Fisheries Conflicts
on the Saugeen/Bruce Peninsula:
Toward a Historical Ecology

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INTRODUCTION

In this paper I outline current fisheries resource conflicts on the Saugeen/Bruce Peninsula in Southern Ontario. The central tension in these conflicts arises between those who support and those who oppose aboriginal and treaty rights to fisheries resources.

The paper is a report in progress, based on Ph.D. research conducted since early 1995 which includes a survey of written sources as well as interviews with members of the peninsula’s two First Nations communities. My overall research goal is to provide anthropologically informed contexts that can contribute to a better understanding of the conflict issues and more equitable resource management policies. I follow the historical ecology approach (see Crumley 1994) as a framework for addressing the complex and wide ranging issues involved in this resource conflict.

I provide background information about the peninsula’s First Nations, their recent attempts to assert rights to the fisheries, and the conflicts they have met. I then offer a preliminary analysis of interconnected jurisdictional and ecological issues which I see as central to this conflict. I conclude with a discussion of issues surrounding fish stocking practices, as an example of how this resource conflict cuts across both ecological and social/political domains.

GENERAL DEFINITIONS

Aboriginal rights are defined in this paper as legal recognition stemming from pre-colonial occupation of territory. Treaty rights are gained through negotiated agreements. Native rights are more generally defined, sometimes including aboriginal and/or treaty rights, but more broadly based on a perceived fairness in native–non-native relations which is not necessarily reflected in Canadian law.
Regarding references to groups of people, I capitalize specific names as well as the term *First Nations*, which carries an assumed specific group reference with it. Broader categories such as *aboriginal, native, and white* remain uncapitalized. Terms such as *aboriginal* and *native* are used here in general reference to the people who were in North America before 15th-century European contacts were made, and those who have since claimed these pre-contact inhabitants as their ancestors.

My choice of terms is made in an attempt to be as diligent and consistent as possible, though I recognize the ambiguity and possible political problems of such categorical references. Some other Canadian scholars such as Peers (1996:43) have chosen a different set of rules for naming groups of native peoples, as have scholars from below the Canadian border, where *tribes, Indian, American Indian, and Native American* are common references (see Loewen 1995). In my understanding, there is still a good deal of variation among native peoples themselves regarding preferred terms of self-designation. However, there seems to be, at least in Canada, a general wish to be known first by affiliation to one’s own particular local group. I have taken this into account in choosing my group references.

**PEOPLE AND PLACES**

In terms of extra-local designation, members of the two First Nations on the Saugeen/Bruce Peninsula refer to themselves as both *Chippewa* and *Ojibway*, depending on the context. The community based at Saugeen reserve No. 29 is known as the Saugeen First Nation — or less formally as Saugeen. The reserve is located at the southwestern corner of the peninsula which runs approximately north–south between Lake Huron (to the west) and Georgian Bay (to the east).¹ There are about 600 members on the reserve and about 800 living elsewhere.

Nawash is about an hour’s drive away, on the Georgian Bay side of the peninsula. Until the 1850s there was a community called Newash at Owen Sound, about 30 miles to the south. Chief James Newash and his group brought the name with them when they were moved out of Owen Sound by the government a few years after the 1854 Oliphant Treaty (see Schmalz 1977:107–121). Nawash (as it is now spelled) is also referred to as Cape

¹ A smaller reserve area called Chief’s Point is located a few miles north of the Saugeen reserve. It also belongs to the Saugeen First Nation.
Croker, or less formally as Cape. A third name, Neyaashiingaming, translates from Ojibway as ‘a body of land mostly surrounded by water’ (Ernestine Proulx, personal communication, 1995). There are approximately 650 Nawash band members on-reserve and 1200 off-reserve.

Since their combined involvement with the recent (1992–93) fisheries trial, the two communities have shared the name Saugeen Ojibway First Nations.

The stretch of land known as the Bruce Peninsula is the northern extension of Bruce County, which was named in 1849 (when the land below the peninsula was first surveyed) in honour of James Bruce, Earl of Elgin and Kincardine, and Governor General of British North America (Robertson 1906:38–39). In 1836, under a treaty negotiated by the Lieutenant Governor, Sir Francis Bond Head, about one and a half million acres below the peninsula was surrendered, and the peninsula was reserved as territory of the Saugeen Indians. Until 1854, when most of the peninsula was also surrendered (see Surtees 1984:101–5), it was referred to as the Saugeen Peninsula. I call it the Saugeen/Bruce Peninsula in recognition of these historical sequences and in consideration of unresolved land claims currently pursued by the peninsula’s First Nations.

CURRENT FISHERIES JURISDICTION

Fred Jones, who is now in his eighties, is one of the most experienced fishers at Nawash. When I first contacted him about giving an interview, he quite bluntly refused my request. But a year later, after I became better acquainted within the community, he generously agreed to let me visit him and ask him some questions. When I began explaining that I was interested in what he might know about the history of fishing on the peninsula, he pointed to a news article lying on the TV tray in front of the couch where he sat. It was entitled “Fishing, Fairgrieve, and First Nations” (Sun Times, 30 September 1995). I was still stumbling through my question as Fred handed me the article and spoke his answer: “it all started when Howard Jones and the Nadjiwon boys were arrested for fishing without a license.”

On 26 April 1993, Judge Fairgrieve announced his ruling in the trial officially known as R. v. Jones [1993] O.J. No. 893 (Ont. Prov. Div.), and less formally as the Fairgrieve decision. He dismissed charges against Howard Jones and Francis Nadjiwon, members of the Chippewas of Nawash First Nation, who had been accused of “taking more lake trout than
permitted by [the] band’s commercial fishing license contrary to Ontario Fishery Regulations”. Judge Fairgrieve found that the quotas assigned to them by the Ontario Ministry of Natural Resources (MNR) “unjustifiably infringed on [the] defendants’ existing aboriginal and treaty rights.” Applying principles set out in 1990 by the Supreme Court in the Sparrow case, he recognized aboriginal and treaty rights as giving the Saugeen Ojibway First Nations “priority [access to the fisheries] over all other groups after conservation needs [are] met” (Ontario Reports 14[3d]:421).

Judge Fairgrieve’s ruling in this case is seen as a “highly significant precedent” (Notzke 1994:72). Though it is a lower court ruling, it may apply beyond the subsistence rights dealt with in the Sparrow case, since it recognizes “an aboriginal right of some sort to fish commercially” (Notzke 1994:72). This case is an important victory for the peninsula’s First Nations communities (Chief Ralph Akiwenzie, personal communication, 1996), but it left a great deal undefined, including the extent of commercial fishing rights, the exclusiveness of recognized fishing rights, and what exactly conservation means.

Judge Fairgrieve indicated that he expected the MNR and the First Nations to negotiate appropriate conservation measures. Several months after the trial, a “Statement of Political Intent” was presented to MNR representatives by the Saugeen Ojibway First Nations, but negotiations never got off the ground. An apparent dead end was also reached by the Chippewas of Nawash who began holding meetings with the MNR on their own.

Chief Richard Kahgee of the Saugeen First Nation asserts that his people’s jurisdictional rights to the fisheries were never relinquished, and therefore negotiation was unwarranted. He also sees negotiation as problematic because it could be regarded as consultation. The MNR’s obligation to consult with Native communities (as set out in Sparrow) might then be met, even if the communities opposed whatever regulations the MNR decided on.

On 23 September 1995, at an international conference in Duluth, Minnesota, Chief Kahgee announced the “Duluth Declaration”. Formally signed at a public ceremony at Saugeen on 2 October 1995, the document claims jurisdiction to the “waters in their entirety, which includes the fisheries, lands and minerals, above and below the waters, including the lake bed” around the peninsula, “to the median point in the water between
the Saugeen Nation territory... and all other national territory” (Saugeen First Nation 1995). The declaration also served notice that commercial and sports licenses would be issued by the band. Chief Kahgee stated that beginning in January 1997 these licenses would be enforced by Saugeen’s own conservation officers (Sun Times, 3 October 1995).

CURRENT FISHERIES CONFLICTS

While there is some support from outside the First Nations communities for assertions of aboriginal and treaty fishing rights, there are obvious signs of resentment. Fisheries conflict issues are debated in the local media and at local gatherings. The conflict attracted the attention of programmers from a regional television network, who covered it in a five-part series in late 1995. Around the same time a segment about the peninsula’s fisheries dispute was featured on the national CBC network program “The Fifth Estate” (see Sun Times, 29 November 1995).

The loudest objections to assertions of aboriginal and treaty rights come from sport fishing association members, who are particularly concerned during derby seasons. They see native commercial fishers who set gill nets near sport fishing areas as unfairly exploiting fish stocks that are maintained by sporting association hatchery and stream rehabilitation projects (Sun Times, 15 August 1995; Globe and Mail, 11 September 1995).

Non-native commercial fishers have an informal agreement with the MNR to leave Owen Sound Bay and Colpoys Bay as sport fishing areas; however, native commercial fishers do not participate in this agreement. They feel they have a right to fish there since the bays are within their traditional territory as defined in the Fairgrieve decision. Even though there has actually been little (if any) native commercial fishing within the bay at Owen Sound, the position that native fishers take on this issue is seen by sporting association representatives there as a threat to sport fishing, and, thereby, a threat to the local economy (Sun Times, 15 May 1996).

The hostility surrounding the fisheries has become more than a difference of opinion. Several Nawash community members have claimed

2 Judge Fairgrieve indicated that “traditional territory” extended seven miles out around the peninsula. However, it is debated whether this line completely encloses the bay at Owen Sound, which lies at the southeastern corner of the peninsula.
that their nets were damaged or stolen (*Sun Times*, 28 August 1995), and one Nawash member faced court charges relating to alleged attempts to ward off tamperers by booby-trapping his net lines with razor blades (*Sun Times*, 5 September 1995; *Wiarton Echo*, 13 September 1995).

In another set of incidents, a fishing boat owned by native fishers sank under suspicious circumstances while docked at Howdenvale, opposite the Fishing Islands in Lake Huron (*Sun Times*, 28 August 1995). Only days after it was raised, it caught fire (*Sun Times*, 5 September 1995). Police have not yet charged anyone, but they concluded that the fire was set deliberately (*Wiarton Echo*, 1 October 1995). Native community members and supporters suspect that local residents, who had been actively trying to prevent native fishers from using the docks, were involved in these acts of property damage. Sport fishery advocates are also suspected.

Several other occurrences depict the tensions surrounding the peninsula’s fisheries. In August 1995 a group of angry citizens, including sport fishing association members and an elected local government official, marched to the Owen Sound market where they confronted native fish vendors. There they protested against what they saw as the government’s lack of support for non-native interests (*Sun Times*, 8 August 1995). From native perspectives this demonstration was an attempted intimidation of native people.

Within a few weeks of the market demonstration, two native youths sustained knife wounds in a late night street fight in Owen Sound. According to native witnesses, police officers were in the area and could have stopped the fight (*Sun Times*, 5 September 1995). A police spokesperson suggested that because there were other fights on the same evening, they did not have sufficient manpower to break up this particular one, but natives suspect a link between police inaction and the fisheries conflict (*The Record*, 5 September 1995).

While these confrontations have primarily occurred on the Nawash side of the peninsula, hostility is also evident on the Saugeen side, where fishing association members have stated that violence could erupt if natives try to enforce their own fishing regulations as noted in the Duluth Declaration. Tensions increased as the January 1997 enforcement deadline approached, but direct confrontation was avoided, partly due to Chief Kahgee’s announcement that his community’s regulation of the fishery would take place gradually.
In early April 1997, Richard Kahgee resigned as chief of the Saugeen First Nation, due to conflicts within the band council (see *Sun Times*, 5 April 1997, 15 May 1997). The seven council members who continue to carry out band business, under protest from Richard Kahgee, five other council members, and a considerable portion of the community membership, may not support the Duluth Declaration (*Sun Times*, 7 April 1997).

**CONFLICT ISSUES**

The Saugeen/Bruce Peninsula fisheries conflict is characterized by debates over interrelated jurisdictional and ecological issues. Jurisdictional issues are explicitly political, involving both social or moral conventions, and their technical or legal definitions. Ecological issues are generally seen to be apolitical, but they too have both technical and social aspects, and are at least implicitly political.

*Jurisdictional issues*

There is great uncertainty on all sides as to how treaties, court rulings, and licensing regulations apply to the current peninsula fishery. Various historical points are argued as jurisdictional issues within the fisheries dispute — arguments about what and who agreements apply to.

Both native fishery representatives and sport fishery advocates are working to gain greater jurisdiction of the fisheries through legal and political recognition of their interests. While legal recognition is an end in itself, it is also an ongoing process. Some aboriginal fishers are concerned that the MNR could take the Fairgrieve ruling to a higher court. Aside from this possibility, important issues resulting from Judge Fairgrieve's decision require further resolution, as noted above. And as Pinkerton (1992:330) points out, legal recognition does not itself dictate resource management policy change "especially when legal rights run counter to prevailing power relationships."

Debates over jurisdictional issues, whether carried on within the aboriginal communities, among supporters of the sport fishery, or in confrontations between the two, are therefore best understood not just as attempts to clarify legal conventions that already exist. They are also part of a broader process of asserting and contesting public opinion by which conventions are re-created. "History" plays no small role in such processes (see Friedman 1992, Alonso 1988).
Ecological issues

In the Saugeen/Bruce Peninsula fisheries conflicts, ecological impacts are debated against a backdrop of conservation. But conservation can mean different things to people whose ecological visions are founded on different vested interests.

As set out in the Sparrow case, conservation has first priority in Canadian fisheries management. After conservation concerns are met, allocations can be granted first to native fishers, and then to non-native commercial or sport fishers. The Supreme Court’s recognition of conservation concerns ahead of native fishing rights makes the political dimensions of conservation quite apparent to aboriginal people.

Representatives of Ontario’s largest sport fishing association, the Ontario Federation of Anglers and Hunters, object to the priority that Sparrow sets out (Ankney 1991:44, 49; OFAH 1993). They argue that according to democratic principles all citizens should have equal rights to resources. Conservation is not possible, they claim, unless individual interests give way to the greater good and all citizens follow one set of resource management regulations. In local newsletters, sporting magazine articles, and policy discussion papers, they have argued that native peoples’ unwillingness to comply with this utilitarian ideal is a serious threat to the environment. They also give examples of aboriginal resource harvesting practices, often highlighting particular harvesting technologies, that do not comply with conservation as they define it. Much of the debate about ecological issues in the peninsula’s fisheries dispute stems from such accusations made against native people.

Though the stability of fish populations certainly warrants concern, in arguing projected outcomes of culturally specific technology uses, little attention is given to the actual extent of such practices. I had to be cautious during my research in pursuing politically contentious information, such as quantities of fish taken by native spear fishers. However, my impression is that spear fishing is a very informal activity among the peninsula’s aboriginal community members, and its impact on fish populations is currently minimal, especially when compared with native and non-native commercial activity, not to mention sport fishing.

The overlap of fishing methods among the peninsula’s native and non-native fishers is also frequently ignored in arguments about ecological impacts of culturally specific fishing technologies. Gill nets are currently
the primary fishing technology among native and non-native commercial fishers alike. And natives and non-natives both use a variety of smaller and larger fishing boats.

This lack of attention to actual uses of fishing technologies suggests that issues about culturally specific ecological impacts are essentially more important in political than in ecological terms. The images evoked in debating such issues are persuasive if one assumes that “conservation” has nothing to do with the contest for access to resources. Their vividness diminishes when that illusion is exposed.

CONCLUSION

The ecological concerns most frequently raised by aboriginal community members involve fish stocking practices which have been carried out jointly by the MNR and sporting associations over the last several decades. Exercising their control over hatchery and stocking programmes, which they support through volunteer labour and fund raising, sporting associations plant fish species that suit their own interests, even though they may have unforeseen and disturbing ecological effects.

Ecological dangers of introducing exotic species are noted in many recent biological studies (e.g. Billington and Hebert 1991). Introduction of exotic species can increase stresses on indigenous fish populations through predation, competition for food sources, genetic diversity loss, and disease transmission. In spite of these warnings, government resource managers continue to condone the stocking of various types of salmon from the Pacific coast and hatchery-reared trout hybrids.

Aboriginal resource rights supporters oppose current stocking programs on ecological grounds. Within the native communities there is also a more explicitly political criticism of the system of authority by which stocking choices that have an impact on the ecology are made. Community members whom I spoke with are especially critical of the close relationship between sporting association members and government resource managers, which they see as a blatant conflict of interest.

Political objections to fish stocking practices are also expressed among native community members in more subtle ways as well. Whenever I raised the issue of stocking programs in interviews, the intensity of the discussions seemed to increase. People became quite animated in their depictions of the glutinous steelhead or the giant salmon, swallowing up
indigenous ones — eating their weight every... every so often. The predators were given a good deal of descriptive detail in these accounts; though it is not hard to imagine who they are.

REFERENCES

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