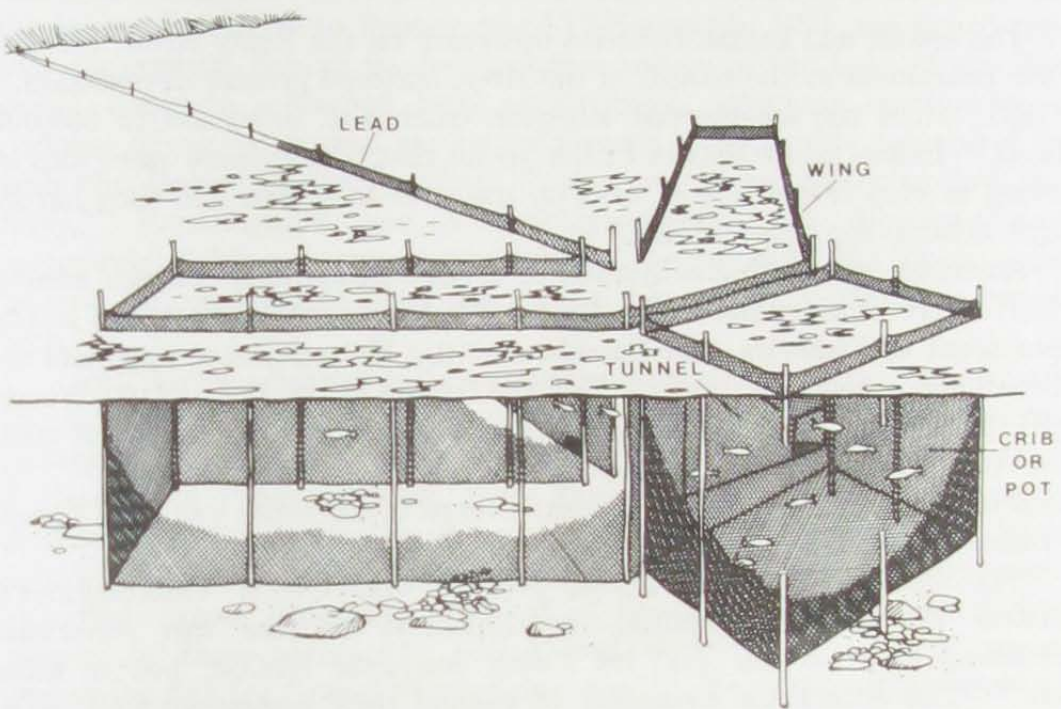


Figure 2: A Poundnet and Its Component Parts

Source: G.F. Adams and D.P. Kolenosky, *Out of the Water: Ontario's Freshwater Fish Industry*, ([Toronto]: Commercial Fish and Fur Branch, Ministry of Natural Resources, 1974), P.7.

Minnesota's commercial fishermen exercised little discretion in harvesting sturgeon. The commercial catch had risen dramatically between 1888 and 1890, from 40,000 to 200,000 pounds,⁵³ largely as a result of the increased use of small-meshed poundnets. Notwithstanding their efficiency, these small-meshed nets diminished the recruitment of small, sexually immature sturgeon into future spawning populations by restricting their

escapement.⁵⁴ Although the full impact of restricted escapement would not be realized until later in the decade, Deputy Superintendent General of Indian Affairs Lawrence Vankoughnet and Ebenezer McColl, the Winnipeg-based Inspector of Indian Agencies directly responsible for the administration of Treaty Three, were voicing Ojibwa concerns about overfishing as early as 1889-90.⁵⁵ In 1890, McColl wrote that

I made enquiries of Mr. Agent Pither and ex-Agent McPherson in reference to the matter [of American overfishing], and was informed by them that since the fisheries had been established at Garden Island, and between the mouth of the Rainy River and Buffalo Bay, the fish are rapidly disappearing from other [Canadian] parts of the lake, as stated by the Indians. ...⁵⁶

The settler and Indian fisheries upstream on the Rainy River, affected by the poundnets at the mouth of the river, suffered greater devastation.⁵⁷ In 1891, when the commercial sturgeon catch had increased to 500,000 pounds,⁵⁸ Indian agent Robert Pither wrote that "the Indians were almost starving as very few sturgeon went up the river to spawn and they hardly caught enough for personal use."⁵⁹

American overfishing continued to evoke considerable concern among Indian Affairs officials and on 23 June 1890, Vankoughnet proposed to the Department of Fisheries that Canada and the United States negotiate an international agreement "under which the fishing in the Lake of the Woods might be reserved and protected in the interests of the Indians on both sides of the line and licenses to all other parties refused."⁶⁰ A memorandum outlining this agreement's terms of reference was later signed by representatives of both departments on 23 July 1890.⁶¹

The Ojibwa of Treaty Three, perhaps unaware of Vankoughnet's initiative or the memorandum, continued to address the American overfishing issue at the local level with Inspector McColl, but to little avail.⁶² The Americans continued to expand their operations and over-exploit the resource. A crisis point was reached in August 1890, when sheer desperation drove the Ojibwa of Treaty Three and the Minnesota Chippewa (Ojibwa) to seize a fishing station operated by Americans on Garden Island. Only nets and fishing gear (the means of production and the implements of destruction) were destroyed in this resistance action. The station itself was left intact.⁶³

The Canadian government acted swiftly to reduce the threat of further seizures. The 1889 commercial closure of the Canadian fisheries of the Lake of the Woods was affirmed on 20 August 1890, by order-in-council P.C. no. 2002. It retained them for exclusive Indian use and provided Canada with the legislative leverage to persuade the Americans to undertake the same action for their fisheries. The Americans, however, did not follow through on the Canadian initiative.⁶⁴ The Minnesota-based

fisheries continued to expand with little regard for Indian interests and without restraint, from 17 poundnets catching 200,000 pounds of sturgeon in 1890 to (a peak of) 193 poundnets catching 1,143,072 pounds of sturgeon in 1895.⁶⁵

Predictably, Rat Portage's commercial fishing interests, barred from fishing in Canadian waters since 1889, responded covetously to this American expansion. As early as 9 June 1891, the fishing and fish packing firm of D.F. Reid along with other local area fishermen were petitioning the marine and fisheries department to issue commercial fishing licences to fish "in the [Canadian] Lake of the Woods with nets."⁶⁶ The Indian Affairs department, categorically opposed to this initiative, made its position known to Deputy Minister of Fisheries John Tilton in July 1891.⁶⁷ The Rat Portage Board of Trade, by contrast, supported Reid, probably because its members recognized that his efforts would, if successful, accrue benefits to the town. In a letter to Tupper dated 17 November 1891, the Board argued that commercial fishing in the Canadian waters of the Lake of the Woods would generate increased local employment, stimulate community and regional development and secure for Canada a favourable balance of trade with the United States.⁶⁸ While Tupper remained non-committal in his reply,⁶⁹ Vankoughnet was predictably affronted by the board's pro-commercial fishing stance, and he advised the minister that "on no account [should its] request [to open the lake to commercial netting] be complied with."⁷⁰

Rat Portage fishing and community interests were as adamant about opening the Canadian fisheries of the Lake of the Woods to commercial netting as Vankoughnet and presumably also the Ojibwa were for keeping it closed. In February 1892, three Board of Trade representatives were dispatched to Ottawa "to lay the matter before the Government in its true light."⁷¹ The delegation was heard by several members of Parliament,⁷² including Edgar Dewdney, Minister of the Interior, who was evidently swayed by their arguments, noting that "it looks to me as if we were preserving fish for United States fishermen."⁷³ He cautioned, however, that "a further examination should be made into the matter by some disinterested party."⁷⁴ That "disinterested party" was former fisheries inspector R.F. Stephenson, whose views were solicited by Dominion Lands commissioner H.H. Smith at Dewdney's request. Stephenson supported the efforts of the Department of Indian Affairs to block Reid and other Rat Portage commercial fishermen from regaining access to the Canadian fisheries.⁷⁵ However, on 23 April 1892, the Department of Marine and Fisheries acquiesced to pressure exerted by the Rat Portage fishing lobby and issued three "experimental" commercial fishing licences for the Canadian waters of the Lake of the Woods.⁷⁶

Fortuitously for the Marine and Fisheries department, Dawson and Vankoughnet's opposition to commercial fisheries development in the Treaty Three area had dissipated by 1892, not by choice but as happenstance.

Dawson was defeated in the 1891 federal elections and not subsequently renominated to run in the next election by Conservative Party electors.⁷⁷ A sympathetic ally of the Ojibwa people, Dawson was not very effective in advancing their fishing interests following his political defeat. Vankoughnet, on the other hand, though still in command as Deputy Superintendent General in 1892, was unable to exercise his authority, for political reasons. He was forced to retire in 1893. Moreover, just prior to and following Vankoughnet's superannuation, the Indian department had, according to Leighton, "become much less sensitive to local situations and needs than the old provincial department had been. In its attempt to seek greater economy and efficiency, the Ottawa office had become insulated against local realities."⁷⁸ Indeed, the department's silence on Treaty Three fisheries matters was conspicuous after commercial licences were issued in 1892.

The commercial fishing interests at Rat Portage continued to exert unrelenting pressure on the department of marine and fisheries to issue more fishing licences,⁷⁹ while Vankoughnet tirelessly, but in vain, assumed a countervailing position conveying Ojibwa concerns.⁸⁰ These concerns were clearly enunciated by the Ojibwa three months after the Canadian fisheries were reopened to commercial netting. On 18 July 1892, eleven Ojibwa Chiefs wrote to Indian Affairs asking for the government's support in protecting their fisheries:

We the undersigned Chiefs, in the Rat Portage Indian Agency beg leave to humbly represent to the Indian Department: ... that we want that they would try and do something to prevent American fishermen from destroying the fish in the Lake of the Woods. There are also Canadians that have licenses from the Government and we are of [the] opinion that if no such licenses were granted it would be easier to put a stop to this wholesale depleting of fish in the lake. This, one of our main resources is getting more and more scarce and we can now hardly catch enough to feed ourselves in summertime. Some strong measure should be taken to remedy the actual state of things. ...⁸¹

Apparently, Ojibwa concerns were ignored. The Canadian commercial fisheries of the Lake of the Woods continued to expand at an unprecedented rate, from three licences issued in 1892 to one hundred licences issued in 1895 and, unlike the American fisheries, were neither sturgeon nor poundnet dependent.⁸² Sturgeon were harvested with poundnets in the southern more open waters of the Lake of the Woods (thereby exacerbating the already intense pressure placed on the sturgeon by American fishermen); whitefish, pickerel and jackfish, by contrast, were taken with gillnets in the northern portion of the lake.⁸³ The intensification of fishing effort on the Lake of the Woods, as measured by the number of nets employed in the fisheries and by the consolidated catch of the major species

targeted for commercial exploitation, was staggering indeed.⁸⁴ The reported catch of sturgeon, yellow pickerel, whitefish and jackfish caught with poundnets and gillnets by Canadian and American fishermen, for example, peaked in 1894 at 3,125,834 pounds, as compared to 95,000 pounds in 1888.⁸⁵ In 1896, Canadian fishermen employed 151 gillnets and 127 poundnets in their fisheries (prior to 1892, only 1,000 feet of gillnets had been fished under one experimental licence⁸⁶), while 193 poundnets were operated by fishermen in the American-based fisheries (as compared to only four in 1888).⁸⁷

The Marine and Fisheries department, while admitting that the Americans were overfishing the sturgeon, had evidently acceded to the views of William Wakeham.⁸⁸ Wakeham, appointed British Commissioner to the international fisheries commission in 1892 to investigate the fisheries "in the contiguous waters of Canada and the United States," including the Lake of the Woods,⁸⁹ in 1894 was quoted as saying that the Ojibwa would always have a sufficient quantity of fish at their disposal.⁹⁰ His remark, based on brief visits to the major fisheries on the Rainy River, Garden Island and Oak Island, did not reflect Ojibwa concerns. In March 1895, in a petition to the Indian Affairs department, Chief Powasing wrote

that in the opinion of myself and of all the other Indians here we are in great danger of being seriously injured, and in great danger of starvation, if something is not done by the Canadian and American Governments to stop the destruction of the fish in the Lake of the Woods. There are several large Fishing Companies both American and Canadian carrying on large fishing business [*sic*] here and the sturgeon and other fish are being taken from the lake in such large quantities, that if something is not done to stop the fishing -- the sturgeon particularly -- and white[fish] and other fish will be done away with. ...⁹¹

The Department of Marine and Fisheries and Commissioner Wakeham (and his American counterpart Richard Rathbun), perhaps dismissing the 1894 decline of sturgeon as a cyclical and temporary dip in what had been until 1893 a steeply ascending commercial production curve, chose to ignore Powasing's concerns that such a dip in fact marked the beginning of the end of the Ojibwa sturgeon fisheries. And, indeed, by 1900 the sturgeon fisheries of the Lake of the Woods had collapsed. The reported Canadian and American sturgeon catch peaked in 1893 at 1,650,000 pounds. By 1900, it had dropped to 152,334 pounds.⁹² The commercial landings of the other targeted species exhibited a similar downward trend. For example, the combined Canadian and American catch of sturgeon, yellow pike, whitefish and jackfish had dropped from a high of 3,125,834 pounds in 1894 to 547,515 pounds in 1900.⁹³ In 1898, a local Indian agent expressed renewed interest in creating exclusive Indian fishing closures for the Ojibwa of

Treaty Three as a measure to protect their traditional grounds from encroaching commercial fishing operations.⁹⁴ Evidently, his concerns were ignored.

The collapse of the sturgeon fisheries on the Lake of the Woods and the escalating prices paid for caviar induced commercial fishermen to retrench their operations to the mouth of the Rainy River,⁹⁵ where schooling sturgeon, converging in May and June in preparation for spawning, could still be caught in large quantities and with little effort. Needless to say, the expansion of commercial fishing activities at this critical location accelerated the collapse of the fishery, as even fewer sturgeon could evade the proliferation of nets to spawn upstream at the Manitou and Long Sault Rapids.

Canada and Minnesota began to limit the number of commercial licence holders in 1897, as a measure to conserve the rapidly dwindling lake and riverine sturgeon population.⁹⁶ Paradoxically, this measure did little to mitigate non-Native fishing pressure on the resource, particularly on the Rainy River, and in fact may well have increased it. Escalating caviar prices (between May and September 1895, the caviar prices had increased from \$26.00 to \$50.00 per keg⁹⁷), fuelled by spiralling demand and dwindling supplies, promoted uncontrolled American-directed sturgeon poaching (probably executed by advancing settlers) for caviar.⁹⁸ Licensed American and Canadian commercial fishermen were outraged that poachers were harvesting the riverine sturgeon with unbaited grappling hooks during the spawning season, and demanded that the federal government enact legislation to protect the resource.⁹⁹ The Rainy River Ojibwa who continued to fish with spears at their historic sturgeon fisheries at the Manitou and Long Sault rapids were implicated in government correspondence as accessories because they were evidently trading sturgeon with the American fish traders.¹⁰⁰ The self-regulating Ojibwa riverine fisheries and the long-established Ojibwa fish trading activities were accordingly rendered unlawful with the stroke of a pen in 1903, when the federal government acquiesced to the commercial fishing lobby and passed legislation that prohibited the use of spears and unbaited hooks in Ontario (among other non-net implements) as sturgeon capturing devices, and restricted access to the resource within the province during spawning season.¹⁰¹

Sturgeon poaching and the illicit trade in caviar on the Rainy River continued unabated in the absence of any strict enforcement of the 1903 federal sturgeon regulations.¹⁰² The magnitude of these covert activities further suppressed an already diminished recruitment of sturgeon into future spawning populations, as evidenced by the reported catches, and in fact was probably causal to the ultimate capitulation of the fishery. The combined annual American and Canadian sturgeon harvest dropped to a low of 49,710 pounds in 1906, and average annual production for the period

1898 to 1909 did not exceed 179,720 pounds, down significantly from 869,734 pounds harvested annually by American and Canadian fishermen between 1888 and 1897.¹⁰³ In 1912, Commissioner Kelly Evans reported on the economic potential of the recreational and commercial fisheries of Ontario, and declared that the sturgeon fisheries of the Lake of the Woods, among other sturgeon fisheries in Ontario, had been depleted "almost to the vanishing point."¹⁰⁴

That the late 19th and early 20th century sturgeon fisheries of the Lake of the Woods and the Rainy River were mismanaged by government is to state the obvious. But why were they mismanaged? Why had the federal government not been more vigilant in protecting the sturgeon from overexploitation despite repeated warnings voiced by its own Indian Affairs department and by the Ojibwa people throughout the 1890s that this valuable resource would disappear if stringent management and enforcement actions were not imposed to control the rate of harvest? Why had Ojibwa fishing rights, as entrenched in Treaty Three, not been protected after licences were issued in 1892 and why was the commissioners' assurance that the Ojibwa would have the use of their fisheries in perpetuity not honoured? What was Ontario's role in managing its own fisheries? Why had the province not been more vigilant in protecting the sturgeon and other species from rampant commercial overexploitation? A sojourn to Ottawa and Toronto, the two seats of government, is necessary to address these critical questions and issues.

Federal and Provincial Fisheries Jurisdictions and the Administration of the Treaty Three Fisheries, 1873-1912

In 1873, the Canadian government assumed jurisdiction over the fisheries within Treaty Three under Section 91 of the British North America Act, 1867, which gave it exclusive legislative authority over sea coast and inland fisheries.¹⁰⁵ The federal government's unilateral control of the inland fisheries, exercised through The Fisheries Act, 1868,¹⁰⁶ was ultimately challenged in 1882, when the supreme court decision in the case of *The Queen v. Robertson*¹⁰⁷ ruled that the "ownership of the soils or beds of freshwater rivers did not pass to the Federal Government under the BNA Act."¹⁰⁸ The court ruled that, although Parliament had the power to regulate and protect the inland fisheries, it did not have the legislative competence through its department of fisheries to issue licences and leases to fish where the exclusive *right* to fishing was vested with the land owner (the riparian proprietor), which included, in the Robertson case, the province of New Brunswick (the right of fishing within this province was thus determined to be incidental and accessory to the ownership of the soil and the bed of rivers and streams). Secondly, the court ruled that the

federal government could not legislate on matters concerning the management (for example, licensing and enforcement) and disposition of provincial Crown property (in this case fish).¹⁰⁹

The Robertson decision encouraged Ontario and several other provinces to challenge Canada's control of their fisheries. Ontario's first post-Confederation Fisheries Act,¹¹⁰ passed in 1885, covered the inland lakes, river and stream fisheries and honoured the legislative powers of the federal fisheries statute as framed by the Robertson case. In fact, to minimize the chances of federal disallowance, the application of the Ontario act was carefully worded to include "all fisheries and rights of fishing in respect of which the Legislature of Ontario has authority to legislate."¹¹¹ However the provisions in subsequent fisheries acts promulgated by Ontario clearly infringed on federal powers. Rather than to disallow the acts, the federal government reciprocated in kind by continuing to issue commercial fishing licences in Ontario. Fishery overseers, meanwhile, were appointed by both governments to enforce their respective statutes, which contained both mutually exclusive and overlapping provisions, thus resulting in protracted conflicts and disagreements over which statute took precedence.¹¹² In 1893, for example, an Ontario overseer reported that, "I found myself in an embarrassed [*sic*] position last spring at Rondeau [Lake Erie] concerning Pike spearing, where a Dominion Overseer claimed full power and spoke very unbecomingly of the Ontario Laws."¹¹³ Confrontations of this sort reflected the legacy of Section 91 of the B.N.A. Act, which, in contrast to the Robertson case of 1882, failed to succinctly articulate provincial (in this case Ontario's) declared proprietary rights to the fisheries and the management mandates accruing from them.

The federal government through its department of marine and fisheries, continued to assert unilateral control of Ontario's fisheries during the 1890s by enacting fisheries legislation containing enforcement provisions, and by appointing overseers to enforce them. The federal government also continued to issue commercial fishing licences. Provincially appointed fishery overseers were overwhelmed by this execution of authority and many of them responded by remaining "almost inactive."¹¹⁴ (Provincial overseer John Emmons, assigned to oversee the fisheries in the Rainy River district, may have taken this action.) But federal control, in the absence of active provincial participation, did not serve the provincial fisheries well.¹¹⁵

Through the licensing process, the marine and fisheries department had overcapitalized many of Ontario's commercial fisheries without paradoxically providing the necessary enforcement measures to supervise the rate of harvest. On the Lake of the Woods, for example, only one federal overseer, Charles W. Chadwick, was appointed to "oversee" the fisheries shortly after they were reopened to commercial netting in 1892. Evidently, Chadwick discharged his duties more routinely from behind a desk in Rat Portage than out on the lake because the department had refused his repeated requests for a patrol vessel to inspect the widely dispersed fishing

grounds.¹¹⁶ This astonishingly short-sighted decision left him no recourse but to travel to the grounds on regularly scheduled freight and passenger steamers, but only intermittently and restrictively as their schedules and routes permitted.¹¹⁷ Only in 1896, three years after the reported annual commercial sturgeon catch had peaked and four years after the first commercial licences had been issued, did the department of marine and fisheries instruct Chadwick to "employ [a] tug [for] two months with the option to purchase if suitable."¹¹⁸ As it was, the decision to acquire one came after the damage to the sturgeon fisheries had occurred.

Ontario's Crown Lands department, responsible for managing the provincial fisheries, had not issued Chadwick's provincial counterpart, John Emmons, a patrol vessel either (nor was one commissioned by Ontario for the Rainy River until 1903).¹¹⁹ Clearly, the absence of much-needed patrol vessels, and the protracted disputes that may have occurred between Chadwick and Emmons over which statute -- federal or provincial -- ranked supreme, frustrated their efforts to protect the diverse fisheries of the Lake of the Woods and its tributary waters from commercial over-exploitation.

The protracted fisheries dispute between Canada and Ontario was referred by the Governor General in Council to the Supreme Court in 1894-95.¹²⁰ The court's ruling affirmed the federal government's right under the constitution to legislate for the protection of the inland fisheries, while the claimant provinces (Ontario, Quebec and Nova Scotia) retained all proprietary rights to the fisheries that they held at Confederation; thus, the provinces reserved the exclusive right to issue licences for their fisheries and enforce the existing fisheries statutes. The Supreme Court ruling was subsequently appealed by Canada and the three provinces to the Judicial Committee of the Privy Council and upheld in 1898.¹²¹

The privy council decision, fisheries officials thought, would provide the basis from which a more effective fisheries management program in Ontario would flow. Their optimistic views, however, were short-lived, as jurisdictional conflicts between Canada and Ontario continued to fester without resolve until about 1912.¹²² The decision focused not on the question of legislative authority and proprietary rights but rather on the execution and interpretation of the management mandates that the privy council had respectively adjudicated for them in 1898.¹²³ The perpetuation of the fisheries dispute between Canada and Ontario under altered terms of reference was nowhere more obvious than on the Rainy River, with a resultant catastrophic and final conclusion for the sturgeon fisheries of the Lake of the Woods.

In February 1902, the marine and fisheries department received the first of many complaints from licensed Lake of the Woods fishermen that Rainy River sturgeon were being poached with unbaited hooks for their caviar during the spawning season.¹²⁴ Ontario's deputy commissioner of fisheries, S.T. Bastedo, argued that this was a problem for the federal government to address, because "in the absence of a close season [for

sturgeon] there is nothing that we can do. ..."125 Ontario could not enforce close season legislation where such legislation did not exist. Bastedo's federal counterpart, F. Gourdeau, the Deputy Minister of Marine and Fisheries, did not share this view. Gourdeau refused to enact close season legislation for sturgeon because it would disadvantage Canadian fishing interests and because "the Ontario government would control the matter and prosecute [*sic*] for fishing without licenses."126

From the federal perspective, sturgeon poaching on the Rainy River was deemed illegal not because the resource was caught during the spawning season but because it was caught by fishermen who were not licensed. Thus, Gourdeau argued that riverine sturgeon poaching was a licensing and enforcement matter over which Ontario had complete jurisdiction. Bending to considerable provincial pressure, the federal government, as noted, did enact close season and limited gear legislation in 1903 to restrict access to the riverine sturgeon, while Ontario reciprocated in kind by placing a patrol vessel on the river.¹²⁷ Unfortunately, the damage had already occurred.

There is little doubt that the federal department of marine and fisheries actively promoted commercial fisheries development in northwestern Ontario. Its unequivocal support of commercial fishing interests, without regard for Ojibwa concerns and in the context of fractious and protracted jurisdictional uncertainty, led to the collapse of the sturgeon fisheries of the Lake of the Woods and the Rainy River. For the Ojibwa of Treaty Three, the outcome was clear. The fisheries department, in the course of promoting the development of the local commercial fisheries, neither recognized their Aboriginal and treaty rights to fish, nor honoured the treaty commissioners' pledge of assured long-term access to the resource (the exception was the three-year hiatus between 1889 and 1892, when the Canadian fisheries were reserved for the Ojibwa people). Such rights, astonishingly, were discounted not by oversight but as matter of departmental policy. The following pages examine this policy in historical perspective.

Federal Fisheries Administration and Native Fishing Rights in Canada

The Treaty Three fisheries provisions, including the "outside promise" that the Ojibwa would "forever have the use of their fisheries," had evidently been negotiated by the treaty commissioners without reference to the federal marine and fisheries department. This department was not fully receptive to Native peoples' Aboriginal and treaty rights to fish, as evidenced in 1875, for example, when its minister declared in a departmental circular that "Indians enjoy no special liberty as regards either the places, times or methods of fishing."¹²⁸ The seeds of this rather remarkable statement were sown in pre-Confederation times by the fisheries

branch of the Crown Lands Department of Upper Canada when,¹²⁹ following the conclusion of the Robinson Treaties in 1850, it was compelled to address Aboriginal and treaty fishing rights issues on Lake Huron and Georgian Bay.¹³⁰

On 30 January 1882, nine years after Treaty Three was signed, Acting Deputy Minister of Marine and Fisheries Archibald McLelan once again articulated his department's position on Indian fishing rights, this time to the Prime Minister, Sir John A. Macdonald. He stated that "Indians are entitled to use the public fisheries only on the same conditions as white men, subject to the *Fisheries Act*, and Fishery regulations."¹³¹ McLelan argued that the recognition and protection of Aboriginal and treaty fishing rights, including the creation of exclusive fishing closures to prevent commercial encroachment into traditional Indian fishing grounds, "would *provoke collisions* between white fishermen and Indians instead of preventing them" [emphasis in original].¹³² Moreover, while not addressed in McLelan's letter, the marine and fisheries department's refusal to recognize Aboriginal and treaty fishing rights meant that Indian people could not easily prosecute their fisheries during close seasons (or spawning seasons), as practised prior to treaties. Although the department often relaxed close season regulations for Native people, fisheries field staff frequently argued that harvesting fish during spawning was not in the interest of good fish management.

McLelan's arguments and the close season fish management rationale were to guide the actions of the fisheries department into the late 1890s on matters relating to Aboriginal and treaty fishing rights. On 20 December 1897, Clifford Sifton, the Minister of the Interior, wrote to Sir Louis Davies, the Minister of Marine and Fisheries, about resolving the issue once and for all. Sifton wrote that

there seems to have been considerable trouble for years as to the fishery right of the Indians in different parts of Canada. The question is constantly coming up, and it seems to me that there should be a clear understanding ... between your department and mine as to what these rights are and the course of procedure to be followed in the future.¹³³

Both departments agreed to look into the matter.¹³⁴ Indian Affairs prepared a lengthy report, written by Samuel Stewart, which outlined the rights of Indian people to fish in the various provinces and regions of Canada.¹³⁵ In his report, Stewart stated categorically that such rights "appear to have no weight with the Fisheries Department."¹³⁶ The fisheries department rejoinder, written by Commissioner of Fisheries Edward Prince, relied almost entirely on arguments enunciated in McLelan's 1882 letter to Macdonald.¹³⁷ From a policy perspective, Prince argued, nothing had changed in the intervening sixteen years, and added that "in view of the

consistent course adhered to by this Department ... it is not easy to discover what would be gained by any new inquiry at this late juncture."¹³⁸

The 19th century policies of the department of marine and fisheries regarding Aboriginal and treaty fishing rights had left a lasting impact on the Ojibwa of Treaty Three. With the collapse of the Rainy River sturgeon in 1912, the Ojibwa, through no action of their own, had lost their lake and riverine sturgeon fisheries. This tragic conclusion was predestined, inasmuch as the fisheries department's policies by design neither recognized their Aboriginal and treaty rights to fish nor honoured the treaty commissioners' assurance that they would "forever have the use of their fisheries"; moreover, the department, bending to the interests of the commercial fishing industry at Rat Portage, re-opened the Lake of the Woods to commercial netting, thereby failing to follow through on the political initiative to pressure the Americans to reserve their fisheries for exclusive Indian use.¹³⁹ Concerns regarding the commercial over-exploitation of sturgeon expressed by the Ojibwa and others were either dismissed or simply ignored.

Conclusions

The Ojibwa of Treaty Three considered the sturgeon to be a valuable sustaining resource for food and trade. Sturgeon production and exchange forged kinship and community ties, as well as commercial trade networks, and sustained large-scale festivities and ceremonies on the banks of the Rainy River at the Manitou and Long Sault Rapids. The significance of sturgeon to Ojibwa society and culture was well recognized by the commissioners appointed to conclude Treaty Three, and reserves were intentionally placed in close proximity to traditional Ojibwa fishing grounds, including the Rainy River. The Ojibwa sturgeon fisheries were self-sustaining. However, with the passage of time, the treaty commitments and "outside promises" made by the federal government to the Ojibwa people were of little consequence to the department of marine and fisheries as it actively promoted (but without properly managing) commercial fisheries development in the Treaty Three area. Today the Ojibwa of Treaty Three are left with the legacy of a sturgeon fishery destroyed by that unrestrained development.

The jurisdictional division of powers concerning Ontario's fisheries was instrumental in -- though not causal to -- the debasement of the Treaty Three Ojibwa sturgeon fisheries and other Native fisheries in the province,¹⁴⁰ inasmuch as fisheries elsewhere in Canada under the auspices of uncontested federal control had also collapsed at about the same time. For example, in Manitoba and British Columbia, the Native fishing economies suffered equal or greater devastation as a result of federally promoted but mismanaged commercial fisheries development.¹⁴¹ No amount of historical narration will rehabilitate these fisheries to their pristine state nor will it reverse the short- and long-term damages that have

accrued to Native communities as a result of actions perpetrated by Government and industry a century ago. However, the historical exercise should not be construed as futile. Writing about the past brings it most visibly into the present. As a process, it acts to precipitate social, political and legal change regarding, in this case, Aboriginal and treaty fishing rights, and serves as a basis for justifying and advancing sustainable Native fisheries co-management initiatives predicated on the recognition and expression of those rights.¹⁴²

Notes

- 1 An earlier version of this paper was read at the Seventeenth Annual Congress of the Canadian Anthropology Society in Calgary, Alberta, 2 May 1990, and the Sixty-Ninth Annual Meetings of the Canadian Historical Association, Victoria, British Columbia, 27 May 1990. It is based on a larger research study of the Treaty Three fisheries commissioned by the former Office of Indian Resource Policy, Ministry of Natural Resources, and completed under the auspices of the Research Unit of the Ontario Native Affairs Directorate. The map showing the locations of the major Native and Non-native fisheries of the Lake of the Woods and Rainy River is reproduced from a map prepared by the Ministry of Natural Resources, Surveys Mapping and Remote Sensing Branch.

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- 2 The Ojibwa resisted signing Treaty Three. See Alexander Morris, *Treaties of Canada with the Indians*, (Toronto: Belfords, Clark and Company, 1880) [Reprinted, Coles Publishing Company, Toronto, 1971], pp. 44-47, and also National Archives of Canada (hereafter cited as

- NAC), RG10 (Records of the Department of Indian Affairs), Vol. 1918, File 2790D. Dawson to Meredith, 28 January 1874.
- 3 NAC, RG10, Vol. 3800, File 48542. Vankoughnet to Tilton, 30 June 1888.
 - 4 The Lake of the Woods is Ontario's second largest interior lake. Located in northwestern Ontario, approximately 980 square miles of its total water area are contained within Ontario's provincial boundaries; the remaining 505 square miles of water project into Minnesota and Manitoba. The Lake of the Woods has a watershed that covers 27,000 square miles, an area comprising approximately half of the 55,000 square miles surrendered by the Ojibwa in 1873 under Treaty Three. See Val Macins, *The Fisheries of the Lake of the Woods*, (Sport Fisheries Branch, Ministry of Natural Resources, 1972), p. 10.
 - 5 Bennett McCardle defines "outside promises" as "solemn undertakings made by one side or the other which were not put into the written agreement." See Bennett McCardle, *Indian History and Claims: A Research Handbook - Volume 1*, (Ottawa: Treaties and Historical Research Centre, INAC, 1983), p. 71.
 - 6 The geographical range of the lake sturgeon (*Acipenser fulvescens*) in North America is extensive. It extends as far east as the St. Lawrence River estuary (west of the salt water termination) and as far north as the Seal River (which flows into Hudson Bay). Lake sturgeon have been reported in the North Saskatchewan River to the west and as far south as the Mississippi River and its tributaries south to Nebraska, Missouri and Alabama. The Great Lakes basin, the Hudson Bay drainage basin and the Lake Superior watershed west to Lake Winnipeg once contained some of North America's largest sturgeon fisheries. See J.J. Houston, "Status of the Lake Sturgeon, *Acipenser fulvescens*, in Canada," *Canadian Field Naturalist* 101, no. 2 (1987): 172.
 - 7 A lake sturgeon weighing 310 pounds, for example, was taken from Lake Superior in 1922. Smaller giants weighing 240 and 208 pounds were taken from the Lake of the Woods in 1916 and 1953 respectively. W.B. Scott and E.J. Crossman, *Freshwater Fishes of Canada*, Fisheries Research Board of Canada Bulletin 184 (1973), p. 83.
 - 8 Houston, p. 171.
 - 9 Houston, p. 177.
 - 10 Tim E. Holzkamm, Victor P. Lytwyn and Leo G. Waisberg, "The Rainy River Sturgeon: An Ojibway Resource in the Fur Trade Economy," *The Canadian Geographer* 32, no. 3 (1988): 196.

- 11 Barton W. Evermann and Homer B. Latimer, "The Fishes of the Lake of the Woods and Connecting Waters," *Proceedings of the United States National Museum* 39 (1910): 126.
- 12 Tom Mosindy, "The Lake Sturgeon (*Acipenser fulvescens*) Fishery of the Lake of the Woods, Ontario," Ontario Ministry of Natural Resources, 1987. Proceedings of a workshop on the lake sturgeon (*Acipenser fulvescens*). *Ontario Fisheries Technical Report Series Number 23*, 1987, p. 51.
- 13 The Lake of the Woods sturgeon spawned almost exclusively in the Rainy River, as noted by Evermann and Latimer, p. 126.
- 14 Accumulated wood fibre and chemical wastes on the river substrate from the pulp and paper mill at Fort Frances this century have since claimed these and other riverine spawning sites. See Mosindy, p. 51.
- 15 The importance of the riverine sturgeon for subsistence and commerce was recognized by traveller John Jessop in 1859. Approaching the Manitou Rapids, Jessop writes that "when we approached [the Indian settlement] the alarm was given by the beating of drums, upon which the shore was soon crowded with Indians. ... We gave them some tobacco, and purchased three or four sturgeon. The Indians of that region subsist chiefly on that species of fish; in fact it is as much the staff of life among them as bread is with us." see John Jessop, "North-West Correspondence," *The Globe* [Toronto], 15 July 1859, p. 2.
- 16 Holzkamm, Lytwyn and Waisberg, p. 194.
- 17 Holzkamm, Lytwyn and Waisberg, pp. 194-205.
- 18 Holzkamm, Lytwyn and Waisberg. See also Matti Kaups, "Ojibwa Fisheries on St. Louis River, Minnesota: 1800-1835," *Journal of Cultural Geography* 5, no. 1 (1984): 61-83.
- 19 Holzkamm, Lytwyn and Waisberg, p. 195.
- 20 Archaeological data suggest that these gatherings may have been even larger prior to European contact, when a much higher Aboriginal population appears to have existed. Victor Lytwyn, personal communication, 29 January 1990. See also David Arthurs, *Archaeological Investigations at the Long Sault Site* (Manitou Mounds), Conservation Archaeology Report, Northwestern Region, no. 7, (Ontario: Ministry of Citizenship and Culture, 1986). Holzkamm, Lytwyn and Waisberg (p. 198) state that the Ojibwa "came from as far away as Lake Winnipeg on the west, Lac Seul to the north, Leech Lake to the south, and Lake Superior to the east."
- 21 The importance of the Aboriginal fisheries cannot be underestimated given that the Treaty Three area could not readily sustain a widespread horticulture regime. In 1888, Ebenezer McColl, Inspector of Indian Agencies, wrote that the terrain was generally rocky and

marshy, thus compelling the Ojibwa "to resort to their fisheries and hunting grounds for means of supporting themselves and families. ..." By the same token, the Ojibwa were not solely reliant on fish and game for sustenance. As part of their seasonal round, they also cultivated a variety of different crops, including corn, squash, potatoes, onions, pumpkins and carrots, in gardens on islands and at lakeside locations where generally lighter, more workable soils and a longer frost-free growing season prevailed. See, respectively, Canada, *Sessional Papers* (hereafter cited as *CSP*), 1888, Vol. 13, No. 15, Annual Report of the Department of Indian Affairs, p. 164; and D.W. Moodie and Barry Kaye, "The Northern Limit of Indian Agriculture in North America," *The Geographical Review* 54 (1969): 513-29. For evidence supporting the importance and high productivity of Ojibwa gardens, see Leo G. Waisberg and Tim Holzkamm, "Ojibwa Agriculture in Northwestern Ontario 1805-1875: Their Gardens Mostly on Islands," presented at the 1990 meetings of the American Society for Ethnohistory, Toronto, 1-4 November 1990.

- 22 Holzkamm, Lytwyn and Waisberg, p. 199; see also T. Holzkamm and M. McCarthy, "Potential Fishery for Lake Sturgeon (*Acipenser fulvescens*) as Indicated by the Returns of the Hudson's Bay Company Lac La Pluie District," *Canadian Journal of Fisheries and Aquatic Sciences* 45, no. 5 (1988): 921-23.
- 23 NAC, RG2 (Records of the Privy Council Office), series 1, vol. 45-1. Federal Order-in-Council P.C. no. 872, 17 April 1871. The reasons for signing Treaty Three are examined by W.E. Daugherty, *Treaty Research Report: Treaty No. 3*, (Ottawa: Treaties and Historical Research Centre, DIAND, 1986).
- 24 NAC, RG2, Series 1, Vol. 45-1. Federal Order-in-Council P.C. No. 872, 17 April 1871. This order-in-council notes that the Ojibwa "retaining what they deserve in reserves at certain localities where they fish for sturgeon would, it is thought, be willing to surrender for certain annual payment their lands to the Crown."
- 25 *Treaty No. 3 Between Her Majesty the Queen and the Saulteaux Tribe of the Ojibbeway Indians at the Northwest Angle in the Lake of the Woods with Adhesions*, DIAND publication no. Q5-0571-000-EE-A1 [reprinted 1966, 1978] (hereafter cited as *Treaty No. 3*).
- 26 The proprietary interests to the lands ceded by Treaty Three that were claimed by Canada and Ontario were adjudicated in 1888, when the majority in the case of the *St. Catherine's Milling and Lumber Company v. The Queen* ruled that the entire beneficial interest in the land rested with and would accrue to Ontario. Jurisdiction over Indian people and Reserve lands, however, would continue to remain with

Canada. The boundary dispute was settled in 1889 by the *Imperial Canada (Ontario) Boundary Act*, which established Ontario's western boundary at its present location. Once Ontario secured underlying title to the ceded lands, it had authority to control and administer the lands that the federal government had set aside or intended to set aside as Indian reserves. Accordingly, the province insisted it concur in reserve locations and size, and an agreement was reached between Canada and the province in 1894 to settle the outstanding issue. Ontario finally confirmed the Treaty Three reserves in 1915, and transferred the reserves to the federal Crown as fiduciary to the Ojibwa people. See *St. Catherine's Milling and Lumber Company v. The Queen*, *The Law Reports* [Appeal Cases] 14 (1889), pp. 46-61; *The Ontario (Canada) Boundary Act*, Statutes of Great Britain, 52-53 Victoria, C. 28, 1889; NAC, RG10, vol. 3882, file 95721. *The Government of Canada and the Government of Ontario. Agreement re Indian Lands*, 16 April 1894, and subsequent legislation *An Act to confirm the title of the Government of Canada to certain lands and Indian Lands*, Statute of Ontario, 5 Geo. V. C. 12, 1915. For a more detailed discussion of the Ontario boundary question and Ontario's role in the confirmation of Treaty Three reserves, see, respectively, Morris Zaslow, "The Ontario Boundary Question," in Edith Firth (Ed.), *Profiles of a Province*, (Toronto: Ontario Historical Society, 1967), pp. 107-17, and David T. McNab, "The Administration of Treaty #3: The Location of the Boundaries of Treaty #3 Indian Reserves in Ontario, 1873-1915," in *As Long as the Sun Shines and Water Flows: A Reader in Canadian Native Studies*, edited by A.L. Getty and A.S. Lussier, Nakoda Institute Occasional Papers no. 1, (Vancouver: University of British Columbia Press, 1983), pp. 145-57.

- 27 In a letter to Deputy Superintendent General of Indian Affairs Lawrence Vankoughnet dated 4 July 1888, Simon J. Dawson, one of the Treaty Three commissioners, reflects the Ojibwa view that they had never surrendered their proprietary interests in the fisheries. He wrote that the Ojibwa, "while they look upon strangers as being perfectly free to use rod and line they regard the sturgeon as their *own particular property* [emphasis added]. ..." The Ojibwa re-affirmed their title to the fisheries in July 1890. They informed Ebenezer McColl, Inspector of Indian Agencies, that "when we gave up our lands to the Queen we *did not surrender our fish to her* [emphasis added], as the Great Spirit made them for our special use." See, respectively, NAC, RG10, Vol. 3800, File 48542. Dawson to Vankoughnet, 4 July 1888, and CSP, 1891, Vol. 15, No. 18, Annual Report of the Department of Indian Affairs, pp. 200-201.

- 28 In Treaty Six, for example, "there was universal agreement amongst the interviewees that animals, birds, and fish were not surrendered. Some explained that these things would not have been given up because they were needed in order to live." See John Leonard Taylor, "Two Views on the Meaning of Treaties Six and Seven," in *The Spirit of the Alberta Indian Treaties*, edited by Richard Price (Edmonton: Pica Press, 1987), p. 43.
- 29 *Treaty No. 3.*
- 30 *Treaty No. 3.*
- 31 NAC, RG10, Vol. 1922, File 2970. Dawson to Morris, 2 March 1874; see also NAC, RG10, Vol. 1918, File 2790D. Federal Order-in-Council no. 841, appointing R.J.N. Pither as Reserve Commissioner, 8 July 1874.
- 32 NAC, RG10, Vol. 2314, File 62509-4-2. "Department of the Interior, Ottawa, Nov. 18th, 1875. North West angle of the Lake of the Woods, October 1st, 1875."
- 33 NAC, RG10, Vol. 2314, File 62509-4-2. The riverine fisheries were subsequently destroyed but compensation, to my knowledge, has not been forthcoming.
- 34 Statistical confirmation that the Aboriginal sturgeon fisheries were self-sustaining is provided by Holzkamm and McCarthy, pp. 921-23. See also NAC, RG10, Vol. 3800, File 48542. Dawson to Vankoughnet, 4 July 1888. Dawson advised Vankoughnet that "it would be a lamentable thing for the Indians of that section [Lake of the Woods] if the sturgeon on which they mainly depend for subsistence were destroyed. ... I know from my own experience that they are careful not to alarm them or *kill more than due regard for maintaining the supply would warrant*" [emphasis added]. Sound resource stewardship was evidently practised by the Ojibwa on the Rainy River. There was seemingly an abundance of sturgeon in the river even as late as 1887, when Alex McQueen, Inspector of Fisheries for Manitoba, described sturgeon fishing on the river as "quite an industry among the Indians." CSP, 1887, Vol. 21, No. 6, Appendix No. 9, Annual Report of the Department of Fisheries, p. 309.
- 35 Simon Dawson, *House of Commons Debates*, 16 June 1887, pp. 1070-71. Later, in a letter to Hayter Reed dated 26 April 1895, Dawson acknowledged that when Treaty Three was signed, it "was never anticipated that there would be such a run on their [the Ojibwa] fisheries by the white man as since has occurred." See NAC, RG10, Vol. 3800, File 48542. Dawson to Reed, 26 April 1895.
- 36 NAC, RG10, Vol. 3800, File 48542. Draft letter from the Department of Indian Affairs, unsigned, to Foster, 27 December 1886.

- 37 Most fisheries records pre-dating 1894 were destroyed in a fire.
- 38 In his first two visits to the Lake of the Woods in July and November of 1886, Winnipeg-based Inspector of Fisheries, Alex McQueen, wrote that only Indians and settlers were prosecuting its fisheries for their own use. He added that only 35,000 pounds of fish that year were "shipped by a few small traders" through Rat Portage. Subsequent correspondence between McQueen and Deputy Minister of Fisheries John Tilton suggests that Canadians were neither commercially licensed nor involved in the fish trade of the Lake of the Woods until 1888. See *CSP*, 1887, Vol. 20, No. 15, Annual Report of the Department of Fisheries, p. 317; *NAC*, RG10, Vol. 3800, File 48542. McQueen to Tilton, 6 August 1888.
- 39 Many of the Canadian fishermen were financed and controlled by American fishing firms, with some of the firms located as far away as Sandusky, Ohio. American control of the Canadian fisheries was extensive in the mid-1890s, prompting the Department of Marine and Fisheries to recommend to the Governor General the appointment of a commissioner to investigate this issue. *NAC*, RG23 (Records of the Department of Fisheries), Vol. 223, File 1224-1. Haskins to the Minister of Marine and Fisheries, 26 January 1895. In the same file, see also, "Recommendation to His Excellency The Governor General in Council to appoint Charles Chadwick as Commissioner to enquire into alleged violations of the Regulations," 25 February 1895.
- 40 A federally issued experimental gillnet licence issued to D.F. Reid in 1888 was the sole exception. Inspector of Fisheries Alex McQueen, responsible for "inspecting" the fisheries of Manitoba and northwestern Ontario, recognized the management and financial implications of not licensing fishermen. The federal government had received many licence applications, but none seemingly had been issued. On 4 March 1885, McQueen wrote the Minister of Marine and Fisheries, A.W. McLelan, stating that "it appears to me most necessary that some policy should be decided on, in this matter, as soon as practicable, so that definite limits may be set apart and a revenue derived." In any case, only one federally issued commercial fishing licence for the Lake of the Woods was issued throughout the 1880s. Ontario had not granted any licences throughout that period. See, respectively, *CSP*, 1885, Vol. 18, No. 9, Annual Report of the Department of Fisheries, p. 299; *NAC*, RG10, Vol. 3800, File 48542. White to Vankoughnet, 16 June 1888; McQueen to Tilton, 6 August 1888.
- 41 The federal government appointed Alex McQueen inspector of fisheries in 1884. Based in Winnipeg, McQueen was responsible for "inspecting" the provincial fisheries of Manitoba and northwestern Ontario (within

Treaty Three) until locally based fishery overseers were appointed later in the decade. A provincial overseer at Rat Portage was apparently not appointed until 1888. See CSP, 1885, Vol. 18, No. 9, Annual Report of the Department of Fisheries, p. 297; and also "Work Stopped: The Dominion Fishery Inspector Summons the Fishing Firm of D.F. Reid," *The Rat Portage News*, 25 January 1889, p. 1.

- 42 Simon Dawson, *House of Commons Debates*, 30 June 1885, p. 2954. Dawson may have overstated his case, as it was unlikely that any of the stocks were threatened in 1885. In 1886, only 35,000 pounds of fish were shipped by traders through Rat Portage to market, hardly a significant quantity relative to the commercial catches of succeeding years. Dawson's concerns, however, may have been shaped by the destruction of the Native fisheries of Lake Huron and Georgian Bay a decade earlier. See CSP, 1887, Vol. 20, No. 15, Annual Report of the Department of Fisheries, p. 317.
- 43 Elizabeth Arthur, *Simon J. Dawson, C.E.* (Thunder Bay: Thunder Bay Historical Society, Inc., 1987), p. 19.
- 44 NAC, RG10, Vol. 3800, File 48542. Dawson to Vankoughnet, 8 May 1888. See also RG10, Vol. 3755, File 30979-1-1. Vankoughnet to McLelan, 28 August 1885.
- 45 "Work Stopped: The Dominion Fishery Inspector Summons the Fishing Firm of D.F. Reid," *The Rat Portage News*, 25 January 1889, p. 1. Reid had been issued a gillnet fishing licence in July 1888. See NAC, RG10, McQueen to Tilton, 6 August 1888.
- 46 NAC, RG10, Vol. 3755, File 30979-1-1. Vankoughnet to Pither, McCracken, and McIntyre, 13 November 1889.
- 47 NAC, RG10, Vol. 3755, File 30979-1-1. Vankoughnet to Pither, McCracken, and McIntyre, 13 November 1889.
- 48 Poundnets were introduced to the Lake of the Woods fisheries in 1887. *Report of the Joint Commission Relative to the Preservation of the Fisheries in Waters Contiguous to Canada and the United States* (Ottawa: S.E. Dawson, 1897), p. 130.
- 49 CSP, 1891, Vol. 15, No. 18, Annual Report of the Department of Indian Affairs, p. 201; see also Grace Lee Nute, *Rainy River Country* (St. Paul: Minnesota Historical Society, 1950), p. 68.
- 50 Much of the world's caviar throughout the 1890s was procured from Lake of the Woods sturgeon. It was shipped to Germany via Sandusky, Ohio, and New York for processing, and then reshipped back to the United States and sold as Russian caviar. See "Canada's Sturgeon," *Rat Portage Miner and Rainy Lake Journal*, 31 March 1899, p. 3; "Canadian Caviare," *The Globe* [Toronto], 17 May 1899, p. 4; "Boom in Sturgeon Roe," *Rat Portage Miner and Rainy Lake Journal*,

- 6 July 1899, p. 1; "New Ontario -- Its Resources and Future Development," *The Globe* [Toronto], 1 December 1900, p. 1. For a Manitoba comparison, See Frank Tough, "Depletion by the Market: Commercialization and Resource Management of the Lake Winnipeg Sturgeon Fisheries," Department of Native Studies, University of Saskatchewan, April 1989.
- 51 *Report of the Joint Commission Relative to the Preservation of the Fisheries in Waters Contiguous to Canada and the United States*, p. 132.
- 52 NAC, RG10, Vol. 3755, File 30979-4. Indian fishing locations cited by Robert Pither, 20 September 1892; NAC RG10, Vol. 3908, File 107297-1. Leveque to McLean, 31 January 1898; Archives of Ontario (hereafter cited as AO), Irving Papers, MU 1,469, Box 31, Package 37, Items 18-19. Margach to Irving, 14-15 January 1895; also Irving Papers, MU 1,470, Box 32, Package 37, Item 21(1). Margach to White, 9 May 1896; CSP, 1891, Vol. 15, No. 18, Annual Report of the Department of Indian Affairs, p. 201.
- 53 Evermann and Latimer, p. 127. The reported commercial landings are probably conservative estimates relative to actual catches.
- 54 *Report of the Joint Commission Relative to the Preservation of the Fisheries in Waters Contiguous to Canada and the United States*, p. 130. American fishermen employed twine that was 3.5 inches extension measure (from knot to knot) in the poundnet crib. By comparison, when the Canadian fisheries were opened to commercial netting in 1892, fishermen were prohibited from using twine that was less than 4.5 inches extension measure. The impact of restricted escapement and overharvesting is clearly enunciated by Tom Mosindy. He writes that a "reduction in numbers of mature sturgeon in the population is supported by a decline in the percentage contribution of caviar in the total reported catch; from about 7% during the initial buildup of the fishery (1888-1895) to less than one percent in the years after 1906." See Mosindy, p. 51.
- 55 NAC, RG10, Vol. 3800, File 48542. Vankoughnet to Tilton, 22 October 1889; also Vankoughnet to White, 23 October 1889.
- 56 CSP, 1891, Vol. 15, No. 18, Annual Report of the Department of Indian Affairs, p. 201.
- 57 River mouths were preferred fishing locations. In Manitoba, in October 1890, Samuel Wilmot informed Charles Tupper, Minister of Marine and Fisheries, that he, Alex McQueen and Ebenezer McColl were given the "following expression [by Indians through their interpreter] ... on the subject of depletion of whitefish on the Little Saskatchewan and in St. Martin's Lake ...: Can't catch enough whitefish for our families up

river any more; all caught in mouth of river and in bay by white men traders for freezers. In old time plenty fish go up river and into St. Martin's; could then catch plenty of fish for families all along banks of river with small scoop nets, easy, but now can't get fish that way any how -- fish too scarce. ... Indians want big fish traders kept away from mouth river and bay with big steamboat fishing; let trader fish in big water out on lake, where Indians can't go with small canoe." CSP, 1891, Vol. 8, No. 8, Appendix No. 3, Annual Report of the Department of Fisheries, *Special Report of Mr. S. Wilmot Relative to the Preservation of the Whitefish Fisheries of Lake Winnipeg*, p. 58. From both Indian and non-Indian perspectives, the fisheries of the Little Saskatchewan River and the Rainy River illustrate striking parallels.

- 58 Evermann and Latimer, p. 127.
- 59 NAC, RG10, Vol. 3800, File 48542. Pither to McColl, 22 December 1891; see also CSP, 1892, Vol. 10, No. 14, Annual Report for the Department of Indian Affairs, p. 49.
- 60 NAC, RG10, Vol. 3800, File 48542. Vankoughnet to Tilton, 23 June 1890.
- 61 NAC, RG10, Vol. 3800, File 48542. Memorandum from Tupper and Bowell to the Governor General in Council, 23 July 1890; see also Tilton to Vankoughnet, 30 July 1890.
- 62 CSP, 1891, Vol. 15, No. 18, Annual Report of the Department of Indian Affairs, pp. 200-201.
- 63 NAC, RG10, Vol. 3,800, File 48,542. McColl to Vankoughnet, 16 August 1890. See also "South of the Line: Reed [Reid] Fishery Establishment on American Soil," *Manitoba Daily Free Press*, 15 August 1890, p. 2, and "Indian Outbreak Quelled," *Manitoba Daily Free Press*, 20 August 1890, p. 8. Of the 900 to 1,000 Indians inhabiting the vicinity of the Lake of the Woods, approximately 500 travelled to Garden Island to discuss their fishery concerns. This large turnout reflected the importance of the fishery resource to the Ojibwa of Treaty Three. See "Indians are Quiet," *Manitoba Daily Free Press*, 23 August 1890, p. 6. The Reid fishing station seizure came at a time when the Indian fisheries throughout Manitoba and the Northwest Territories were also under siege. On November 18, 1890, Ebenezer McColl wrote that "at every reserve visited on Lake Winnipeg the Indians earnestly entreated me to use my influence for the protection of their fisheries. ... I never heard, during my annual inspection of the reserves for the last thirteen years, any complaint whatever from the Indians, agents, missionaries, traders and other parties about any scarcity of whitefish or sturgeon until these extensive [non-Indian]

- fisheries had been established on the lake." See CSP, 1891, Vol. 15, No. 18, Annual Report of the Department of Indian Affairs, p. 202.
- 64 Exclusive Indian fishing rights in the Canadian fisheries were established but reserving "the rights in common of fishing by hand with hook and line." Federal Order-in-Council no. 2002 cited the terms of reference drafted by Indian Affairs and Marine and Fisheries in their memorandum of 23 July 1890. See NAC, RG10, Vol. 3,800, File 48,542. Federal Order-in-Council P.C. no. 2002, 20 August 1890. Smith refers to this order-in-council in a letter to Vankoughnet on 7 December 1892. According to NAC records, Federal Order-in-Council no. 2002 has not been repealed. David Enns, archivist, National Archives of Canada, personal communication, 22 July 1988.
 - 65 Evermann and Latimer, pp. 125, 127.
 - 66 NAC, RG10, Vol. 3800, File 48542. Reid stated for "Rat Portage [Inhabitants] that gill net fishing be allowed in Lake of the Woods," 9 June 1891; see also Vankoughnet to McColl, 17 June 1891.
 - 67 NAC, RG10, Vol. 3800, File 48542. Vankoughnet to McColl, 23 July 1891.
 - 68 NAC, RG10, Vol. 3800, File 48542. Chadwick, Ross and Drewry to Tupper, 17 November 1891.
 - 69 NAC, RG10, Vol. 3800, File 48542. Tupper to Chadwick, Ross and Drewry, 27 November 1891.
 - 70 NAC, RG10, Vol. 3800, File 48542. Vankoughnet to the Acting Deputy Minister of Marine and Fisheries, 12 January 1892.
 - 71 "Our Fish," *Weekly Record* [Rat Portage], 26 March 1892, p. 1.
 - 72 NAC, RG10, Vol. 3800, File 48542. Newspaper clipping from *The Gazette* [Ottawa], 25 February 1892; see also "Our Fish," *Weekly Record* [Rat Portage], 26 March 1892, p. 1.
 - 73 NAC, RG10, Vol. 3800, File 48542. Dewdney to Vankoughnet, 29 February 1892.
 - 74 NAC, RG10, Vol. 3800, File 48542. Dewdney to Vankoughnet, 29 February 1892.
 - 75 NAC, RG10, Vol. 3800, File 48542. Smith to Dewdney, 12 March 1892.
 - 76 "Will Grant Fishing Licenses," *Weekly Record* [Rat Portage], 23 April 1892, p. 1. Smith, the Deputy Minister of Marine and Fisheries, acknowledged that his department had acquiesced to pressure exerted by the Rat Portage fishing industry lobby to open the Canadian fisheries to commercial netting. In his instructions to J.W. Colcleugh, the newly appointed fishery overseer (who was shortly thereafter succeeded by C.W. Chadwick), Smith noted that "for the purpose of accommodating the residents of the locality, as well as to supply the

requirements of the trade, the minister has decided that a limited amount of pound and gill net fishing be allowed in that portion of the above named lake [Lake of the Woods]." See AO, Irving Papers, MU 1469, Box 31, Package 37, item 16(1). Smith to Colcleugh, 17 May 1892; see also Irving Papers, MU 1470, Box 32, Package 37, Item 20. "List of Licenses Issued in Lake of the Woods, Ontario during 1892-93-94 and 1895," 18 May 1895.

77 Arthur, pp. 27-28.

78 The lamentable circumstances surrounding Vankoughnet's superannuation are described at length by Douglas Leighton, "A Victorian Civil Servant at Work: Lawrence Vankoughnet and the Canadian Indian Department, 1874-1893," in Getty and Lussier, pp. 104-119.

79 Among other reasons, commercial fishermen demanded additional licences because little of the U.S. production that flowed through Rat Portage was sold locally. See "Fish Shipments at Rat Portage," *The Globe* [Toronto], 28 January 1893, p. 7; "Fisheries Regulations," *The Globe* [Toronto], 1 April 1893, p. 12; "Tiresome," *Weekly Record* [Rat Portage], 10 February 1893, p. 1; "Incredible: Lake Superior Fish Sold in Rat Portage," *Weekly Record* [Rat Portage], 3 February 1893, p. 1.

80 NAC, RG10, Vol. 3800, File 48542. Vankoughnet to Deputy Minister of Marine and Fisheries [William Smith], 2 December 1892 and 24 January 1893.

81 NAC, RG10, Vol. 3880, File 92840. Letter to the Superintendent of Indian Affairs from Eleven Chiefs from the Rat Portage Indian Agency, 18 July 1892.

82 AO, Irving Papers, MU 1470, Box 32, Package 37, Item 20. "List of Licenses Issued in Lake of the Woods, Ontario, during 1892-93-94 and 1895," 18 May 1895.

83 *Report of the Joint Commission Relative to the Preservation of the Fisheries in Waters Contiguous to Canada and the United States*, p. 129-30.

84 Even the local press had expressed considerable unease about the federal government's decision to increase its allocation of commercial fishing licences. See "The Fishing Business," *The News* [Rat Portage], 13 September 1895, p. 3.

85 Evermann and Latimer, p. 124.

86 NAC, RG10, Vol. 3800, File 48542. McQueen to Tilton, 6 August 1888.

87 Evermann and Latimer, p. 124.

88 NAC, RG10, Vol. 3,800, File 48,542. Hardie to Reed, 22 November 1894.

- 89 Correspondence Relative to the Appointment of Joint Commission, Foster to Herbert, 4 October 1892. In *Report of the Joint Commission Relative to the Preservation of the Fisheries in Waters Contiguous to Canada and the United States*.
- 90 NAC, RG10, Vol. 3800, File 48542. Hardie to Reed, 22 November 1894.
- 91 NAC, RG10, Vol. 3800, File 48542. Chief Powasing, Rat Portage, to the Deputy Superintendent General of Indian Affairs [Hayter Reed], March 1895. Robert Pither supported Powasing's petition. In a letter to Ebenezer McColl, dated 3 May 1895, Pither remarked that if non-Native fishermen "continue to fish another season with the same number of nets, the Lake will soon be depleted of whitefish and sturgeon." See NAC, RG10, Vol. 3800, File 48542. Pither to McColl, 3 May 1895.
- 92 Evermann and Latimer, p. 127.
- 93 Evermann and Latimer, p. 124.
- 94 NAC, RG10, Vol. 3908, File 107297-1. Leveque to The Secretary [J.D. McLean], 31 January 1998.
- 95 See, for example, "License of Nets," *Weekly Record* [Rat Portage], 19 February 1896, p. 1.
- 96 Evermann and Latimer, p. 125; see also "Lake of the Woods Fishing," *The Rat Portage Miner and Rainy Lake Journal*, 11 February 1898, p. 8.
- 97 Caviar advertisement, *The Rat Portage Evening News*, 10 May 1895, p. 8, and 20 September 1895, p. 4. A keg held 160 pounds of caviar. See Hazel Wahlberg, *The North Land: A History of Roseau County* (Roseau, Minnesota: Roseau County Historical Society, 1975), p. 182.
- 98 The riverine sturgeon were harvested primarily for their roe. See NAC, RG23, Vol. 223, File 1224-1. Armstrong to the Hon. Minister of Marine and Fisheries [R. Prefontaine], 23 December 1902.
- 99 NAC, RG23, Vol. 223, File 1224-1. Armstrong to Nash, 6 February 1902; see also Bastedo to Gourdeau, 10 February 1902; Armstrong to Prince, 28 April [1902]; Armstrong to Gourdeau, 29 April 1902; Armstrong to the Minister of Marine and Fisheries [R. Prefontaine], 23 December 1902.
- 100 Ontario, *Sessional Papers* (hereafter cited as OSP), 1901, Vol. 33, Pt. 9, No. 68, Second Annual Report of the Department of Fisheries of the Province of Ontario, p. 24; NAC, RG23, Vol. 223, File 1224-1. Boucher to Armstrong, 11 June 1903; Fullerton to Gourdeau, 23 June 1903; Bastedo to Gourdeau, 23 June 1903.
- 101 NAC, RG2 [Series 1], Vol. 853, Federal Order-in-Council P.C. no. 594, 27 April 1903. Special Fishery Regulations for the Province of Ontario.

- 102 NAC, RG23, Vol. 223, File 1224-1. Gourdeau to Bastedo, 3 June 1903; the same correspondence was sent by Gourdeau to Fullerton on 3 June 1903; see also Fullerton to Gourdeau, 23 June 1903; Gourdeau to Fullerton, 27 June 1903; Fullerton to Gourdeau, 30 June 1903.
- 103 Evermann and Latimer, pp. 127-128.
- 104 *Final Report of the Ontario Game and Fisheries Commission, 1909-1911. Appointed to enquire into and report on all matters appertaining to The Game Fish, The Fisheries, and the Game of the Province of Ontario*, (Toronto: L.K. Cameron, 1912), p. 76.
- 105 *The Public General Statutes*, Vol. II, 30 and 31 Victoria, C. 3, 1867 (United Kingdom).
- 106 *Statutes of Canada*, 31 Vic. C. 60, 1868.
- 107 *The Queen v. Robertson*, *Supreme Court Reports* 6, (1882), pp. 52-143; see also "The Question of Riparian Rights," *The Globe* [Toronto], 2 May 1882, p. 4.
- 108 Richard W. Parisien, *The Fisheries Act: Origins of Federal Delegation of Administrative Jurisdiction to the Provinces*, (Ottawa: Environment Canada, Policy, Planning and Research Service, 1972), p. 2.
- 109 *The Queen v. Robertson*, p. 124.
- 110 *Statutes of Ontario*, 48 Vic. C. 9, 1885.
- 111 I am grateful to Alan McCullough of the National Historic Parks and Sites Directorate for providing me with this insight.
- 112 For a more detailed examination of the jurisdictional dispute between Canada and Ontario, see A.B. McCullough, *The Commercial Fishery of the Canadian Great Lakes*, Studies in Archaeology, Architecture and History (Ottawa: Supply and Services, 1989), pp. 93-100.
- 113 OSP, 1894, Vol. 26, Pt. 4, No. 17, Report of the Ontario Game and Fish Commissioners, p. 17.
- 114 OSP, 1893, Vol. 25, Pt. 9, No. 76, Report of the Ontario Game and Fish Commissioners, pp. 5, 13.
- 115 see, for example, OSP, 1894, Vol. 26, Pt. 4, No. 17, Report of the Ontario Game and Fish Commissioners, p. 6.
- 116 NAC, RG23, Vol. 223, File 1224-1. Chadwick to Smith, 30 April 1894; Dominion Commissioner of Fisheries [Prince] to Chadwick, 26 March 1896; Chadwick to the Deputy Minister of Marine and Fisheries, 21 April 1896. Rather than to recruit additional overseers to supervise the rapidly expanding commercial fisheries, the Department of Marine and Fisheries maintained its existing complement of fishery overseers by reducing their workload. The department informed Chadwick, for example, that he could proceed to investigate reported fishing violations only after first verifying their reliability. Any investigation of alleged fishing violations which could not first be verified required prior

departmental approval. Overseers were thus faced with an interesting dilemma because the reliability of reported violations could only be determined by checking them out at the source. The cost-saving measures employed by the Department of Marine and Fisheries to police the fisheries in the Treaty Three area in all likelihood originated with William Smith, the Deputy Minister of Marine and Fisheries. Smith's cost-controlling program for the Department is examined by Gwynneth C.D. Jones in "William Smith," *Dictionary of Canadian Biography* 12, 1891-1900, (Toronto: University of Toronto Press, 1987), pp. 978-81. I am indebted to her for drawing my attention to William Smith's administrative character traits and their impact on fisheries policies.

- 117 NAC, RG23, Vol. 223, File 1224-1. Kennedy to Gourdeau, 12 March 1897. Of note is that each of Chadwick's fisheries inspection tours kept him occupied for as long as ten to twelve days at a stretch.
- 118 NAC, RG23, Vol. 223, File 1224-1. Prince to Chadwick, 11 May 1896.
- 119 "To Preserve Fish," *The Globe* [Toronto], 22 March 1904, p. 10.
- 120 *In the Matter of Jurisdiction Over Provincial Fisheries, Supreme Court Reports* 26, (1897), pp. 444-578; see also "The Fisheries," *The Globe* [Toronto], 14 October 1896, p. 4; "The Fisheries Judgement," *The Globe* [Toronto], 15 October 1896, p. 6; "The Fisheries Case To Go To The Privy Council," *The Globe* [Toronto], 11 January 1897, p. 1.
- 121 *Attorney General for the Dominion of Canada v. Attorneys General for the Provinces of Ontario, Quebec, and Nova Scotia, The Law Reports* [Privy Council], May 26, (1898), pp. 700-717; see also *Attorney General for the Provinces of Ontario, Quebec and Nova Scotia, Canadian Reports* [Appeal Cases] 12, (1897-1902), pp. 48-72.
- 122 McCullough, p. 96.
- 123 McCullough, p. 96.
- 124 NAC, RG23, Vol. 223, File 1224-1. Armstrong to Nash, 6 February 1902.
- 125 NAC, RG23, Vol. 223, File 1224-1. Bastedo to Gourdeau, 10 February 1902.
- 126 NAC, RG23, Vol. 223, File 1224-1. Gourdeau to Bastedo, 25 February 1902; Gourdeau to Armstrong, 28 April 1902 and 29 April 1902.
- 127 "To Preserve Fish," *The Globe* [Toronto], 22 March 1904, p. 10. Ironically, the federal legislation was rescinded in 1907, at Ontario's request. See NAC, RG23, Vol. 342, File 2965-1. Federal Order-in-Council P.C. no. 1231 rescinding Federal Order-in-Council P.C. no. 594, 28 May 1907.

- 128 NAC, RG10, Vol. 1972, File 5530. Circular, Dominion of Canada, Department of Marine and Fisheries, signed by W.F. Whitcher for the Minister of Marine and Fisheries, 17 December 1875.
- 129 See, for example, NAC, RG10, Vol. 323, Crown Lands Department File on the "Opinion of Solicitor General on Claims [by] Indians [for] Exclusive fishing rights."
- 130 For a comprehensive and well reasoned historical account of Aboriginal and treaty fishing rights in Ontario, see Lise C. Hansen, "The Indian Fishery in Ontario: A Primer," presented at the Seventeenth Annual Congress of the Canadian Anthropology Society, Calgary, Alberta, 2-4 May 1990.
- 131 NAC, RG10, Vol. 2874, File 176410. McLelan to Macdonald, 30 January 1882.
- 132 NAC, RG10, Vol. 2874, File 176410. McLelan to Macdonald, 30 January 1882.
- 133 NAC, RG10, Vol 3909, File 107297-3. Sifton to Davies, 20 December 1897.
- 134 NAC, RG10, Vol 3909, File 107297-3. Sifton to Davies, 20 December 1897. See also Davies to Sifton, 22 December 1897.
- 135 NAC, RG10, Vol. 3908, File 107297-1. Stewart's report titled "Fishing Privileges Claimed by Indians," undated document, probably written in December 1897.
- 136 NAC, RG10, Vol. 3908, File 107297-1. Stewart's report titled "Fishing Privileges Claimed by Indians," undated document, probably written in December 1897.
- 137 NAC, RG10, Vol. 3909, File 107297-3. Prince's, "Memorandum for the Minister. Re: Fishery Privileges of Indians," 5 April 1898.
- 138 NAC, RG10, Vol. 3909, File 107297-3. Prince's, "Memorandum for the Minister. Re: Fishery Privileges of Indians," 5 April 1898.
- 139 Admittedly, this action would have been difficult to execute effectively in light of the increased commercial value of sturgeon and sturgeon products, though not impossible. Alan McCullough of the National Historic Parks and Sites Directorate has suggested, for example, that the federal government could have increased its bargaining position by refusing the entry of American produced fish into Canada for handling and rail shipment. Recall that Minnesota fishermen did not have the necessary transportation links to ship their fish to market. I am indebted to Alan for this insight.
- 140 See Victor Lytwyn, "Ojibwa and Ottawa Fisheries around Manitoulin Island: Historical and Geographical Perspectives on Aboriginal and Treaty Fishing Rights," this volume.

- 141 See Patricia Berringer, "Aboriginal Fishery Systems in British Columbia: The Impact of Government Regulations, 1884-1912," presented at the Sixteenth Annual Congress of the Canadian Ethnology Society, Ottawa, 20-23 May 1989; and Frank Tough, "The Establishment of a Commercial Fishing Industry and the Demise of Native Fisheries in Northern Manitoba," *The Canadian Journal of Native Studies* 4, no. 2 (1984): 303-19. For a comparative U.S. example, see Daniel L. Boxberger, "In and Out of the Labour Force: The Lummi Indians and the Development of the Commercial Salmon Fishery of North Puget Sound, 1880-1900," *Ethnohistory* 35, no. 2 (1988): 161-90.
- 142 The recent Supreme Court decision, *R. v. Sparrow*, for example, affirms the Aboriginal right to fish. The importance of fish as a sustaining resource for Native people was recently quantified by Fikret Berkes. He demonstrated that the subsistence fisheries provide, as a working mean, "Canadian Native harvesters with some 60 kg of fish, or a potential edible weight of some 42 kg per person per year. This is six times higher than the average Canadian fish consumption of 7 kg." From the *subsistence* and now *legal* perspective, it is incumbent on government to protect current Native fisheries from further debasement. See Fikret Berkes, "Native Subsistence Fisheries: A Synthesis of Harvest Studies in Canada," *Arctic* 43, no. 1 (1990): 35-42. For a well-written cross-cultural summation of sustainable development initiatives, both theoretical and practical, see his edited volume *Common Property Resources* (London: Belhaven Press, 1989).