Culture, History and Contention: Political Struggle and Claims-Making over Indigenous Fishing Rights in Australia, New Zealand and the United States

Dissertation

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Abstract

Drawing from archival and interview data, this study examines and compares the historical and contemporary processes through which Indigenous fishing rights have been negotiated in the United States, Australia and New Zealand, where three unique patterns have emerged and persist. Framing these battles as episodes of political contention in broader struggles for tribal self-determination and decolonization, the author takes a systematic, case comparative approach to expose the movement-level dynamics and the broader structural constraints that have resulted in varying levels of success for Indigenous communities who are struggling to maintain their traditional fishing practices, while also gaining economic stability through commercial fishing enterprises. By focusing on the interactions that occur between state actors and Indigenous resisters at the highly-contested, cultural and ideological frontiers of these nations’ socio-political landscapes, this study is able to expose the dynamic processes through which cultural meaning-systems both affect collective action and are capable of transforming formal systems of racial/ethnic domination. More broadly, this study reveals contemporary trends in the struggle over ethnic identity and culture in post-colonial societies. These trends reflect both changes in colonial structures as well as enduring dissimilarities in the worldviews and relative political influence of Indigenous peoples and members of dominant societies.
Dedicated to:

Chris Cantzler

Isla Faye Cantzler

Connie Olsen and Mick Miller

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CHAPTER 1
INTRODUCTION

Until fairly recently, prevailing views of Indigenous populations have been that they are “disappearing cultures,” who have been increasingly absorbed into mainstream political and cultural systems. Despite the dire prognostications of many scholars in the decades after European contact, as well as the efforts of colonial agents throughout history, Indigenous communities have not disappeared, nor have they been entirely assimilated into dominant cultures. Instead, tribal groups persist as culturally distinct communities with their own forms of governance and traditional norms and customs, even in the face of centuries of governmental pressure to conform to mainstream political, economic and cultural paradigms. This is particularly true in First World settler states, such as the United States, New Zealand, and Australia, where Indigenous groups persist as culturally, legally and politically distinct communities within these broader national contexts.

Regardless of their persistence, some continue to view relations between states and Indigenous peoples as one way streets, with the state largely dictating the outcomes of these interactions (See e.g. Fenelon 1998). While it is true that Indigenous political actors seeking change tend to be funneled into mainstream political channels and, by necessity, often choose to engage the state on the terms mandated by the norms of
dominant institutional systems, it does not automatically follow that they sacrifice their unique, culturally-based objectives or that they fail to exert some influence of their own on the broader political process. Contrary to being a “one way street,” Indigenous people’s interactions with agents of the state tend to be interactional processes, marked by an evolving progression of action and reaction by both parties (Cornell 1988). What’s more, the content of Indigenous activism is often shaped by the actors’ distinct worldviews (Neizen 2003; Wilmer and Alfred 1997). Over time, these worldviews have influenced the substance of the broader discourses and the parameters of the very institutions that Indigenous people confront.

It is my contention that the efforts of Indigenous people to secure political autonomy in the wake of centuries of colonization and cultural domination provide relevant cases in point for examining how culture and structure interact to influence episodes of contention and transform the broader political environment. In particular, struggles over natural resources, whether it be access to land or competition over fish and game, have long been at the center of contention between European settlers and Indigenous peoples (Fenelon 1998; Wilmer and Alfred 1997). Traditional subsistence hunting and fishing is particularly crucial to the cultural continuity and political self-determination of Indigenous communities -- a point made clear in historical and anthropological literatures (Freeman et al. 1998; Nesper 2002; Wilkinson 2000). Oftentimes, however, Indigenous people’s interests in traditionally harvested animal and fish species comes into direct conflict with the ever changing, but predominantly economic, interests of mainstream corporate and governmental actors.
Given disproportionate social and political power enjoyed by the dominant stakeholders, one would expect conflicts over prized natural resources to be a one-sided affair, with outcomes disproportionately favoring non-Indigenous parties and resulting in the systematic loss of Indigenous rights to traditionally significant species. While on a superficial level this appears to be the case, a deeper examination of these struggles reveals that Indigenous groups continue to exert meaningful influence over the process of resource allocation in post-colonial societies and, in many cases, they do so on terms that they define as culturally significant to their communities (See e.g. Freidman 1999; Nesper 2002; Maaka and Fleras 2005). This, however, begs the question of how, in the face of such lopsided political power structures, Indigenous groups are able to remain significant players in struggles over natural resources? Furthermore, do different colonial trajectories and contemporary political structures have bearing on the manner in which Indigenous power, agency and culture are manifested during the course of mobilization?

For many Indigenous groups in the United States, New Zealand and Australia, fishing and hunting aquatic species remains a principal activity for ensuring that the subsistence needs of tribal communities are met (Australian Department of Environment and Water Resources 2007; Boxberger 1989; Nursey-Bray 2001; Waitangi Tribunal 1988). For many Indigenous people, however, fishing is much more important than simply a means for supplying food. Indeed, the act of fishing is tied to traditional identities and practices that go back thousands of years and link Indigenous people to their territorial homelands through traditional knowledge and ceremonial practice. Fishing also provides a lifeline to the future by providing Indigenous communities with
economic opportunities to ensure that they are not left behind in a rapidly globalizing world (Durette 2007).

Given the importance of fishing to their cultures and economies, it is perhaps not surprising that struggles to protect Indigenous fishing rights from encroachment by non-Indigenous commercial and recreational users tend to develop into high-stakes ideological battles that implicate crucial aspects of Indigenous identities and cultures. What’s more, these struggles increasingly challenge the political and cultural foundations upon which Indigenous-state relations are structured. On a fundamental level, Indigenous people’s claims to culturally-based fishing rights are assertions of political sovereignty against colonial regimes that have long operated to dominate them. On another level, such claims are direct challenges to conflicting state political structures and mainstream cultural beliefs regarding notions of citizenship and ethnicity, which have also been codified into the laws and policies that have historically subordinated Indigenous peoples.

This study examines and compares the historical and contemporary processes through which aboriginal fishing rights have been negotiated in the United States, Australia and New Zealand, while paying particular attention to both the political structures that constrain and enable Indigenous claims-making and the cultural manifestations of Indigenous mobilization that emerge in different contexts. A primary assumption underlying the analyses is that different structural realities will spawn diverse manifestations of culture and culture conflict during episodes of political contention. The goal is to reveal how variations in political processes across nations provide greater or lesser opportunities for Indigenous activists to pursue their cultural, economic and
political objectives and, ultimately, influence political institutions and mainstream discourses in ways that reflect their aspirations. With this goal in mind, key questions about the interaction of Indigenous movements with broader political structures can be addressed. Namely, how do Indigenous movements adapt and innovate to structural realities? How do dominant cultures respond to these innovations? Do they make space for cultural differences or do they clamp down on those differences through increased pressures to assimilate? The answers to these questions are relevant to important theoretical discourses in the social movement, sociology of culture, and race and ethnicity literatures.

Taking an historical-comparative approach, and guided by a culturally-informed Political Process Model for understanding episodes of political contention, I analyze conflicts over Indigenous fishing as processes of interactions between state and Indigenous actors in order to capture their structural and cultural dynamics, as well as their cross-national variation. Generally speaking, the parameters of Indigenous peoples’ lives, from the shape of their governing structures, to where they live, and whether or not they have access to traditional natural and cultural resources, are primarily defined by the prerogatives of colonial governments, which have been institutionalized into bureaucratic systems that favor state interests. Not surprisingly then, assertions of cultural and political sovereignty by Indigenous groups over contested natural resources, such as fisheries, tend to come into direct conflict with state institutions. A systematic examination of these conflicts highlights the enduring cultural differences between Indigenous and non-Indigenous people and emphasizes the strain that exists between manifestations of
Indigenous self-determination and the state structures established to ensure the social and political control of Aboriginal people. By approaching these conflicts as a series of interactions, this study reveals crucial structural, cultural and agential dynamics that are inherent to episodes of political contention over Indigenous people’s rights to natural and cultural resources, and is able to shed light on broader trends in struggles over definitions of ethnic identity and culture in post-colonial societies. This approach also enables exploration of the dynamic processes through which cultural meaning-systems both affect action and materially impact existing power structures. Ultimately, this study will make theoretical impacts by contributing to broader contemporary research on social movements, culture, and race and ethnicity. It also attempts to remedy the general neglect of Indigenous people in theory-driven scholarship on stratification, politics and resistance within American Sociology.

In order to capture the structural dynamics that provide political opportunities for culturally-relevant Indigenous activism, I explore three aspects of the broader political environment that are especially pertinent to conflicts over Indigenous fishing rights. First, I examine the history of colonization in each of the three nations and highlight prevailing colonial philosophies that continue to define Indigenous rights. Second, I analyze current definitions of race and ethnicity that dominate mainstream discourses in Australia, New Zealand and the United States and investigate how Indigenous identities fit into these constructions. Finally, I examine key features of the political institutions through which Indigenous activists are able to make their claims. I specifically explore the nature of
Indigenous people’s access to these institutions as well as who controls the legal discourses within them.

Second, I analyze the existing resources available to Indigenous activists and the strategies employed by Indigenous groups to mobilize in spite of structural constraints in order to ensure that their cultural interests are protected and that their contemporary economic and political needs are met. The strategies employed speak to both the mobilizing structures and cultural framing devices that are implicated in Political Process explanations for collective action. Depending on the structural dynamics at play, I find that Indigenous groups undertake a variety of innovative strategies when making their claims. Oftentimes these strategies involve manipulating institutional systems to meet their particular cultural needs, or making their claims in a variety of institutional and extra-institutional settings, depending upon which settings are more favorable to the specific type of claim they are making – specifically, whether they are predominantly political, economic, or cultural in nature. I also find that Indigenous groups often present fluid definitions of their ethnic identities and cultural values and strategically manipulate these constructs in the course of mobilization to further legitimate their claims. By innovating within institutional structures and strategically wielding definitions of Indigenous ethnic identities and cultures, Indigenous fishing activists are able to assert agency over the colonial systems that were created to ensure their submission to hegemonic cultural, economic and political paradigms.

In the concluding chapter, I explore the impacts of these episodes of contention on the prevailing political structures and discourses in Australia, New Zealand and the
I am specifically interested in revealing the broader processes through which identity-based Indigenous movements are able to alter the political institutions that have been established to regulate Indigenous peoples’ lives and their traditional resources. I am also interested in understanding how these movements ultimately influence the transformation of mainstream discourses regarding the ethnic and racial composition of society. For example, in each of the three nations Indigenous groups are starting to be included in crucial fisheries allocation and management decisions and, in more and more cases, their unique standing as traditional owners of fisheries resources is being taken into account. Moreover, policymakers in two of the three nations are beginning to accept Indigenous people as “front line” managers of natural resources in ways that are consistent with the identity deployment tactics of Indigenous activists. There is also some evidence that mainstream discourses are changing to embrace Indigenous people as uniquely deserving of land and sea rights based on their traditional relationship to natural and cultural resources. That being said, such gains are not without their downsides. In some instances, the recent successes of Indigenous people in achieving greater recognition of their fishing rights have caused a backlash from conservationists, scientists, recreational and commercial fishermen, and members of the general public who continue to blame Indigenous people for resource depletion. These positive and negative trends appear to signal transformations in colonial structures and, at the same time, reflect enduring dissimilarities that exist between the worldviews of Indigenous peoples and members of mainstream cultures.
Why Indigenous Communities in Australia, New Zealand and the United States?

Although over five hundred years have passed since the beginning of European colonization of the New World, the political institutions established in the wake of settlement still reflect colonial dynamics of domination and subordination between governments and their Indigenous inhabitants. These institutions were forged by colonial agents as the last enterprise of conquest, after decades of struggle for territorial and political supremacy were finally determined in their favor. Through these enduring colonial structures, Indigenous people in post-colonial nations are forced to deal directly with the state in order to protect their interests (Cornell 1988; Maaka and Fleras 2005).

Indigenous communities in First World settler societies such as Australia, New Zealand and the United States, maintain a significant amount of cultural and political distinctiveness from mainstream societies. This distinctiveness has been secured through centuries of resistance to assimilation as well as the codification of Indigenous peoples’ disparate legal and political statuses within the laws and policies of the dominant society (Cornell 2006; Morris 2003; Wilkinson 2005). It is further reinforced by Indigenous peoples’ occupation of territorial “free spaces,” which are geographic areas that are physically removed from the broader population and which are sometimes considered separate political jurisdictions from the states and territories within which they are located (Fenelon 1998). These social differences are further reinforced by the distinct, legally-imposed racial, ethnic or political categories that have historically defined Indigenous people.
Australia, New Zealand and the United States are all British settler societies with similar colonial beginnings (Cornell 2006). What is somewhat surprising, however, is that these three nations have relatively dissimilar histories of contact between early British colonizers and the Indigenous inhabitants of the lands, and that they also have relatively divergent political systems for governing the ongoing affairs of their native populations (Allen 2002). In the United States, tribal status is formally established through a process of federal recognition (American Indian Resource Institute 1988; Deloria and Lytle 1983; Pommersheim 1995). In most cases, federal recognition is grounded in legally binding treaties, which were entered into between individual tribes as sovereign nations and the United States government during the colonial period (American Indian Resource Institute 1988). Today, American Indian tribes continue to be treated individually and are considered semi-sovereign nations with the authority to govern their own members and territories without interference from the states. While the federal government ultimately has plenary authority over Indian affairs, contemporary federal policy encourages tribal self-determination with limited intervention by the U.S. government.

In New Zealand, a single treaty known as the Treaty of Waitangi established the legal relationship between Maori people and the white settlers, who are commonly referred to as Pakeha (Durie 1998; Smith 2005). Prior to European contact, Maori tribes had distinct political identities, territorial domains and social customs and commonly engaged in inter-tribal warfare over land and resources. But, because the tribes shared a common language and an underlying cultural worldview, it was relatively easy for the
colonial government to treat them as a single people for the purpose of negotiating the Treaty, although ratification by individual tribal chiefs was still required (Allen 2002). The treaty process would be a model for future Maori-Pakeha relations, in which Maori people would continue to be treated in a relatively uniform fashion by the New Zealand government for general policy-making purposes.

In Australia, however, no treaties were ever signed between the Aboriginal inhabitants and the British invaders. Unlike the situation in the United States and New Zealand, the Australian colonizers did not consider Aboriginal tribes to be political entities whose consent was required for formal settlement. Instead, they applied the fictitious legal doctrine of “terra nullius,” meaning “the land belonging to nobody,” to the entire continent to justify unimpeded settlement without any regard to the Aboriginal people who had been living there for over 60,000 years (Horrigan 2003:1). For the next two centuries, Aboriginal Australians would be an invisible people, suffering unspeakable depredations at the hands of the colonizers with little legal protection. In a landmark ruling in 1992, however, the Australian High Court finally provided Aboriginal people with the legal foundations upon which to assert their political and cultural autonomy (Russell 2005). In the case of Mabo and Others v The State of Queensland, the High Court recognized the existence of continuing native title, which includes subsistence hunting and fishing rights, to lands where such title was not extinguished by law or by contradictory state action (Horrigan 2003). This ruling has revolutionized the political relationship between Aboriginal people and the Australian government by providing a legal framework for Aboriginal people to assert their political autonomy over
large tracts of land and culturally valuable natural resources. Because it is a relatively new development, much uncertainty remains about just how much the recognition of native title will help shift the balance of power toward Aboriginal groups in their struggles for political, economic and cultural self-determination.

**Why Fishing Rights?**

In virtually all settler societies, the history of colonization is marked by struggle between Indigenous communities and colonizers over access to natural resources, including subsistence resources such as fish and game (See e.g. Eversole, McNeish and Cimadamore 2005; McCaskill and Rutherford 2006; Simon 2006). Within one or two generations of settlement, colonial populations in Australia, New Zealand and the United States established commercial fishing industries that, over time, have become highly lucrative. Through the years, these industries have evolved to include recreational components as well. Not surprisingly, the operation of these industries directly conflicts with the interests of Indigenous populations who have long relied on access to the fisheries to satisfy their own subsistence, spiritual and economic needs.

Fishing is deeply rooted in the traditional identities of Indigenous people in each of the three nations under examination (See Ross and Pickering 2002; Waitangi Tribunal 1988). Indigenous people believe that fishing is integral to the cultural continuity and the political and economic self-determination of their tribal communities. While fishing provides for the subsistence needs of Indigenous people and presents opportunities for economic self-sufficiency, the act of fishing itself, and the bounty that it provides, is
fundamentally linked to the spiritual identities of Indigenous people (Waitangi Tribunal 1988; Wilkinson 2000). Creation stories commonly connect Indigenous peoples’ origins to the sea, and instruct them as to their ongoing obligations as stewards of sea country (See e.g. Cohen 1986; Coombs 1994; Smith 2005). The maintenance of cultural fishing practices is important to Indigenous people, because it ensures that traditional and sacred knowledge regarding sea country will be passed down to future generations. Given all of this, it is not surprising that Indigenous people view infringements upon their customary fishing practices as threats to their ability to preserve traditional knowledge and practices, and to protect the health and welfare of their communities.

In addition to maintaining significant economic and regulatory interests in recreational and commercial fishing industries, federal governments are increasingly answering to a growing constituency of environmental advocates who demand preservation of the fisheries in light of increasing evidence of resource depletion. A common theme among certain conservationists in Australia, New Zealand and the United States is that the Indigenous harvest of marine resources is, to a greater or lesser extent, responsible for declining fish stocks (Bowhay and Grayum Interview; Ross Interview). In light of these conflicting interests, struggles over fishing have developed into intense battles, the outcomes of which have the potential to alter the playing fields upon which the political relationships between Indigenous people and the state are structured. In light of the high stakes at play, it is perhaps not surprising that these conflicts have triggered the activation of ideological frames that are rooted in the cultural values and identities of those on both sides of the debate, and tend to involve strategies that highlight the race-
based power dynamics that come into play when groups with differential social and political power vie for resources. On the part of the State, such strategies commonly include the construction of racial identities that diminish Indigenous people’s standing in society, and as a result, further reduce their influence in direct conflicts with the State. The indirect result to Indigenous people is the loss of their ability to define their rights on terms that are culturally meaningful to them, unless they can successfully innovate both inside and outside institutional settings to ensure that their cultural needs are met. An examination of this innovation is a primary concern of this study.

The Chapters Ahead

In Chapter 2, I set the stage for the analyses that follow by introducing the three cases and demonstrating how a focus on Indigenous activism and, in particular, on the struggle over Indigenous fishing in Australia, New Zealand and the United States, is relevant for exploring the cultural dynamics of political contention. The historical discussion in Chapter 2 lays the foundation for the contemporary struggle by revealing its roots in the long history of conquest and resistance between European settlers and the Indigenous inhabitants of these three First World settler nations.

In Chapter 3, I present the theoretical framework that guides the analyses. Grounded in the Political Process Model (McAdam, Tilly and Tarrow 2001) for exploring the dynamics of political contention, but informed by more culturally-oriented approaches to social movement research, this study seeks to provide a more general understanding of the structural and cultural dynamics of contention by comparing the
struggle over Indigenous fishing rights in three national contexts with diverse colonial histories and institutional mechanisms for managing Indigenous affairs. In this study, I analyze the dynamic, relational and, ultimately, cultural mechanisms through which different aspects of the Political Process Model combine across the three cases. In doing so, I hope to shed light on the persistence of Indigenous political and cultural identities, the upsurge in Indigenous self-determination and political autonomy, and the transformation of colonial systems of racial domination that have resulted through these struggles. More broadly, by elevating the cultural dynamics of contention to a position of greater influence in the Political Process Model, this study provides a theoretical foundation for understanding how Indigenous movements that are engaged in dismantling the structural legacies of colonization are able to alter political structures and modify the mainstream discourses that have operated to dominate and oppress these groups for centuries.

Chapter 4 presents the methodology of the analyses. Specifically, this study takes a comparative-historical approach for examining the strategic aspects of Indigenous mobilization over traditional fishing rights and the constraining, yet ever-changing, facets of the broader political structure in each of the three national contexts. Such an approach reveals general patterns and causes of outcomes in a manner that is sensitive to distinct historical, political and cultural circumstances (Skocpol 1979). The case comparison is specifically guided by Tilly and Tarrow’s (2007) “Mechanism-Process” approach for examining streams of political contention. Data collection was accomplished during four and half months of fieldwork in New Zealand, Australia and the United States, where
extensive interviews were conducted and archival, historical and legal documents were probed. Coding and analysis of the data was facilitated through the use of the NVivo software system, which is designed to aid qualitative research.

Following the methods chapter, Chapters 5, 6, 7 and 8 present the study’s findings and are organized around the analytical components of the Political Process Model -- namely, political opportunities, mobilizing structures (including existing Indigenous resources and mobilizing strategies) and cultural framing processes. The final chapter is the Conclusion, where I highlight the broader themes that are revealed through the analyses and draw general conclusions about the interaction between history, politics, and culture and its impacts on episodes of political contention over vital natural and cultural resources in First World settler nations. I also discuss the theoretical implications of my findings for sociological literatures in politics and hegemony, culture, social movements and racial/ethnic conflict and explore some of the broader implications of my findings for scholars of environmental justice and decolonization. Finally, I draw attention to some important insights from my study for policy-makers and Indigenous activists who are currently struggling for control over vital natural and cultural resources.
CHAPTER 2

COLONIZATION, FISHING AND THREE CASES

In this chapter, I place the contemporary struggle over Indigenous fishing rights in the historical context of contact and conflict in Australia, New Zealand and the United States. In doing so, I emphasize the deep-seated cultural, spiritual and economic importance of fishing to the Indigenous populations in these three countries and trace how these long-standing interests ultimately clash with the more exclusively monetary concerns of the colonial governments. This background discussion sets the stage for the theoretical development and analyses that follow by providing a summary of the current state of Indigenous fishing in the three countries, including a brief discussion of the political context of the contemporary conflict and the shape that Indigenous mobilization has taken.

Australia

“Aboriginal people’s relationship with nature is essentially familial. The obligations to care for, bring up and protect members of their immediate and extended family include not only people from ‘far away’ with whom relationships have been established, but also subsequent generations, all living creatures and inanimate aspects of the group’s habitat. Thus, the obligations to nurture that are imposed on young men at their successive initiation ceremonies and on young women from birth, refer not merely to their human kin, but to the whole family of nature (Coombs 1994:8)”
Prior to contact with European settlers, Indigenous Australians enjoyed a
symbiotic relationship with their natural environment, or what they refer to as “country.”
Their land and sea countries provided them with the necessities of life and the
foundations for their traditional economies, including food, shelter, a homeland, as well
as a sense of place and belonging. Sea country was particularly important to the pre-
contact economies of Aboriginal communities that inhabited Australia’s coastal regions.
Core aspects of Indigenous peoples’ spiritual identities and cultural norms and values
also came from the sea. According to their beliefs, the spiritual ancestors of Indigenous
Australians travelled the earth, creating the natural world, prescribing sacred relationships
and obligations between creatures and inanimate objects and, ultimately, embodying
specific physical forms and landmarks that still populate the land and seascape (Coombs
1994). According to H.C. Coombs, “Important within this created pattern was the design
of a vast repertoire of knowledge and ceremony which it was the primary function of
Aboriginal people to perform in perpetuity (1994:8).” In accordance with the ceremonial
obligations and traditional laws laid out by their ancestors, Indigenous Australians serve
as caretakers for their country, ensuring that the welfare of the natural world is protected
(Roberts and Wallis N.d.). Meeting this sacred responsibility guarantees not only that the
material needs of future generations of Aboriginal people are met, but also that their
foundational cultural meaning systems and lifeways are preserved. Both of these ends are
essential for the survival of Aboriginal groups as culturally distinct and autonomous
communities despite the overwhelming forces that seek to overcome them.
The most significant threats to the survival of Aboriginal communities stem from contact with European settlers and the resulting colonial policies that have served to displace Aboriginal occupants from their traditional homelands and clear the way for the unfettered settlement and economic endeavors of the colonizers. Although first contact between Aboriginal people and Europeans came in 1606 when the Dutch made a brief exploration of mainland Australia, permanent settlement did not occur until after 1770, when Captain Cook and the crew of the *Endeavor* spent several months exploring Australia’s eastern coast (Lippmann 1994). Then, when Britain decided to make Botany Bay the site of its first Australian penal colony in 1788, European settlement began in earnest (Lippmann 1994).

It is estimated that approximately 750,000 Aboriginal people inhabited Australia at the time of British settlement (Lippmann 1994). Believing in the social Darwinian view that Aboriginal people were an inferior race, most settlers thought that the Indigenous inhabitants of the continent would simply die out as the superior white race stretched its influence deeper into Aboriginal territories. Many of the colonizers’ early philosophies and policies toward Aboriginal people reflected this view. One such philosophy that was crucial in providing the political justification for colonization was the legal doctrine *terra nullius* (Horrigan 2002). This literally translated to “unoccupied territory” (Lippmann 1994). By declaring the Australian continent “empty” at the time of contact, the doctrine of *terra nullius* justified unfettered British settlement and the forced removal of Aboriginal people from their homelands, while also legitimating decades of condoned violence by settlers and local lawmakers against the Indigenous inhabitants of
desired real estate (Nursey-Bray 2001). What’s more, the philosophy embodied in *terra nullius* also rationalized settlement without engaging in any formal treaty-making with Australia’s Indigenous peoples. This marked a significant departure from past and future British colonial practices in North America and New Zealand and would significantly weaken Aboriginal bargaining power from the period of settlement through the present day.

Early colonial histories tend to depict the centuries of conflict between settlers and Aboriginal people over land and natural resources as a relatively peaceful, one sided affair, with Aboriginal communities either succumbing to disease or quietly retreating in the face of the benevolent and inevitable tide of colonization (Lippmann 1994). Such treatments belie the bloody reality of the situation, in which Aboriginal people were explicitly hunted down and massacred by British and Australian settlers who saw it as their God-given right to clear the land of the inferior menace by whatever means necessary. The settlement of Tasmania provides a particularly contemptible example of such tactics. In 1830, thousands of Aboriginal Tasmanians were captured or killed during a government sanctioned “mass hunt” in which all eligible white males were required to participate. The extreme tactics that were used during these hunts, which often targeted women, children and the elderly, are unmentionable (See Lippmann 1994). In the few years that followed the first hunt, nearly the entire Indigenous population of Tasmania was removed or wiped out. Similar episodes of genocide were occurring throughout the country during this time, although the outcomes for Aboriginal people on Australia’s mainland were not quite as catastrophic as they had been in Tasmania. By the end of the
20th Century, the Aboriginal population had dwindled to approximately 265,000 nationwide (Lippman 1994:87). Today, only about 1.6% of the total Australian population is Indigenous, although this percentage is increasing.

Those who survived the atrocities of the early years of Australian settlement were often rounded up and forced onto reserves away from their homelands with other Aboriginal people from various regions and cultural groups (Lippmann 1994). The reserves were commonly run by Christian missionaries, whose objective it was to strip Indigenous people of their traditional identities and communal lifestyles, and instill in them Christian beliefs and the desire to live individually and take up farming or other Western economic pursuits. During this period it was common for Aboriginal children to be taken from their families as a matter of policy and forced to work as domestic laborers or ranch hands for the growing pastoral industry in the northern and central parts of the country (Lippmann 1994). Much like the cotton industry in the United States, the Australian ranching industry relied upon the unpaid, or severely underpaid, labor of Aboriginal people. The conditions on these ranches were deplorable, and resulted in a feudal relationship between Aboriginal groups and land owners with the former often receiving only basic provisions of food, clothing and blankets for their work. However, because Aboriginal groups living on and near cattle ranches were sometimes able to maintain their kinship practices, they were able to preserve their normative systems to a greater extent than people who were forced onto reserves and compelled to live according to the dictates of missionaries, or those who were dispersed into the towns and cities.
Officially condoned practices of child kidnapping continued in most of Australia until the 1960’s and in the Northern Territory until 1976, with few escaping its impact. A 1986 survey by the Victorian Aboriginal Health Service found that 47% of Indigenous Australians had been separated from both of their parents during their childhood (Lippmann 1994:95). The psychological consequences of being a part of the “Stolen Generation,” as they have come to be known, continues to plague those who suffered removal from their families and kinship groups, while the cultural ramifications of losing entire generations of children continues to take its toll on the health and well-being of Aboriginal communities. After 240 years of colonial suppression, Aboriginal Australians continue to suffer from the ill-effects of cultural disjuncture, including extreme poverty, lack of economic opportunities, alcoholism and other diseases, high mortality rates and low life expectancies. Indeed, the World Health Organization reported that, as of 1988, Indigenous Australian’s health was among the worst of any Indigenous group in the world (Lippmann 1994).

But, much as Australian history downplayed the violence that was directed toward Indigenous people during the first century of colonization, it also ignored the efforts of Aboriginal Australians to resist unwelcome incursions onto their lands and sustained attempts to destroy their cultures and assimilate them into the mainstream citizenry (Lippmann 1994: McConnochie, Hollinsworth and Pettman 1988). In the early years of contact, Aboriginal people resisted colonization through armed struggle. Later, when armed resistance became untenable, they engaged in willful non-compliance to the efforts of missionaries and government officials to enforce their conformity with Western ideals.
and lifestyles (Lippmann 1994). Indeed, Aboriginal people became particularly adept at projecting a façade of acceptance with official demands for the purpose of ensuring that their material needs were met while, at the same time, surreptitiously maintaining their kinship networks, traditional authority structures, and their ceremonial practices and sacred obligations to the natural world.

During the 20th Century, Aboriginal resistance became more organized and pan-Indigenous in scope (Lippmann 1994; McConnochie et al. 1988). In 1945, Aboriginal workers on a cattle station went on strike to protest substandard wages and working conditions (Lippmann 1994). Early Aboriginal collective action of this nature was closely linked to trade union activism, with unions providing a support network for Aboriginal activists throughout the latter part of the 1900’s. Aboriginal people were not granted full national citizenship until the mid-1960’s and, until that time, could not own property or vote in most of the states. During this period, Indigenous activism in Australia focused on the struggle for equal rights, with movements demanding political representation in governing bodies, and official Constitutional or Treaty-based recognition of Aboriginal rights (Lippmann 1994). In the late 1970’s and 1980’s, the tone of Aboriginal activism shifted again. This time the focus moved from demanding equality to insisting upon recognition of Aboriginal political autonomy and rights as a consequence of their historical status as the original owners of the Australian continent and their unique and continuing cultural heritage (McConnochie et al. 1988). The new tenor of Aboriginal activism was exemplified during a 1988 march where of tens of thousands of Aboriginal
Australians and their supporters protested the celebration of the nation’s bicentennial (Lippmann 1994:76). According to Lorna Lippmann:

For Aborigines, despite the day being one of mourning for illegal invasion and usurpation, for bitter and bloody wars, for genocide, forced assimilation and oppression, it was by some magic also a display of pride and resurgent culture. Thirty thousand people marched from all over Australia, white swinging in behind black, carrying the colours that have become so familiar: red for blood and the land, gold for the sun, the giver of life, and black for the people who have triumphed over adversity (1996:76).

These campaigns, like those that came before them, had decidedly mixed results. While material gains were often slow to occur, the protests of the 1970’s and ‘80’s signaled a turning point for Aboriginal resistance and ushered in a period of increased mainstream recognition of Aboriginal autonomy and cultural diversity (Lippmann 1994; Russell 2005). There was renewed acknowledgement by Aboriginal activists that true self-determination could only occur with the legal recognition of traditional land rights. With access to their ancestral country and its resources, Aboriginal people could once again engage in the traditional pursuits that not only put food on their tables, but also fed their spirits and solidified their communal bonds with the natural world, their ancestors and with each other. Aboriginal activists understood that by revitalizing their sacred obligations as stewards of their country they would also be able to rebuild their traditional authority regimes, fill in the gaps of traditional knowledge that had been lost during the Stolen Generation, provide for the subsistence needs of their people and cultivate new
generations of cultural and political leaders. Country lies at the hearts and souls of the Aboriginal people. Only by restoring their sacred connection to country could Aboriginal people hope to revive their struggling communities. Contrary to the claims of their opponents, recognition of Aboriginal land rights was not about returning to a way of life that was rooted in the nostalgic past. It was about ensuring that Aboriginal groups persisted as autonomous, diverse and thriving cultures into the future. These goals could not be realized by simply returning to a forgotten time but, instead, required acknowledging Aboriginal culture as fluid and evolving. This perspective accepted that Aboriginal revitalization required the cultivation of ancestral identities, as well as ownership of country and the cultural obligations inherent to it. But, it also recognized the necessity for economic development and formal cooperation with, and representation within, mainstream political institutions.

Embracing this approach to Aboriginal revitalization, Eddie Mabo, an Indigenous man from the Torres Strait Islands, challenged the State of Queensland’s authority over the Murray Islands, claiming that native ownership of the islands was never extinguished (Russell 2005). The case, Mabo and Others v The State of Queensland, would become the foundation for all future claims of land and sea rights by Aboriginal people in Australia. In their landmark ruling in Mabo, the Australian High Court “demonstrated Australia's allegiance to internationally accepted principles of nondiscrimination, even to the point of overthrowing discriminatory judge-made doctrines like terra nullius, which regarded Australia legally as 'land belonging to no-one' before the late 18th century and denied recognition of pre-existing Indigenous land rights (Horrigan 2003:1).” In the
decision, “the High Court held that the Indigenous inhabitants of Australia held customary native title in their traditional lands in unalienated Crown land in Australia so long as it has not been validly extinguished by legislative or executive action, provided that they have not surrendered their title or lost their connection with the land (Horrigan 2003, citing Mason 1996:3).”

The Mabo ruling, and the Native Title Acts of 1993 and 1996 that followed, institutionalized a system for adjudicating future claims of rights by Aboriginal groups to traditional land and sea territories. While it provided an unprecedented opportunity for Indigenous Australians to gain access to significant parts of their country that had been usurped during colonization, the native title system was far from perfect (See Horrigan 2002). For one thing, formal native title tribunals deal with the claims of each Indigenous group separately, which bogs down the system and delays resolution of the claims. What’s more, native title jurisprudence puts the burden on Indigenous claims-makers to prove an unbroken traditional connection to the territory in question, regardless of the colonial policies that resulted in the removal of Aboriginal people from their traditional homelands (Durrette 2007). Furthermore, the native title system gives nearly unilateral authority to non-Indigenous judges to determine not only the content, but also the authenticity, of “traditional” Aboriginal culture (Brennan 2007). By anointing the courts as the final arbiters of traditional culture, the system further reduces Indigenous people’s power to define their own cultural prerogatives. Not surprisingly, it also permits the whittling away of traditional territorial rights in favor of non-Indigenous commercial interests (Horrigan 2002). All of that being said, most would agree that the Mabo
decision, and the recognition of native title rights that followed, have provided Indigenous Australians with a powerful lever through which they are able to negotiate for the access to, and management of, culturally and economically important natural resources (Smyth Interview).

One area where Aboriginal people are increasingly asserting their native title rights is with regard to marine resources. Aboriginal Australians have a long-standing connection to their sea country and have traditionally relied on fish and marine mammals to support and sustain their communities (Smyth 2001). Indeed, there is ample anthropological evidence of coastal Aboriginal groups engaging in widespread fishing for both subsistence and trade (Durette 2007; Ross Interview). After European contact, Indigenous Australians continued to fish and hunt marine species. In the early colonial days, Aboriginal people were commonly forced into dangerous jobs in non-Indigenous commercial fishing businesses, primarily because of their extensive knowledge of sea country and skills in the water (Smyth 2001). This practice died out with the advent of cattle ranching, but Aboriginal fishing continued. Until 1967, Indigenous people were exempt from laws requiring fishing licenses. This was in accordance with colonial era policies requiring reserves to be self-funded by the Aboriginal inhabitants themselves. The upside of this practice was that Indigenous communities occupying coastal reserves often maintained their cultural connections to their sea country and their traditional practices of fishing and hunting marine mammals.

When non-Indigenous commercial and recreational fishing enterprises regained momentum in the late 1960’s, Aboriginal fishing was quickly targeted as a threat (Smyth
2001). During this time, Aboriginal fishing was brought under federal and state fishing regulation, and Aboriginal people were required to get licenses along with everyone else. The problem with this was that personal licenses were expensive and commercial licenses were virtually unattainable, given a moratorium that was issued on the issuance of new licenses. After *Mabo* and the recognition of native title rights to the land, Aboriginal activists turned to the courts for further recognition of territorial sea rights and access to marine resources. Once again, the outcome of these efforts has been mixed. While the courts have been willing to recognize some Aboriginal marine rights, they have fallen short in their full recognition of Native Title to the sea, relying on the European legal fiction of the sea as part of “the commons,” which cannot be owned or controlled by any group to the exclusion of another (Glaskin 2000; Smyth 2001). Where Aboriginal rights to marine resources have been recognized, they continue to be subordinated to “pre-existing” recreational and commercial fishing rights (Glaskin 2000). Thus, Native Title rights to the sea continue to be merely token rights with no power of exclusion or, as of yet, guarantee of access (But see the *Torres Strait Sea Claim*).

The growing conservation movement in Australia presents an additional obstacle to full recognition of Aboriginal marine rights. In the late 20th Century, Australians became increasingly concerned about dwindling fisheries resources and turned their attention toward the allocation of marine resources between commercial, recreational and Aboriginal stakeholders (Ross interview). While there are no credible measurements of the amount of fish that Aboriginal fishers take, most indications are that the harvest is quite small in comparison to the other users and the large illegal take from foreign
fishermen in the Australian fishing zone. That being said, Aboriginal people continue to be a primary target of conservationists, who demand further regulation of Indigenous fishing practices (See e.g. Australian Wildlife Protection Council; Ross Interview). While Aboriginal communities point to science and the law to validate their claims, they confront an inconsistent political system and a public that is, at best, ambivalent and, at worst, hostile to their plight. For these reasons, Aboriginal people face an uphill climb toward the full recognition of their traditional marine resource rights, including the acknowledgement of their rights to manage their resources in ways that are both culturally meaningful and necessary to ensure that the health of their sea country is maintained for future generations.

**New Zealand**

“... (The Maori) after having a little laught at our seine, which was a common kings seine, shewed us one of theirs which was 5 fathom deep and its length we could only guess, as it was not stretchd out, but it could not from its bulk be less than 4 or 500 fathom (700-900 metres). Fishing seems to be the chief business of this part of the country; about all of their towns are abundance of netts laid upon small heaps like hay cocks and thatched over almost every house you go into has nets in its making (sic).”


Unlike the Indigenous inhabitants of Australia who occupied the Australian continent for over 60,000 years, New Zealand’s Aboriginal people, the Maori, arrived in their current homeland relatively recently. Contemporary theories place Maori migration and settlement in New Zealand at around 1250 to 1300 AD (Smith 2005). But, like the Aboriginal people of coastal Australia, the Maori have strong ties to their marine
environments. Anthropological evidence suggests that fish and shellfish have always been a staple of the traditional Maori diet (Waitangi Tribunal 1988). Beyond merely relying upon the sea to meet their subsistence needs, Maori people have long looked to their sea country as the source of their ancestral identities and the systems of traditional laws and customs that they live by. Although they refer to themselves as tangata whanua (“people of the land”), at their core the Maori are sea people. The Polynesian ancestors of the contemporary Maori arrived in New Zealand or, as they refer to it, Aotearoa (“Land of the Long White Cloud”), on outrigger canoes by way of a series of deliberate ocean crossings of several thousand miles (Smith 2005). These early settlers shared kinship networks with Polynesian explorers who had populated other regions of the central Pacific Ocean, including Easter Island and Hawaii, during the past 2000 years. They were skilled navigators who relied on the stars, ocean currents, the migratory patterns of birds, and seasonal weather patterns to accomplish their long and treacherous voyages (Smith 2005).

The worldview of the Maori and their maritime relatives is shaped by the traditions, beliefs and kinship networks that comprise their “whakapapa,” which loosely translates into “genealogy” (Allen 2002). Whakapapa orders the Maori world by linking the people with their ancestors, and with elements of the natural world that are also considered to be part of their kinship networks (Smith 2005). As with the creation stories of Aboriginal Australians, Maori cosmologies link the people with the land, sea and the creatures of the natural world in familial bonds, all the while creating sacred obligations of ceremony and caretaking. Through exploration and settlement, Polynesian whakapapa
evolves and is transported to new territories, serving to connect the people back to their ancestral origins while, at the same time, solidifying the travelers’ sacred ties and territorial supremacy to their new homelands. As Philippa Mein Smith explains,

Polynesians carried their stories with them, peopling each island with their own genealogy to establish a cosmological and social order. Laid as a mental map across the land, whakapapa acted as a cultural marker, so that the land also became the people’s ancestor. The landing places of canoes helped to establish people’s authority in a region. Claiming the land began with naming, where the people planted ‘archetypal images from Polynesian mythology’ across the landscape and became tangata whanua in the process. The interaction of tradition and landmark reinforced their beliefs (2005:10).

For many Maori groups, the story of New Zealand’s origin is a key piece of mythology that continues to play a central role in tying Maori ethnic identities and culture to the sea. According to the origin story of the Ngati Porou tribal people, their Polynesian ancestor, Maui, fished the North Island of New Zealand out of the ocean, naming it Te Ika a Maui (Smith 2005). The East Coast tribes as well as the Ngai Tahu tribe on the South Island believe that their founding ancestor, Paikea, travelled to New Zealand on the back of a whale (Smith 2005). According to this story, Paikea survived after his canoe capsized in the Pacific “by invoking his heritage as the son of the sea, and over generations the metaphor of his summoning the sea to ‘lift him’ “as a great fish” to shore’ became a whale that bore him through the surf (Smith 2005: 11).” Along with stories like these that account for, and validate, Maori’s occupation of New Zealand, the traditional
knowledge and skills that guided the ancestral Maori people on their maritime journeys and enabled them to thrive upon their arrival in Aotearoa, has also been passed down to contemporary Maori people through oral tradition.

Prior to European settlement in New Zealand, coastal Maori tribes (or “iwi”) engaged in widespread fishing activities for the purposes of providing for the subsistence needs of the community, for meeting their customary and ceremonial needs, and for trade with other Maori groups (Waitangi Tribunal 1988). At that time, traditional fisheries were managed at the iwi (tribal), hapu (subtribal, or extended family) and whanua (family) levels. Traditional laws and regulations governed who had access to particular fishing grounds as well as the appropriate timing and methods for fishing particular species (Waitangi Tribunal 1988). Tribal fisheries experts also established means for ensuring the sustainability of fish species. These included the enforcement of territorial and seasonal closures of particular fishing grounds, and the imposition of penalties for breaches of traditional fishing regulations.

Captain Cook made two voyages to New Zealand in the 1760’s and 1770’s. However, a major European presence was not felt in the islands until the 1790’s with the semi-permanent construction of whaling posts, and formal settlement did not occur in New Zealand until 1840 (Smith 2005). While early contact between Maori and the Europeans was predominantly peaceful, Maori were more than willing to protect their territorial and material interests with aggression if these interests were threatened by the invaders. More than anything, however, economic interests defined the early relationship between Maori and the Europeans in the New Zealand. During the first fifty years of
contact, Maori actively engaged in widespread trading with the Europeans, having a virtual monopoly on the provision of supplies, including fish, to meet the subsistence needs of whalers and early settlers (Smith 2005). According to Smith, “Maori seized every opportunity presented by culture contact to improve their circumstances and break out of ecological constraints (2005:39).” Such opportunities generally involved utilizing European technology to improve their economic standing. With continued contact and access to such technology, Maori were eventually able to trade goods as far away as Australia, engage in shipbuilding, initiate their own whaling operations, and open their own banks (Smith 2005).

One piece of European technology that Maori were quick to acquire through trade, but which did far more to weaken their autonomy than enhance it, was the musket. As it happened, access to European weapons coincided with increased inter-tribal warfare between Maori tribes over land and resources. Prior to 1815, “Maori warfare had been seasonal and highly ritualistic, with relatively few deaths (Smith 2005:34).” The introduction of European weapons changed the scope and impact of Maori warfare, with devastating effects. During the “musket wars” of 1815 to 1840, thousands of Maori people were killed or displaced from their homelands. This resulted in a realignment of political and territorial power among Maori groups, the disruption of traditional authority structures, and the depopulation of large areas of the New Zealand countryside. These destructive outcomes corresponded in time with the influx of white immigrants around 1840 and paved the way for widespread colonization and a shifting balance of power in New Zealand from the Maori to the European colonizers.
Around 1840, Christian missionaries succeeded in convincing the British government that greater imperial intervention was required in the territory in order to ensure the protection and “civilization” of the Maori during the course of white settlement (Smith 2005). In order to speed the ultimate transfer of lands from Maori to Crown ownership, a formal treaty, known as the Treaty of Waitangi, was drafted and the push was made to acquire the signatures of the Maori leadership. A version of the Treaty of Waitangi was translated into Maori in order to secure the understanding and consent of these leaders. Eventually, over five hundred chiefs signed the Maori version. While the two versions of the Treaty are only a few paragraphs long, they differ in significant ways. These differences continue to be the source of controversy in the determination of contemporary Maori rights (See Waitangi Tribunal 1988). While it is clear that British sovereignty in New Zealand is derived from the Treaty, it is not clear whether the Maori agreed to cede their own authority over their lands and resources or whether they merely agreed to share authority with Britain, as equals. With regard to Maori fishing rights, however, the Treaty is not as ambiguous. Article 2 of the English version specifically states that the Maori are to retain “the full exclusive and undisturbed possession of their Lands and Estates Forests and Fisheries and other properties which they may individually or collectively possess so long as it is their wish and desire to retain the same (Treaty of Waitangi, Article 2, English Text).”

 Regardless of the parties’ intentions in signing the document in 1840, the events of the next several decades would relegate the entire Treaty to virtual meaninglessness. It would remain in this state for over a century. Within just a few years, a massive influx of
white settlers from Britain, Australia and the Americas put increasing demand on limited territorial resources. When the settlers continued to ignore Maori land ownership and the promises of the Treaty, violence erupted. Between 1860 and 1874, “land wars” between Maori and European settlers (known thereafter as “Pakeha”) raged on the North Island (Smith 2005). Each side understood that control of the land would also lead to political and economic dominance, and the power to dictate the shape of New Zealand’s future. Years later, the Waitangi Tribunal, which was established to determine the extent of Maori Treaty rights, recognized the significance of these wars:

> We have tended to call those wars the Land Wars for issues concerning land were predominant, but modern historians emphasise that they were really about power and control, the concern of the tribes to uphold their own tribal authority in respect to their particular lands, resources and interests, and the anxiety of the Governors to uphold the sovereignty of the Crown which was felt to be threatened by tribal controls (Waitangi Tribunal 1988).

The skilled Maori warriors were able to hold their own against the Pakeha forces for a number of years. But, they ultimately succumbed to the onslaught of imperial and colonial troops, which included reinforcements from Australia as well as Maori “friendlies (Smith 2005).” The years of bitter struggle took their toll on race relations in New Zealand, and the impact of these post-war tensions between Pakeha and Maori would continue to be felt until the present day. What’s more, the narrow Pakeha victory on the battlefields did not end the struggle over land, resources and power. It only altered the playing field. As a further attack on Maori sovereignty, the fledgling New Zealand
Parliament passed a number of statutes designed to destroy what remained of the Maori’s economic and political bases of power, which stemmed from their land and resource rights (Waitangi Tribunal 1988). The most devastating of these laws were the Native Land Act of 1862 and the New Zealand Settlements Act of 1863, which individualized Maori land ownership and legalized the confiscation of tribal land for white settlement, all the while ignoring the Crown’s Treaty obligations, which, by 1877, had been referred to by the New Zealand courts as “a simple nullity (Waitangi Tribunal 1988).”

The Waitangi Tribunal would later reflect on the impacts of early colonial laws on Maori fishing:

Being their primary economic activity, Maori fishing also came under political attack. Early colonial fish laws gave legal force to the dispossession of the Maori of their fisheries and introduced the basic assumptions on which subsequent fish laws were founded. In essence, the fisheries and foreshore were held to belong to everyone. Maori had at best, some vague and undefined right and at worst, no special rights at all except those that Parliament might provide (Waitangi Tribunal 1988).

Perhaps most damaging to Maori self-determination was the legal determination that Maori fishing endeavors were purely subsistence activities with no commercial component. Over the course of the next century, the history of Maori’s early dominance of the commercial fishing industry would be lost. This would be replaced by the perception in both public and political discourses that Maori had always been merely small time, individual fishermen (Waitangi Tribunal 1988). But, while Pakeha may have
forgotten Maori’s deep fishing legacy, the Maori people never did. For over a century, Maori continued to challenge oppressive fishing laws in the courts and in Parliament, demanding that their Treaty-guaranteed rights be upheld. Time and time again, these challenges fell largely on deaf ears.

While Maori were rapidly losing access to their traditional fishing grounds and being disenfranchised from their customary and commercial fishing rights, the Pakeha commercial fishing industry was slowing growing (Waitangi Tribunal 1988). Until the 1960’s, New Zealand’s commercial fishing industry focused on in-shore species and was small in scope. In 1963, in order to expand the industry, the New Zealand Parliament de-licensed commercial fishing and encouraged the cultivation of their export market. By the late 1970’s, the environmental consequences of deregulating the inshore fishery became apparent and the focus shifted to deeper waters. During the 1980’s, larger fishing companies became bigger players in the industry. This shift marked a huge increase in earnings for the New Zealand fishing industry (Waitangi Tribunal 1988).

As it happened, the transition of the fishing industry in the 1980’s coincided with a period of severe economic turmoil in New Zealand (Jones Interview; Waitangi Tribunal 1988). This was primarily the result of England joining the European market in the 1970’s and no longer looking to New Zealand as its primary bread basket. New Zealand’s Parliament met this crisis by completely reconfiguring the nation’s economic and political structure, and by the privatizing and localizing governmental services. Part of this restructuring involved the privatization of natural resource development, including the public fishery (Waitangi Tribunal 1988). In 1983, Parliament instituted a Quota
Management System (QMS) for its fishery, through which a limited number of fishing licenses were allocated to commercial fishermen and a moratorium was placed on the issuance of new licenses (Durie 1998). The decision was also made to cancel the licenses of small-time and part-time commercial fishermen, whose income from fishing fell under a minimum threshold (Waitangi Tribunal 1988). Maori fishermen, who often fell into this category, faced losing what remained of their long-standing commercial fishing traditions. The Waitangi Tribunal, which was later charged with determining the extent of Maori fishing rights, recognized the predicament Maori people were in:

Of course they were part-timers! They had been that way since time immemorial, living with one foot on the land, the other in the sea, They had commitment to both, it was part of their traditional way, and the modern world had not brought alternative industries to their region. Yet the … Maori who had retained their people’s long tradition in fishing finally were to be excluded (Waitangi Tribunal 1988).

Maori fishermen, who had never conceded their Treaty-guaranteed rights, had little choice but to ask the courts to intervene on their behalf. Two tribes, the Muriwhenua from the North Island and Ngai Tahu from the South Island, brought cases challenging the application of the QMS to their fishing rights, contending that such regulation was a breach of the terms of the Treaty of Waitangi. In the 1970’s, the Waitangi Tribunal was established as a non-binding judicial body to adjudicate Maori Treaty-based claims. Oversight of the Muriwhenua and Ngai Tahu fishing rights cases were quickly turned over to the Tribunal to determine the extent of Maori fishing rights and to make a
recommendation to the High Court about how to proceed with the Quota Management System.

In their petition to the Court, the Muriwhenua Tribe stressed the continuing importance of fishing to tribal livelihoods and to their economic and cultural well-being. According to Tribal leaders:

(e) Fish continue to provide a vital component of the Muriwhenua people’s diet.

(f) It is also an important food in a symbolic sense. It is part of the cultural dietary habit.

(g) Fish is also important in meeting Muriwhenua cultural obligations and in maintaining status when providing manaaki [“hospitality”] to guests.

(h) Commercial fishing is important to the Muriwhenua Maori to provide individual livelihoods, at one level, and at another, to keep people on the land and communities together (Waitangi Tribunal 1988).

In light of the substantial evidence of the Muriwhenua people’s historic and ongoing fishing practices, the Waitangi Tribunal found the QMS to be a breach of the Tribe’s Treaty-guaranteed fishing rights. The Waitangi Tribunal also determined that Maori customary fishing rights included both subsistence and commercial components, while specifically acknowledging that had it not been for unfair Crown regulation of Maori fishing during the early years of colonization, the Maori would likely have developed a comprehensive and technologically advanced commercial industry (Waitangi Tribunal 1988). By recognizing that the Treaty of Waitangi protected not only Maori fishing rights as they had been in 1840, but also the future rights which would have naturally developed
from them, the Tribunal took a far more progressive view of traditional Indigenous culture than the Australian High Court in the *Mabo* decision.

In light of these findings, the Waitangi Tribunal recommended that the New Zealand government halt further issuance of quota under the QMS. Fearing that the Tribunal’s finding in the Muriwhenua case represented only the tip of the iceberg for Maori fishing rights claims nationally, but also holding to the belief that the QMS had progressed too far to be reversed, Parliament seized upon the opportunity to settle Maori Treaty-based fishing rights claims once and for all. The terms of the eventual settlement contained the following key provisions: 1) 10% of New Zealand’s total fishery quota was to be allocated the Maori; 2) 20% of the quota for future species added to the QMS would also be allocated to Maori tribes; 3) The New Zealand government would spend NZ$150 million to purchase a 50% interest in the largest domestic commercial company, Sealords Ltd, for the benefit of the Maori; and, 4) Customary (non-commercial) harvesting rights would be recognized and protected (Kerins and McClurg 1997; New Zealand Ministry of Fisheries 2008a; Thom 2006). The settlement also established two new governmental agencies, which are staffed by Maori people and charged with the task of overseeing all Maori fishing initiatives, ensuring ongoing economic returns on Maori fisheries assets, and representing Maori interests at the highest level of government (Durie 1998).

Once the general parameters of the settlement were worked out, the task was then left to the Maori people themselves to determine how the settlement resources would be allocated. According to Minister of Parliament, Shane Jones, the allocation negotiations caused conflict between Maori factions and marked “the collision of traditional culture,
the culture of colonists, [and] the cultural of international trading. It was all these conflicting forces, and they were on the table, and we had to ascertain which tribe owned what in the context of a modern economy. And, of course, each tribe had its own view (Jones Interview).” In 2004, after twelve years of negotiations, an agreement was finally reached and the settlement was given legal effect by Parliament in the Maori Fisheries Act. As of 2006, the Maori controlled 40% of New Zealand’s fishing industry through the quota (Tau 2006). Given that commercial fishing generates NZ$1.3 billion in export revenue and constitutes the nation’s fifth largest export sector, this is no small feat (Thom 2006).

While the formal parameters of Maori commercial interests in fishing are fairly well-defined at this point, validation of their non-commercial subsistence, ceremonial and recreational rights have lagged. This has caused considerable dissatisfaction among Maori people who believe that the protection of Maori customary rights was given short shrift during the settlement negotiations (Hokianga Accord 2007). Of additional concern is the fact that the settlement does not include any provision for Maori to manage the fishery. This leaves Maori fisheries vulnerable to Crown determinations that may restrict the issuance or use of quota species for conservation purposes, or for any other reason it deems compelling. As one concerned Maori individual put it: “As long as all you have is quota, somebody else tells you how much quota you can have (Hokianga Accord 2007:19).”

The recognition of Maori fishing rights has been an integral part of the broader process of validating the Treaty of Waitangi as a living document, which imposes
ongoing obligations of fair play and respect for Maori and Pakeha alike. While certainly a step in the right direction, the future of Maori fishing rights remains uncertain. On the one hand, the innovative fisheries settlement has provided the Maori people with unprecedented economic opportunity and political power. On the other hand, the institutionalization of Maori commercial interests has marginalized other important aspects of traditional fishing, such as the protection of ceremonial uses of the fisheries and the culturally sensitive management of marine resources. This has caused some disagreement between Maori people who feel that cultural matters should be paramount to commercial interests and those who see the road to cultural revitalization as paved through economic might.

United States

“Our tribal cultures aren’t based on selling the fish either. We fill our smokehouses and freezers with salmon. We give our fish away to our neighbors and to food banks. We return salmon carcasses to the rivers and bays where they provide nutrition to other creatures. It is only recently that some people have begun to measure the value of salmon in dollars and cents. We fish because we are fishermen. We have always been fishermen. Yes, we would prefer to make some money for our efforts. We have families to support, too. But, even if we don’t make money at it, we will still fish. It is who we are. We will not stop trying to restore wild salmon stocks. To do that would be to deny our heritage, our culture, our identity, and the needs of future generations. That we will not do. Ever.”

- Billy Frank, Jr. (Frank 2002)

Native Americans, like other Indigenous groups throughout the world, have long and deep-seated traditions that link their spiritual, material and social well-being to the natural world. Oftentimes, a single animal species represents all of these facets of individual and tribal welfare. For Indigenous people of the Pacific Northwestern part of
the United States, this species is the salmon. Tribal people have depended upon salmon for their livelihoods for thousands of years and, to them, the fish are more than another commodity- they are life sustaining, they are food. In fact, anthropologists estimate that, at the time of contact, Indigenous families in the Puget Sound area traditionally consumed about 500 pounds of salmon per year (Wilkinson 2000:21). But to assume that native people view salmon as simply a material necessity, much the way that modern Americans view meat, grains, and other foodstuffs, would be a gross understatement. On the contrary, the cultural identities and customary codes by which tribal people in the Pacific Northwest live their lives are linked to the salmon as well. This is evidenced by the central role played by salmon in the traditional stories of Northwest tribes (See e.g. Cohen 1986; Squaxin Island Tribal Museum Exhibit). These stories, which continue to be passed down from generation to generation, contain essential lessons about the interconnectedness of man and nature and instructions to native people about how to care for the earth to ensure that salmon, and other life-sustaining species, are always protected. Such lessons commonly took shape within religious beliefs and are reinforced through rituals that pay respect to the sacred fish and view salmon as “people” connected to humankind through bonds of kinship. According to Cohen, “religious attitudes and rites require that harvesters never waste fish wantonly or permit streams to be polluted. Because the ‘salmon people’ are beings with supernatural power, their arrival must be greeted with respect and ceremony. Beliefs warn that improper treatment of the salmon will cause them to return disgruntled to their villages under the sea, not to return until the situation is corrected (1986:24).” The First Salmon Ceremony, a religious rite practiced
in one form or another by many Northwest tribes, is still commonly performed today to ensure the perpetual return of the salmon (Waitangi Tribunal 1988).

Fishing has also provided economic opportunities to generations of Native Americans. Prior to European contact, these opportunities took the form of trade with other Indigenous groups from a wide geographic region. Eventually, the trade networks expanded to include white fur traders and settlers. Fishing also played a part in the acquisition of status for tribal elites, who gained prestige through the accumulation and eventual distribution of goods acquired through trade of surplus salmon (Boxberger 2000). In particular, tribal status hierarchies were linked to the ownership of reef net sites, which were capable of yielding over one thousand fish per day (Boxberger 2000:15). Whether for subsistence, customary or economic purposes, Indian tribes of the Pacific Northwest were engaged in highly developed and widespread salmon fishing enterprises at the time of European contact. This was noted by Lewis and Clark who, in their visit to the Pacific Northwest, commented on the quantity and size of the salmon, as well as the magnitude of the native fishing industry (Cohen 1986). One account estimates that, at the time of contact, over 50,000 Indians were catching 18 million pounds of salmon per year along the Columbia River alone (Cohen 1986).

Even considering the massive volume of fish taken by Indian fishermen in the pre-contact years, there is no available data that suggests that over-fishing was a problem (Boxberger 2000). This is likely due to a combination of Indigenous technologies and belief systems designed to ensure that tribal communities’ needs were met without wasting the valuable and sacred salmon resource. Indeed, native fishermen used a variety
of fishing techniques and adhered to traditional laws restricting fishing to particular sites, times and methods. For example, gill nets, which were primarily used in rivers for subsistence catches, typically spanned only halfway across waterways and were designed to capture only mature fish, thus allowing for the escapement of young and small fish to upstream spawning grounds (Cohen 1986). Large fish traps at reef sites were periodically opened to further guarantee the seasonal renewal of the species. Such action was necessary to ensure that tribal communities would continue to thrive and that the ecosystems that sustained them would flourish as well. “Indians knew they had to protect the quality of the rivers. Under conditions of abundance, their religious and technical precautions ensured the perpetuation of the fish (Cohen 1986:29).”

Although Indians of the Pacific Northwest had contact with Russian fur traders in the late 18th Century, regular interaction between Indigenous and European cultures did not begin in earnest until the mid-1800’s when missionaries, gold prospectors and settlers began pouring into the area. Because tribal villages occupied the best real estate along river banks and tidelands, the push was made by leaders of the Oregon Territory to negotiate treaties for the sale of these lands for the purpose of settlement. Small pox had preceded the white invaders by several decades, and Indigenous populations in the region had already diminished significantly by the time of the settlement boom in the 1850’s, thus putting the Indians at a real disadvantage in the treaty negotiation process (Boxberger 2000). Recognizing that the tide of white settlement would only increase, 25 tribes in what are now Oregon and Washington entered into treaties with Territorial Governor, Isaac Stevens, and agreed to sell 64 million acres of their traditional lands in
exchange for the guaranteed protection of their reserved land and resource rights (Boxberger 2000; Cohen 1986). The most important resource right that the Northwestern tribes reserved for themselves was the right to fish for salmon as they had done for millennia. According to Nisqually Tribal elder and fishing rights activist, Billy Frank, Jr., “Fishing defines the tribes as a people. It was the one thing above all else that the tribes wished to retain during treaty negotiations with the federal government 150 years ago. Nothing was more vital to the tribal way of life then, and nothing is more important now (Frank 1998).” Understanding that the tribes would never cede their territory without guarantees that they could continue to engage in traditional fishing, Isaac Stevens included the following language in the treaties: “The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory… (Stevens Treaty with the Yakama Indians, quoted in Woods 2005:2).”

To pave the way for settlement, Indigenous parties to the Stevens Treaties were forced to live on reservations, which were significantly smaller than their long-established homelands and where they were confronted with pressures from missionaries and government agents to forego their traditional lifestyles and religious customs. What tribes were facing in the Pacific Northwest was similar to the situations confronting tribes across the United States as the reservation system was applied unilaterally across the new American landscape (Limerick 1987). During the reservation era, which spanned the 19th and early 20th centuries, tribal people around the nation were removed from their
homelands and resettled onto small and often inhospitable tracts of land from which they were not permitted to leave. The reservation system was essentially designed to strip individual Indians of their traditional identities and reshape their lives in new terms that were more acceptable to the wider society (Cornell 1988). New roles, such as “farmer,” “landowner” and “Christian,” were forced upon them while many of their previous roles, including those leadership roles that were determined by clan affiliation or traditional systems of honor, either became obsolete were prohibited outright.

For many years, Native Americans were not permitted to practice their religions or speak their native languages. Their children were routinely shipped off to boarding schools where their hair was cut, they were given English names and they were taught American history and American values. Many of these children were never returned to their tribes, but were, instead, adopted into white American families where their assimilation into mainstream society was completed. Those left on the reservations faced constant degradation from their captors, who controlled food rations, raw materials and many other items essential to their survival. Traditional systems of honor were defiled by soldiers who publicly humiliated tribal chiefs, warriors and respected elders. To make matters worse, disease and famine were consistent threats on the reservations. These constant perils further eroded the confidence of tribal communities. Until the 1924, Native Americans were not even granted the basic right of citizenship. Even now, the United States Congress maintains ultimate authority over tribal affairs (Deloria and Lytle 1983). This includes the authority to end federal recognition of any tribe on a whim,
thereby stripping the tribes of their “tribal” status and all of the powers of self-
determination that go along with it.

Tribes in the Pacific Northwest had it somewhat easier than their counterparts in
other areas of the country in that they were often permitted to leave their reservations for
work and to participate in subsistence activities, such as hunting, gathering shellfish and
berries and, most importantly, fishing for salmon (Wilkinson 2000). As long as their most
important traditional activity was preserved, tribes were reasonably content. But once
non-Indian interests began to encroach on their reserved fishing rights, their satisfaction
quickly eroded. The first intrusions came as increased pressure for land compelled the
Territorial government to redraw reservation boundaries, moving certain tribes, like the
Nisqually, away from their life-giving rivers. Not surprisingly, the Nisqually tribe
responded the only way they could to a threat of this magnitude: with violence. After a
short and bloody war, the Nisqually were allowed to move back to their river and their
salmon (Wilkinson 2000:15). But, their problems did not end there.

When the Stevens Treaties were signed, Indians in the Pacific Northwest did most
of the fishing in the region. However, by 1866, with the establishment of the first non-
Indian commercial fishing operations in Washington, the tide was beginning to turn
(Boxberger 2000). A decade later, the first canneries appeared in the Puget Sound and the
balance of power would forever shift to favor the non-Indian commercial fishing industry
at the expense of the tribes, and the salmon. By the turn of the century, technological
advancements in fishing and canning resulted in a great deal of waste and, eventually,
species decline. According to Boxberger (2000), in 1901 more salmon were thrown away
than could be canned. The efficiency of non-Indian fish traps, and their strategic placement above tribal reef sites and at the mouths of rivers, resulted in the decimation of Indian reef netting by 1915 and the destruction of salmon runs in the rivers abutting Indian reservations. The mechanization of the fishing industry in the early 20th Century, combined with the placement of hydropower dams on many of the major rivers beginning in the 1930’s, and a post- World War II population boom, caused rapid decline of the salmon fishery and created urgent pressure for conservation efforts, lest salmon die out completely.

While the earliest laws in Washington provided exemptions for Indians’ reservation-based fishing, later regulations were expanded to include Indians under the argument that they were United States citizens and, as such, they should not be privy to any “special rights.” This is despite the fact that Indian fishing rights, both on and off the reservations, were specifically guaranteed in the Stevens Treaties. What’s more, the United States Supreme Court had previously upheld the Stevens Treaties and ruled that Washington state licensing laws did not apply to off-reservation fishing activities (See U.S. v. Winans (1905); Tulee v. Washington (1942)). As justification for their ruling, the Supreme Court noted that “the right to fish was ‘not much less necessary to the existence of the Indians than the atmosphere they breathed’ (U.S. v. Winans 198 U.S. at 3 (1905)).” But, while the federal courts were willing to acknowledge tribal treaty rights, the State of Washington refused to do so and continued to take a negative view of Indian fishing rights and the treaties in general. A quote from the Washington Supreme Court sums up the official view of Indians in the State in the early part of the 20th Century:
At no time did our ancestors in getting title to this continent ever regard the Aborigines as other than mere occupants and incompetent occupants of the soil… Neither Rome nor sagacious Britain ever dealt more liberally with their subject races than we with these savage tribes who it was generally tempting and always easy to destroy and whom we have so often permitted to squander vast areas of fertile land before our eyes (State v. Towessnute, 89 Wash at 78 (1916)).

Although federal law was clearly on the side of the tribes, the federal Bureau of Indian Affairs, which is charged with protecting Indian treaty rights, was generally unwilling to step in and defend tribes against the State’s illegal enforcement of its regulations against Indian fishermen.

As the fishing industry continued to decimate salmon runs, pressure from commercial and recreational fishing groups mounted on Washington State legislators and resource managers to further restrict tribal fishing. Throughout the mid 20th Century, policy-makers in Washington tightened the screws on tribal fisheries, even though the Indian take constituted less than 3% of the total yearly salmon harvest in the Puget Sound (Boxberger 2000:119). Seeing State regulation as a breach of their Treaty-guaranteed fishing rights and an attack on their ways of life, Indian fishermen continued to fish wherever and however they could. This resulted in an escalation of riverbank violence between Indian fishermen and State law enforcement agents and non-Indian vigilantes, which continued in earnest from the 1940’s through the 1970’s (Wilkinson 2000).
As the conflict intensified, Indian activism likewise increased with fishermen from various tribes in the Pacific Northwest engaging in “fish-ins” to protest the state’s disregard of their treaty-guaranteed rights (Johnson, Champagne and Nagel 1997; Wilkinson 2000). The activists deployed contentious cultural identities, which drew on themes prevalent in the history of Native American resistance against colonial intrusions, as well as those rooted in their deep connection to the salmon and the natural environment. The symbolic nature of these protests, and the often-violent responses they provoked, quickly attracted the attention of mainstream media outlets as well as urban-based Indian organizations, such as the National Indian Youth Council (“NIYC”), who quickly became involved in the struggle (Wilkinson 2000). Until this point the NIYC had predominantly concerned itself with issues particular to urban Indians, even though it’s over-arching objectives -- the protection of Native American cultures, the empowerment of tribal governments and the improvement of individual Indian lives -- resonated much more broadly (Johnson et al. 1997; Wilkinson 2000). The Pacific Northwest fish-ins marked the beginning of a more unified alliance between urban and rural Indians in the struggle over Native American self-determination. The fish-ins also influenced the more widespread use of highly publicized, symbolic protest events as means for getting messages about Native American rights across. For these reasons, the fish-ins set the stage for the Red Power activism that was to spring up across the country in the 1960’s and ‘70’s (Cornell 1988).

The struggle of Indian fishermen in the Northwest culminated in the late 1960’s and early 1970’s with several historic federal court cases, the most significant of which
was *United States v. Washington* (1974). In this case, the United States government brought suit on behalf of fourteen Washington tribes against the Washington State Departments of Fisheries and Game, challenging their regulation of Indian fishing at traditional off-reservation fishing sites. During the four year trial, animosity between Indians and non-Indians in the state came to a head, with racially motivated violence often being directed toward Indian fishermen (Wilkinson 2000). At times, such hostility was even targeted at federal officials, including District Court Judge George Boldt, who the non-Indian citizens saw as meddling in what was essential a “state’s rights” issue. In the end, Judge Boldt ruled in favor of the tribes, giving new life to the treaties. He determined that up to 50% of the fish stock should be allocated to the tribes for their subsistence and commercial uses. He also took the unprecedented step of requiring all three stakeholders (commercial, recreational and tribal fishers) to work together to manage the resource in a way that would maximize allocation to all parties and ensure that salmon species would be protected into the future. Thus, through the efforts of Native American activists and the willingness of a sympathetic federal court, tribal self-determination over their fisheries was recognized.

Unfortunately, the ruling did not end the controversy or the conflict. As the details of the allocation were worked out, non-Indian protestors maintained a visible presence outside the courthouse, hanging Judge Boldt in effigy and displaying signs and bumper stickers that read, “Can Judge Boldt,” “Let’s Give 50% of the Indians to Judge Boldt (Wilkinson 2000:58),” and “Sportsmen’s rights torn to a shred, screwed by a Boldt without any head (Hannula 1974).” In the decades that followed the ruling, the state of
Washington continued to press the matter in federal court and at the Congressional level, looking for ways to avoid allocating 50% of the fish to the Indians. State officials even went so far as to lobby Congress to repeal the Stevens Treaties altogether. When their efforts failed, State managers eventually came to the table and committed themselves to working with their tribal partners to ensure a positive outcome for all stakeholders, as well as the fish. The controversy surrounding the trials reveals the nature of the political opportunities and obstacles that the Indians were facing. These included systems of authority over Indian affairs that were split between the states and the federal government, a divided mainstream population, with support from Civil Rights activists and elites, and violent, racist opposition from local fishermen and residents, and a judicial process that was ill-prepared to deal with Native American cultural interests or to view Indigenous interests holistically.

Within a few years of the historic ruling, institutionally supported tribal organizations were established to manage fish resources in scientifically responsible and culturally relevant ways. Over time, these organizations began to use their influence to negotiate cooperative agreements with other stakeholders to ensure the maintenance of the tribes’ commercial interests while protecting tribal cultures and the salmon that sustains them. In the 35 years since the groundbreaking Boldt decision, much has changed. Tribal governmental and scientific infrastructures have developed to the point where tribes have become legitimate leaders in State and regional resource protection initiatives. The management partnerships between the State and tribes, which have
evolved out of the Boldt decision, have become quite functional and now provide a genuine model for State-Indigenous resource ventures globally.

Despite these gains, Indians of the Pacific Northwest continue to confront threats to their Treaty-based fishing interests, due in large part to the perils that habitat destruction, resulting from unchecked population growth, and the ill-effects of the logging, agricultural and hydropower industries, pose to the continued viability of entire species of salmon. Although strides have been made by tribes and their governmental partners to manage fisheries resources in ways that ensure the fair and equitable allocation among the stakeholders, the parties often remain worlds apart in their approaches to protecting the fish from extinction. Perhaps not surprisingly, State managers continue to approach resource management at the species level, while tribal managers, relying on generations of traditional knowledge and a taking more holistic view of habitat, maintain that an ecosystem-based approach is the only way to ensure the continued existence of the salmon. According to Billy Frank, Jr., Indigenous people’s traditional knowledge, which has been honed for thousands of years through experience and a deep cultural connection to their homeland and to the salmon, makes them particularly well suited to managers the salmon fishery:

I’ve spoken about the traditional knowledge of our ancestors for many years because within its teachings are the answers to the environmental challenges we all face today. The heart of traditional knowledge is respect. Learn and listen and you can hear the rhythm of this heartbeat being passed from generation to generation on the ceremonies and stories of our people. Listen and you can feel its
valuable lessons in the collective breath of living things big and small. Feel this heartbeat and you will feel your own (Being Frank 2007b).

The histories of these three cases reveal strikingly similar colonial experiences of Indigenous peoples in Australia, New Zealand and the United States. In all three countries, pre-contact native groups managed thriving fisheries, which fed their bodies and their spirits. Deep-seated traditional knowledge ensured the sustainability of Indigenous fisheries, despite the reliance on aquatic species to meet the subsistence, economic and ceremonial needs of the people. This balance was upset with the arrival of British settlers, who rapidly exploited fisheries resources for their own economic purposes and impeded Indigenous access to the species upon which they had relied for hundreds, and even thousands, of years. While the ability of Indigenous people to resist incursions into their prized fisheries was severely hampered during the height of colonial dominance, the people never gave up. Over the past forty years, in each of the three countries, Indigenous fishing rights have been reasserted with renewed zeal. This study examines the new and imaginative ways that contemporary Indigenous people are defending their traditional fishing rights in Australia, New Zealand and the United States, while paying particular attention to the roles that Indigenous ethnic identities and cultures play in the process. I contend that these roles will vary depending upon the nature of the political structures, and the vestiges of colonial domination that remain, in each of these three nations.
CHAPTER 3
INDIGENOUS CLAIMS-MAKING AND THE RELEVANCE OF
SOCIOLOGICAL THEORY

Scholars of social movements have long recognized the constraining effects of politics and economic structures on mobilization. Analyses of structure tend to focus on the ability of movement actors to mobilize public resources (See e.g. McCarthy and Zald 1977) or to take advantage of political opportunities to further their claims (See e.g. Jenkins and Perrow 1977). Social movement researchers have also come to recognize the ways in which culture and identity shape the objectives, strategies, and outcomes of social movement initiatives (Gamson 1995; Taylor and Whittier 1995; Williams 2004). Especially valuable would be research that links the aforementioned approaches, specifically conceptions of political process with seemingly dichotomous notions of culture (Meyer 2002). This study seeks to fill this void in the social movement literature by specifically examining the structural and cultural processes through which Indigenous people strategically mobilize in order to affect broader political changes while also ensuring that their cultural prerogatives are met. By elevating the cultural dynamics of contention to a position of greater influence in the Political Process Model of
mobilization, this study will provide a more suitable framework for understanding how Indigenous movements, and other ethnic identity movements -- particularly those engaged in dismantling the structural legacies of colonization -- are able to alter the political structures and modify the mainstream discourses that have operated to keep these groups in positions of subordination for centuries.

This study views struggles by Indigenous people to protect their customary and commercial fishing rights as episodes of contention in broader processes of decolonization. According to Maaka and Fleras (2005), the past several decades have witnessed a global trend of Indigenous activism, with the goal being to decolonize societies from within. Through interaction with state governments, and active engagement with enduring colonial structures of domination, Indigenous activists are able to assert post-colonial alternatives, which promote Indigenous self-determination and governance as necessary to achieve constructive co-existence between Indigenous communities and dominant cultures (Maaka and Fleras 2005). The claims of contemporary Indigenous activists challenge dominant foundational logics of monocultural states in favor of principles rooted in multiculturalism and favoring multiple, overlapping political jurisdictions. Contemporary debates over Indigenous sovereignty and self-determination “are no longer about independence, but around accommodating equally valid yet mutually opposed notions of autonomy and belonging (Maaka and Fleras 2005:59).” According to Maaka and Fleras, Indigenous activists propose a “new model of governance … that acknowledges a plurality of sovereign entities within a new normative framework based on the principle of shared co-existence
between sovereigns, each of which recognizes the autonomy of the other in some spheres, but sharing jurisdictions elsewhere (2005:59).”

Indigenous people’s rights to access and cultivate traditionally harvested natural resources, such as fish and game, are essential components of Indigenous self-determination and, as such, are fundamental to breaking down the vestiges of colonial domination. The acknowledgment of traditionally-based resource rights validates Indigenous groups’ governmental autonomy over their territories and legitimates such rights based on alternative logics, such as Indigenous peoples’ historical continuity, cultural autonomy, and original occupation of their land. It also presents Indigenous people with greater opportunities to revitalize their communities through economic development, protect their resources through the activation of jurisdictional authority, and participate in mainstream decision-making regimes.

The analyses begin with the following assumptions: 1) Social movement mobilization is a process that is both constrained by historical and structural realities, yet imbued with the power to affect and alter those realities (Meyer 2002); and, 2) Nation states with different political and historical characteristics will produce distinct structural realities that will impact social movements in specific, observable ways (See e.g. Rucht 1996). With these assumptions in mind, key questions about the interaction of Indigenous movements with broader political structures can be addressed. Namely, how do Indigenous movements adapt and innovate to structural realities? How do dominant cultures respond to these innovations? Do they make space for cultural differences or do they clamp down on those differences through increased pressures to assimilate? In
addition to answering these questions, my systematic examination of the historical interaction between Indigenous communities and state actors will likely reveal broader trends in cultural negotiation processes. Undoubtedly, these processes will reflect both transformations in colonial structures, including dominant constructions of race and ethnicity, as well as enduring divisions between the worldviews of Indigenous and non-Indigenous citizens of former settler societies. By exposing the evolving power dynamics and structural constraints that shape Indigenous-state relations in these three national contexts, this study will reveal the contextual opportunities and obstacles for policy-level resolutions of conflicts over Indigenous fishing rights, as well as other sovereignty-based claims of Aboriginal people. It is hoped that this information will help dismantle the barriers that inhibit the achievement of mutually satisfactory resolutions of these ongoing disputes.

**Structure and Culture: The Arbitrary Divide**

Scholars of social movements have long debated the value of focusing on either the structural or cultural dynamics of political contention. While contemporary scholars contend that it is possible, and indeed, beneficial to examine both aspects of mobilization in an integrated fashion, few theoretical approaches enable such scholarship in ways that appropriately balance the influence of structure and culture, or view structural and cultural processes as interactional in nature. Early theoretical explanations for mobilization were firmly structuralist in their orientation. These approaches considered the organizational strength of social movement organizations (SMO’s) as well as facets
of the broader political environment as the most salient for explaining mobilization, movement persistence, and movement outcomes. The first of these approaches was Resource Mobilization Theory (See e.g. Jenkins 1983; McCarthy and Zald 1977). Using foundational assumptions from rational choice theory, resource mobilization scholars were often interested in how movement entrepreneurs and SMO’s provided potential constituents with incentives to participate or support social movements. Research from this perspective views organizational strength, organizational form (e.g. level of formality and centralization) and the strategic mobilization of resources from key (usually external) constituents as particularly relevant.

Later scholars agreed that the resource mobilization approach was overly focused on organizational dynamics, and that it ignored the role of broader political, economic, and social structural conditions. To remedy this perceived oversight, McAdam and his colleagues proposed the Political Process Model. In an early version, McAdam (1982) contended that successful mobilization required favorable political opportunities, organizational strength and cognitive liberation. Of these three aspects of mobilization, most agreed that political opportunities were most crucial in providing openings for mobilization in the first place (Kitschelt 1986; Kriesi, Koopmans, Duyvendak and Guigni 1997; Tarrow 1994; Zald, McCarthy and McAdam 1996). Political opportunities were thought to include aspects of the broader political environment, such as institutional arrangements for claims-making, the relative openness of mainstream political structures, and prevailing assertions of mainstream political power in particular bureaucratic realms. Many political process scholars believed that without favorable opportunities, successful
mobilization would not be possible (McAdam 1983; Meyer 1993; Kriesi et al 1997; Roscigno and Danaher 2001). However, they also came to recognize that political opportunities alone were not sufficient to explain collective action. Instead, they must be mediated by social networks and solidarity, as well as culturally resonant frames that reduce the social costs of participating for potential constituents (Tarrow 1994).

More recently, political process approaches have been criticized for downplaying essential cultural dynamics of mobilization (Buechler 1993; Goodwin and Jasper 1999). Most notably, political process research has been reproached for being overly economistic and failing to acknowledge the non-material, ideological, symbolic, moral, emotional, and cultural explanations for mobilization. Political process theorists answered these critiques by highlighting the importance of social movement framing as providing the discursive and symbolic mechanisms through which the experiences of movement participants are organized, problems are diagnosed and solutions are prescribed (Babb 1996; Benford and Snow 2000; Snow, Rochford, Wordon and Benford 1986). According to Benford and Snow, “collective action frames are action-oriented sets of beliefs and meanings that inspire and legitimate the activities and campaigns of a social movement organization (2000:614).” While acknowledging that social movement frames are rooted in the cultural orientations of potential and actual movement participants (Swidler 1995; Tarrow 1994), most political process research is primarily concerned with the strategic functions of framing to facilitate successful mobilization (Babb 1996; Benford and Snow 2000; Cornfield and Fletcher 1998; McCammon, Hewitt and Smith 2004).
Even though framing has been incorporated as a key attribute of the three-part Political Process Model (See Tarrow 1994; Zald et al. 1996), many scholars would later claim that this did not go far enough in giving proper consideration to the cultural mechanisms that underlie mobilization. In particular, critics contend that political process approaches take an overly strategic view of culture and fail to adequately explain the host of contemporary movements that are organized around alternative logics, such as those based on shared ethnic identities or feelings of moral outrage (Buechler 1993; Goodwin and Jasper 1999; Kane 1997). What’s more, political process research was faulted for failing to examine key cultural phenomena, including identity formation processes, meaning-making, the construction of grievances, the roles of emotions, morality and ideologies, as well as solidarity building around non-material objectives, such as the recognition of alternative lifestyles and identities. It was further contended that frames were treated either as structural categories or mere residuals to political and organizational attributes, both of which marginalized the role of culture in mobilization instead of acknowledging its independent influence on various aspects of collective action (Goodwin and Jasper 1999; Kane 1997).

These critiques ushered in a new era of social movement research, with cultural processes, such as identity construction, meaning-making, and the use of symbolic and expressive forms of protest playing a more central role in the analyses. Culturally-oriented scholars increasingly examined non-material incentives for participation in collective action, such as moral shocks (Jasper and Poulsen 1995), oppositional identities (Roscigno and Danaher 2001), and class consciousness (Fantasia 1988, Morris 1992).
Others moved away from the strategic approach to “culture as practice” to examine the autonomous and embedded dynamics of culture and their influence on the creation of shared identities, ideologies, frames and discourses within social movements (See e.g. Kane 1997). Still others investigated the emergent nature of culture and focused on social movements as the settings for the creation of new cultural forms and identities (Fantasia and Hirsch 1995).

From the structural and cultural debate emerged a growing belief that neither approach, by itself, adequately explains the causes and consequences of political contention and collective action. Pursuant to this belief, a new body of scholarship aimed to integrate these schools of thought. For their part, McAdam et al. (2001) reformulated the variables of their Political Process Model (political opportunities, mobilizing structures and cultural framing processes) and conceptualized them as “relational mechanisms” that are forged through interaction. Rather than prioritizing political opportunities, their new model recognized the centrality of all three aspects of contention and asserted that in different political, historical or cultural contexts, these variables would interact in varying ways, creating different forms of contention. Following a similar line of reasoning, other scholars sought to link cultural, material and political explanations to explain the emergence and character of a whole host of social movements, including those seeking moral reform (Beisel 1990), the recognition of ethnic group aspirations (Alvarez, Dagnino and Escobar 1998; Fantasia and Hirsch 1995), and labor rights (Fantasia 1988; Roscigno and Danaher 2001), among others.
In addition to linking structural and cultural dynamics, many of these studies took a much more nuanced view of the importance of culture in shaping episodes of contention, rather than simply considering its strategic applications. Many of these newer models now considered culture as both strategic and enabling (Johnston and Klandermans 1995; Steinberg 2002) as well as autonomous and rule bound (Kane 1997; Steinberg 2002; Williams 2004), and sought to determine how cultural dynamics both shaped episodes of political mobilization and, in turn, were shaped by them (Fantasia 1988). Others recognized the futility of analytically separating the structural and cultural dynamics of contention from one another and, instead, argued for the necessity of viewing these dynamics as interactional, relational, mutually constitutive and mutually transformative (Kane 1997; McAdam et al. 2001).

These new approaches have gone a long way in bridging the structural-cultural divide that has historically inhibited the development of a general understanding of contention. That being said, the majority of the analyses undertaking an integrated approach are single case studies examining a specific dynamic of mobilization, such as recruitment (Jasper and Poulsen 1995), frame resonance (McCammon et al. 2004), the construction of collective identities (Melucci 1995; Meyer 2002) or the emergence of oppositional political identities (Fantasia 1988; Fantasia and Hirsch 1995; Roscigno and Danaher 2001). Despite this, several leading scholars acknowledge that the structural and cultural dynamics of contention will vary in different political and historical contexts and assert that “greater explanatory power is afforded by examining how such mechanisms
combine and the outcomes that emerge across contexts and across different forms of contention (McAdam et al. 2001).”

This study takes a step in the direction of a more general understanding of the structural and cultural dynamics of contention by specifically examining the struggle over Indigenous fishing rights across three national contexts with varying colonial histories and bureaucratic systems for managing Indigenous affairs. Instead of focusing on a single aspect of mobilization, this study will answer the call of McAdam and his colleagues, by analyzing the dynamic and relational mechanisms through which different aspects of the Political Process Model (i.e. political opportunities, mobilizing structures and cultural framing processes) combine in each of the three sites. Beyond explaining the different levels of success experienced by Indigenous political challengers seeking recognition of their fishing rights in these countries, this study will also shed light on broader issues, such as the persistence of Indigenous political and cultural identities, the upsurge in Indigenous self-determination and political autonomy, and the transformation of colonial systems of racial domination that have resulted through these struggles.

**Identity, Culture and Contention**

Before delving into the specifics of how the Political Process Model can be applied to examine the cultural dynamics of contention over Indigenous fishing rights, it is necessary to first provide some discussion about how the theoretical conceptions of collective and ethnic identity, and the construction of culture have been applied in research examining collective action and, in particular, episodes of political contention
involving Indigenous peoples. From there, I will elaborate on how these concepts can be integrated into the Political Process Model to elevate matters of culture to a position of greater centrality in the model and to provide greater analytical potency in examining contentious interactions between Indigenous movements and the state.

*Identity*

With the upsurge in research focusing on the cultural aspects of mobilization, numerous studies appeared which explicitly examined the importance of collective identities for many different types of movements and movement processes, including movement participation (Friedman and McAdam 1992), solidarity (Adams and Roscigno 2005), organizational stability (Reger 2002) and movement change through cohort replacement (Whittier 1997). Along similar lines, contemporary social movement scholars have also considered the importance of oppositional cultural dynamics to mobilization. Roscigno and Danaher (2004) contend that preexisting oppositional cultural identities may be relevant to mobilization in the absence of formal organizations and political opportunities. Fantasia (1988) asserts that oppositional identities and solidarity may emerge during crises when individuals are forced to act outside of the institutional arrangements that have kept them quiescent. It is during times of crisis that existing cultural beliefs and value systems can become oppositional and contribute to counter-hegemonic claims and the development of oppositional identities and solidarity (See Billings 1990; Fantasia and Hirsch 1995).
Scholars follow different schools of thought for understanding the theoretical underpinnings of collective identity formation. For example, resource mobilization approaches traditionally viewed identities as preexisting mobilization or not particularly relevant to it, while later political process approaches consider identity construction as connected to framing (Hunt, Benford and Snow 1994). Other scholars link the formation of collective identities to rational choice explanations for mobilization, by contending that identities create non-material incentives for participation (Roscigno and Danaher 2001). Another group of researchers stress the emotional, cognitive and moral aspects of collective identities to explain group connectedness and mobilization in the absence of existing networks (Jasper and Paulsen 1995; Polletta and Jasper 2001). Finally, others conceptualize identity formation as a complex and differentiated process involving self-identification, categorization, or connectedness (Brubaker and Cooper 2001). Underlying the body of work on collective identity runs a current of contradiction over the nature of identity formation processes as either predominantly strategic and constructed or more predetermined and embedded in existing cultural meaning systems. This has led to the concept of collective identity being defined in contradictory ways in different contexts (Brubaker and Cooper 2000).

Like the broader category of collective identity, theoretical conceptualizations of ethnic identity have been similarly convoluted. Early theories viewed ethnic identities as products of modernization that emerged through ethnic contact and conflict (See discussion in Cornell and Hartmann 1998). Many believed that as societies modernized and the world globalized, national identities would slowly replace ethnic identities. The
persistence of traditional ethnic identities, the emergence of new ethnic identities, and the increasing prevalence of ethnic conflicts since WWII has required these early theories to be revisited. In their wake, two competing schools of thought have emerged to explain the persistence of ethnic identities in the modern era. The first view, known as Primordialism, contends that ethnic identities persist because they are inherent and fixed. Clifford Geertz, who was one of the earliest proponents of this approach, maintained that ethnic identities have no social source. Instead, such identities exist a priori, are rooted in bloodlines, are activated through affective bonds, and exert independent force on the actions and relationships of ethnic group members (for a discussion see Eller and Coughlin 1993).

Circumstantialists, on the other hand, reject the proposition that ethnicity is predetermined and, instead, contend that ethnic identities are fluid and can easily be manipulated and transformed to meet changing political and economic realities (See discussion in Cornell and Hartmann 1998). Ethnic categories and identities persist because they are easily mobilized for the attainment of material resources. Furthermore, Circumstantialists assume that because modern states are not racially neutral actors (Bobo and Tuan 2006; Wilmer and Alfred 1997), political structures, and the economic systems that developed within them, tend to reify racial categories and reinforce ethnic group formation. Accordingly, it is believed that ethnic identity formation is inherently tied to economic and political processes and involves competition over material resources. Examples of theories stemming from this school of thought are split and
segregated labor market analyses (Bonacich 1972) and world systems theories (See e.g. Hechter 1975).

From the Circumstantialist-Primordialist divide emerged the Constructivist view of ethnic identity. While many studies utilizing this intermediate perspective emphasize the strategic nature of ethnic identity construction, others are able to reconcile both the constructed and coercive aspects of ethnicity. At the crux of this theoretical perspective is the assertion that ethnic identities are not static or fixed, but instead are socially constructed and constantly re-created throughout time and in different social contexts (See e.g. Blauner 2001; Omi and Winant 1994). According to Omi and Winant, racial classifications are not natural or essential categories. Instead, they are social categories that are “created, inhabited, transformed and destroyed” over time and through human action (1994:55). Through their “racial formation theory,” Omi and Winant conceptualize race as a “fundamental dimension of social organization and cultural meaning (p. viii),” which “symbolizes social conflicts and interests” and plays a fundamental role in “structuring and representing the social world (p. 55).” Racial formation occurs through a process of historically situated episodes or “projects” within which human bodies are represented and organized (1994:55). These processes are also inexorably linked to the development of hegemony and, as such, the state plays a preeminent role in the construction of racial categories. Significant to this study is Omi and Winant’s conceptualization of race as both a matter of social structure and cultural representation. According to them, manifestations of race include both “… discursive and representational means in which race is identified and signified on the one hand, and the
institutional and organizational forms in which it is routinized and standardized on the other (1994:60).”

In her groundbreaking study on Native American activism in the 1960’s and 1970’s, Joanne Nagel (1994) contends that ethnicity involves the construction of both identity and culture, and is inherently interactional and strategic. According to Nagel, “the construction of ethnicity is an ongoing process that combines the past and the present into building material for new or revitalized identities and groups (1996:9).” Cornell and Hartmann (1998) also take a constructivist approach to understanding ethnicity, but downplay some of Nagel’s strong emphases on the instrumental and strategic aspects of ethnic identity formation in favor of an approach that integrates both the primordial and circumstantial aspects of identity (See also Williams 1994). Overall, Cornell and Hartmann (1998) contend that ethnic identity formation processes are informed by material interests, subjective meanings that groups have about themselves, political and economic forces that are indifferent to particular groups, and the inertia of institutions that reinforce these categories. They recognize that ethnic identity is both asserted and ascribed, while stressing the force that ethnic identities exert on group members and the fact that they are reinforced by the myths, narratives and ideologies of the group (See also Stack 1986). This is consistent with Williams’ (1994) contention that, from a long-term view, ethnicity appears fluid and ever-changing, but from a short-term view it appears fixed and inseparable from social, economic and political status hierarchies.
Constructivists accept that individuals maintain some autonomy in defining their ethnic identity, but also recognize that this autonomy is far from absolute. Instead, ethnic identity formation is a dialectic process influenced by individual or group self-identification and by the ethnic designations of outsiders (Nagel 1994). More specifically, these identities are forged through interaction “as various groups and interests put forth competing visions of the ethnic composition of society and argue over which rewards and sanctions should be attached to which ethnicities (Nagel 1994:154).” Perhaps not surprisingly, those visions of ethnicity set forth by the state and by other actors whose interests align with the state, carry significant weight. What’s more, because the interests of dominant stakeholders tend to be rooted in competition over resources and are reinforced by existing economic and political status hierarchies, the formal definitions of ethnicity that emerge from them are not neutral categories. Instead, racial and ethnic identities are essentially power laden concepts that emerge during racialized moments wherein racial categories are normalized and institutionalized into hierarchical systems of domination (Spickard 2005). State actions thereby limit ethnic identity formation “to socially and politically defined ethnic categories with varying degrees of stigma or advantage attached to them (Nagel 1994:156).”

State policies and the ethnic categories defined by dominant groups are by no means static, but rather shift over time, becoming either more accepting of diversity (Meyer 2002), or more oppositional. Shifts toward greater tolerance are often perceived as social resources, or political opportunities (McAdam and Snow 1997; Meyer and Staggenborg 1996), that provide aggrieved parties with an incentive to act at a certain
time and in a particular manner (Jenkins and Perrow 1977). Movement adaptation to structural change is not a one-way street, but part of a dialectic process of adjustment on the part of both movements and the state (Valocchi 1996). According to Meyer, “changes in policy influence political opportunities, and activists respond accordingly, trying to mobilize, or to affect new policy changes in these new circumstances (2002:6).” “Identity deployment” is one adaptive strategy that identity-based movements, such as those organized by Indigenous people, utilize to take advantage of the opportunities presented by policy shifts in order to pursue broader political and cultural changes.

This study utilizes a constructivist approach in examining the persistence of Indigenous identities in the United States, New Zealand and Australia and the deployment of these identities as strategies of action during episodes of contention over Aboriginal fishing rights. More than a circumstantial approach, which focuses strictly on economic conditions and political hierarchies, a constructivist approach is able to capture the nuance of the lived experiences of Indigenous people as they struggle for autonomy. While it is true that Indigenous identities are, in part, shaped by their marginalized political and economic positions, this only explains a small part of the persistence of Indigenous ethnicity. Many of the struggles that Indigenous people have engaged in are over non-material and cultural goals, in addition to economic self-sufficiency and political representation. The constructivist approach provides room to uncover how non-material objectives and incentives are shaped by Indigenous people’s worldviews, ideologies and myths and, in turn, can shape the content of Indigenous political identities and influence the shape of aboriginal mobilization. It’s interactive and processual nature
also enables the examination of how power dynamics, including broader state definitions and interests, determine the content of, and set limits upon, the agency of Indigenous people to construct their own political identities and mobilize these during periods of conflict with agents of the state.

**Culture, Conflict and Change**

Related to the formation of ethnic identities is the construction of culture. According to Nagel, “Identity and culture are fundamental to the central projects of ethnicity: the construction of boundaries and the production of meaning (1994:153).” Culture is comprised of those ideational and material aspects of social life, which are the substance of a people – language, religion, ceremony, myth, belief, values, folkways, mores, kinship, worldview, as well as the worlds of art, music, tools, food, housing, dress, adornment (Nagel 1996). Whereas ethnic identity formation is significantly constrained by external and structural forces, the construction of culture is shaped primarily, although not entirely, by internal group processes. Through these internal processes, beliefs and values become centralized in the collective psyche, solidarity is created and motivations for collective action are shaped.

The culture of a group is not fixed but instead is constantly changing as the group reinterprets past practices and norms, blends aspects of other cultures, and reworks and improves existing customary systems. Like ethnic identities, cultures are constructed by groups in interaction with the larger society. Borrowing Bourdieu’s notion of “habitus,” Nagel asserts that human agency in constructing culture is limited by the “set of
assumptions, dispositions, and orientations that shape human thought and action, visions of the possible, perceived choices (1996:45).” It follows then, that the content of each group’s culture is shaped by worldviews that vary according to historical context, geographic location, political circumstance, and the social power dynamics present in a given society. Particularly relevant for the purposes of this study is the influence of culture on collective action. According to Swidler, culture provides “the vocabulary of meanings, the expressive symbols, and the emotional repertoire with which [social actors] can seek anything at all (1995:27).” Culture, therefore, provides movements with “tool kits” of symbols, rituals, stories and worldviews that are called upon during times of resistance to define shared identities, formulate grievances and construct strategies of action (Johnston and Klandermans 1995; Swidler 1995). Many scholars of social movements utilize Swidler’s toolkit analogy and focus on the strategic functions of culture in shaping political contention (Benford and Snow 2000; McVeigh and Sikkink 2001; Zald 1996).

While ethnicity, like culture, is a fluid concept, the worldviews and rituals that comprise a groups’ cultural toolkit and, through their utilization, bind a group together, also have an enduring quality that exists beyond their activation for material gains (Stack 1986). It is this primordial aspect of culture that comprises the emotive content of group identity and consciousness and may explain the persistence of cultural heterogeneity in the face of overwhelming homogenizing forces. With this in mind, some scholars are moving away from viewing the cultural foundations of mobilization as strictly instrumental in nature (See e.g. Kane 1997; Steinberg 2002; Whittier 2002; Williams
2004). This is especially true for scholars examining episodes of contention between states and oppressed cultural and ethnic groups (Alvarez et al. 1998; Fantasia and Hirsch 1995; Morris 1992; Williams 1994). By viewing cultural meaning systems as embedded in the values, ideologies and, most significantly, the formal institutions of both dominant and dominated groups, and by perceiving culture and structure as mutually constitutive and transformative, these studies emphasize the autonomous influence of culture on contention (Johnston and Klandermans 1995; Kane 1997; Morris 1992; Whittier 2002). A richer understanding of contention, therefore, requires analyses of the cultural, as well as the material and political, foundations of institutional structures, including the legal and political structures of state governments.

According to Morris (1992), cultural meaning systems and their structural manifestations influence the emergence of political consciousnesses in members of oppressed and dominant groups. The development of a political consciousness, which Morris defines as “those cultural beliefs and ideological expressions that are used for the realization and maintenance of group interests (1992:362-3),” emerges through social and political struggle, information sharing and organization building, and varies across societies according to their political, social and cultural histories (See also Tilly 2002). Significantly, political consciousnesses, like oppositional identities and other cultural dynamics of contention, emerge through social relationships and, specifically, through interactions between dominated groups and agents of social control during times of group conflict.
Morris (1992) contends that the intersections of political consciousnesses of dominant and dominated groups, and their structural manifestations, are important areas of inquiry. On the one hand, the political consciousness of oppressed groups often takes an oppositional form, is reactive in nature, and is constructed to counter hegemonic ideologies and systems of domination. On the other hand, dominant group consciousness is akin to Gramsci’s conceptualization of hegemonic/legitimating consciousness and tends to be normalized and legitimated through societal institutions (Morris 1992:363). Where these institutions are constructed or maintained to ensure dominant group interests against the interests of oppressed or marginalized groups, they become part of a formal system of domination. According to Morris, race based systems of domination are structural and observable and, where they interact with the political aspirations of racial minorities, they fuel oppositional political consciousness and impact collective action. Morris further asserts that, “it is the interrelated system of political consciousness and the system of human domination that have given rise to them in the first place that should become the focus of analytical inquiry. Such an inquiry would investigate the major group cleavages in any given society around which durable streams of political consciousness cluster as a result of social inequality and group struggle (1992:359).”

In addition to revealing the cultural dynamics of mobilization, analyses of the historical interactions between Indigenous movements and state systems of domination have the potential to explain the differential statuses of Indigenous peoples across national contexts and can also expose the social mechanisms through which ethnic conflict can transform dominant political structures and cultural paradigms. These
objectives are aided by reference to foundational theories on the dynamics of ethnic group formation and the emergence of formal systems of inequality and stratification. According to Omi and Winant (1994), the formation of racial categories and identities are always historically situated. They assert that, “the processes of racial formation we encounter today, the racial projects large and small which structure U.S. society in so many ways, are merely present day outcomes of a complex historical evolution (1994:60).” Thus, to fully comprehend contemporary racial dynamics, it is important to understand the historical interactions and processes through which they evolved.

The seminal works of Noel (1968) and Blauner (1972; 2001) provide useful orienting frames through which to examine the historical interactions that laid the foundation for contemporary dominant-minority group relationships between Indigenous and non-Indigenous peoples in Australia, New Zealand and the United States. Both of these scholars emphasize the significance of the “contact situation” that characterized the first encounters between groups in order to explain the evolution of formal systems of inequality. In a nutshell, Noel (1968) predicts that where different groups encounter each other in a “contact situation” marked by the presence of ethnocentrism, competition, and differential power, some form of ethnic stratification will inevitably emerge.

According to Noel (1968), ethnocentrism is a universal characteristic of all societies that is manifested through the tendency to judge other groups as inferior by the standards of one’s own culture (See also Healy 2010). Competition over scarce and desirable resources is also an important predictor of inequality as it provides the motivation for one group to dominate the other (Healy 2010). Noel argues that
“differential social power is absolutely essential to the emergence of ethnic stratification and the greater the differential the greater the span and durability of the system, other things being equal (1968:162).” While each element will vary in any given context, Noel asserts that absent any of them, ethnic stratification will not emerge. Noel then uses his theory to explain the origins of slavery in the United States. He argues that while the contact situations of Europeans with American Indians and colonized Africans were both marked by ethnocentrism and competition, there was a greater differential in power between Europeans and Africans than there was between Europeans and Indigenous peoples. A system of slavery was ultimately possible because colonized Africans had few resources with which to resist capture and servitude.

Blauner (1972; 2001) also maintains that contact situations are significant for explaining stratification and the emergence of formal systems of ethnic domination. His work specifically examines and compares the contact situations of colonized versus immigrant groups. He contends that,

minority groups created by colonization will experience more intense prejudice, racism and discrimination than those created by immigration. Furthermore, the disadvantaged status of colonized groups will persist longer and be more difficult to overcome than the disadvantaged status faced by groups created by immigration Blauner 1972:52).

Similar to Noel’s emphasis on ethnocentrism, Blauner (2001) highlights the cultural dynamics of oppression, which he conceptualizes as a fundamental aspect of colonization. Blauner argues that “culture and social organization are important vessels of
a people’s autonomy and integrity; when cultures are whole and vigorous, conquest, penetration, and certain modes of control are more readily resisted (2001:58).” For this reason, the cultures of colonized peoples are often formal targets of imperialist agendas. The cultural oppression of colonized people is further legitimated by the racist assumptions held by white Western interlopers about their own cultural superiority. The targeting and supplanting of colonized groups’ cultural systems with those of their oppressors is a fundamental component of both colonization and racial formation. Indeed, Omi and Winant argue that processes of racial formation are essentially linked to the “evolution of hegemony (1994:56),” wherein dominant group rule is normalized and legitimated by the masses’ eventual acceptance of ideological systems that justify the way society is organized and governed.

These foundational theories are particularly relevant to this study for two primary reasons. First, Noel’s and Blauner’s emphasis on contact situations to explain the emergence of systems of stratification is potentially informative for understanding the relative disadvantage experienced by Indigenous peoples in Australia, New Zealand and the United States, and how this has impacted their chances for successfully asserting their fishing rights. For instance, it is possible that the greater degree of political and social disadvantage experienced by Aboriginal Australians’ versus Maori people and Native Americans, and their more modest success in asserting their marine rights, can be explained in part by key dissimilarities in ethnocentrism, competition and differential power between Indigenous peoples and European colonizers across these sites at the time of contact.
Second, these theories conceptualize racial formation and stratification as structural and cultural processes that are essential to assertions of hegemonic power. In doing so, they provide the analytical tools for not only understanding how racial hegemony is constructed and maintained, but also how it could be dismantled. Along these lines, it follows that counter-hegemonic change requires not only the deconstruction of structural manifestations of inequality, but also their ideological foundations. It can be argued, then, that to achieve meaningful counter-hegemonic change, including, in these cases, the decolonization of state institutions controlling Indigenous natural resources, social movement actors must be effective at strategically attacking both of these types of targets.

Various scholars of mobilization have also theorized about the potential for collective action to bring about social change. According to Zald (1996), social movements are constantly engaged in processes of reality construction, where they vie against the views of counter-movements and agents of the state. They do so by drawing from the same cultural stock as those they oppose (Della Porta 1996; Zald 1996). Although states and their agents tend to have greater access to the resources necessary to successfully define reality, state hegemony is never total (Fantasia 1988). Cultural breaks (Zald 1996), discursive opportunities (McCammon, Muse, Newman and Terrell 2007), and other conditions of uncertainty create opportunities for movement actors to artfully transform the discourses that dominate them and, thereby, bring about broader cultural change (Steinberg 2002). Because all “cultures contain diverse, often conflicting
symbols, rituals, stories, and guides to action (Swidler 1986:277),” the interaction of conflicting symbolic systems is bound to create uncertainty and unrest.

According to Swidler (1986), in “unsettled times” cultural ideologies are not fused to the social structure, but instead are highly contested and vulnerable to change. Meadows (1951) similarly contends that societies’ belief systems are sustained through “myths,” and as a society becomes more heterogeneous, it also becomes more multi-mythical. When this happens, the “central myth” loses its salience and competition to replace the central myth ensues. To accept the view that movements can engender cultural changes requires a semiotic or metaphoric view of culture (Alexander and Smith 1993; Kane 1997). According to this view, objects and symbolic meanings are attached to each other in random and irrelevant ways. While these structures are resilient and self-perpetuating, they are not immune to change. Cultural change occurs when objects and their meanings are recombined in new ways, which are accepted by the broader population.

Taking Swidler’s conceptualization of unsettled times a step farther I contend that Indigenous communities, especially those considered internal colonies, occupy “unsettled spaces” within larger societies. Unsettled spaces are sociopolitical contexts where expectations for formal (e.g. legal) or informal (e.g. social or cultural) interactions between groups are either undefined or are significantly contested. Although unsettled spaces need not include a territorial component and can exist in the symbolic and bureaucratic realms within which groups interact, a group’s territorial separateness from the dominant society can be an indicator that the group occupies an unsettled space. For
example, in many former British settler societies, Indigenous communities occupy legally defined territories that are set apart from the rest of society. Within these territories, Indigenous communities exercise varying degrees of autonomy, either as a matter of law or of common practice. In these contexts, dominant ideologies are constantly challenged by alternative, more culturally relevant, Indigenous ideologies. This results in a situation where full assimilation into the dominant culture fails to occur. This conception of Indigenous nations as occupying “unsettled spaces” reveals their nature as naturally and institutionally constructed oppositional cultures. Their cultural and political distinctiveness from the dominant society is, on the one hand, constantly contested and, on the other, is legally codified in colonial policies and reinforced through the application of the law and the political demands of Indigenous activists.

**Indigenous Mobilization**

Indigenous insurgency as both a local and global phenomenon has generally been overlooked in the sociological literature. This is unfortunate, as the topic has great promise for elaborating issues that are relevant to literatures in the sociology of culture, political sociology, social movements, and race and ethnicity. Analyses of contemporary conflicts between Indigenous groups and state governments over important social resources also have the potential to provide theoretical insights into key cultural dimensions of political contention as well as the social mechanisms that facilitate broad political and cultural change.
The fact that Indigenous people, especially those in former British colonies, such as the United States, New Zealand and Australia, occupy politically, culturally and geographically distinct spaces within larger nations is highly relevant for expanding upon theories of oppositional culture, identity and counter-hegemonic resistance. According to Gramsci (1971), hegemony consists of the power to dominate through unseen structures and the uncritical acceptance of dominant ideologies by oppressed groups. Hegemonic power essentially neutralizes dissent and promotes political passivity. Resistance, then, requires the ability to see through these systems of domination. This can only happen when a population acquires historical perspective and political consciousness. Because their unique and separate political and geographic positions in post-colonial societies have resulted from their historical struggles and, in many cases, are written directly into the law, Indigenous people, more than other oppressed groups, may already have the historical perspective and political consciousness necessary to engage in active, counter-hegemonic resistance.

Billings (1990), expanding upon Gramsci, asserts that in order to engage in resistance, individuals must experience a “conversion.” This is only possible where there are autonomous organizations operating outside of hegemonic control (what Fantasia and Hirsch (1995) and others refer to as “free spaces”), where there are organic intellectuals who can activate alternative ideologies, and where there are existing networks through which the plausibility of these counter-hegemonic views can be legitimated. Fenelon (1999) asserted that during the 1880’s Indian reservations in the United States were “near” total institutions and that the emergence of counter-hegemonic discourses by
reservation Indians during this period was unlikely. In the present era, however, where policies of self-determination are more prevalent and Indigenous communities in former settler societies have considerable autonomy within the confines of their lands, tribal territories have essentially become political and cultural free spaces. What’s more, the past 30 years have witnessed an influx of new Indigenous intellectuals and leaders who have reimagined and reasserted rights to Indigenous political and cultural autonomy. Within these geographically bounded communities, as well as in the growing urban Indigenous population and international networks of Indigenous people, are likeminded individuals who are able to reinforce counter-hegemonic messages and mobilize around them.

Mara Loveman (2005) contends that state making is an inherently cultural and symbolic endeavor. State power consists of the naturalization of state legitimacy in particular bureaucratic realms as well as the imposition of ideological power through the assertion of cultural myths and nationalistic identities. Loveman asserts, however, that state hegemony is not inevitable and it does not occur all at once. Rather, it happens as a result of conflict over state legitimacy in different bureaucratic or administrative realms. State victories tilt the playing field in favor of the state such that all future conflicts regarding political authority in a particular realm happen on the state’s terms. While most Western states have already acquired symbolic power in the vast majority of bureaucratic realms, state legitimacy over Indigenous affairs remains contested. Especially within tribal territories, Indigenous people maintain significant (although qualified) authority over their lands and their membership. The fact that state hegemony remains contested
provides Indigenous activists with real opportunities to dismantle and reframe the cultural discourses and structural hierarchies that have historically oppressed them.

While Indigenous insurgency has largely been ignored in American sociology, the work of Stephen Cornell, Joanne Nagel and small group of fellow sociologists provides notable exceptions. The majority of these scholars examine the causes and consequences of revitalization movements in the United States, including the Red Power movement, which swept through Indian Country in the 1960’s and 1970’s. The Red Power movement ushered in an era of increased political and cultural self-determination, and provided new economic opportunities for Native American tribes (See Cornell 1988; Josephy, Nagel and Johnson 1997). It also paved the way for federal policy reforms, which reflected a shift in the political discourse surrounding Indian affairs from unilateralism to self-governance and autonomy. What’s more, American Indian mobilization resulted in unforeseen cultural changes both inside and outside of Indian country (Nagel 1996).

According to Cornell (1988), the unique history of American colonization and the ensuing conflict between Native Americans and the United States government has, over time, influenced the shape of contemporary Indigenous mobilization. While Euro-American attempts to formally incorporate Indian tribes into the dominant society have certainly constrained Indigenous insurgency, Indian activists have been able to improve their political circumstances and create opportunities for further resistance through their innovative and strategic responses to State assertions of power and dominance. Notably, Native American revitalization movements have strategically utilized externally imposed
definitions of Indian ethnicity (such as what constitutes a “tribe”), institutions of
domination (including BIA-approved tribal governments), and policies of colonization
(such as the forced removal of Native Americans to boarding schools and urban centers)
as tools of resistance (Cornell 1988).

Some could argue that the utilization of dominant discourses and institutions by
Indigenous activists reinforces hegemonic power and formal structures of racial
domination. And, while such strategies may not be best suited for Indigenous aspirations
aiming at independent sovereignty, they are in line with a vision of decolonization that
foresees the transformation of colonial systems of governance to one “based on
overlapping jurisdictions within a joint sovereignty rather than on the absolute and
undivided sovereignty of the state (Maaka and Fleras 2005:59).” According to Young,

… few indigenous peoples seek sovereignty for themselves in the sense of the
formation of an independent, internationally recognised state with ultimate
authority over all matters within a determinately bounded territory. Most
indigenous peoples seek significantly greater and more secure self-determination
within the framework of a wider polity (2000:252).

I contend that Indigenous mobilization strategies that utilize and innovate within
dominant political structures for the purpose of asserting culturally relevant alternatives
that embrace Indigenous rights and autonomy over traditional lands and resources are
consistent with these broader aspirations.

To date, contemporary mobilization has generated some material gains for Native
American people (See e.g. Nesper’s (2002) discussion of tribal fishing rights in
Wisconsin), as well as increased political influence in the decisions impacting tribal people. That being said, the more radical goals of the Red Power movement were never truly met (Cornell 1984; Stotik, Shriver and Cable 1994). This is due, in part, to the United States government’s tactical response of suppressing the radical elements of the Red Power movement while empowering tribal governments through policies of self-determination (Cornell 1984). According to Cornell (1984), the modest and, in many cases, symbolic federal reforms toward greater self-determination accommodated many of the political and material objectives of tribal bodies. What’s more, these reforms acted to further incorporate tribal governments into the dominant political and economic systems, thereby creating incentives for tribes themselves to self-regulate against more radical challenges to the system.

While Johnson, Nagel and Champagne (1997) acknowledge the modest policy changes engendered by the Red Power movement, they contend that more remarkable transformations in the individual and shared identities of Native American people also resulted from this wave of Indian resistance. First, the Red Power movement spawned a new pan-Indian solidarity, which created opportunities for unified resistance at the federal level on matters that impacted Native American people generally. Second, Red Power generated cultural and political revitalization at the tribal level and empowered tribes to further assert their economic, political and cultural autonomy over tribal affairs. Finally, Indigenous insurgency fostered a demographic revitalization among Native American people. Expanding upon these final two points, Nagel (1996) contends that the political reorganization and growth of tribes, as well as the rapid increase in people
identifying themselves as American Indians, cannot be explained by demographic causes alone. Rather, the successes of Native American insurgency and its pan-Indian character essentially created incentives for people to identify themselves as Native Americans and enabled them to see themselves as part of an American ethnic group, rather than simply members of individual tribes. Like Cornell, Nagel also asserts that American Indian cultural and demographic revitalization was ultimately the product of interaction between state systems of domination, which laid the groundwork for insurgency through many of its assimilationist policies, and Indigenous activists who sparked ethnic renewal and ushered in an era of self-determination.

There is every reason to believe that Indigenous revitalization, ethnic renewal and mobilization, and the development of pan-Indigenous identities, are not merely American phenomena, but are being witnessed around the world as part of broader struggles to decolonize societies from within (See e.g. Alvarez et al. 1998; Maaka and Fleras 2005). Indigenous mobilization is a uniquely cultural phenomenon. Instead of seeking inclusion or accommodation by the broader society, Indigenous people often demand rights to political self-determination and cultural autonomy. To date, little social movement research has examined movements with these types of goals (But see Johnson, et al. 1997). Simply lumping Indigenous mobilization into the same analytical categories as political activism by other ethnic groups would not sufficiently address the influence of culture on repertoires of contention, including the unique strategies of action and movement objectives of Indigenous activists. Nor is such an approach designed to capture the interactional and, fundamentally, cultural mechanisms of contention that
make it possible for the alternative logics of Indigenous activists to transform long-accepted and institutionalized discourses regarding citizenship, democracy and multiculturalism (See e.g. Alvarez et al. 1998).

According to Alvarez (1998) and Maaka and Fleras (2005), contemporary Indigenous mobilization is marked by the infusion of democratic politics with discourses of culture and identity. Indigenous people mobilize around deeply alternative views of citizenship and identity, and demand that states recognize their “right to live together differently” with members of the dominant population (Maaka and Fleras 2005:12). While these claims are often rooted in local cultural identities, and are based on the continual or original occupation of geographic spaces, they do no relegate native lifestyles to traditional ways of the past. Instead, many claims by Indigenous people are simultaneously rooted in the past, where their legal, ethical, and cultural legitimacy is based, and oriented toward the future, in their emphases on economic opportunities, cultural reimagination and revitalization, political sovereignty and co-governance within broader governmental regimes. Nesper (2004) provides an example of the multi-faceted nature of contemporary Indigenous mobilization in his examination of the Wisconsin Ojibwe Tribe’s struggle for recognition of culturally-based fishing rights. The Ojibwe people essentially re-activated and reimagined aspects of their traditional cultural fishing practices in new and oppositional ways for the purposes of creating solidarity among tribal members and making claims for recognition of their customary and commercial fishing rights against the state. In similar ways, Indigenous people around the world are reimagining their cultural traditions to make claims that are essentially modern and
political. While it remains true that most native groups have not achieved widespread structural transformations, by infusing the democratic process with political and cultural demands, many have succeeded in altering the discourses within which the relationship between Indigenous people and members of dominant societies are redefined. In the wise words of Vine Deloria, Indigenous people are becoming increasingly successful at “dismantling the master’s house (Morris 2003:9).”

*Political Process and the Cultural Dynamics of Contention*

McAdam et al. (2001) call for research that elaborates the Political Process Model by taking a comparative and cross-national approach to examine how the relational mechanisms of political opportunities, mobilizing structures and framing processes vary, and to analyze the implications of those differences for the dynamics of contention. This study answers that call by applying their model to episodes of contention over Indigenous fishing in Australia, New Zealand and the United States. It is my belief that different colonial trajectories provide different opportunities for resistance, and that the diverse cultural, social and political experiences of Indigenous people will influence their organizational forms and tactics, and the framing techniques utilized during mobilization. In its application of the Political Process Model, this study elevates matters of culture to positions of central importance, while remaining cognizant of the structural obstacles that shape and constrain Indigenous mobilization. It accomplishes this task by acknowledging both the strategic and embedded nature of cultural meaning systems and their autonomous influence on all aspects of the Political Process Model, including the
dominant political structures that constrain and enable Indigenous mobilization, the
mobilizing strategies employed by Indigenous activists, and the discursive frames
through which Indigenous grievances, rationales for action, and political and oppositional
identities are constructed.

This study also recognizes that cultural meaning systems of both dominant and
dominated peoples are mutually constitutive and transformative, and that they are formed
through interaction and struggle over valuable social, economic and political resources.
Efforts by Indigenous people to decolonize national governments by, for example,
asserting control over traditional natural resources, are particularly relevant for
examining the processes through which hegemonic and counter-hegemonic
consciousnesses and identities are forged. In the case of political struggle over
Indigenous fishing rights, cross-national variations in the political opportunities
confronting Indigenous actors, and the mobilizing structures and framing devices utilized
during the course insurgency, should have significant impact on the shape of Indigenous
political action and its relative success in achieving broad transformations in enduring
systems of colonial domination.

Political Opportunities

The first component of McAdam et al.’s political process model is “the structure
of political opportunities and constraints facing the movement (2001:2).” This is
comprised of “the enduring and volatile features of a given political system (McAdam et
al. 2001:13),” which are believed to have significant influence on the shape and nature of
collective action. Institutional arrangements, formal and informal power relations, historical precedents for mobilization, and access to forums for challenging state authority, are all important aspects of the political environment that impact social movement dynamics (See Kitschelt 1986; Kriesi et al. 1997; Meyer 1993). Scholars are increasingly aware that cross-national variations in these types of political structures can account for differences in the form, extent, and success of comparable social movements (McAdam et al. 2001).

Because the parameters of Indigenous people’s lives, including such necessities as the nature of their governing structures, where they live, and their access to natural and cultural resources, are defined over time by colonial governments and institutionalized in bureaucratic systems that tend to favor state interests, Indigenous mobilization is particularly susceptible to variations in the historical trajectories of colonization and the vicissitudes of the broader political system. For the purposes of this study, several variables will serve as indicators of the structure of political opportunities facing Indigenous activists in Australia, New Zealand and the United States. First, I will examine the history of colonization in each nation and the prevailing colonial philosophies and policies that continue to define Indigenous rights broadly, and fishing rights, in particular. Second, I will explore some of the mainstream discourses regarding race and ethnicity in each country and detail how Indigenous people, and their claims to culturally-based resource rights, fit into these discussions. Finally, I will analyze the structure of contemporary political institutions for Indigenous claims-making. This includes an examination of the relative openness of these forums to Indigenous groups,
and the potential for Indigenous claims-makers to assert alternative legal and cultural logics to justify their rights.

Most social movement research approaches political opportunities as purely structural categories. However, these analyses will be undertaken from a theoretical perspective that pays particular attention to both the cultural and structural orientations of political institutions. It is assumed that hegemonic political consciousnesses and discourses regarding racial and ethnic relations, citizenship, and the appropriate distribution of social resources are embedded within political institutions. Of particular interest in this study is whether shifts in the political opportunities confronting Indigenous fishing activists reflect changes in broader cultural discourses regarding multiculturalism, citizenship and equity.

Mobilizing Structures

According to McAdam et al., mobilizing structures are “those collective vehicles, informal as well as formal, through which people mobilize and engage in collective action (2001:3).” These include formal social movement organizations (SMO’s) as well as informal organizations, networks, and grassroots settings. Mobilizing structures also include the tactical action repertoires utilized by insurgents, such as the particular goals that a movement asserts, the settings in which such claims are made, and the degree to which threat, disruption, or violence are strategically employed (McAdam et al. 2001).

Over time and depending on the historical and political contexts of the nation states within which they reside, Indigenous communities have faced varying degrees of
political acceptance. In these diverse situations, they have relied on a range of tactics for asserting their rights, including different types of protest, direct governmental lobbying, litigation, and, in rare cases, violent insurgency. In this study, I am particularly concerned with the following mobilizing structures and strategies utilized by Indigenous fishing activists in the three national contexts: 1) the settings in which Indigenous fishing claims are asserted; 2) the level of formality of Indigenous organizations and the availability of existing networks and Indigenous intellectuals to facilitate their claims; 3) the presence of counter-hegemonic free spaces for the development of oppositional identities and claims; 4) the particular goals that are asserted by Indigenous activists; and, 5) the ways that Indigenous cultural concerns shape decisions about where and how fishing rights claims should be made.

A number of questions guide my inquiry. Specifically, do Indigenous actors commonly assert their rights inside or outside established institutional channels or do they innovate by asserting fishing rights claims in a variety of places, both inside and outside formal settings? If they choose the latter course, how do their strategies of action differ in each setting, if at all? If Aboriginal activists are confined to formal settings for making their claims, are they able to manipulate existing institutional systems for the purpose of achieving their own, unique cultural objectives? Have Indigenous activists established formal SMO’s for the purpose of asserting their fishing rights, and do they have access to existing networks of intellectuals and activists that are available to assist in claims-making? And, how, if at all, do the physical and cultural realities of contemporary Indigenous life (i.e. whether they live on reservations or in urban areas, whether they
have maintained their traditional fishing activities over time, etc.) impact their strategies of action?

_Framing Processes_

Framing processes comprise the final facet of McAdam et al.’s Political Process Model. These are “the collective processes of interpretation, attribution, and social construction that mediate between opportunity and action (McAdam et al. 2001:2).” Framing ultimately refers to the process by which individuals and groups construct meanings about social phenomena and challenge other constructions of meanings that conflict with their views (Benford and Snow 2000). Framing serves multiple functions for social movements, including identifying and attributing blame for the perceived causes of problematic situations, articulating solutions and developing strategies to address those problems, mobilizing ideas and supporters to facilitate consensus and action, and demobilizing opponents, among other things (Benford and Snow 2000).

The beliefs, motivations and values that provide the content for movement framing are rooted in the culture of a social movement’s membership. According to Swidler, culture influences action by providing people with “the vocabulary of meanings, the expressive symbols, and the emotional repertoire with which they can seek anything at all” (1995:27). Culture, therefore, provides movements with “tool kits” of symbols, rituals, stories and world-views that are called upon during social movement framing to define shared identities, formulate grievances and construct strategies of action (Johnston and Klandermans 1995; Swidler 1995). Like Swidler, McAdam et al. are primarily
concerned with the instrumental functions of framing for collective action, which they define as “conscious strategic efforts by groups of people to fashion shared understandings of the world and of themselves that legitimate and motivate collective action (2001:6).” This study is concerned with the strategic ways in which Indigenous activists wield aspects of their ethnic identities and cultures to assert their fishing rights. However, I am also interested in understanding how culture, as embedded in the worldviews of both dominant and Indigenous groups, can operate to both legitimate Indigenous claims and transform broader discourses regarding multiculturalism and citizenship.

Several categories of frames are relevant in addressing these concerns. The first of which are oppositional cultural frames and identities that reflect the unique historical and colonial experiences of Indigenous groups in each of the three nations. Along these lines, I am particularly interested in whether oppositional frames that are rooted in preexisting, oppositional identities and cultures are reactivated during times of contemporary conflict over fishing rights (See e.g. Cornell 1984; Roscigno and Danaher 2004). These types of frames may also include aspects of key political discourses that have emerged during the course of colonization and the political struggles that followed. This is consistent with Fantasia and Hirsch (1995) who, citing Fanon, contend that resistance will generally be oriented around objects and circumstances created by dominant cultures (See also Cornell 1988).

The second category includes frames rooted in the traditional relationship between Indigenous people and their natural environment. Nearly all struggles between
Indigenous people and European colonizers have been over control of natural resources and geographic territories. These struggles often represent the cultural disjuncture between native views of life that are tied to the land and value sustainable utilization, and those of Euro-Americans that favor individualism, commercialism and domination over nature (Wilmer and Alfred 1994). Throughout time, the tactics of Indigenous resistance have often involved symbolic expressions that are tied to natural resources and traditional land bases. Similarly, traditional resource practices are often reimagined as oppositional symbols to mobilize supporters and create solidarity (See e.g. Nesper 2004). Of specific interest is whether and how these traditional cultural symbols are reimagined and reactivated by Indigenous people to assert their contemporary political and economic rights.

Finally, Williams (2004) contends that in order to affect counter-hegemonic change, social movement claims must resonate with broader discourses (See also Ewick and Silby 2003; Steinberg 2002). Along these lines, I expect the frames of Indigenous resisters to call upon themes that are part of the broader cultural tool kits in Australia, New Zealand and the United States, respectively. These may include dominant discourses concerning multiculturalism, property rights, and environmental protection, among others. Because these discourses are already embedded in the worldviews and political consciousnesses of the dominant population, I expect that these types of frames will be particularly successful in transforming formal systems of domination and the cultural assumptions upon which they are based.
Core Questions Relative to Dominant Theoretical Frameworks

In light of the theoretical frameworks discussed in this chapter, this study will focus on the following analytical questions: 1) Can the relational mechanisms embodied in the Political Process Model help explain key differences in the levels of success experienced by Indigenous fishing rights activists across the three cases? 2) How are variations in colonial histories pertinent to understanding the strategies of action utilized by Indigenous claimants and their opportunities for affecting counter-hegemonic change? 3) How are the cultural meaning systems and assumption of both dominant and Indigenous populations pertinent to understanding the dynamics of contention between Indigenous actors and former settler states? 4) How are the Political Process Model and the cultural dynamics of contention able to shed light on broader processes of decolonization in former settler societies? 5) What are the social mechanisms through which ethnic conflict can transform formal systems of domination and their cultural underpinnings? 6) Do Indigenous political actors deploy aspects of their ethnic identities and cultures as strategies of action during episodes of political contention over fishing rights? 7) If so, how are these constructions relevant to understanding the mobilization processes of Indigenous social movements and the mechanisms for breaking down formal systems of racial/ethnic domination in former settler states?
CHAPTER 4

THE CASE COMPARATIVE METHOD

This study takes an historical-comparative approach to examine episodes of political contention over Indigenous fishing rights and the constraining, yet ever-changing facets of the broader political structure in Australia, New Zealand, and the United States. Such an approach reveals general patterns and causes of outcomes in a manner that is sensitive to distinct historical, political and cultural circumstances (Skocpol 1979). It does so through the selection of “slices of national historical trajectories as the units of comparison (Skocpol 1979:35-36),” and the extrapolation of potentially relevant associations of potential causes for a given outcome. In my case, the outcomes of interest are the divergent forms that political challenges over Indigenous fishing rights have taken, and the varying levels of material and non-material successes these challengers have experienced in each of the three countries. Particular attention will be given to variations in the mobilization strategies (i.e. the tactical innovations) of Indigenous communities to assert their fishing rights and the institutional responses (i.e. tactical adaptations) of the states to either make space for Indigenous perspectives within their broader political cultures or to reject such perspectives.
The primary analytical objectives are twofold. First, the study seeks to uncover how the cultural and structural dynamics of contention interact to produce three divergent patterns of political conflict and resulting systems of Indigenous fishing rights. Second, the study seeks to identify the social mechanisms through which conflicts between state regimes and Indigenous groups can transform dominant political structures and prevailing cultural discourses regarding race, ethnicity and citizenship. Beyond these primary objectives, this study also provides insights for understanding the persistence of Indigenous political and cultural identities, the upsurge in Indigenous self-determination and political autonomy, and the transformation of colonial systems of racial domination that have resulted through these struggles.

**Mechanism-Process Approach**

The historical-comparative analyses undertaken in the study are principally informed by Tilly and Tarrow’s (2007) “Mechanism-Process” approach for examining episodes of political contention. This approach was developed as a follow-up to McAdam et al.’s (2001) *Dynamics of Contention*, in order to provide a methodological foundation for exploring the issues raised in that book, including the interactions between the fundamental, relational mechanisms of contention -- namely, political processes, mobilizing structures, and framing processes. As these interactions are the central foci of this study, the mechanism-process approach seemed perfectly suited to guide these analyses.
According to Tilly and Tarrow, contentious politics involves “contention, collective action, and politics (2007:4).” During episodes of contentious politics, groups make claims that bear on someone else’s interests. These claims are made through coordinated efforts on behalf of shared interests or programs, and essentially involve interactions with agents of the government. Through analogy or comparison of similar episodes of contention, the mechanism-process approach is able to provide a more general account of the broader processes at work during periods of political conflict. One way that it accomplishes this task is by dividing these broader processes into streams (or “episodes”) of contention, and then comparing similar streams across national contexts to determine whether differences in state regimes, such as the institutional structures for claims-making or the formal political strategies for managing challenging populations, explain why some forms of contention are more prominent in some countries versus others (Tilly and Tarrow 2007:37). This comparison is facilitated by identifying the central mechanisms that operate within each contentious episode. Mechanisms are interactional events “that alter relations among sets of elements in similar ways over a variety of situations (Tilly and Tarrow 2007:29).” Depending on the political contexts in which they operate (i.e. the political opportunities afforded by particular state regimes), and the social resources available to challengers (such as their mobilizing structures, cultural predispositions, and political and ideological traditions regarding contention), such mechanisms will combine differently to produce divergent forms of contention across sites.
Fundamental to Tilly and Tarrow’s characterization of contentious politics is its emphasis on the relevance of government as a party to contentious interactions. According to Tilly and Tarrow, the presence of government is significant for three important reasons: 1) those who control government gain advantages over those who do not through the collection of taxes, the distribution of resources and the regulation of behavior; 2) governments make the rules regarding contention, including who is permitted to make claims against the state, how those claims must be made, and which institutional settings are most appropriate for bringing them; 3) governments control substantial coercive means, including not only the legal and political institutions that govern contentious interactions, but also the means for enforcing their interests and dictates (2007:5). They further assert that subtle differences in regimes, even between broadly democratic regimes, such as those present in Australia, New Zealand and the United States, can produce significant differences in the shape of contentious politics (2007:54). Through systematic analyses of the dynamic interactions between political challengers and the state, the mechanism-process approach can capture the mechanisms through which the state constrains and enables challenges, as well as the ways that contentious interaction affects governing structures by “reshap[ing] political relations, institutions, opportunities, threats, and repertoires…(2007:67).” For these reasons, the mechanism-process approach for understanding episodes of contentious politics is well-suited for analyses such as those undertaken in this study, which explore manifestations of symbolic and hegemonic power, as well as the social mechanisms through which counter-hegemonic change is possible.
What’s more, the mechanism-process approach is malleable enough to provide an orienting framework through which to examine the cultural and structural mechanisms that drive contention. For example, Tilly and Tarrow acknowledge that the activation of contentious identities is a significant mechanism in processes of ethnic mobilization (2007:80). While asserting that the mobilization of identities does not automatically follow from the existence of a social base to which it corresponds, such as a pre-existing cultural orientation or worldview, they recognize that contentious interaction triggers the activation of pre-existing ethnic identities (Tilly and Tarrow 2007:80). By situating episodes of ethnic conflict in their political and historical contexts, and by paying particular attention to the state structures that enable and constrain ethnic mobilization, the mechanism-process approach facilitates the identification of fundamental interactional mechanisms that trigger the mobilization of ethnic identities as political identities.

Given its comparative orientation, its emphasis on government and political power, and its built-in consideration of political opportunities, mobilizing structures and the cultural foundations of contention, the mechanism-process approach is well suited for analyzing and explaining key similarities and differences among the forms and outcomes of Indigenous mobilization for fishing rights in Australia, New Zealand and the United States. In this study, the broader processes of contention that require explanation include the emergence of particular mobilization forms and the outcomes they engender. The streams of contention identified for comparison, which Tilly and Tarrow define as “bounded sequences of continuous interaction (2007:36),” are contemporary episodes of
direct political action by Indigenous challengers against agents of the state, and involving third party stake-holders, wherein the challengers are seeking formal state recognition of their historically-based rights to engage in customary and/or commercial fishing, and to participate in fisheries resource management activities. These episodes are then placed in their historical and political contexts, with particular attention being paid to the political opportunities that constrain and enable Indigenous mobilization, the mobilizing structures and strategies available to the challengers, and the cultural and ideological orientations and frames that justify and legitimate mobilization.

Within their historical and political contexts, key mechanisms that drive mobilization and the interaction of Indigenous challengers, the state, and third-party actors are identified. Then, the sequences in which these mechanisms combine with aspects of the political opportunity structures and the social bases for mobilization are analyzed. These mechanisms and sequences are then compared across the three cases in order to explain fundamental similarities and differences in both the shape of contention over Indigenous fishing rights and the broader political and cultural transformations that have resulted through these conflicts. Because this study is concerned with the cultural dynamics of contention, particular care is taken to identify cultural foundations of hegemonic power as well as the interaction of political mechanisms of contention with culturally-oriented bases for mobilization, such as the cultural identities, ideological foundations and traditional knowledge systems of Indigenous challengers, in order to determine their influence on episodes of political conflict over Indigenous fishing rights.
Data Collection

Data for this study were collected during four months of fieldwork in Australia, New Zealand, and the Pacific Northwest of the United States. Travel to these sites was facilitated through the award of a Dissertation Improvement Grant from the National Science Foundation. Capturing the cultural and political processes that have resulted in different patterns of mobilization and outcomes regarding Indigenous fishing rights in these three national contexts requires multiple levels of data. To trace the historical contexts and progression of political opportunities that confront Indigenous actors and the mobilizing structures and cultural frames that facilitate mobilization, I examined a wide array of archival materials, including legal documents, such as treaties, legislation, and court decisions, as well as expert opinions and newsletters from academics, policy-makers, and organizations representing Indigenous communities and other stakeholders. These documents were supplemented by reference to political and public discourses, as found in congressional debates, court transcripts and newspaper articles that explicitly deal with the struggles of Indigenous people to secure customary and commercial fishing rights. According to Tilly and Tarrow, archival data collection is particularly well suited to the mechanism-process approach for comparing episodes of contention (2007:36).

Over 250 documents covering the political efforts of Native American tribes, Maori iwi (tribes) and Indigenous Australian communities were collected from archival and online databases housed at the following locations: the National Indian Law Library (NILL) in Boulder, Colorado; the Northwest Indian Fisheries Commission in Olympia, Washington; the University of Washington, in Seattle; Balkanu Cape York Development
Corporation in Cairns, Queensland; CRC Reef Research Centre Ltd., and the Great Barrier Reef Marine Park Authority in Townsville, Queensland; the Northern Land Council, and the North Australia Indigenous Land and Sea Management Alliance in Darwin, Northern Territory; the Queensland Department of Primary Industries, in Brisbane; the Centre for Aboriginal Economic Policy Research, the Australian Institute of Aboriginal and Torres Strait Islander Studies Centre, and the Australian Department of Water Heritage and the Arts, in Canberra, Australian Capital Territory; the South Australian Attorney General’s Department, in Adelaide; the Australian National Native Title Tribunal in Perth, Western Australia; the New Zealand Ministry of Fisheries, Aotearoa Fisheries Limited, Te Ohu Kaimona, and Victoria University in Wellington, New Zealand; and, the University of Auckland, and Option4 New Zealand in Auckland, New Zealand.

Primary and secondary sources, including anthropological literature and tribal documentation, such as press releases and policy statements, as well as newspaper accounts and interview data from current participants in Indigenous fishing initiatives and experts in the area of fishing rights, law and history, were also analyzed to reveal key insights into Indigenous cultural practices, mobilization strategies, colonial histories, legal and political contexts, and broader discourses regarding race, ethnicity and indigeneity in each country and their implications for episodes of contention over Indigenous fishing. Twenty-eight semi-structured interviews were conducted with experts in Indigenous fishing rights, including representatives from the following organizations and institutions: the Northwest Intertribal Fisheries Commission in Olympia,
Washington; Aotearoa Fisheries Limited, Te Ohu Kaimoana, The New Zealand Ministry of Fisheries, New Zealand Parliament, and the University of Victoria School of Law in Wellington, New Zealand; Te Kotahitanga o Te Arawa Waka Fisheries Trust in Rotorua, New Zealand; the Department of Sociology at the University of Auckland; the Departments of Anthropology and Aboriginal and Torres Strait Islanders Studies at the University of Queensland, and the Queensland Department of Primary Industries and Fisheries in Brisbane, Queensland, Australia; Balkanu Cape York Development Corporation, and the Great Barrier Reef Marine Park Authority in Cairns, Queensland; the Torres Strait Regional Authority on Thursday Island, Queensland; the Centre for Aboriginal Economic Policy Research, Australian National University Law School, and the School of Archaeology and Anthropology at Australian National University, in Canberra, Australian Capital Territory.

In addition to these data, I also collected over ten hours of audio recordings from speakers at the Third Annual Maori Fisheries Conference in Napier, New Zealand from April 6-8, 2008. The majority of the conference speakers were fisheries experts representing a wide array of government and non-governmental organizations, including the New Zealand Ministry of Fisheries, the Ministry of Maori Affairs, Te Ohu Kaimoana, Aotearoa Fisheries Limited, Oceanlaw New Zealand Law Firm, Wai Maori Trust freshwater fisheries consortium, fisheries professionals from various iwi (‘tribes’) and hapu (‘kinship groups’), and representatives from the commercial and aquaculture industries. Also presenting at the conference were invited guests from the Northern Territory, Australia representing Aboriginal, recreational and commercial fishing
stakeholders. They were on hand to discuss a possible negotiated settlement in light of the Australian High Court’s ruling acknowledging the exclusive access of Aboriginal people to waters and fish in the vast intertidal zones off the Northern Territory coast (See the Blue Mud Bay case). The conference also served as a forum for a policy debate between Ministers of Parliament representing the Green, National, Progressive and Maori political parties on the topics of equitable fisheries allocation and the conservation of fisheries resources. The primary aims of the conference were to bring together fisheries experts and Maori stakeholders to discuss the implications of conservation and regulatory policies on Maori fisheries, to cultivate new commercial endeavors for Maori owners of fisheries quotas, and to discuss and debate the best ways to satisfy the Maori’s potentially-conflicting commercial, customary, and recreational interests.

At the commencement of the conference, I was privileged to take part in a powhiri, which is a formal Maori ceremony in which guests were welcomed to the Matahiwi Marae. A marae is the sacred and social meeting place belonging to particular iwi, hapu or whanua (families) where the most important social and traditional activities continue to take place. The Matahiwi Marae is one of the oldest established marae of the Ngati Hawea hapu in the Hawke’s Bay region of New Zealand. It was originally established as a neutral meeting ground for prominent chiefs in the area. The powhiri consisted of the karanga, in which a female elder of the marae called out in Maori to the guests, and was met in response by the guests themselves. Subsequently, the elders of the marae personally welcomed the guests and then all of the prominent members of the marae received each guest with a traditional hongi greeting, in which noses are pressed
together and hands are shaken. Through this exchange, guests ceased to be visitors and became tangata whanua (one of “the people”). The powhiri was followed by a hakari (traditional feast), in which generous servings of the best traditional moana (food) and kai moana (seafood) were shared with all of the guests, who sat together at one long table in this festive celebration of unity and camaraderie. At the powhiri and hakari, I was given the chance to see for myself just how important the fisheries are for Maori people. Beyond providing important opportunities for economic development and increased political standing, control of the fisheries enables Maori people to retain the customs and traditions that have been essential to their communities for generations. With this perspective, I was better equipped to observe the struggle over Maori fishing rights, as well as the struggles for fishing rights in Australia and the United States, for what they were -- namely, complex and multi-faceted endeavors in which issues of custom, culture, governance and economic development were constantly contested and in which Indigenous people consistently channeled their histories and traditions as they strived for a better future.

**Case Comparison**

Australia, the United States and New Zealand are well suited for such a comparison given their similar colonial beginnings and their relatively divergent policies toward their Indigenous populations (Cornell 2005). All are the products of English colonization and, as British settler societies, they “share common structural features … of dominance imposed on Indigenous peoples (Maaka and Fleras 2005:18).” On the other
hand, the political structures established by each nation for dealing with their native inhabitants differ rather significantly, creating tangible distinctions in the opportunities for native people to successfully assert traditional rights and maintain their cultural and political autonomy. In the United States, for instance, federal acknowledgement of tribal rights, including subsistence hunting and fishing rights, is secured through official “recognition” of individual tribes. The foundation of this system is rooted in the process of treaty-making between individual tribes and the U.S. government. In New Zealand, on the other hand, the rights of all Maori iwi (tribes) are subsumed under one treaty, the Treaty of Waitangi (Allen 2002). As such, Maori fishing claims have been dealt with in a more expansive fashion than in the United States, where similar rights are adjudicated on a tribe-by-tribe basis. In some ways, New Zealand’s structure has permitted greater flexibility than in the U.S. for the Crown and Indigenous parties to work out creative settlements that include sweeping provisions for commercial fishing rights and carve out opportunities for the inclusion of urban Maori.

In Australia, no treaty was ever ratified between the Crown and any Indigenous societies. Perhaps as a consequence, Aboriginal Australians have not experienced the same level of success as Native Americans or New Zealand Maori in securing state recognition of their cultural and subsistence rights. In fact, as this study highlights, there has been no consistent Crown recognition of Aboriginal fishing rights in Australia. While recent Australian High Court acknowledgement of native land title presents considerable promise for the future success of Indigenous land and sea claims, including subsistence and commercial fishing rights, Aboriginal Australians’ achievement of anything more
than token recognition of their interests remains beyond their reach. Overall, these national-level differences are germane to understanding the political and cultural contexts within which Indigenous rights are negotiated and the pathways that Indigenous resistance has taken. Moreover, they may explain the varying levels of success that Indigenous people have experienced in asserting their rights and defining their own cultural prerogatives in these three countries.

A brief explanation is required about the decision not to include Canada in this study. In many respects Canada presents an appropriate case for comparison. Fishing rights are extremely important to Canada’s First Nations and struggles to secure these rights have taken center stage in many historical and contemporary interactions between tribes and the Canadian government. Canada was not included as a case in this study, however, because its political structure and the pattern of Indigenous fishing rights that has emerged in Canada do not vary systematically from the other countries to provide a distinct outcome for comparison. Specifically, in both Canada and the United States, Indigenous fishing rights have largely been negotiated through individual treaties, on a tribe-by-tribe basis, and later secured through litigation. For those tribes without treaties, individual and pan-tribal fishing rights have been obtained through negotiation and legislation at the Federal and Provincial levels. In this latter regard, the political structure of Crown-Indigenous relations in Canada is somewhat analogous to that in Australia, although the outcome (that is, the official recognition of Indigenous fishing rights) is closer to that of New Zealand and the United States. So, while the United States, New Zealand and Australia provide clear outcomes for comparison (specifically, treaty
recognized fishing rights negotiated on a tribe-by-tribe basis, pan-Indigenous traditional and commercial fishing rights secured at the federal level, and little to no recognition, respectively), the pattern of Indigenous fishing rights in Canada is more complex, exhibiting characteristics of all three other national cases.

**Analyses**

Prior to analyzing any of the 250 articles or 28 semi-structured interviews, I created general codes, which were inductively extracted from the broad themes revealed in the literature discussed in chapter 3, and which generally correspond to the broad categories of the political process model -- namely, political opportunities, mobilizing structures, and framing processes. Codes pertaining to political opportunities included references to colonial histories, prevailing policies for managing Indigenous fishing rights, institutional structures for making claims, state responses to Indigenous claims-making, and mainstream and political discourses regarding race, ethnicity and indigeneity, as well as dominant beliefs regarding the causes of environmental and species’ declines. General codes pertaining to mobilizing structures include references to decisions about where to address Indigenous fishing rights claims, the content of those claims (whether politically, economically, or culturally focused), and any innovations in the ways that Indigenous groups pursued these interests. Finally, codes pertaining to framing processes reference the cultural and political identities that are activated to justify Indigenous fishing rights claims, including oppositional political identities, cultural identities rooted in traditional relationships between Indigenous people and the
natural world, and frames linked to the dominant society’s cultural tool kits in each of the three nations under examination.

The archival and interview data were then systematically analyzed and coded with the use of the NVivo software system, which was developed to facilitate the analysis, coding and comparison of qualitative data. After reviewing and coding the articles and identifying the general themes, I created additional sub-categories to flesh out the general themes and aid in the analyses. These subcategories were coded in accordance with themes revealed in the literatures on Indigenous movements, culture and racial and ethnic identities, and also reflected the political and cultural mechanisms that came to light through immersion in the data. These codes were then systematically applied to the documents and interview data. Once the coding was completed, three narratives were then reconstructed that detailed the political struggles over Indigenous fishing in each nation. The narratives were then compared to each other in accordance with the mechanism-process approach described above in order to reveal key similarities and differences in the political and cultural mechanisms that drove the contentious interaction and that ultimately resulted in three distinct systems of Indigenous fishing rights. By approaching the struggles over Indigenous fishing rights episodes of contentious interactions between Indigenous groups and states -- looking simultaneously at broad political structures, the perspectives and actions of Indigenous actors and groups, and the discourses that frame the events -- and by doing so comparatively and across time, this study is able to shed light on multi-level processes that, in certain circumstances, reinforce existing power structures and, in others, foster social change.


**Cultural Sensitivity**

I have made every effort to conduct these analyses in a way that respects Indigenous peoples’ legitimate concerns about the sanctity of Indigenous knowledge and the propriety of engaging in research that involves native communities. In recent years, Indigenous people have consistently and thoughtfully critiqued academic research that reduces native peoples to passive subjects and that unilaterally imposes Western theoretical perspectives on Indigenous ways of life. One major concern is over the great body of anthropological depictions of Indigenous cultures that has been developed without the participation of native informants (Mihesuah 1998). It is believed that because these depictions omit insider perspectives they are inherently distorted. Others argue that “certain aspects of tribal culture should be off limits to scrutiny,” including private and sacred cultural beliefs and practices (Mihesuah 1998:4). There is significant concern over the publication of details about private ceremonial practices and the location of sacred sites by insensitive scholars who were privy to this information. As a result, a growing body of literature has emerged that specifically addresses how research involving Indigenous people can be approached respectfully (Mihesuah and Wilson 2004; Smith 1999). To most native scholars this means that researchers must not only be sensitive to the privacy of Indigenous subjects, but they also must involve Indigenous people in all stages of the research process in order to ensure that the native community benefits just as much as the scholar from the project (Smith 1999). Garroutte envisions sensitive and participatory research involving Indigenous peoples to be grounded in an approach that she calls, “Radical Indigenism”:
It is intended not as a scholarship performed entirely by Indians, but as one in which Native peoples can see themselves and in which Natives – scholars and nonscholars alike – can participate. It is a scholarship in which questions are allowed to unfold within values, goals, categories of thought, and models of inquiry that are embedded in the philosophies of knowledge generated by Indian people, rather than in ones imposed upon them (2003:144).

With this guidance in mind, I have framed this study in such a way as to ensure that Indigenous individuals, tribes and cultures, of which I do not share an insider perspective, are not the units of analysis. On the contrary, this study focuses on episodes of politically contentious interactions between Indigenous actors and broad structures of political domination, such as the legal systems, bodies of policy, mainstream discourses regarding race, ethnicity and indigeneity, and other structural vestiges of colonialism. My goal is not to reduce Indigenous culture to any monolithic categories or to impose any Western theoretical paradigms on the cultural activities of Indigenous people. Rather, my goal is to understand the cultural dynamics of political contention by examining how Indigenous actors activate cultural symbols that they define as meaningful during political mobilization, as well as the social mechanisms through which Indigenous actors are able to transform dominant political structures and racial discourses. In this process, I have tried to ensure that the portions of my research that specifically focus on Indigenous culture and activism have been guided from the perspectives of Indigenous people themselves.¹
Although I am not an Indigenous person, I worked for several years as an attorney, specializing in U.S. Federal Indian law and advocating on behalf of tribes on a variety of environmental and social justice issues. In this capacity, I assisted tribes in managing their natural and cultural resources in ways that optimized their economic interests and political autonomy while, at the same time, ensuring that their cultural priorities were maintained. I believe that my professional experience navigating the legal relationships between tribes and state and federal governments has provided me with the necessary foundation to further explore these relationships through theoretically-driven scholarship. I also believe that my experience working on behalf of Indian tribes and tribal members has instilled in me the sensitivity necessary to engage these issues in ways that are respectful to the privacy and agency of Indigenous people. These relationships have also encouraged a sense of obligation on my part to give back to Indigenous communities by providing a piece of scholarship that will be useful to them in their ongoing struggles to exercise political sovereignty over fundamental cultural and natural resources. I hope that the findings of this study will assist Indigenous parties in becoming more central players in political decision-making processes over matters that are fundamental to their communities’ survival. I also hope that the insights gleaned from the analyses will help lay the foundation for Indigenous and state actors to negotiate broad and creative settlements to their resource disputes that are respectful to the primacy of Indigenous rights, while remaining mindful of important environmental and commercial interests.
CHAPTER 5
THE CONTEXT AND PATTERNING OF POLITICAL OPPORTUNITY

Generally speaking, Indigenous people in Australia, New Zealand and the United States have experienced colonization in similar ways. In all three cases, European contact and settlement altered forever the land tenure of Indigenous communities and the normative systems controlling the utilization and conservation of culturally-significant natural resources. From the beginning, British colonization was an inherently contested affair, as the usurpation of Indigenous lands and resources were always fundamental objectives. Over time and depending upon the perceptions of Indigenous resistance and the legitimacy of Indigenous claims to the resources in question, varying strategies were deployed by the colonial governments to meet these objectives. While these strategies differed in significant ways in each of the national contexts, there were also striking similarities. In all three cases, colonial conflicts over resources involved episodes of violence, as well as the institutionalization of laws and policies aimed to separate Indigenous people from their traditional resources, weaken their traditional systems of authority, and assimilate them into the dominant population, while simultaneously marginalizing them from mainstream political and economic opportunities.
The conflict over Indigenous fisheries was no different. In each case, British colonizers encountered Indigenous communities that lived by the water and who relied upon the abundance provided by the rivers and oceans to meet their economic, cultural and subsistence needs. It didn’t take long for white settlers and entrepreneurs to recognize the commercial value of New World fisheries and attempt to stake their claims to these resources, as they had already done with Indigenous lands. While the general strategies of domination, noted above, certainly applied to the usurpation of Indigenous fisheries in all three national contexts, there were also fundamental differences in the processes through which Indigenous fisheries' were appropriated in each case. These differences were consequential in shaping the contemporary regulatory regimes that govern Indigenous affairs, generally, and fisheries resources, more specifically. This chapter examines and compares the histories of colonization in Australia, New Zealand and the United States, while paying particular attention to the processes and institutions that accomplished and sustained the appropriation of Indigenous fisheries. The contemporary manifestation of these processes and institutional controls comprise the structure of political opportunities facing Indigenous political actors who are seeking to re-assert authority over their traditional fisheries. As such, they are relevant for understanding the strategies and content of Indigenous fishing rights mobilization and the potential for achieving meaningful change in each of the three cases.
For Indigenous communities in coastal Australia, life has always been lived in harmony with their sea country. Since time immemorial, marine resources have provided for the subsistence and communal needs of Aboriginal people, while also supplying currency for exchange. At the same time, sea country comprised a sacred space for Indigenous Australians, which was spiritually inseparable from the lands and from the people who lived by them and benefitted from their abundance. Through spiritual connectedness evolved an ethos of kinship and stewardship that bound Aboriginal people to their sacred country by way of an intricate system of ritual and responsibility to care for country and all its life-sustaining resources. For contemporary Aboriginal people who still live near the sea, marine resources, including fish, shellfish, sea turtles and dugong, continue to make up an important part of their diets, while the ethos of stewardship and sacred responsibility toward these resources remains an enduring element of their traditional laws and customs. For them, any valuable recognition of their traditionally-based marine rights must include two components: 1) the right to access and utilize marine resources in order to sustain their communities by providing for their subsistence, socio-cultural, spiritual and economic needs; and, 2) the right to manage and protect marine resources according to the sacred obligations set forth in traditional law. Unfortunately, Aboriginal community leaders seeking to achieve these important and interconnected goals, face significant political obstacles, which are, themselves, institutionalized reflections of Australia’s long history of discrimination and marginalization of Aboriginal people.
The Enduring Legacy of Colonization

Australia’s political structure was, in certain fundamental ways, constructed upon a deeply racist colonial foundation and evolved from a long tradition of official and unofficial policies that were specifically crafted to separate Aboriginal people from their lands and resources. Oftentimes, the implementation of the policies resulted in the destruction of Aboriginal communities altogether. The philosophical foundations for Australia’s enduring legacy of institutionalized discrimination toward Aboriginal people can be traced to the colonial doctrine of *terra nullius*, which paved the way for the earliest settlement of the Australian continent. *Terra nullius*, which literally translates to “a land of no one (Russell 2005:40),” legitimated British incursions into Australia without the acknowledgment of Aboriginal tribes’ political sovereignty, even though their civilizations had flourished on the continent for tens of thousands of years. The de-politicization of Aboriginal civilizations enabled the British to settle Australia without engaging in treaty-making, as was the practice in North America and would be again with the settlement of New Zealand. As a result, Australia’s nationhood was established without any foundational documents that “confirm Indigenous rights or even bind its government to act in good faith when dealing with Indigenous Australians (Durette 2007:22).” By essentially defining Aboriginal people as “non-people” who could easily be politically and economically marginalized, or even wiped from the face of the earth without protection or recourse, the philosophy embodied in *terra nullius* provided a powerful catalyst for the realization of the political and material objectives of British
colonizers and Australian settlers regardless of the costs to the Indigenous population.

Views of Aboriginal Australians as an inferior race, undeserving of the rights and protections of the European colonizers, laid the foundation for centuries of discriminatory laws and policies aimed to separate Aboriginal people from the valuable lands and resources that they had occupied and managed since time immemorial. These laws also aimed to destroy the unique cultural systems that were so alien to the settlers, but that had sustained Aboriginal communities and forged an inseparable link between them and their country for millennia. While early colonial policies targeting Aboriginal people were particularly damaging, many of the most egregious practices continued well into the 20th Century, including the denial of full citizenship status to Aboriginal Australians until 1967 and the kidnapping of mixed race children in parts of Australia until the 1960’s and 1970’s.

This long history of racism and discrimination has also influenced mainstream discourses about Aboriginal ethnicity as well as debates over Australian nationalism and the character of Australia’s citizenry. While these discourses are often contradictory in substance, their utilization tends to consistently demean Aboriginal culture and personhood, while promoting non-Indigenous political and economic interests over those of Australia’s original inhabitants. While Australia’s colonial history was violent and marked by the forced removal of Aboriginal people from their homelands and the appropriation of materially and culturally valuable resources by force, threats of force and outright massacre, many contemporary Australians were taught a revisionist colonial
history, whereby Aboriginal people “just floated mysteriously across the landscape, and when the good British arrived, they just faded away (Smyth Interview).” Along these lines, modern Australians were also led to believe that, at the time of contact with European settlers, traditional Aboriginal culture was particularly simplistic and under-developed, with no economic component. At the time, such beliefs justified the paternalistic and assimilationist policies that encouraged Aboriginal people to adopt the ways of life of white Australians and rationalized the kidnapping of mixed race children “for their own good (Lombardi Interview).” Later, these discourses would validate the exclusion of any commercial entitlements within recognized native title rights. Somewhat ironically, the refusal to permit Indigenous Australians to commercially develop their natural and cultural resources is inexplicably inconsistent with another prevailing stereotype regarding Aboriginal people: that they are lazy and willfully dependent on the welfare system to get by (Walker 1993). Such views continue to be held by members of the general public as well as by government officials who manage Aboriginal affairs and control access to culturally and economically significant natural resources.

The generally accepted view that Aboriginal people were not capable of engaging in “contemporary” economic or political pursuits, would also excuse policies that diminish their power to manage their own natural and cultural resources and that exclude them from decision making bodies, even where their own destinies are being determined. According to Dermot Smyth, a zoologist and expert on Indigenous natural resource management, until fairly recently natural resource managers were forbidden to speak to Indigenous Australians as a matter of policy. Smyth saw this practice as a particularly
egregious injustice as well as “a stupid way to manage the environment- to exclude the people who had been managing it for thousands of years (Smyth Interview).” The lack of any meaningful Aboriginal representation is a problem that continues to plague Australian politics. In Australia’s national history, there have only been two Indigenous representatives in the Commonwealth’s Parliament and, at present, there are none serving in that capacity. While there have been various institutional bodies for asserting Aboriginal interests at the Commonwealth level over the past 50 years, including the most recent iteration known as the Aboriginal and Torres Strait Islander Commission (ATSIC)\textsuperscript{ii}, these forums have primarily served only advisory functions and have failed to achieve any institutional longevity.

Contemporary Political Institutions Governing Indigenous Affairs and Marine Resources

Native Title

The past twenty years have witnessed major changes in the formal acknowledgement of Aboriginal land and natural resources rights through the recognition of Aboriginal native title in the landmark case of *Mabo and Others v The State of Queensland*. In its ruling in *Mabo*, the Australian High Court reversed *terra nullius* and decades of legal dogma that denied Aboriginal people’s original sovereignty and ownership of their ancestral lands and resources (Horrigan 2003). By reversing *terra nullius*, the High Court acknowledged that Indigenous Australians continued to hold customary native title\textsuperscript{iii} to their traditional lands and resources, so long as these rights had not been “validly extinguished by legislative or executive action, [and] provided that they
have not surrendered their title or lost their connection with the land (Horrigan 2003 citing Mason 1996:3).”

The earliest interpretations of native title were revolutionary, not only in their complete reversal of centuries of discriminatory colonial dogma, but also in their apparent openness to Aboriginal definitions of traditional law governing the scope and content of native title determinations. The Native Title Act of 1993, sought to immediately codify and clarify the Mabo decision, while also providing a safety net for non-Indigenous private and governmental property holders by ensuring that the latter’s rights could not be superseded by successful determinations of native title. Of particular import to Aboriginal fishing rights is Section 211 of the Act, which “exempts native title holders from permit or license requirements for hunting, fishing, or gathering done for the purpose of satisfying personal, domestic or non-commercial communal needs, or is otherwise in the exercise or enjoyment of native title rights (Durette 2007:16).”

In addition to establishing the framework for recognizing native title, the Act also provided native title holders with a statutory “right to negotiate” where future acts purported to extinguish native title and guaranteed monetary compensation where extinguishment occurs (Durette 2007:16). Strikingly, however, the Native Title Act includes no Aboriginal right to veto development projects that might infringe on their rights, no right to control or participate in environmental management of native title resources, and no way to stop governments from overriding native title rights that are deemed to interfere with industry or public access to natural resources (Mulrennan 1998). Where native title rights are overridden, monetary compensation is the only available
reparation.

The Native Title Acts of 1993 and 1996 established a body of tribunals through which Aboriginal people are required to adjudicate their customary rights to lands and resources. While the Native Title system finally gave Aboriginal people official access to political institutions and tools for asserting their ancestral rights, it also forced them to adhere to a complex system of regulations that privilege Anglo-European legal and scientific paradigms and have little relevance to the lived experiences and worldviews of Aboriginal people. Native Title tribunals specifically require that Indigenous groups bring their claims separately rather than asserting them jointly with other groups who may share ancestral homelands, kinship networks, or other cultural affinities. This limits the autonomy of Aboriginal groups to determine for themselves the most politically or culturally relevant alliances through which to bring their claims. It further belies the reality and complexity of tribal identifications, which, due to colonial practices of removal and dispersion, are often not easily determined by contemporary residential patterns. What’s more, tribal groups are compelled by statute to form “prescribed bodies corporate (PBC), as land-holding and management vehicles” as a pre-requisite to bringing native title claims (Brennan 2007). This forces Aboriginal groups to adopt a purely Western institutional form, which often does not reflect the traditional organizational systems of Aboriginal communities, and strips from them the ability to decide for themselves how best to organize.

Regardless of the limitations of the Native Title system, the Act and the *Mabo* decision had real potential to be a powerful one-two punch for Aboriginal people to assert
their rights and achieve culturally and socially significant outcomes. Unfortunately, the progressive possibilities of the native title regime have fallen victim to a series of regressive political moves that have seriously curtailed its potency (Horrigan 2003). In response to the public’s largely irrational fears that Aboriginal native title would supersede individual property rights, invalidate leases on vast tracts of profitable pastoral lands, and provide Aboriginal people with an unfair commercial advantage in natural resource exploitation, the Australian government chipped away at Aboriginal native title through legislative and judicial action. Particularly destructive were the conservative Howard Government’s 1996 Native Title Amendments, which gave “priority to business or governmental interests in almost every commercially significant occasion where those rights might coexist and compete (Horrigan 2003).” Also damaging were a series of court decisions that increased the evidentiary burden on Aboriginal claimants in proving their traditional connections to lands and resources (See e.g. Members of the Yorta Yorta Aboriginal Community v Victoria and others (2002)).

Notwithstanding these general problems, the native title system remains the only formal means for Aboriginal communities to assert their traditional rights to fish and hunt aquatic resources. Unfortunately, the system is particularly ill-suited for this task. This is primarily due to the fact that the native title system treats Indigenous land and sea rights very differently: “the government has not minced any words in relation to Native Title in the sea: ‘native title is not recognized in the sea.’ This of course is a presumption of epic proportions that flies in the face of aboriginal assertions now and forever (Roberts and Tanna 1998:3).” The disparate treatment of land and sea rights appears to be a lingering
reflection of the European legal fiction that views the sea as part of “the commons,” which cannot be owned or exclusively possessed (Glaskin 2002:1). Indeed, the Australian High Court has specifically ruled that while native title rights to Aboriginal sea country exist, they do not confer the authority to exclude others. Glaskin explains that,

the native title rights of the common law holders were reduced to the right to travel through or within the claimed area, fish and hunt (non-commercially), visit and protect places, and safeguard their cultural and spiritual knowledge. These native title rights and interests are considered to be affected by, and required to yield to, other rights and interests ‘to the extent of any inconsistency,’ meaning they are subject to the extant legal rights of others (2002:3).

Beyond acknowledging a general right to access and harvest marine resources, native title rights to the sea are more symbolic than anything else, and remain secondary in priority to existing recreational and commercial interests. And, unlike native title to land, marine native title rights do not confer a “right to negotiate” under the Native Title Act where future acts of development threaten these interests (Mulrennan 1998).

Another major obstacle facing Aboriginal native title holders is the explicit interpretation of Aboriginal fishing rights as excluding any commercial component. Although there is ample historical evidence that Aboriginal fishermen from Northern Australia traded fish with Macassan fishermen from the Indonesian archipelago prior to European contact, such evidence has not been accepted by the courts as proof sufficient to confer native title rights (Durette 2007). Unfortunately, Australia’s refusal to acknowledge any commercial component of traditional customary fishing has effectively
relegated Aboriginal fishing rights to a subsistence level and further reinforces Indigenous Australians’ economic and political inequality.

Bureaucratic Structures and Policies

Outside the Native Title system, the institutional structure for regulating Aboriginal aquatic rights is divided between the individual states and the Commonwealth (Reilly 2006). Within each of these regimes, authority is further divided amongst a number of small bureaucratic agencies, which often have conflicting agendas. The result is a hodgepodge of incongruent fishing regulations and rulings that, for the most part, have given short shrift to Aboriginal customary interests and have proscribed commercial fishing altogether. This forces Aboriginal groups to negotiate individually with federal and state governments, with no guarantee of a consistent outcome in the application of their marine rights. Such a fragmented approach to Aboriginal affairs also prevents Indigenous groups from asserting their rights in a unified fashion -- effectively compelling resolution of Aboriginal claims on claim-by-claim and jurisdiction-by-jurisdiction bases (Horrigan 2002).

Another problem for Indigenous Australians is that the agencies governing Aboriginal affairs and marine resources are predominantly staffed by non-Indigenous people who fail to advocate effectively for Aboriginal needs. While this situation remains the norm, there has been some movement toward greater Indigenous representation in decisions concerning culturally significant marine resources. Indeed, the decades since Mabo have witnessed a general trend by the Australian government to develop a new system of policies and institutions that facilitate negotiations between Aboriginal and
non-Aboriginal stakeholders, increase Aboriginal influence in policy-making arenas, and provide opportunities for meaningful participation by Aboriginal people in the management of aquatic resources. These institutional changes have been accompanied by shifts in attitudes by many natural resource managers who feel that “fairness” demands not only recognition of Aboriginal resource rights, but also the opportunity for Aboriginal people to contribute to the decision-making and management of those resources (Murphy Interview).

In spite of these changes and the increase in negotiations over Aboriginal marine rights, the scope of the resulting agreements are generally limited to the access and co-management of the resources, and fail to include provisions for their exclusive ownership or commercial development. But even in these more modest efforts, Aboriginal people face major political and cultural barriers. For one, management regimes tend to privilege Western scientific paradigms favoring strict conservation measures over more holistic Indigenous approaches to eco-system sustainability. Second, because white Australians dictate the terms within which claims to Aboriginal aquatic rights occur, they are able to control the discourses within which these rights are negotiated. Aboriginal marine rights also remain subject to the whims of dominant political regimes, which remain generally unwilling to consider Indigenous stakeholders as legitimate management partners or recognize the full extent of Aboriginal native title rights, regardless of High Court rulings to the contrary.

In general, Aboriginal sea country management programs are expected to engage in established co-management protocols that are governed by western scientific
paradigms rather than the normative systems of management developed and perfected by Indigenous stewards for tens of thousands of years (Roberts and Tanna 1998). Even where Indigenous groups take the lead in resource management efforts, they are often unable to exert meaningful substantive control over the process (Annie Ross Interview). Two Indigenous resource managers echo this sentiment when they explain that, “In Natural Resource Management when people talk of Indigenous governance more often than not they use blackfella names to refer to whitefella ways (North Australia Indigenous Land and Sea Management Alliance 2008:49).” What’s more, many white resource managers and scholars believe that contact with European settlers disrupted the practice of authentic Indigenous culture and, as a result, “indigenous communities have been so severely disrupted that they no longer possess a meaningful relationship to the environment nor retain a historic memory of that relationship (Ross and Pickering 2002 citing Redford 1990).” These deep-seated, Euro-centric beliefs about the legitimacy of Aboriginal cultural norms further inhibit Indigenous Australians’ ability to implement culturally-sensitive methods of cultivating and managing their aquatic resources.

From a policy perspective, mainstream resource managers often separate land and sea resources, taking a divided approach to ecosystem management that is based on bureaucratic jurisdictions, rather than ecosystems, which is the standard within Aboriginal societies. While this remains the norm, there is some indication that some managers are starting to see the benefit of bio-regional approaches to resource management. If mainstream management regimes continue to move in this direction, and if they keep promoting co-management partnerships with Aboriginal communities who
live near their sea countries, utilize their resources, and have an ongoing obligation of stewardship, there will likely be greater opportunities for Aboriginal people to implement sustainability practices that not only protect their native title rights, but also reflect their cultural obligations to the sea.

Unfortunately, inconsistent funding remains a major impediment to the long-term viability of Aboriginal management programs. Oftentimes, continued funding hinges upon the creation of corporate bodies and the adoption of Western procedural rules for conducting business. This is the case even though these frameworks and regulations are inconsistent with Aboriginal social structures, they have little relevance to culturally-based resource management, and there is little existing institutional capacity within many Aboriginal communities to support these imposed systems (Roberts Interview; Roberts and Tanna 1998). To make matters worse, funding agencies commonly fail to give Aboriginal programs adequate time to build the necessary capacity in order to demonstrate programmatic success. As a result, funding is often cut off before these programs can even get off the ground (Hunter Interview; Roberts Interview).

A final, significant factor that inhibits the broad-based, institutional recognition of Indigenous Australians’ rights to access and manage traditional aquatic resources, is the fact that state and Commonwealth resource management agencies are becoming increasingly influenced by powerful environmental and conservation movements that often remain hostile to the interests of Aboriginal people. As conservation of the marine environment becomes a paramount concern for Australians, many environmentalists remain willing to target Aboriginal consumptive practices for reform, rather than
considering the far more destructive activities of commercial and recreational fishermen. According to Ross (Interview 2008), Australia has witnessed a recent shift in thinking by conservation experts about population declines in endangered species – particularly dugongs, which are commonly hunted by Aboriginal communities for subsistence and ceremonial purposes. While experts used to attribute dugong population decline as primarily incidental to recreational and commercial fishing activities, many are now pointing to Aboriginal hunting as the most significant cause of the decline (See also National Native Title Tribunal 2004a).

The shift in scientific discourses mirrors recent claims by conservationists and scientists blaming Aboriginal Australians for negative environmental outcomes more generally and coincides with growing public concerns that widespread native title rights will inevitably destroy protected natural resources. Notwithstanding the conflicting evidence, Australian policy makers are increasingly willing to regulate Indigenous dugong hunting, while placing few limitations on incidental kills by commercial and recreational fisherman (National Native Title Tribunal 2004; Ross and Pickering 2002). Following the demands of their conservationist constituency, policy makers are also increasingly favoring blanket bans on marine mammal harvesting and instituting “no take zones” that cover large swaths of Aboriginal sea country, rather than acknowledging time-honored Aboriginal approaches to species protection that favor sustainable utilization of resources (Dhimurru Land Management Aboriginal Corporation 2006; Ross Interview).
New Zealand

The Maori of New Zealand are maritime people. Their cultural and political identities are tied to stories of heroism, exploration and the survival of their ancestors who migrated thousands of miles to Aotearoa New Zealand on out-rigger canoes, relying solely on their wits, their deep-seated knowledge of the sea and the stars, and the abundance of resources the ocean provided to them. Throughout the majority of the 800 years since their arrival in New Zealand, Maori civilizations have prospered, and this is in no small part due to their reliance upon and exploitation of marine resources.

Prior to European contact, Maori engaged in widespread fishing activities, using an array of technologically impressive methods to meet their personal, ceremonial and economic needs. With the arrival of Europeans and the tools they brought with them, Maori fishing expanded to a position of regional dominance, with new economic opportunities taking center stage. However, as the balance of power in New Zealand shifted from the Maori to a growing population of Pakeha (white) settlers, Maori fishing suffered. Through both intentional and incidental consequences of colonization, Maori fishing supremacy faltered and, by the end of the 19th century, was relegated to predominantly subsistence-level activities. But, even as Maori fishing was scaled down and pushed back to more local and family-based operations, it remained socially, culturally and economically important. Today, the sea continues to occupy a central place in the culture of modern Maori people, much as it did for their ancestors. Through ceremony and on-going traditional obligations, the sacred ties linking Maori people to their maritime ancestors, and creating obligations of stewardship to their resources, are
perpetually reinforced. In light of the enduring importance of fishing to their lives, the Maori have continued to press for recognition of the full breadth of their fishing rights as practiced prior to British contact and as guaranteed through the Treaty of Waitangi.

Indeed, the past 25 years have witnessed a revival of Maori customary and commercial fishing rights. This has been accomplished in several ways: 1) through the rebirth of the Treaty of Waitangi in the 1970’s as a binding document creating the Crown’s ongoing obligation to protect Maori rights; 2) through the Waitangi Tribunal’s subsequent determination that the Crown breached its obligations to protect Maori fishing rights from interference and to facilitate opportunities for the Maori to develop those rights over time; and 3) through the sweeping settlement of all Maori fishing claims, which included the transfer of 50% of the largest commercial fishing company in New Zealand to Maori, the ongoing allocation of fisheries quota to Maori tribes, the establishment of two governing bodies to oversee the settlement process and ensure economic returns on settlement assets, and the guarantee that customary (non-commercial) Maori fishing interests would also be protected.

While the settlement represents an unprecedented opportunity for Maori people to regain some of their historical dominance in the New Zealand fishing industry, it is not without its problems. Ultimately, the settlement and the political system of regulations it engendered are products of a unique history of colonization, and the resulting racial tensions and political and cultural clashes that marked Maori and Pakeha relations during the process of nation-building in New Zealand. It is with this understanding in mind that we must examine the contemporary structure of political opportunities facing Maori
people as they assert their Treaty-guaranteed rights to develop and manage their fisheries.

*Colonization: Exclusion and Reintegration of Maori into Dominant Political Structures*

Unlike the European settlers of Australia, those who attempted to colonize New Zealand met an Indigenous population that was linked by a common language and ancestral genealogy (“whakapapa”). The Maori people were also more assertive, at times aggressive and, by European standards, more technologically advanced than Indigenous Australians. Instead of an alien culture, the first Europeans in New Zealand likely recognized in the Maori many similarities to themselves. Like European societies, Maori civilizations were hierarchical and leadership was manifested through prestige, military prowess, and, to some extent, the accumulation of wealth. Maori societies were also politically and territorially organized, and disputes between tribes (“iwi”) over lands and resources were not uncommon. Finally, the Maori were economically progressive, often seizing upon new technologies and opportunities to increase their harvesting and trade capacities.

In light of these commonalities, and in consideration of the real threat that Maori warriors posed to settlement, the British were willing to engage in acts of diplomacy with the Maori that were unheard of in Australia. In striking contrast to *terra nullius*, the Crown entered New Zealand with the presumption that Maori tribes actually owned much, if not all, of New Zealand and conditioned settlement on the Maori’s cession of lands to the Crown through negotiated agreements. This prompted the 1840 Treaty of Waitangi, which was signed by over 500 Maori chiefs and accomplished the transfer of
sovereignty over the territory of New Zealand from the Maori to the British Crown.

Several fundamental assumptions were implicit in the signing of the Treaty. The first was that Maori tribes had preexisting political autonomy over the lands and resources of New Zealand. The second was that the British and the Maori were equal parties to the agreement with each negotiating for “a better life” for their people (Waitangi Tribunal 1988). From the Crown’s point of view, this would be accomplished through the assumption of sovereignty necessary to settle New Zealand and build a new nation. From the Maori point of view, this required the reservation of full possession and autonomy over essential lands and natural resources, including their fisheries.

In its earliest days, nationhood in New Zealand was constructed in a largely bi-cultural way. The Treaty of Waitangi was itself a bi-cultural document. Specifically, the Treaty was written in both English and Maori and it envisioned the continuation of the Maori’s political autonomy over their peoples, territories and resources within British-governed New Zealand. However, as the white population boomed and the Maori sustained difficult military losses during the Land Wars, the balance of power slowly shifted from Maori to Pakeha and the bi-cultural experiment of nation-building in New Zealand was abandoned in favor a more mono-cultural approach to colonization, which had been the norm in Australia and North America. Indeed, from the 1870’s through the 1970’s, the legal significance of the Treaty of Waitangi as a foundational document guaranteeing mutual benefit and protection to Pakeha and Maori was completely ignored.

During this time New Zealand’s colonial history was re-written from a story of egalitarianism and mutual accommodation to one of European superiority, forced
acculturation and justified political domination. The Maori people were re-classified from equal Treaty partners to second class citizens. Unlike Aboriginal Australians, however, the Maori enjoyed full citizenship status in New Zealand and the educational and economic opportunities that came with it. For the majority of Maori during this period, however, such opportunities remained elusive and they continued to comprise the lowest economic classes, living either in remote rural communities or in more economically depressed urban areas. Although some Maori people were able to break through these social barriers, acquiring wealth or ascending to political office, these cases remained the exception rather than the rule.

Racial domination was not institutionalized in New Zealand to the same extent as it was in Australia. That being said, the Maori were not immune to political attacks on their ways of life. Examples of this include legislation mandating the education of Maori children in English, prohibiting Maori healing practices, and banning breastfeeding by Maori mothers in public (West-Newman 2004). At the same time, Maori societies were targets of laws aiming to systematically weaken tribal political power by individualizing Maori land ownership. This paved the way for a new series of laws and policies that were enacted to separate Maori people from valuable land bases, open up their lands to settlement, mining and other industries, and appropriate Maori fisheries. By the middle of the 20th Century, the Maori had lost control of much of their lands and traditional resources and had few opportunities to assert themselves within mainstream economic markets and political systems.
The reinvention of Maori as racially subordinate to white New Zealanders also seeped into mainstream worldviews and dominant discourses. Stereotypes of Maori as lazy and welfare dependant only served to reinforce their economic and social alienation by painting them as particularly undeserving of governmental assistance, even as the income gap between Pakeha and Maori widened. Where affirmative action policies were proposed to bridge this gap, they were commonly resisted as an affront to Pakeha notions of egalitarianism, in which all citizens were formally equal and where no class of people deserved “special rights.” Furthermore, Maori assertions of rights based on their original occupation of New Zealand or on the terms of the Treaty of Waitangi were often dismissed on the grounds that the Maori, like the Pakeha, were simply immigrants to New Zealand and, as such, were not Indigenous peoples deserving accommodation under common law recognition of native title or the terms of treaties. These prevailing discourses justified existing inequalities and created barriers against Maori peoples’ integration into contemporary markets, the revitalization of Maori cultural and political systems, or the development of traditionally-based economic opportunities.

In the past 35 years, a major shift has occurred in the recognition of Maori rights, which seems to hint at a re-awaking of a more bi-cultural vision of nationhood in New Zealand. This shift has coincided with several other significant changes impacting the politics and economy of New Zealand, which emerged from both domestic and international sources. In 1975, decades of Maori political activism had culminated in the re-birth of the Treaty of Waitangi as a legally binding foundational document. At the same time, the Waitangi Tribunal was empowered to investigate claims that the Crown
breached the Treaty by settling Maori lands and permitting the unauthorized exploitation of Maori natural resources. In the years that followed, several major claims were decided in favor of the Maori, including two groundbreaking decisions involving the fishing rights of the Muriwhenua and Ngai Tahu tribes. Not only did the Waitangi Tribunal find that the Crown had unlawfully interfered with the Maori’s fishing rights, but it defined those rights very broadly, acknowledging the subsistence, ceremonial and commercial components of the Maori’s treaty rights. While this was happening, New Zealand experienced a significant economic crisis when England joined the European Union and turned away from New Zealand as a major agricultural importer. The crisis left the New Zealand government searching for ways to settle Maori treaty claims once and for all and, at the same time, reduce some of the government’s financial and bureaucratic burden by redirecting the provision of services to Maori communities and providing economic opportunities for individual Maori people. Meeting these disparate goals provided the impetus for the Crown’s massive settlement of Maori fishing rights in 1992. The re-validation of the Treaty of Waitangi, the Crown’s willingness to accept responsibility for breaching the Treaty, the integration of Maori as legitimate players in New Zealand’s fishing industry, and the recognition of Maori corporate and governing structures as valid vehicles for overseeing Maori economic and political interests all seem to point to the possibility of New Zealand re-defining itself on more inclusive, bi-cultural terms.
The Institutionalization of Contemporary Maori Fishing

The scope of contemporary Maori fishing rights are overwhelmingly shaped by the terms of the 1992 fisheries settlement and the Waitangi Tribunal’s findings in the Muriwhenua and Ngai Tahu cases. In its landmark rulings, the Waitangi Tribunal took a far more expansive view of Indigenous rights than the Australian High Court did in the *Mabo* case. For one, the Tribunal refused to freeze Maori fishing rights to their extent in 1840, and instead determined that the Maori had a right to develop their fisheries over time and through technological advancement. According to the Tribunal, the Treaty of Waitangi “specifically envisioned that Maori would gain greater development opportunities from settlement and access to new markets,” and “imposed a duty on the Crown to ensure that each tribe retained sufficient resources from which they could develop (Waitangi Tribunal 1988).” Also unlike the Australian court, the Waitangi Tribunal did not impose a burden on the Maori to prove their continual fishing activities. On the contrary the Tribunal ruled that the Maori’s significantly diminished fishing activities were proof, in and of themselves, that the Crown breached the Treaty.

In the end, the Waitangi Tribunal determined that by permitting the unchecked expansion of the non-Indigenous fishing industry, the Crown infringed on the Maori’s extensive treaty-guaranteed rights to control, manage and develop their fisheries and caused immeasurable social, cultural and economic costs to Maori individuals and tribes. According to the Tribunal, the Crown was now obligated to put things right for the Maori, and this would doubtlessly be very costly: “Very substantial relief to the claimants is required in respect of past breaches and to *restore their fishing economy to what it*
might have been. There can be no once-and-for-all settlement in Muriwhenua without a long term programme of rehabilitation to restore their ancestral association with the sea [Emphasis Added] (Waitangi Tribunal 1988).” Understanding that the Muriwhenua and Ngai Tahu rulings were likely to be the first of hundreds of Maori fishing claims, the New Zealand government set to work to settle all potential claims fully, finally, and in a unified fashion. Such an approach was consistent with the renewed spirit of negotiation and partnership that was envisioned by the Waitangi Tribunal in the Muriwhenua ruling. Indeed, the Tribunal seemed to view the revitalization of the Treaty and any resulting settlements as opportunities for New Zealand to re-construct its national identity on more bi-cultural terms. According to the Tribunal, settlement “is not a question of compromise but of recognizing the contribution that both Treaty parties can make to building a unified whole (Waitangi Tribunal 1988).”

The groundbreaking fisheries settlement that resulted accomplished several things. First, it allocated 10% of New Zealand’s total fisheries quota to the Maori and guaranteed that 20% of future quota would also be allocated to Maori tribes. Second, the government purchased and transferred to the Maori 50% ownership in Sealords Ltd., the largest domestic commercial company in the country. The settlement also ensured that customary (non-commercial) harvesting rights would be recognized and explicitly protected by future regulations. Finally, the settlement established two new governmental agencies, Te Ohu Kaimoana (TOKM) and Aotearoa Fisheries Limited (AFL), which are staffed by Maori people and charged with the tasks of overseeing the allocation of quota
and assets to the iwi, ensuring ongoing economic returns on Maori fisheries assets, and representing Maori interests at the highest levels of government (Durie 1998).

In the process of institutionalizing Maori fishing rights, the settlement also restructured the way those rights were organized, regulated and protected, with both positive and negative results. The settlement was constructed as a binding agreement between the Crown and 57 individual iwi (“tribes”). However, Maori communities are socially and political organized not only at the tribal level, but also according to hapu (sub-tribal) and whanua (family) affiliations. And because Maori fishing activities were traditionally regulated by hapu and whanua, not iwi, the settlement imposed a somewhat artificial structure on Maori people for managing their contemporary fishing rights.

To accomplish a full and final settlement of Maori fishing claims, the Crown decided to deal with the Maori as a unified group, instead of individually or with the various iwi. While deferring to traditional Maori decision-making processes requiring consensus, the terms of the settlement demanded agreement among all 57 recognized iwi as to how allocation of settlement assets would proceed. This was particularly challenging given the conflicting interests and long-histories of conflict and violence between many of the tribes. Indeed, the early years of negotiations between the iwi were “like riots” with protests, chanting and haka (war dances) (McClurg Interview). Twelve years later, all 57 iwi had agreed to an allocation model where quota to inshore and deep-water fisheries would be allocated to iwi proportionally according to a combination of population size and ownership of coastline. Peter Douglas, CEO of Te Ohu Kaimoana marvels at this agreement:
If you were to describe it in a cynical way, there’s the government that says ‘here you are, here’s a whole lot of money, or a whole lot of means to create money, you sixty tribes, why don’t you figure out how to split it up how you like.’ Nobody had done anything like this here or anywhere. And, so people talk about this terrible ten year period where we squabbled about how we’re going to divide it all. And, the truth of it is, if you understood what was involved, you’d think ‘gee, ten years, that’s not bad (Douglas Interview).’

Once this agreement was reached, the terms of the settlement were put into law by Parliament as the Maori Fisheries Act of 2004.

The Fisheries Act required each iwi to establish a mandated iwi organization (MIO), which had to meet formalized corporate and governance standards in order for the iwi to take control of their fisheries quota. Some iwi who had been providing services to local members for several years had a head start on this process. Others are still building the necessary capacity to make this happen. As with Indigenous tribes in Australia, Maori organizations are required to adopt Western corporate and political structures in order to achieve formal recognition of their fishing interests. On one hand, this remains antithetical to traditional Maori authority structures and strips from them the autonomy to make decisions about what governing model best meets their needs. On the other hand, by virtue of their relatively high level of integration into the social, political and economic mainstream, and their generally-held aspirations to access and benefit from contemporary economic markets, Maori people seem to find greater advantage to
adopter these structures and do so with greater overall success than Indigenous Australians.

For the purposes of regulating and allocating resources, the settlement and Fisheries Act also created an artificial distinction between commercial and non-commercial customary (i.e. ceremonial and subsistence) fishing rights. By dividing Maori fishing rights along these lines, the settlement created competition between Maori individuals and groups that prioritized one category of fishing over the other. In addition to creating divisions between Maori people, these distinctions have also resulted in unforeseen alliances. On the one hand, there are alliances between Maori commercial stakeholders, which include various iwi, TOKM and AFL, and non-Maori members of the commercial fishing sector, who all want to maximize corporate returns without undue regulation. On the other, there are growing alliances between Maori proponents of customary rights, and recreational fishers, who are all primarily concerned with conservation and the protection of the fisheries from unchecked commercial exploitation.

A significant problem that exacerbates these divides is that the settlement is far more explicit in establishing mechanisms for allocating and protecting Maori commercial fishing rights than is the case for non-commercial rights. In the years since the settlement, there has been a noticeable lack of guidance and funding from the New Zealand Ministry of Fisheries (MFish) to support Maori in the protection, regulation and management of their non-commercial fisheries. Formally speaking, customary regulations have established numerous instruments for Maori to assert culturally-relevant control over their customary fisheries. These include the establishment of traditional mechanisms,
such as kaitiaki (a traditional fisheries guardian who issues licenses for customary fishing), mataitai reserves (reserved traditional fishing grounds where commercial fishing is prohibited), taipure and rohe moana (coastal fishing boundaries), the appointment of pou takawaenga (customary fishing liaison) within MFish, and the creation of regional forums to facilitate cooperation between MFish and the Maori people. Unfortunately, to date, MFish’s efforts to fully integrate Maori customary fishing into a national regulatory regime have been generally inconsistent, suffering from lack of funding, lack of public support, and lingering institutionalized doubts about the capacity of Maori to manage their own fisheries. What’s more, MFish has consistently ignored its statutory obligation to consult with Maori when developing sustainability policies that could directly or indirectly impact Maori customary fishing (Tai 2006).

Ultimately, Maori fishing rights, including the settlement itself, remains subject to the whims of New Zealand’s Parliament. Unlike the United States and Australia, New Zealand does not have a constitution. Other than rights derived from the common law, all other legal entitlements are created by statute and, as such, can be changed relatively easily (Boast Interview). While the Waitangi Tribunal has made it clear that the Treaty and its principles have become a binding and irrevocable part of the common law, the shape of the rights derived from the Treaty remain malleable and subject to the vicissitudes of New Zealand politics. All of that being said, the Maori have reason to be optimistic that the strides they have made in integrating their rights into New Zealand’s fishing regime are just the beginning of better things to come. Currently, Maori comprise about 15% of New Zealand’s population and their numbers are increasing every year.
Consequently, the Maori people have become an influential voting bloc, and they are more than willing to leverage their political clout between the country’s two major political parties. What’s more, since the 1860’s Maori have dedicated seats in Parliament, the exact number of which changes and is determined by the proportion of Maori people in the general population. In 2004, the Maori Party was formed during the foreshore and seabed controversy, discussed briefly below, for the specific purposes of representing Maori interests in New Zealand’s Parliament. The Maori’s growing political influence means that their interests are increasingly considered at the highest levels of government, and there’s little reason to believe that this will change anytime soon.

Notwithstanding the Maori’s increasing political power, their fishing rights remain subject to attack from governmental and public sources that are driven by conflicting objectives and, sometimes, lingering biases against the Maori people. One example of such a threat is the New Zealand government’s renewed push to conserve marine resources in light of evidence of species decline due to unchecked commercial exploitation. To meet this objective, the Department of Conservation has proposed establishing Marine Reserves over large swaths of New Zealand’s coastal waters within which all fishing activities would be prohibited. Maori see such policies as a breach of their Treaty fishing rights, as well as de facto evidence of the government’s unwillingness to take Maori traditional conservation efforts seriously. Another major setback to the Maori’s marine rights was the New Zealand Parliament’s unilateral restriction of Maori title to foreshore and seabed lands, notwithstanding court rulings to the contrary (Boast Interview). The foreshore and seabed issue represented a step backward for Maori-
Pakeha relations in the post-fisheries settlement era and potentially signals a backlash by members of the public and the political elite who see the settlement and other recent Maori victories as unfair and undeserved special rights (West-Newman 2005). It remains to be seen whether these recent setbacks in policy and mainstream discourses represent truly regressive moves or whether they are simply the growing pains of a nation that is striving to re-define itself on more bi-cultural terms.

**United States**

Native Americans of the Pacific Northwest consider themselves to be “salmon people (See e.g. Squaxin Island Tribal Museum Exhibit 2008).” As far back as anyone can remember, Indigenous people in this region relied upon salmon as their primary source for nutrition and an important commodity for trade. So fundamental were salmon to the survival and social organization of Native Americans that the species became a central part of their social and cultural identities. Indeed, an array of ceremonial rites and customary regulations evolved that linked the salmon and the people together in sacred bonds of kinship and ensured the protection of the species from over-harvesting. For millennia, the salmon continued to nurture the bodies and spirits of Native American people, and the people ensured that the species thrived. With the arrival of American colonizers in the mid-1800’s, everything would change for both the salmon and the Indigenous inhabitants of the Pacific Northwest, just as it had for Indigenous people throughout the United States and many of the traditional species they had survived upon. Native American people would not give up their rights to harvest and manage their sacred
salmon easily, however. In exchange for ceding much of their ancestral homelands, Native Americans would bargain to retain their vast fishing rights. The treaties within which these rights were protected would become an integral part of young America’s foundational legal structure. What follows is a contextual discussion of the political structure governing both Indigenous affairs and fisheries in the United States, and the Pacific Northwest more specifically. Within this discussion is an examination of how this political structure, coupled with prevailing discourses favoring resource exploitation and justifying the marginalization of Indigenous people, made it possible for Native Americans’ treaty-guaranteed fishing rights to be ignored for over a century and then to re-emerge as powerful legal means for achieving tribal revitalization and for reviving the endangered Northwest salmon fishery.

Colonization and the Recognition of Indigenous Sovereignty

As in New Zealand, British colonization of what would become the United States was undertaken with the explicit assumption that the original Indigenous inhabitants were politically sovereign nations who held legal title to their lands and resources. White settlement could only occur after the cession of Indigenous ownership. While there were some hostilities between settlers and Indians in the Pacific Northwest, the vast majority of land cessions in this region occurred through peaceful negotiations. Indeed, 64 million acres in what are now Oregon and Washington were transferred from tribal to federal ownership through a series of treaties negotiated between Territorial Governor Isaac Stevens and 25 tribes in the mid-1850’s (Boxberger 2000; Cohen 1986). Acknowledging
the importance of fishing to Indigenous diets, economies and cultural traditions, and understanding that the failure to protect Native American fishing rights in the treaties would be a deal breaker for the tribes, Stevens included the following language in each of the treaties: “The exclusive right of taking fish in all streams, where running through or bordering said reservation, is further secured to said … Indians, as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory …. (Woods 2005:2, quoting Treaty with the Yakamas 1855).”

The structure of and assumptions behind these treaties are noteworthy for several reasons. For one, the treaties acknowledge the individual sovereignty of each tribe, rather than lumping them all together as a singular Native American people, as was the case in New Zealand. Second, the Native American tribes do not cede their sovereignty, as they do in New Zealand, but rather cede only their ownership over particular territories and resources. Finally, the rights retained to Native American people in the treaties are recognized as being “reserved” by them as sovereigns, rather than being granted by the American government. Finally, the federal authority to negotiate treaties with Indian tribes and the legal supremacy of such treaties are explicitly recognized in the U.S. Constitution. Article I grants only to Congress, to the implicit exclusion of the individual states, the power to regulate the affairs of Indian tribes, while the Supremacy Clause in Article IV makes all treaties “the supreme law of the Land (Article IV, paragraph 2).”

Thus, unlike Australia and New Zealand, the relationship between Native Americans and the State, and the rights and obligations negotiated between them, are explicitly recognized and protected by the most fundamental legal authority in the land.
In light of the Constitutional protections afforded to treaties in the United States, one might expect greater historical accommodation of Indigenous treaty rights in the U.S. versus other settler states. Unfortunately, federal policies for managing Indian affairs have been wildly inconsistent since nationhood, ranging from moderately supportive of Indian rights to overtly hostile. Indeed, while the treaty era, which spanned most of the 19th Century, was marked by a general acknowledgement of tribal autonomy and property rights based on the tribes’ unique status as original sovereigns, the reservation era that followed during the late 19th and early 20th Centuries was driven by policies aimed to destroy what remained of traditional Indigenous cultural and political systems, and to assimilate Native American people into the American mainstream. After tribes successfully resisted the most egregious assimilationist policies, federal policies shifted in the 1920’s to empower tribal governments by incentivizing the adoption of Western governing structures with promises of funds and increased jurisdictional autonomy.

Just as many tribal governments were re-strengthening, federal policies shifted again in the 1950’s to favor the “termination” of Indian tribes’ sovereign status and the full and final assimilation of Native Americans into mainstream American culture. The Termination Era was catastrophic for many Indian people, resulting in the loss of dozens of tribes’ federally-recognized, “semi-sovereign” status, the forfeiture of additional lands and resources to white settlers and developers, and the relocation of scores of Native American people from impoverished but socially connected reservation communities to impoverished and alienating urban centers. Finally, after years of political mobilization by Native American activists asserting the evils of termination and demanding the
recognition of tribal sovereignty and Indian treaty-rights, federal policy shifted again in the 1970’s, this time promoting tribal “self-determination.” During the Self-Determination Era, tribal governments have utilized federal support to assume greater responsibility in providing essential services to Indian people and have asserted greater jurisdictional authority over their natural and cultural resources.

The Boldt Decision: The Re-Birth of Indian Fishing Rights and the Enduring Legacy of Racism in the Pacific Northwest

The rapid expansion of the non-Indian commercial fisheries in the Pacific Northwest occurred during the late 1800’s and continued unchecked through the 1970’s. By that time, however, overfishing had significantly reduced salmon species to unsustainable levels. Much of this development came at a time when the federal government was particularly unsupportive of Native American rights and, as a rule, turned a blind eye to non-Indian exploitation of Indigenous resources, regardless of whether they were protected by treaties. Without federal interference, and supported by the agendas of State politicians and regulatory agencies, the rights of non-Indian commercial and recreational fishers were privileged over those of tribes and Native American people. As the ill-effects of over-fishing became an undeniable reality, it was Indian fisherman, rather than the overwhelming numbers of non-Indian fishers who swarmed the harbors, bays, river mouths and banks, who were targeted by State regulations to reduce their take. When Indians refused to surrender their treaty-guaranteed rights to fish as their people had done for generations, they were threatened by white fishermen and law enforcement officials with arrests and violence. It was in this
climate of State-sanctioned hostility that Indian fishermen of the Pacific Northwest were finally able to convince the federal government to bring a case on their behalf against the State of Washington, demanding once and for all that their treaty fishing rights be recognized.

The ruling in *U.S. v. Washington* (1974) and its aftermath were historic for several reasons. For one, Federal District Court Judge Boldt took the unprecedented step of interpreting the treaty language guaranteeing Indian’s right to fish “in common with” the citizens of the Territory as meaning that the tribes were entitled to 50% of the harvestable fish, even though they represented only about 1% of the population of the State and, at the time of the ruling, caught only about 5% of the salmon (Wilkinson 2000). Second, Judge Boldt determined that the Tribes’ reserved fishing rights included their authority to manage their fisheries free from State interference. Third, the judge interpreted the scope of the treaty rights quite broadly, noting specifically that,

> The right secured by the treaties to the plaintiff tribes is not limited as to species of fish, the origin of the fish, the purpose or use, or the time or manner of taking, except to the extent necessary to achieve preservation of the resource and to allow non-Indians an opportunity to fish in common with treaty right fishermen outside reservation boundaries (Mosey 1974).

Fourth, Judge Boldt defined non-Indian recreational fishing as merely a “privilege” rather than the “god-given” right many avid fishermen believed that they had. Non-Indian fishing rights suddenly stood in striking contrast to the constitutionally protected treaty fishing rights of Indian people, which were now recognized by the District Court and
backed by Constitutional mandate. Finally, the ruling forced the State and tribal parties to work together to finalize the details of the allocation and the parameters of the Court-mandated co-management relationship that would govern all fisheries regulatory decisions in the State going forward.

Judge Boldt’s landmark decision came at a time when mistrust and antagonism between whites and Native Americans was particularly high. These sentiments amplified as conflicts over scarce natural resources and, in particular, salmon and steelhead fisheries, came to a head. The overwhelmingly negative and vehement response of white citizens to the Boldt decision highlights the extent of opposition that Native Americans striving to exercise their treaty fishing rights faced from their fellow citizens. It also demonstrates the lingering misunderstanding, antagonism, and outright racism that overshadowed Indian-white relations in the Pacific Northwest during the 1970’s. On a fundamental level, the response brought on by the ruling demonstrated the depth of most citizens’ ignorance about the political status of Indian tribes and the legal obligations created through treaties. Many saw the treaties themselves as antiquated and no longer relevant to the contemporary world (See e.g. Letter to the Editor, Mar. 20, 1974). The following letter to the editor from the Vancouver Columbian typifies such views:

But he [referring to a Native American person who wrote an earlier letter in support of tribal fishing rights] is typical of all sob sisters (Fathers?) in that he expects things to be as they were, which they can never be, no matter who loused things up. The point is that the salmon and steelhead runs are very largely protected, maintained and propagated by hatchery programs derived from
sportsmen’s license fees (the Indians pay none). We have paid billions to the Indians in retribution for what our ancestors did to them and their lands. Just when do we reach the point when the damn bills are paid… or do they go on forever? It is today, not 100 years ago, and what I object to is the Indian taking what I’m paying for (Letter to the Editor, Mar. 8, 1974).

Along these lines, some felt that Indians’ use of contemporary fishing methods or enjoyment of other modern amenities somehow nullified their treaty rights. For example, Garland Morrison, President of the Steelhead Trout Club contended that sport fishermen were particularly upset by Indians “claiming aboriginal rights while taking advantage of space-age technology to engage in modern commercial fishing rights (Unknown 1974).”

Others view Native Americans as simply a racial minority or special interest group and object to treaty rights as a violation of the Equal Protection Clause of the U.S. Constitution. These people fail to understand that the treaties were negotiated by and for the protection of Indian tribes, not individuals. The treaties are binding agreements between sovereign nations and the obligations that arise within them are based on the tribes’ political status, not the racial status of Indian people (U.S. Department of Interior 1978). Many others remain skeptical of the tribes’ abilities to manage their own fisheries and assume that, either through greed or lack of capacity, tribal management will result in the complete decimation of salmon and steelhead species (Roberts 1975). In making these assumptions they fail to consider that tribes sustainably managed their fisheries for millennia prior to contact with Europeans. While many of these types of objections contain veiled racist assumptions about Indian people, their motives, and capabilities,
others are far more explicit in this regard. Indeed, some angry citizens hold fast to racial stereotypes of Indian people as lazy, alcoholic, individuals who contribute little to American society and, for these reasons alone, do not deserve a share of the salmon and steelhead fishery. The following letter from a concerned citizen to Washington Senator Henry Jackson sums up this stance:

As a sport fisherman, I have thousands of dollars invested in a boat and related equipment; I am not about to see it fall into disuse to provide further drinking money for a pack of Indians. With the amount of money you people and our government squander on useless social programs I think you could afford to buy all those Indians all the cheap wine they could drink and an old beater car a couple times a year…. I don’t care how you do it, but we want these Indians off our back and quickly. P.S. Probably not too many Indians bother to vote, but I do (Price 1975).

The general antagonism toward Indian fishing rights was not simply limited to an uninformed public, but was also widespread among State politicians and natural resource managers. In the years immediately after the ruling, State officials routinely refused to recognize treaty fishing rights, filing lawsuits to halt implementation of the ruling and passing laws to block Court mandated co-management of the salmon fishery. As justification for their lack of cooperation, Washington State officials commonly cited their deep mistrust of tribal management, as well as their general beliefs that the recognition of Indian fishing rights were repugnant to tightly held, American values of equality and citizenship. State Attorney General, Slade Gorton made this argument,
stating that, “It is destructive of social peace to have a policy under which one class of citizens in entitled to special rights in perpetuity by reason of race, or more precisely, by reason of race and the luck of ancestral treaty (Brack 1977:4).” State Senator Jack Metcalf echoed Gorton’s sentiments, arguing that, “You can’t have superior rights; you can’t have a hereditary aristocracy … that has more rights than other people. That won’t work in this country (Wilkinson 2000:54).” In light of the State’s recalcitrance, the Federal District Court eventually assumed jurisdiction over the State’s fisheries management in 1978 and compelled cooperation between the State and the Tribes.

The conflict over Indian fishing rights also drew attention to an enduring and deep-seated animosity toward the federal government that had prevailed in the Pacific Northwest. In line with their long tradition of support for “State’s rights” issues, many Washington citizens and politicians were quick to blame the federal government for the re-emergence of the “Indian problem” in their state. This was only exacerbated by the Federal District Court’s ruling in *U.S., v. Washington*, which many saw as judicial activism. In the Washington State Legislature’s investigation in the aftermath of the decision, Senator Metcalf expressed that “he felt that Judge Boldt had allowed his personal, social theory to override calm judicial judgment,” and that “this decision was one of a long succession of federal court decisions which used social theory to extend federal jurisdiction and to further restrict state control over its own resources (Washington State Senate 1974:6).” Given the federal government’s sole authority to regulate Indian affairs, many felt that it was, ultimately, the government’s responsibility, either through monetary relief or, preferably, the renegotiation of treaty fishing rights, to
bail the state out of its’ post-Boldt predicament. During a meeting to consider the economic impact of the Boldt decision on non-Indian fishermen, an officer from the State Governor’s office argued that, “the statehood which was conferred 100 years ago contained a mortgage which was now being collected, and not only fishermen but other’s have the feeling that the federal government should take a closer look at the provisions of our mortgaged statehood …. Congress should attempt to take care of this in a one-shot deal (Johnson 1974).” These tensions created additional obstacles for Indian people who, by virtue of their semi-sovereign status and the terms of the Boldt decision, were required to negotiate the murky waters of the overlapping and often inconsistent federal and state management regimes.

**Contemporary Relations**

The institutional parameters within which Native Americans must exercise their treaty fishing rights are shaped primarily by the original terms of the decision in *U.S. v. Washington* and the formal relationships that evolved from it. In that decision, Judge Boldt mandated tribal management of all Indian fisheries as well as tribal co-management with the State of Washington over fisheries issues that impacted both parties. The latter included determinations of proportional allocations of off-reservation fish-stocks and the enforcement of joint regulations within the separate jurisdictions, among other things (Wilkinson 2000). While the co-management relationship was resisted by State fisheries officers for a number of years, they were eventually embraced by a new cadre of managers who began to see cooperation as legally unavoidable, but also a legitimate and
meaningful way to ensure that sufficient salmon and steelhead stocks remained in the waters for Indian and non-Indian stakeholders alike.

The *U.S. v. Washington* decision also took the unprecedented step of conditioning tribal management of Indian fisheries on the individual tribe’s successful demonstration of “competent leadership, an organized tribal government, trained enforcement personnel, expert advisers, a membership role and provision for member identity cards (Waitangi Tribunal 1988).” On the one hand, these requirements privilege Western scientific paradigms for natural resource management and thereby limit tribal autonomy to construct fisheries management policies that correspond more favorably with traditional, culturally-sensitive approaches. On the other hand, their adoption provides tribal management regimes with greater legitimacy, and helped facilitate the relatively rapid integration of tribes into mainstream fisheries management regimes. The tribes also saw the value in adopting certain scientific mechanisms and recognized that their implementation would ultimately allow them to assert greater autonomy over the entire Northwest salmon industry, which was one of their most important goals. According to a fisheries expert at the Northwest Indian Fisheries Commission (NWIFC), “It was obvious to them [the tribes] that he who had the data was in charge. And, they wanted to make sure that they were part of that data collection and analysis so that they weren’t just relying on the State and Federal government to tell them what the state of the resource was (Bowhay Interview).” After a while, the organizational functionality and scientific capability of tribal fisheries management regimes, combined with the tribes’ dedication to protecting the fisheries, could no longer be ignored. Most State managers eventually
abandoned their concerns that tribes would regulate the resources to extinction, either through self interest or lack of capacity, and embraced tribes as partners in the intensifying struggle to save the salmon from complete annihilation.

Notwithstanding the institutionalization of co-management between the State and tribes, their combined efforts have done little to improve salmon stocks (Brown 1994). At this point, thirteen species of salmon and steelhead have been listed as “threatened” or “endangered” under the Endangered Species Act (ESA) (House Resolution 946). Tribes, State resource managers, and non-Indian commercial and sport fishermen are all finally realizing that more drastic management initiatives are necessary if anyone’s fishing rights are going to mean anything all. Unfortunately, the various stakeholders are still divided on the best means for ensuring species’ survival. State managers, on the one hand, continue to focus on species level management, and remain beholden to non-Indian stakeholders who demand continuing access to the dwindling resources, regardless of the state of the fisheries. Tribes, on the other hand, argue for a more holistic approach to management, which focuses on entire fisheries habitats and the real threats that come from the exploitation of other resources within the watersheds, such as logging, agriculture and hydro-power.

The State’s general unwillingness to regulate activities that impact salmon and steelhead habitat compelled the Treaty Tribes’ to litigate an issue left unresolved by Judge Boldt in U.S. v. Washington: namely, whether the State has an obligation, under the Stevens Treaties, to ensure that activities impacting fisheries habitat do not impinge on the Tribes’ right to harvest 50% of the salmon fishery. In 2007, in a case specifically
dealing with the State’s operation of thousands of culverts that impede the passage of fish, the Federal District Court ruled in favor of the tribes (See United States v. Washington, CASE NO. CV 9213RSM, Sub-proceeding 01-01 (W.D. Wash. 2007)). While the ruling was specific to culverts, it clearly has implications for innumerable commercial and recreational activities within fisheries habitats. The Treaty Tribes’ victory in the culvert case provided them with another powerful legal tool with which to compel State management of fisheries in ways that corresponds to Tribal management values and harvesting interests.

Tribes have been able to wield the Boldt decision and, later, the culvert case, as proof of their willingness to litigate, and their likelihood of prevailing in the courts, in order to bring other powerful stakeholders to the bargaining table in negotiations over fisheries management and habitat protection. One significant example of this is the Timber-Fish-Wildlife Agreement (TFW), which was negotiated in 1987 between Tribes, the State of Washington, the timber industry and environmental organizations, and provides for the management of vital fish and wildlife habitat on commercial timber land (Ross 1998). Agreements like TFW give tribes a voice in decision-making initiatives that impact their Treaty rights, while also solidifying relationships between them and the other stakeholders whose actions can contribute to the survival or the extinction of the Northwest’s salmon and steelhead fisheries.

Notwithstanding the strides that tribes have made in taking control of the management of their Treaty fisheries and forging meaningful relationships with the State and other stakeholders, they still face significant obstacles in achieving the full potential
of their treaty-guaranteed fishing rights. Some of this stems from the continuing conflict over habitat protection and the fall-out from the decision in the culvert case. Others have emerged out of the increasing complexity of co-management regimes, the state resource managers’ conflicting interests between fisheries protection and keeping their recreational and commercial fishing constituencies happy, and the lingering opposition from mainstream citizens, who remain ignorant to the legality of Indian fishing rights. Indeed, as time goes by, tribes are consistently called upon to re-educate both the public as well as newer generations of resource managers as to the state of the law and the terms of the Boldt decision. What’s more, a bias in favor of resource exploitation continues to shape state policies and creates friction wherever innovative conservation measures are sought. New tensions are also mounting between property owners and tribes that are seeking to exercise their Treaty rights to collect shellfish on private tidelands, while lingering tensions remain between Indian fishermen and sports fishers who hang tenaciously to their belief that fishing for steelhead is their “god given” right. Finally, Treaty tribes maintain a tenuous relationship with conservationists, who sometimes recognize their common interests and other times take significant issue with the tribes’ inclination toward the sustainable harvest of marine resources over strict preservation methods, which favor unilateral hunting and fishing bans.

Conclusion

Australia, New Zealand and the United States are all former British settler societies with similar colonial beginnings marked by “discovery,” the expansion of
political autonomy over the territories and the peoples who inhabited them, and the rapid settlement of lands and economic development of natural resources within those territories. In all three cases, pre-existing Indigenous occupation presented a major obstacle in the way of nation-building that had to be overcome through diplomacy, force or, more often than not, both. Notwithstanding the general similarities in patterns of colonization, the assumptions about and treatment of the Indigenous populations varied in significant ways across these three nations. These differences have had real consequences in shaping the political structures that continue to define the parameters of Indigenous peoples’ lives and impact their opportunities for achieving meaningful autonomy over politically, economically and culturally significant natural resources. In particular, these differences have been influential in the development of bodies of laws that define and control the rights of Indigenous peoples, as well as the institutions established for managing Indigenous affairs and the natural resources that Indigenous people have ongoing legal and cultural interests to. These differences are also reflected in the dominant discourses that continue to shape conflicts over contested resources, as well as definitions of Indigenous ethnicity and the status of Indigenous people within the broader citizenry.

While the earliest British colonizers of Australia, New Zealand and the United States all confronted Indigenous civilizations whose occupation of the lands and use of valuable natural resources constituted barriers to the Crown’s assumption of full political sovereignty, the way the colonizers dealt with these obstacles varied in significant ways. These differences have had significant implications for the contemporary political and
economic opportunities of Indigenous peoples and the social arrangements that continue to structure their lives in these nations. In the United States and New Zealand, Indigenous populations were seen as politically sovereign nations who owned their lands as well as the resources that they utilized. In both cases, the British understood that colonization could not be accomplished without the formal cession of Indigenous ownership to the Crown. In furtherance of these ends, the colonial governments of these fledgling nations set out secure the transfer of rights through treaties, utilizing both diplomacy and coercion to gain Indigenous peoples’ cooperation. In Australia, on the other hand, the Indigenous occupants were viewed as essentially “non-people” who could be swept aside by force without legal recourse. Contrary to the assumption of Indigenous sovereignty that accompanied settlement of New Zealand and the United States, the colonization of Australia was explicitly accomplished through reliance upon the legal fiction of terra nullius, which declared the Australian continent “empty” at the time of contact and justified the unimpeded usurpation of Indigenous lands and resources, as well as the enslavement, kidnapping and murder of Aboriginal people.

Beyond simply enabling settlement and the development of resources, the treaties in the United States and New Zealand specifically reserved to Indigenous people the exclusive rights to use and occupy traditional resources and territories. These reservations were viewed by both parties to the treaties as preconditions of colonization and were to be legally protected in perpetuity. Maori iwi and Indian tribes in the Pacific Northwest of the United States were explicit in conditioning the cession of their land rights on the reservation of rights to harvest their traditional fisheries, which had been essential to
meeting their economic and subsistence needs for hundreds, if not thousands, of years. Colonial governments in New Zealand and the Pacific Northwest were well aware that the failure to include fishing rights in the treaties would be a deal breaker for the tribes. With legal protections for both parties in place, the treaties in the U.S. and New Zealand paved the way for nation-building and became the law of the land in both nations, forming part of the common law of New Zealand and explicitly backed by the United States Constitution.

Notwithstanding the formal legitimacy of their treaties, Indigenous people in New Zealand and the United States have not been immune to the regressive political moves that were aimed to break down their traditional cultures and political structures, separate them from valuable natural resources, and marginalize them from mainstream economic and political opportunities. Taking advantage of shifts in power due to warfare, epidemics and white population surges, the fledgling colonial governments in New Zealand and the United States pursued an array of discriminatory policies that alternately encouraged Indigenous alienation from mainstream society as well as their forced assimilation into the dominant white citizenry without accommodating their traditional ways of life or providing them with the material necessities required to make these transitions. Traditional resources, including Indigenous fisheries, were always the targets of official appropriation. In New Zealand, early colonial fish laws served to dispossess Maori people of their ownership of their fisheries and re-define Maori fishing interests as purely subsistence-based. State legislatures in the Pacific Northwest of the United States also ignored treaty fishing rights, passing laws that specifically regulated the Indians’ off-
reservation fishing and later enforcing these regulations on reservations as well. In both cases, these regressive state actions coincided with and, indeed, facilitated the unchecked exploitation of fisheries by non-Indigenous stakeholders, resulting in Indigenous peoples’ exclusion as well as massive species declines without any recourse for the Indigenous populations whose rights were directly threatened.

As difficult as things were for Native Americans and Maori people in the early decades of nationhood, the situation was appreciably worse for Aboriginal Australians. The failure to recognize Indigenous Australians’ political sovereignty or even their basic human rights, essentially legitimized decades of formal and informal policies that served to dehumanize Aboriginal people and dismantle their traditional ways of life, while forcing them into servitude and stealing their children. Without treaties providing at least the formal protection of Aboriginal rights, non-Indigenous stakeholders were free to take whatever they wanted without regard to the original owners. The presumption against Aboriginal rights also meant that, unlike in New Zealand and the United States, it was not even necessary for the state to pass laws in order to appropriate valuable lands and resources. Across the board, Aboriginal people were forced to concede their rights to non-Indigenous stakeholders, whose focus on resource exploitation and commercialization was considered superior to the more localized and culturally-oriented resource uses of Indigenous people. With regard to fishing, this meant that priority was uniformly given to white commercial and recreational interests over the subsistence, customary or economic interests of Aboriginal fishers. However, because the Australian continent is vast, the national population is relatively small, and many traditional
Aboriginal groups continue to occupy remote regions, traditional (non-economic) Aboriginal fishing and the hunting of dugong and sea turtles has been able to continue in some places with relatively little interference from non-Indigenous stakeholders.

In addition to the regressive policies that marked the early years of nationhood, Indigenous people in all three countries were the victims of revisionist histories that further de-legitimated their cultures and their claims to traditional resources. In the case of New Zealand and the United States, new myths about nationhood and conquest transformed the original Indigenous groups from sovereign nations with complex economies and systems of governance, into simplistic cultures whose interests in natural resources were limited to their subsistence needs. In Australia, the violent history of conquest was re-imagined as an essentially peaceful affair, with the Aboriginal population either disappearing into the Outback or willingly submitting to the culturally superior white colonizers without a fight. These revisionist histories would reinforce perceptions of Indigenous peoples’ moral inferiority and further justify the usurpation of Indigenous resources, and the imposition of policies aimed to assimilate Indigenous people “for their own good.” When these policies failed to fully integrate Indigenous populations into the mainstream citizenry or destroy their unique cultural values and worldviews, revisionist myths would continue to feed lingering stereotypes of Indigenous people as lazy, welfare dependent and undeserving of any “special rights” derived from treaties or their original occupation and ownership of the land.

Despite the overwhelming efforts of the colonial governments in Australia, New Zealand and the United States to fully control Indigenous populations and their resources
through warfare, territorial segregation, and a succession of policies aimed to dehumanize, depower, marginalize and assimilate them, Indigenous people and their communities persist, as do their claims to traditional lands and resources. Although they have confronted general indifference, and even outright hostility, toward their claims, Indigenous people in these three nations have never backed down from their insistence that their rights be respected. In the 1960’s and 1970’s, emboldened by the American civil rights movement and the rise of human rights and ethnic mobilization around the world, Indigenous people in New Zealand, Australia and the United States engaged in pan-Indigenous activism, organizing protests to end racism, and to secure land rights and the recognition of Indigenous self-determination. These movements were overwhelmingly influential in achieving the re-birth of the Treaty of Waitangi and the empowerment of the Waitangi Tribunal in New Zealand, the consideration of Aboriginal Native Title claims in Australia, the reversal of “termination” and the adoption of “self-determination” as the official policy for Indian affairs in the United States.

Along with the protests, Indigenous activists sought to dismantle the political barriers that stood in the way of full recognition of their land and resource rights by appealing to the courts. In all three countries, Indigenous claimants brought landmark cases challenging governmental policies that had resulted in the near-total loss of their rights to access, harvest and manage traditionally-significant natural resource. While the Mabo case in Australia was fundamentally a “land rights” case, it included a claim of Native Title to a vast area of the Meriam people’s traditional sea country, which included rights to access and harvest marine species. In New Zealand and the United States, the
Maori and the tribes of Washington State brought claims specifically seeking recognition of their significant fishing rights as guaranteed by the Treaty of Waitangi and the Stevens Treaties.

In all three cases, the courts were willing to take the unprecedented steps of recognizing widespread rights based on Indigenous people’s original occupancy and ownership of their lands and resources. In Australia, this occurred through the abolition of the doctrine of *terra nullius*, which had provided the legal and philosophical foundations for the settlement of the continent as well as the violent and discriminatory colonial policies that followed. The High Court fundamentally found that where Aboriginal land and resource rights had not been explicitly preempted by the Crown or Australian government, Aboriginal people retained “native title” to them. Determinations of existing native title generally granted to Aboriginal Traditional Owners the right to access and utilize those resources according to their traditional laws and customs. In New Zealand, the Waitangi Tribunal determined that the Crown had breached the Muriwhenua people’s extensive fishing rights by permitting the unchecked expansion of the non-Indigenous fishing industry without regard to the Maori’s rights as guaranteed in the Treaty of Waitangi. In light of this determination, and under the assumption that compensation to the Maori for over one hundred years of lost value would be prohibitively expensive, the New Zealand government settled the fishing claims of all Maori people on meaningful terms. Finally, in *U.S. v. Washington*, the United States Federal District Court interpreted the Stevens Treaties as guaranteeing to the Tribes a 50% share of all off-reservation fisheries, and mandated that the State of Washington
ensure not only that the tribes have access to these fish, but also that the tribes be included in fisheries management as well.

The consequences of all three landmark decisions have included the creation of comprehensive institutional systems for Indigenous claimants to assert their autonomy over traditionally significant aquatic resources. In Australia, the recognition of Aboriginal native title triggered the creation of a system of native title tribunals through which all Aboriginal claims, including those to traditional sea countries, must be pursued. Through these proceedings, Aboriginal Australians have been generally successful in achieving native title recognition to lands and terrestrial resources. Unfortunately, Aboriginal claims to sea country and marine resources have been less successful, falling victim to the application of Western legal fictions concerning ownership of the sea. While the courts have been willing to recognize basic native title rights to access traditional sea country and harvest marine resources, these rights are considered secondary to pre-existing non-Indigenous rights over the same resources. That being said, the establishment of the native title system and the general recognition of basic rights to their sea country have provided Aboriginal claimants with a moderate amount of political leverage that they have used to encourage non-Indigenous stakeholders and resource managers to negotiate arrangements for Aboriginal peoples’ use and management of their marine resources.

In New Zealand and the United States, the institutions that emerged from the Maori fisheries settlement and U.S. v. Washington are specifically tailored to regulate Indigenous fishing matters. In New Zealand, the fisheries settlement established two
major governmental agencies, which are staffed by Maori people and charged with the tasks of maximizing settlement assets for the benefit of the tribes and representing Maori fishing interests at the highest levels of government. The political visibility of these agencies, combined with the fact that Maori people comprise 15% of the country’s population and have dedicated representatives in Parliament, give them more visibility and representation in national government than is the case for Indigenous people in the U.S. and Australia, who make up only 1.5% and 2.5% of the general population, respectively, and have no elected representatives in national government. While the terms of the settlement and the institutions established to manage Maori fisheries have provided Maori people with effective mechanisms for regulating and protecting their commercial fishing interests, the same cannot be said for their subsistence and customary interests. At present, Maori customary rights, which include rights to harvest seafood for ceremonial purposes and the ability to manage local fisheries using their own culturally-derived methods, lag behind their commercial rights. At this point, the institutions and regulations established to protect Maori customary fishing rights have not been fully integrated into national fisheries regulatory regimes.

In the United States, on the other hand, the decision in *U.S. v. Washington* explicitly recognized the tribes’ complete authority over on-reservation fisheries, making no distinction between customary and commercial interests, and thereby acknowledging tribal autonomy over all harvesting and management decisions. What’s more, the recognition of a 50% interest in all off-reservation fishing included rights to harvest and manage the fisheries resource. In order to ensure tribal representation on regulatory
bodies, Judge Boldt created Fisheries Advisory Boards to compel State and tribal cooperation in allocation and management decisions and to provide a framework for ensuring that future co-management would continue to represent the interests of all stakeholders and that the terms of the Federal Court’s decision in the case would always be upheld.

Although the degree of institutional accommodation for Indigenous fishing rights varies in each of the three cases, Indigenous people in all three nations are increasingly able to assert their rights through judicial forums, compel negotiations with other stakeholders, and participate to some extent in co-management regimes. This represents both a general shift in the legal recognition of Indigenous aquatic rights, as well as a trend towards greater openness by non-Indigenous resource managers to include Indigenous stakeholders in management initiatives. While, generally speaking, these trends favor Indigenous people, the terms by which their rights are recognized and, ultimately, regulated are still dictated to a significant extent by the state and continue to privilege non-Indigenous institutional and scientific paradigms. For example, in all three cases, the formal recognition of Indigenous fishing rights requires the adoption of Western institutional forms and adherence to Western scientific paradigms. This can be seen in *U.S. v. Washington* in the conditioning of tribal management on the hiring of fisheries experts, as well as in the Maori fisheries settlement, which required iwi to form corporations in order to receive their share of the fisheries quota. Similarly, Aboriginal Australians are required to form corporate bodies in order to bring native title claims and, oftentimes, the funding of Aboriginal resource management initiatives requires adherence
to Western scientific standards. However, because of their remote location as well as the fact that customary Aboriginal fishing and hunting of marine species remains primarily outside State regulatory jurisdiction, Aboriginal Australians have somewhat greater leeway in managing their sea country according to their own traditional laws and customs than is generally the case for Maori and Native Americans. Notwithstanding the increased recognition of Indigenous marine rights, state policies requiring adherence to Western institutional and scientific norms demonstrates the continuing power of post-colonial states to shape the terms upon which Indigenous fisheries and natural resource rights are negotiated.

Finally, Indigenous gains in the recognition of their fishing and marine rights continue to be met with resistance in all three nations. This resistance has come from a number of sources, including those both inside and outside of government. In Australia, the general recognition of native title rights have triggered regressive political moves that limit Indigenous Australian’s ability to achieve widespread recognition of their traditional resource rights. The High Court’s refusal to recognize exclusive native title to the sea, the blanket prohibition on Aboriginal economic development of native title resources, and the judiciary’s increasing attempts to control definitions of “authentic” Aboriginal culture for the purpose of proving native title claims, are examples of this. These limitations serve to maintain state institutional control over Aboriginal affairs, ensure the protection of white interests over those of Indigenous people, and, effectively, condemn Aboriginal Australians to a state of economic and political dependence.
In New Zealand, the fisheries settlement was met by outrage from some who saw the allocation as an affront to culturally accepted notions of egalitarianism. This ultimately contributed to Parliament’s knee-jerk reaction to foreclose negotiations with Maori over ownership of foreshores and seabeds, thereby limiting the possibility of expanding Maori fishing rights within these areas. In the United States, the *Boldt* decision was met with significant resistance by white recreational and commercial fishers, and by Washington State policy-makers who refused to implement the Federal Court mandate for a number of years. Even today, Native American fishers and resource managers confront hostility from State legislators and citizens who see Indian fishing as an unfair incursion into personal property rights and State autonomy, as well as being a violation of “equal protection.” In all three cases, institutional biases still favor commercial exploitation of fisheries resources, notwithstanding the threat that unchecked commercialization poses to the future viability of Indigenous fishing and the resources themselves. At the same time, Indigenous fishing and marine rights are also targeted by an increasingly powerful conservation movement. The members of this movement are often willing to blame Indigenous consumptive practices for species decline, regardless of the evidence to the contrary. They also remain mistrustful of Indigenous management methods that prioritize sustainable utilization over blanket preservation.
The ability of Indigenous political actors to successfully mobilize, either within or outside formal institutional channels, depends in part on the availability of existing resources from which they can draw from to facilitate claims-making. Various scholars of social movements have analyzed the significance of existing resources in facilitating political mobilization and social change. Their body of work acknowledges that political actors mobilize resources from both inside and outside of the aggrieved group (Zald 1992). Internal resources often include formal social movement organizations (SMO’s) (Jenkins 1983; McCarthy 1996), formal and informal social networks (Dixon and Roscigno 2003), movement entrepreneurs and charismatic leaders (Johnson et al. 1997; McCarthy and Zald 1977). External resources, such as allies within the ranks of political and social elites (Jenkins 1983; Meyer and Staggenborg 1996), and formal and informal networks that extend to sympathetic social organizations and political constituents also influence the ability of social movement actors to successfully assert their claims of rights (Jenkins 1983).
In all three national contexts, Indigenous political actors seeking rights to harvest and manage culturally-significant aquatic resources have access to various resources, both inside and outside their immediate communities, which they can potentially mobilize to further support their claims. These include formal organizations that have been established to represent and promote Indigenous rights generally and marine/fisheries rights, more specifically, as well as strategically placed individuals, such as Indigenous intellectuals, experts and non-Indigenous allies both inside and outside government, who serve as advocates for Indigenous peoples’ rights and intermediaries between Indigenous claimants and key decision making bodies with authority over Indigenous affairs. As discussed in this chapter, the exact nature of these resources, and whether or not they are accessible to Indigenous activists, varies in each national context. What’s more, these resources are directly tied to the structure of political opportunities confronting Indigenous people in each nation and they have evolved, whether intentionally and not, out of the unique colonial histories and political/legal paradigms that have been institutionalized for the purposes of controlling Indigenous people and achieving access to their resources.

**Australia**

Beyond establishing a foundation for the ethno-centric policies and attitudes that continue to marginalize and oppress Indigenous Australians, the process of colonization in Australia has also resulted in some unintended consequences for Aboriginal people, which have bearing on the mobilization strategies utilized by Aboriginal claimants for
securing recognition of their rights to fish and hunt culturally-significant aquatic species. For one, colonial practices favoring the isolation of Indigenous communities often resulted in their continued occupation of remote, traditional lands that were not particularly suitable to white settlement. As such, there remains a fairly large population of Aboriginal people who continue to live within their traditional country and have, to varying extents, maintained their traditional practices regarding the utilization and stewardship of their lands and resources (Coombs 1994; Lippman 1994; See e.g. Dhimurru Land Management Aboriginal Corporation 2006). Secondly, members of the Stolen Generation and their children constitute a growing population of urban based Aboriginal people. Particularly since the heyday of the Aboriginal Rights movement of the 1970’s, educated Indigenous people are choosing to embed themselves in the institutions that govern Aboriginal affairs and are serving as political conduits between Aboriginal people who live on country and the political institutions that control their destinies (Lippman 1994). The result is a complex contemporary Aboriginal population in Australia that, in many cases, remains rooted in their ancestral homelands and actively engaged in customary traditions and, in other cases, is increasingly linked to the dominant culture by virtue of their residence in urban areas and their infiltration into dominant political settings. A crystallizing sense of purpose and drive toward political empowerment are linking these two groups together in ways that have real potential for positively impacting the ability of Indigenous Australians to successfully assert their rights to customary marine resources in ways that are both materially and culturally significant. Their aspirations remain tempered, however, by the relatively slow pace of
change in the overall support by mainstream Australians for Aboriginal self-governance and representation within decision-making bodies.

**Formal Organizations**

Up until recently, there has been little institutional support for Indigenous self-governance in Australia. Customary mechanisms of authority have always functioned in Aboriginal communities, however, more formal governing bodies, which adopt Western frameworks and are accepted as legitimate by the Australian government, are more recent phenomena. While some Aboriginal groups established formal governments on their own for various administrative and regulatory purposes, the rapid emergence and legitimation of Aboriginal governing bodies has generally been tied to the regulatory demands of the broader Australian legal system and, in particular, laws pertaining to Aboriginal land ownership (Smyth Interview). Indeed, it wasn’t until the Native Title Act of 1993, where the Commonwealth was looking to regional and local administrative bodies to oversee native title cases, that Indigenous land councils and Native Title Representative Bodies (NTRB’s) were given some validity and funding (Smyth Interview).

While the emergence of land councils and NTRB’s provide Aboriginal communities with legitimacy and access to dominant institutional systems, and generally indicate the growing politicization of Indigenous Australians, they are not without their limitations. For one, in order to be recognized by native title courts, land councils must be incorporated bodies and must adhere to Western forms and procedural requirements that are sometimes unfamiliar to Aboriginal people, and more often, irrelevant to their
aspirations. Second, the membership of land councils changes regularly and is oftentimes not elected by locals, creating conflict within Indigenous groups and confusion about who formally represents community interests (Ross Interview). However, as time goes on, it appears that many land councils are becoming more institutionally embedded and accepted within their communities as legitimate representative bodies. Finally, because many of the land councils exist for the limited purpose of managing native title claims to terrestrial territories, they are often poorly suited to deal with sea claims and fisheries management, especially from the perspective of non-Indigenous resource managers who maintain overall authority to accept or reject co-management arrangements with Aboriginal Traditional Owner groups (Veth and Clarke Interview).

More valuable to Indigenous Australians seeking meaningful recognition of their aquatic rights have been the establishment of independent regional representative bodies that are not tied to State and Commonwealth governments, except through the acceptance of grants. Two noteworthy examples are Balkanu and the North Australia Indigenous Land and Sea Management Alliance (NAILSMA). Balkanu was established in 1996 by the Cape York Aboriginal Trust for the benefit of the Aboriginal people of Cape York, at the far northern tip of Queensland (National Native Title Tribunal 2007). The organization works to assist Aboriginal people in achieving positive outcomes for their economy, society and cultures, by undertaking a wide range of collaborative projects and scientific studies that directly benefit Aboriginal communities. As part of their mandate, Balkanu implements Indigenous land and sea management projects and connects Indigenous people to the financial, educational, scientific and material means through
which to manage culturally significant natural resources. However, because much of
Balkanu’s work depends on acquiring grants, such as those available through the
Commonwealth’s National Heritage Trust, their projects are often held hostage to
funding agencies, who commonly have unrealistic timelines for demonstrating success. It
is not uncommon for funding to be discontinued before many of these important projects
really get off the ground (Roberts Interview).

NAILSMA was established in 1997 out of discussions between various
Aboriginal Land Councils in northern Australia about the need for an integrated and
Indigenous-driven approach to the management of Aboriginal land and sea countries (Yu
2007). According to former Chairman, Peter Yu, the Australian government’s regressive
moves to weaken Aboriginal native title rights motivated Indigenous people to take
greater initiative in leading discussions regarding land and sea management. Yu asserts
that,

NAILSMA primarily exists to support Indigenous land and sea management with
research and resources to care for country, through a partnership of cultural and
customary skills and knowledge of Traditional Owners with the technological
knowledge and ability of the scientific community. A fundamental philosophical
foundation of NAILSMA’s existence is to sustain the capacity of Indigenous
people to live on and work for their country. Much of our work involves investing
in the use of indigenous intellectual knowledge and the capacity to grow and
sustain this knowledge and practices for future generations (Yu 2007:4).
NAILSMA takes a broad approach to achieve these ends. Specific projects are designed to protect culturally-sensitive resources, such as turtles and dugongs, facilitate the transfer of traditional knowledge from elders to youth, train future leaders in the customary and scientific foundations of land and sea management, educate white Australians about the importance of Indigenous resources and traditional knowledge, engage in research partnerships to provide a scientific foundation for Indigenous resource management, promote Indigenous representation on governing bodies with authority over land and sea resources, and promote Indigenous economic development in areas such as aquaculture and eco-tourism, among many other things (North Australia Indigenous Land and Sea Management Alliance 2005; North Australia Indigenous Land and Sea Management Alliance 2007; Yu 2007). Each of these projects is aimed at empowering Indigenous individuals and revitalizing their communities in a holistic fashion that simultaneously supports their cultural, material, and social needs while also encouraging their development as politically influential actors with the authority to govern their own affairs and successfully defend their rights in mainstream forums. What’s noteworthy about Balkanu and NAILSMA is that they are both organized and operated by Indigenous people with the primary purpose of promoting Indigenous aspirations, with Indigenous cultural values playing a central role in all of their initiatives.

Indigenous Intermediaries

There has been an historical lack of any meaningful Indigenous representation within the Australian government and this trend has trickled all the way from the highest
governing bodies to the lowest bureaucratic agencies. Even today there is not a single Aboriginal representative in the nation’s Parliament and Aboriginal officials within any state or federal agency are virtually nonexistent. This fact, in and of itself, presents a major obstacle to Indigenous political actors who lack intermediaries within formal institutions to facilitate their access. Recognizing this, Indigenous organizations have placed increased energy in demanding a place within policy making bodies with authority over Aboriginal affairs generally, and natural resource management, more specifically. Although progress on this front remains slow, there is some evidence that Indigenous leaders and intellectuals are starting to infiltrate these institutional channels. The most striking example are Aboriginal Land Management Facilitators (ALMF’s) and Indigenous Land Management Facilitators (ILMF’s), which are funded through the National Heritage Trust for the purpose of working with Traditional Owners to support their land and sea management aspirations. Their strategies involve providing support of Aboriginal governance, assisting with capacity building in natural resource management, promoting cultural heritage and traditional knowledge preservation, and promoting Indigenous claims on formal decision-making bodies (Roberts Interview). Although funded by the Australian government and charged with promoting the government’s agenda with regard to Aboriginal policy, many ALMF’s and ILMF’s see themselves as activists for Aboriginal people, who are able to strategically utilize their institutionally legitimated positions to further the specific needs of Indigenous Australians, whether or not these conform to the stated objectives of the NHT (Hunter Interview).
In addition to Land Management Facilitators, Aboriginal people are doing what they can to assert themselves within the institutional processes that impact them and their resources. This includes increased Aboriginal representation on regionally-based fisheries committees in the Northern Territory, Zonal Advisory Committees and species-specific Management Advisory Committees in Queensland, as well as advisory committees in the Great Barrier Reef Marine Park (GBRMP) (Smyth 2001). It is worth noting that these positions are all advisory in nature and that they carry no policy-making or veto authority. What’s more, in the case of the GBRMP, Aboriginal representation on advisory committees is often inconsistent, with positions sometimes standing vacant for long periods of time (Murphy Interview).

Non-Indigenous Allies

While meaningful Aboriginal representation within government and on policy-making bodies remains elusive, there is a growing group of non-Indigenous allies both inside and outside government that are providing important resources for Indigenous political actors through the provision of support, funding, and the added legitimacy that comes through political sponsorship. Some of these allies are part of a younger generation of natural resource managers who were raised during the Aboriginal Land Rights Movement and who are more open to investing in local communities and integrating Indigenous people and their traditional knowledge into State and Federal management regimes. These young scientists are starting to replace the old guard, who more commonly advocated policies that adhered to colonial philosophies justifying the
marginalization of Indigenous people and the exploitation of their resources (Nakata and Loban Interview; Smyth Interview). To their credit, this new cohort of resource managers is starting to realize that they cannot efficiently protect environmental resources without the help of local Indigenous people who, by virtue of their occupation of remote areas and their accumulated knowledge regarding sustainability, are particularly well-suited to undertake conservation efforts (Smyth Interview). Indigenous people seeking to protect local resources and institute culturally-relevant management regimes are also finding allies in local academics, who are willing to partner with Indigenous communities and help secure funding for Indigenous land and sea management programs in return for access to resources and to the people who have the most intimate knowledge of them. Through these partnerships and with the growing support of resource managers, Indigenous people are increasingly able to leverage their local assets to achieve essential funding, input into scientific research agendas, participation in resource management initiatives at the local level, as well as increased institutional legitimacy.

In addition to making allies within academic and governmental institutions in Australia, Aboriginal political actors are also benefitting from relationships forged across the spectrum of political influence, from the very local to the global levels. As previously noted, Aboriginal groups are increasingly seeking out local stakeholders with which to enter into agreements about resource allocation and management. Agreements like the Cape York Heads of Agreement provide forums for Indigenous and non-Indigenous stakeholders, including industrialists and conservation NGO’s, to reinforce each other’s interests through a process of mutual consensus-building. This approach works
particularly well in remote areas, where Indigenous populations are larger and their interests pose a legitimate threat to non-Indigenous stakeholders (Yu 2007). Where feasible, these local agreements operate at an appropriate scale for Aboriginal communities, who tend to organize themselves as small political entities rather than a single Aboriginal nation (Smyth Interview). And while vestiges of racism and inequality sometimes threaten relationships between Aboriginal people and rural whites, these agreements provide opportunities for remote stakeholders, regardless of race, to present a unified voice in matters that impact the resources to which they all have legitimate interests. Chris Roberts from Balkanu summed up the foundations for these relationships well, explaining that agreements such as the CYHoA are examples of,

the ethical and moral relationship between people in remote areas. They are not really too concerned about the letter of the law. They just know that they all have to get along up there, because no one else gives a damn about them. They are way up in the sticks and when there’s a crunch they are all going to have to work together to overcome whatever. They live in a cyclone belt, and they are all poor, most of them, with the exception of the commercial fishermen (Roberts Interview).

Aboriginal communities are also beginning to look beyond Australia’s borders for allies within the global Indigenous community, as well as in international human rights circles. Aboriginal groups are increasingly seeking the guidance of Indigenous people from around the world in determining the best, most culturally relevant, and politically
effective means for implementing their own resource management and fisheries agendas. While examples of these interactions are abundant, specific ones include: the Kowanyama people of Cape York engaging in numerous exchange visits with Native American groups from Washington State in order to develop strategies for fisheries co-management; Aboriginal leaders from the Northern Territory traveling with an envoy of non-Indigenous representatives from the seafood and recreational fisheries to New Zealand to explore possibilities for a fisheries allocation system in light of the Blue Mud Bay decision; and, Indigenous resource managers from the Torres Strait travelling to Mexico to learn from Indigenous people there about traditional and scientific approaches to sea turtle management (Loban Interview).

Aboriginal Australians have also secured support from the United Nations. Specifically, in 2000, the United Nation’s Committee on the Elimination of Racial Discrimination (CERD) reviewed Prime Minister Howard’s regressive amendments to the Native Title Act and determined that they violated Australia’s obligations under the Convention on the Elimination of All Forms of Racial Discrimination. Connections and support from the pan-Indigenous global community provides Aboriginal Australians with a network of like-minded and sympathetic allies whose own struggles to control culturally-significant natural resources in light of their unique colonial situations can be used as blueprints to adapt and utilize in the Australian context. What’s more, the support and vigilance of the United Nations lends international political legitimacy to the claims of Indigenous Australians and provides them with some added muscle to compel the
Australian government to ensure that, at minimum, basic human rights standards are met in policies that impact Aboriginal people.

*Presence of Counter-Hegemonic Free Spaces*

Although many Aboriginal people, in particular those of a mixed racial background, now live in urban environments, many others continue to live in settled communities in remote areas of northern and western Australia. Aboriginal people’s general separation from the white Australian population means that many non-Indigenous Australians do not come into daily contact with Aboriginal people and, as such, they remain blissfully ignorant to the extreme poverty and educational and economic inequality facing Aboriginal Australians. Since they are often not confronted with Aboriginal political actors making claims of rights to access and manage traditional resources, most Australians fail to recognize these claims as politically important, which has a palpable effect on Aboriginal rights at the national and state levels. That being said, Aboriginal Australians’ occupation of remote territories has, in many ways, enabled their continued adherence to unique systems of traditional laws, customs and ways of life. Since there is little desire to settle remote Aboriginal lands, many Indigenous communities experience little interference in their day to day existence. This allows them substantial freedom to live according to their own culturally-prescribed norms and customs, and to access and manage local resources according to traditional laws, as long as those resources are not threatened by non-Indigenous industries. What’s more, by virtue of the Aboriginal Land Act in the Northern Territory, and native title law
throughout the rest of Australia, many Aboriginal groups enjoy exclusive possession of their lands with the concomitant power to exclude others. This provides Traditional Owners with even greater power to govern their communities free from non-Indigenous interference and to develop culturally-sensitive resource management programs that protect traditional resources and provide mechanisms for ensuring that traditional knowledge is preserved.

As a growing cohort of Indigenous leaders and intellectuals work to provide remote Indigenous communities with the financial and political tools necessary to assert greater self-determination over their countries and populations, there is every reason to believe that the process of politicization and cultural revitalization in remote Indigenous Australian communities will continue. In many ways, isolated Aboriginal lands are *unsettled spaces* in Australia’s geographic landscape. Within these spaces the assimilation of Indigenous people into the mainstream Australian population has failed to occur and Indigenous communities enjoy greater freedom to cultivate their own cultural worldviews, which, in certain ways, remain oppositional to the cultural norms and values of the broader population. These dynamics are further reinforced by the unsettled nature of the laws and policies governing Aboriginal land and sea tenure in Australia including, most notably, the native title system. The bureaucratic policies controlling Aboriginal access to and management of traditionally significant natural resources are also in flux, as evidenced by the inconsistent and ever-changing patchwork of state and commonwealth agencies established for these purposes. These dynamics provide possible openings in the dominant political structure for Aboriginal claimants to mount counter-hegemonic
resistance and potentially redefine these structures in terms that are more culturally-relevant and politically accommodating to Indigenous aspirations with regard to their sea country.

**New Zealand**

The unique social composition of Maori people at the time of European contact, as a collection of politically distinct tribes (iwis) with their own systems of governance and territorial autonomy, yet linked to each other by shared language, genealogy (whakapapa), and creation stories that depicted their ancestors’ heroic maritime journeys to their current homelands in New Zealand, has continued to influence the contemporary political arrangements of Maori people. This includes the establishment of formal organizations across many different scales, from collections of hapu (sub-tribes) and whanua (families) at one end of the spectrum to pan-Maori alliances at the other. In addition, the perception of Maori culture by the white invaders as similar to European culture in terms of its hierarchical status arrangements and values based on territorial control, wealth accumulation and economic progress, not only encouraged the establishment of post-colonial assimilationist policies, but also facilitated the entree of Maori people into mainstream educational, economic and political systems, albeit with lesser standing than their Pakeha counterparts.

While formal assimilationist agendas did not result in the complete integration of Maori people into the mainstream populace, these policies did succeed in cultivating a small class of Maori citizens with the education, money and political clout necessary to
meaningfully represent Maori interests at the national level, whether through direct representation in Parliament, leadership in business, or extra-institutional political activism. Throughout the 20th Century the majority of Maori people either migrated to urban areas where they made up the lower ranks of the working classes, or they remained in rural areas, near their traditional homelands and maraes. Like their urban relatives, the rural Maori struggled to make ends meet. But, they were also more likely to engage in traditional resource cultivation, including fishing, to supplement their incomes and put food (“kai”) on the table. Indeed, rural Maori were the primary ones to keep the cultural aspects of traditional fishing alive during the long decades in which their rights were ignored. When it came time to reassert Maori fishing rights through the Treaty of Waitangi, the efforts of rural and urban Maori, and the alliances between iwi, would provide essential resources to Maori people in their quest to reassume control over their traditional fisheries.

**Formal Organizations**

Notwithstanding the prevalence of traditional Maori governing systems spanning their history, there have never been any legally recognized tribal governments in New Zealand. Traditional Maori systems of authority were always divided between tribes (iwis), sub-tribes (hapus) and families (whanua) depending on the resources or customary arrangements being regulated. Iwis are simply categories of decent and, prior to serving as the foundation for resource allocation under the fisheries settlement and other negotiated agreements under the Treaty of Waitangi, they had no recognition or authority
under New Zealand law (Boast Interview). Therefore, prior to the requirement that tribes form Mandated Iwi Organizations (MIOs) to be eligible for asset allocation under the fisheries settlement, few tribes had the administrative capacity, experience, and manpower to develop functioning tribal governments, with a few notable exceptions. In the 1980’s, for example, some tribes were able to take advantage of the general trend toward governmental downsizing in New Zealand, which involved the contracting of governmental services out to local governments, including iwis. This process greatly influenced the capacity building of tribes and paved the way for the development of tribal governments in the 1990’s and 2000’s (Findlay Interview). A few other tribes, such as Ngai Tahu on the South Island, were able to capitalize on the infusion of economic resources from early land settlements to develop successful commercial enterprises in a number of industries, including fisheries, and to build the necessary regulatory regimes in advance of the fisheries settlement.

Since the fisheries settlement was codified in 2004, 53 of the 57 iwi that were party to the agreement have formed MIO’s, with the remaining three working toward this goal (Te Ohu Kaimoana 2010:4). While the corporate structure of the MIO is certainly an imposed Western institutional form, iwis were given the freedom to include traditional processes in their operations. According to one Maori staff member of the Ministry of Fisheries, the MIO represents a combination of traditional and Western institutional processes. “It built on existing iwi governance institutions, because there were a lot around at that time spanning their whole history, combined with company practices and also, to some extent, practices within government (Findlay Interview).” As a general
matter, the 1992 fisheries settlement and the 2004 Act that codified it went a long way in strengthening iwi governing structures and enabling tribes to develop the regulatory and commercial infrastructures necessary to assert meaningful control over their fisheries assets. For most iwi, this meant being able to re-invest their assets in the Maori-owned Aotearoa Fisheries Limited or other commercial operations, and distribute the small, although not insignificant returns back into community revitalization projects.

A small minority of tribes, such as Ngai Tahu, are able to operate their own commercial fishing enterprises, but most tribes lack the resources, even after settlement, to purchase the boats and equipment necessary to make this happen. The establishment of MIO’s also facilitated the implementation of tribal customary fishing programs for the purposes of ensuring that Maori fishers are able to put food on their family tables and meet their customary needs during funerals and feasts, while also protecting the resources from over-fishing. For the most part, however, these customary activities continue to be conducted at the hapu and whanua levels, rather than by iwi. According to Peter Douglas, the current Chair of Te Ohu Kaimona (TOKM), the strengthening of tribal governments has been the most significant outcome of the fisheries settlement process. This process has further helped to revitalize Maori communities by integrating the best and brightest young leaders into iwi affairs (Douglas Interview).

Not only does the settlement encourage the creation of tribal governance and commercial regimes, it also incentivizes the forging of alliances between tribes. Through these alliances, iwi enjoy even greater political, economic and cultural opportunities. The twelve year period from 1992 until 2004, when the 57 iwi parties to the fisheries
settlement negotiated a workable arrangement for the allocation of assets, was difficult in some ways. But, it also provided Maori people with a unique opportunity to work through their historical animosities and construct a new vision for a more unified Maori future. And, while some iwi remained disgruntled by the terms of the settlement and the model for asset allocation, most came out of it aware of the potential for Maori collective strength and committed to achieving the shared benefits promised by the new fisheries regime. The terms of the settlement further encourages alliances by requiring iwi to negotiate coastal resource management plans with their bordering neighbors in order to receive the entirety of their inshore allocation. Beyond simply adhering to the letter of the law, tribes are also taking the initiative to forge alliances in order to increase settlement profits, by pooling their fish quota. These arrangements allow some of the smaller iwi to realize commercial gains that would have been impossible had they decided to simply go it alone.

Maori people have also benefitted from collective approaches to their customary (non-commercial) aspirations. One example of this is the creation of regional forums through which iwi and hapu from particular areas of the country are able to coordinate their input to the New Zealand Ministry of Fisheries (MFish) concerning customary fisheries management (New Zealand Ministry of Fisheries 2002). The idea behind regional forums was developed by MFish as a means to streamline the participation of Maori into MFish’s customary fishing regulations and support Maori traditional systems of management, as mandated by the fisheries settlement.
Unfortunately, MFish’s support for the forums they helped develop has been inconsistent at best, as the agency scrambles for new ways to meet its obligation to Maori customary fishers, while simultaneously meeting the needs of the fishing industry and conservation sector. Many Maori groups, on the other hand, have continued to promote regional forums as one viable avenue for Maori to assert their customary aspirations in a unified fashion and to develop innovative approaches to fisheries resource management that remain cognizant to Maori cultural values. The forums also provide training for Maori traditional fisheries managers, known as kaitiaki, to learn the statutory obligations of fisheries management and develop the capacity necessary to effectively implement their own management protocols. In addition, the forums serve as conduits for the exchange of scientific and customary knowledge between Maori fishers and MFish scientists, which further promotes Maori management practices. Significantly, the forums provide an opportunity for dialogue between Maori and the Crown, through which a foundation of trust can be developed to move forward with meaningful co-management.

As the chair of the Bay of Plenty forum explains,

… One thing the Ministry does not have is information about customary practice, which is integral to the customary fisheries implementation and rests with those whanua, hapu and iwi groups. With time the Ministry would like to harvest that information but it will take a lot of trust to get that right…We need to find common ground where parties can work together to develop sustainable management that reflects traditional practices but brings contemporary research-
based knowledge. It will take time for that to happen (New Zealand Ministry of Fisheries 2007).

As of 2008, fourteen regional forums had been established across the country (Horomia 2008).

Arguably the most powerful formal Maori organizations in the fisheries arena are Te Ohu Kaimoana (TOKM) and Aotearoa Fisheries Limited (AFL), which are corporate trusts established by the 2004 Maori Fisheries Act to represent the political and commercial interests of the Maori fishing sector at the highest levels of government and within the New Zealand commercial market. As corporate trusts, these organizations are charged with applying social benefits, including the distribution of assets, to the shareholder (iwi) and non-shareholder (individual Maori) beneficiaries, with these obligations being enforceable through corporate and trustee law (New Zealand Ministry of Fisheries 2008a). Each of these organizations are Maori-run, with the 57 iwi organized into an electoral college of eleven voting members who appoint the commissioners and directors of TOKM and AFL (New Zealand Ministry of Fisheries 2008a). Not only are the administrators Maori, but most, if not all of the general staff of these two organizations are as well.

TOKM was created by the Maori Fisheries Act of 2004 for the stated purpose of “advancing the interests of iwi in the development of fisheries, fishing and fisheries-related activities (Te Ohu Kaimoana website 2008).” These interests and activities encompass both commercial and non-commercial (recreational and ceremonial) components of the Maori’s treaty protected customary fisheries. For its first five years,
TOKM’s primary tasks have centered on distributing settlement assets to its beneficiaries and providing assistance for iwi to form MIO’s. TOKM’s other functions include governmental advocacy on behalf of Maori fishing interests and capacity building for Maori fisheries management and governmental enterprises through direct training of Maori staff and scholarships for the education of young Maori scientists and future political leaders (Te Ohu Kaimoana 2006).

AFL, on the other hand, was formed as a corporation to manage all shareholder assets, including those directly allocated from the settlement and those reinvested by iwi. At present, AFL is the largest Maori-owned seafood company in New Zealand. AFL’s stated purpose is to “be the key investment vehicle of choice for Iwi in the fishing industry, to maximise the value of Maori fisheries assets and to ensure that we are a strong seafood business delivering growth in shareholder wealth to Iwi (Aotearoa Fisheries Limited website 2008).” While TOKM is at least formally charged with representing Maori non-commercial as well as commercial fishing interests, AFL is strictly concerned with the latter. Indeed, at times both AFL and TOKM have evoked the ire of some Maori customary fishing advocates by making arguments that favor commercial interests to the detriment of recreational fishers and customary resource managers (Tau 2006). TOKM recognizes these potential conflicts between Maori fishing constituents and is working to integrate all three sectors of Maori customary fishing (commercial, non-commercial/ceremonial, and recreational) under one representative organization. So far, this has not been an easy task. Notwithstanding this dilemma, TOKM and AFL have developed into powerful, Maori-run organizations, with both
institutional legitimacy and the tools to advance Maori economic and political interests now and into the future. One also gets the sense that regardless of the divides that exist between Maori stakeholders, Maori leaders are committed, more than ever, to unity among Maori people, recognizing that they are stronger as a collective than they ever would be on their own (Ron Roberts Interview).

**Maori Political Leaders and Scientific Experts**

Even through the most repressive colonial years Maori leadership has always been present, with charismatic individuals representing Maori interests inside government, as well as through extra-institutional forums, advocacy and protest. Indeed, Maori representation in Parliament has been guaranteed since the 1860’s, after Maori activists won the right to have four dedicated seats in Parliament. In the early 1900’s, a young group of progressive Maori MP’s led by Apirana Ngata formed a loose coalition of representatives dedicated to improving conditions for Maori from within the system (New Zealand Ministry for Culture and Heritage 2009). This group had a major influence on Maori politics and land rights. By 1943, Apirana Ngata had become the longest serving MP in Parliament. Later, alliances with the Labor Party would bring about even greater changes for Maori people, including the creation of the Waitangi Tribunal in 1975. In 2004, the Maori Party was formed over conflicts with the two largest political parties over the foreshore and seabed issue, discussed above, and was driven by the activism of Maori leaders who took their dissatisfaction with the existing political regime to the streets. Presently, the Maori Party is powerful enough that their alliance with either
the Labor or National parties can sway policy. As a result, their agendas are increasingly taken seriously by leaders in both parties.

It was due to the vision and dedication of Maori leaders both inside and outside the New Zealand government that the groundbreaking fisheries settlement resulted. For decades, Maori people asserted their rights to fish as protected under the Treaty of Waitangi, but their claims largely fell on deaf ears. With the establishment of the Waitangi Tribunal in 1975, a new avenue was opened to make their claims. Leaders of the Ngai Tahu and Muriwhenua people seized this opportunity and each brought complex cases in which they successfully demonstrated the Crown’s breach of their extensive commercial and traditional fishing rights. This paved the way for the innovative settlement process, which required the deft negotiations of Maori leaders in government and the consensus of representatives from all 57 iwi about the ultimate allocation model.

The implementation of the settlement, through the organizations and processes it created, has also nurtured the development of a strong cohort of Maori leaders. Indeed, many of the best and brightest Maori leaders who were involved in the settlement process now hold influential positions in government. One example is Shane Jones, who served as the Chair of the Treaty of Waitangi Fisheries Commission and, in 2005, was elected to Parliament. Another is Peter Douglas, who served as an adviser in the Prime Minister’s Department and Cabinet during the time of the 1992 Maori fisheries settlement, and has been the CEO of TOKM since 2004. Mr. Jones and Mr. Douglas both hold Master’s degrees from Harvard University. In addition, the Ministry of Fisheries has hired numerous Maori policy experts and liaisons to ensure that the Crown’s Treaty obligations
to facilitate Maori fishing interests are being represented within the Department and to
develop efficient working relationships between MFish and the customary stakeholders
and managers operating at the community level. One senior policy analyst at MFish is Dr.
Marama Findlay, a Rhodes Scholar and the first Maori doctoral graduate from the
University of Auckland Business School. In addition to policy analysts, MFish also
employs Pou Hononga and Pou Takawaenga, who manage relationships between Maori
and MFish at the regional level, and are especially concerned with traditional resource
management issues (New Zealand Ministry of Fisheries 2005). On the other side of the
relationship are kaitiaki, who are traditional guardians of fisheries resources and are
appointed by hapu to manage fisheries resources according to Maori customary norms
and values, and to work with MFish in implement Maori management processes.

**Pakeha Allies**

Prior to the fisheries settlement, Maori fishers had few political allies outside their
communities. The settlement changed this in two primary ways. This first was by
providing Maori fishing interests with greater clout in political and commercial arenas.
The second resulted from the decision to separate Maori customary interests into
commercial and non-commercial categories for the purposes of allocating quota and
regulating the resources. Because of these changes, Maori fisheries stakeholders have
been able to forge meaningful, if not always expected, alliances with non-Indigenous
recreational and commercial fishers. Prior to the settlement being finalized, members of
the seafood industry were opposed to the settlement, believing it would result in
significant lost profits to them. Now, however, the seafood industry has become aware of the political power afforded to Maori fishing rights and has shown increased willingness to ally their interests with the Maori, often arguing against any new industry regulations as an attack on the Maori’s treaty fishing rights (Findlay and Lynch Interview). What’s more, the strengthening of property rights under the quota system has provided common ground for the alliance of Maori and Pakeha commercial stakeholders with political leaders in the more conservative National Party.

Alliances between Maori and Pakeha in the non-commercial fishing sector have also been particularly important, especially in creating a unified voice in efforts to protect fish species from over-fishing and environmental harm. One unexpected place where these alliances have emerged is through the regional forums created by MFish to facilitate communication between Maori and the Crown over issues and concerns related to Maori non-commercial customary fishing. The Hokianga Accord, which is an iwi forum representing the interests of iwi and hapu from the mid north region of the North Island, has been a central space for the integration of Maori and Pakeha interests in recreational fishing. New Zealand common law creates the right for all citizens to fish recreationally. For most recreational fishers, and nearly all Maori within this category, the fish they take goes directly onto their tables to feed their families. Through the Hokianga Accord, Maori and Pakeha groups, such as the New Zealand Big Game Fishing Council, have come together to present a unified political front against Crown infringement on recreational fishing rights. These alliances have also enabled iwi and hapu to access Pakeha communities in order to better educate the general public about the
implementation of Maori customary management tools, thus garnering support for these types of local management initiatives. It is noteworthy that the Ministry of Fisheries seems to have withdrawn its support for the Hokianga Accord as an official regional forum once the Accord opened itself up to non-Maori members.

For the most part, the arbitrary legal distinctions between commercial and non-commercial Maori fishing has created somewhat unexpected and incompatible alliances between Maori and Pakeha commercial fishers on the one hand, and Maori and Pakeha recreational fishers on the other. That being said, attempts are being made at the local levels and within TOKM to bridge the divide between commercial and non-commercial fishing to offer a more unified approach to fisheries management and sustainability. One example of this is the Kaikoura Coastal Guardians, which is comprised of a group of local commercial fishers and customary stakeholders that came together to work towards a sustainable fisheries management system (New Zealand Ministry of Fisheries 2008). In addition to these alliances, Maori leaders are also committed to forging new links with international allies in various sectors. These include creating relationships with Indigenous people around the world for the purposes of exchanging knowledge about culturally-relevant resource development as well as creating global solidarity on matters Indigenous rights more broadly. Members of the Maori commercial fishing industry are also opening themselves to trade relationships within the Asian market, thereby expanding the scope of their economic opportunities outside the boundaries of New Zealand for the first time in over one hundred years.
The Presence of Counter-Hegemonic Free Spaces

Although the Maori are nowhere near as geographically isolated from the mainstream population as many Aboriginal Australians continue to be, many Maori people continue to live in rural areas, supplementing their income and food supply through recreational fishing. What’s more, Maori people, whether or not they leave near their iwi, continue to be engaged with their local marae, which are, perhaps, the most important units of Maori society. Marae are sacred meeting areas located at the center of Maori communities, where all important social and cultural functions, such as funerals, weddings, political meetings and feasts (huis) take place. Indeed, Maori customary fishing activities remain the primary source of food (kai) for the feasts and ceremonies that take place at the marae. There are generally several marae affiliated with each iwi and, at present, there are about 700-800 maraes located throughout New Zealand. Each marae is controlled by a single hapu or whanua, and visitors are only permitted to enter with the permission of the local elders. Through the activities that take place on the marae, Maori language, genealogy, community self-determination and cultural values pertaining to fishing and the utilization and stewardship of natural resources, are continually reinforced. Through the repetition of stories about their ancestors’ political power and military prowess, counter-hegemonic tribal identities are also strengthened. Even after 150 years of colonization, the marae remains the tie that continues to bring young Maori people back home and the locus for cultural and political revitalization of Maori communities.
In many ways, the contemporary political and social structures of Indian tribes in the United States reflects their status at the time of European contact as a group of several hundred autonomous nations, with distinct languages, systems of authority, subsistence practices and general ways of life. Recognition by the European colonizers of tribal diversity, as well as the overall sovereignty that the individual tribes possessed over their territories and resources, led to the official policy of treaty-making with the tribes and, eventually, their removal to separate reservations where their “semi-sovereign” authority over their lands, resources, and people would continue. In the case of the tribal signatories to the Stevens Treaties in the Pacific Northwest, tribal authority over off-reservation fisheries resources would likewise continue, although for nearly a century such authority was ignored by the local and state powers that be. It was from their reservation bases that Native Americans’ traditional practices with regard to their natural resources, as well as the sacred stories that linked the people to the resources and created enduring obligations of stewardship, were kept alive. On the reservations, tribal governing structures were also able to develop, and although many adopted a Western model through incentives provided in the Indian Reorganization Act (IRA) of 1934, they were staffed by tribal representatives and were able to incorporate more traditional methods of decision-making and the appointment of leadership. In this way, the sovereignty of tribes in the United States allowed for much more discretion by the tribes in the form of their governing structures than was the case for Aboriginal Australian and
Maori governing organizations created for purposes of native title recognition or fisheries settlement allocation.

The legally recognized and protected political status of tribes and their reservations created somewhat of a barrier against U.S. assimilationist policies that attempted to integrate individual Native Americans into the mainstream population by weakening the political autonomy of tribes or removing Indian people from the reservations. But the existence of reservations alone could not keep tribal communities completely intact, with scores of Indian people leaving the reservations either through removal to boarding schools, adoption into white families, or simply relocating to urban areas to escape the rampant poverty and unemployment that reservation life offered. Many who chose to leave did so in the decades after World War II, taking advantage of federal incentives provided by formal programs aimed to encourage Native Americans to relocate to urban areas and seek employment in the big cities (Nagel 1996).

These programs were mostly a failure from a policy point of view, creating an underclass of poor urban Indians instead of generating the economic opportunities promised. That being said, the programs had the unforeseen effect of creating a cohort of young pan-Indigenous individuals with similar experiences and shared feelings of injustice who quickly became motivated by the Civil Rights Movement to mobilize themselves for the betterment of Native American people as a whole. Utilizing an array of tactics influenced by their civil rights counterparts as well as their own unique experiences as colonized peoples to bring attention to the plight of American Indians, they would ignite the Red Power Movement. One of the first issues on the agenda of this
fledgling movement was the escalating violence over Indian fishing rights in the Pacific Northwest. The movement itself would provide tribes with new resources for making their claims to the treaty rights and, as we will see, the young leaders who came of age through the Red Power Movement would also bring their expertise and experiences back home to the reservations, becoming the tribal leaders and fisheries experts for the post-Boldt era as well.

*Tribal Governments and Other Formal Organizations*

Indian tribes in the Pacific Northwest have been asserting authority over their people, territories and natural resources through traditional governing structures since time immemorial. Through treaty-making with American colonial governments, tribes achieved federal recognition of their existing political sovereignty as well as the guarantee that their autonomy would be protected against incursions by the individual states or other non-Indian stakeholders. With these protections in place, tribal regulatory systems, including those governing access to and sustainable management of culturally-significant salmon fisheries, were able to continue. An essential component of these regulatory regimes was the traditional knowledge regarding methods of harvesting and techniques for preventing overfishing that had been passed down from generation to generation.

Unfortunately, only a few decades after the Stevens Treaties were negotiated, threats from various sources began to chip away at tribal governing structures and their fisheries regimes. Some of the most damaging threats to tribal autonomy came from
official federal policies of assimilation that sought to weaken traditional tribal systems of governance by prohibiting certain ceremonies, allotting communal lands to individual owners, undermining the power of traditional chiefs and religious leaders, and appointing pro-government Indians to positions of authority. The forced education of Indian children in white, Christian boarding schools also eroded traditional knowledge bases by essentially separating generations of Indian people from each other at the time when crucial transfers of knowledge would take place. These policies coincided with the rampant commercialization of the salmon fishery in Washington and Oregon, and the refusal by the State governments to recognize the tribes’ off-reservation fishing rights, seeing them as a barrier to the industry’s growth. Thus, while tribes persisted as legally recognized entities, their organizational capacity to assert authority over their traditional fisheries, either by ensuring their members’ access to off-reservation fishing grounds, or to manage the fisheries according to traditional systems of knowledge, was almost completely nullified by the early 1900’s.

Notwithstanding these serious obstacles, tribes continued to assert their power to regulate their Treaty fisheries. This was especially the case on the reservations where non-Indian interference was more difficult. Where they could, tribes, clans, and individual families continued to regulate their fisheries, adhering to the traditional systems of stewardship that had been passed down from their ancestors. Time and again, when the impacts of white overfishing became too hard for them to ignore, fishing tribes would muster their minimal resources to bring suit against the states, sometimes even pooling their resources to do so. In 1919, for example, the Northwest Federation of
Indians was formed for the purpose of advocating Indian treaty rights, including fishing rights (Boxberger 2000). Through the 1930’s, it remained only one of two inter-tribal organizations in the United States.

Most tribal governments persisted through the Assimilation Era in one form or another and emerged relatively intact, although commonly taking advantage of the incentives in the Indian Reorganization Act of 1934 to adopt Western, democratic models of governance. However, it was not until after Judge Boldt’s ruling in *U.S. v. Washington* that tribal governments really became powerful players in the allocation and management of salmon fisheries in the Pacific Northwest. In fact, the rapid development of tribal capacity in fisheries management and general governance came as a direct result of the Boldt decision, through which the judge conditioned the tribal parties’ self-regulation of their fisheries on their demonstration of particular benchmarks. These included proof of competent tribal leadership, a well-organized tribal government that was capable of promulgating and applying off-reservation regulations that would protect salmon species, trained staff capable of enforcing tribal regulations, qualified experts in fisheries science on staff or at the tribes’ disposal, an approved tribal membership role, and the creation of tribal identification cards to be carried by members while fishing at off-reservation sites. Although some of these requirements may have deviated from traditional methods of governance, tribes were quick to adopt them, recognizing the importance of capacity building, particularly in the fisheries sciences, for asserting autonomy over their on and off-reservation fisheries. According to John Hollowed, the Legal and Policy Advisor for the Northwest Indian Fisheries Commission, the development of tribal management
capacity has enabled issues to stay within tribal and state fisheries forums, where they can be worked out rather than the parties having to resort to litigation (Hollowed Interview). Notwithstanding their initial hesitance, most State resource managers now have full confidence in the motives and capabilities of tribal regulatory agencies and, indeed, “many feel lucky that tribes and treaty rights are around to ensure that habitat concerns are met (Bowhay and Grayum Interview).”

But, as powerful as tribes and tribal fisheries agencies have become in the post-Boldt era, there are still good reasons for tribes to come together and present a unified front in their dealings with states and other non-Indian stakeholders (Brown 1994). In Washington, this unity has been accomplished through the Northwest Indian Fisheries Commission (NWIFC), xii which was established in 1974 to “coordinate an orderly and biologically sound treaty Indian fishery in the Pacific Northwest and provide member tribes with a single unified voice on fisheries management and conservation matters (Brown 1994:2 quoting Northwest Indian Fisheries Commission 1987:1).” NWIFC does not represent or speak for the treaty tribes, but rather facilitates the coordination of tribal agendas and provides the tribes with legal and technical assistance during the course of litigation, negotiation and political advocacy (Bowhay and Grayum Interview). The tribes themselves set the agenda for the Commission, which then provides a forum for them to work toward consensus, wherever possible, and to speak with one voice on policy matters (Bowhay and Grayum Interview). During the first fifteen years of the NWIFC’s existence, much of the Commission’s time and energy was spent battling with the State of Washington. Now that tribal-State co-management arrangements have become
institutionalized, some of this energy has shifted toward habitat protection initiatives and negotiations with private landholders for access to shellfish on tidelands. In addition, inter-tribal conflicts over overlapping off-reservation fishing grounds have also escalated. While litigation cannot always be avoided, NWIFC works with the member tribes to try and build consensus and find common ground in order to prevent the tribes from spending their valuable time and resources fighting each other in the courts (Hollowed Interview).

*Indigenous Intellectuals and Experts*

Major political activism over Indian fishing rights in the Pacific Northwest coincided with the height of the Red Power Movement that had emerged in the late 1960’s and grew in numbers and political activity through the late 1970’s. The Red Power Movement was the first example of persistent mobilization by Native American people that focused on pan-Indian issues rather than local, tribally based concerns (Cantlzer 2008). Early pan-Indian organizations that would form the foundation of the Red Power Movement, such as the National Indian Youth Council, United Native Americans, and the American Indian Movement, were generally launched in large cities, bringing together dislocated American Indians who shared similar dissatisfaction with urban life as well as common experiences of discrimination, political disempowerment, and cultural alienation that were unique to Native Americans. What’s more, many of these young leaders’ had been educated in off-reservation boarding schools, and had been part of the first generation to leave the reservations, either to join the military or make
their way in the big cities. Their time in the “white man’s world” provided them with unique expertise and perspectives that would enable them integrate the lessons and tactics learned through the civil rights and antiwar movements to meet their own, unique aspirations.

In the mid-1960’s, as discord between the States, tribes and non-Indian recreational fishers over Indian fishing rights had reached an all-time high, Indian fishermen began to organize “fish ins” to symbolically protest the disregard of their treaty rights. The symbolic nature of these protests, and the often violent responses they provoked, quickly attracted the attention of urban-based American Indian organizations, such as the NIYC, which became involved in the struggle (Cantzler 2008a). The participation of the NIYC brought new resources to the treaty tribes, including media attention and celebrity allies, like Marlon Brando, who descended on the riverbanks to show their support (Wilkinson 2000). What’s more, several young leaders of the Pan-Indian movement, most notably Hank Adams from the Fort Peck Indian Reservation in Montana, would stay on in Washington State, providing expertise on mobilization and negotiation throughout the next decade and beyond.

The lengthy struggle over fishing in the Northwest would also elevate local Indian leaders to prominence. One noteworthy example is Billy Frank, Jr. from the Nisqually Tribe. Frank, who fished for salmon and steelhead in the Nisqually River with his father since he was a small boy, has demonstrated a deep-seated commitment to preserving Indian fishing rights for most of his life. Indeed, at the age of fourteen, Billy Frank, Jr. was arrested for the first of over fifty times for violating State fishing laws (Wilkinson
In the 1960’s, his active participation in the “fish ins” would lead to an early case challenging State interference with the treaty rights of the Puyallup and Nisqually Tribes (Cohen 1986). Since 1981, Billy Frank has served as the Chairman of the Northwest Indian Fisheries Commission. Although he continues to be a dedicated advocate for Indian fishing rights, at present his primary focus has been on the protection of endangered salmon species from extinction and he has been instrumental in negotiating agreements for the protection of vital salmon habitat with various governmental and industry stakeholders. Since the decision in *U.S. v. Washington*, Billy Frank, Jr. and tribal leaders throughout the Pacific Northwest have had much greater opportunities to represent tribal interests on decision making bodies with authority over fisheries allocation and conservation, such as the federally-mandated Pacific Fisheries Management Council that develops harvest plans off the coast of California, Washington and Oregon. Indian leaders were also central to the development of the 1985 Puget Sound Salmon Management Plan, the 1986 Hood Canal Management Plan, and the 1985 Pacific Salmon Treaty between the United States and Canada (Woods 2005).

*Non-Indian Allies*

Through the treaties and as codified in subsequent laws and policies concerning Indian affairs, the federal government has what has come to be known as a “trust responsibility” toward the individual tribes. This has been interpreted by the courts as requiring the government to protect tribal lands and treaty rights, uphold tribal sovereignty and their rights of self-governance, and to provide basic social, medical and
educational services to tribal members (National Congress of American Indians:11). While most of these responsibilities are administered through the Bureau of Indian Affairs (BIA), every federal agency that deals with Indian tribes is similarly bound by the obligations of the trust responsibility. As part of their obligations, the federal government is also charged with the responsibility of bringing litigation on behalf of the tribes for any interference with tribal sovereignty, land or treaty rights. Unfortunately, during the last part of the 19th Century through the middle of the 20th Century, the federal government was generally negligent in upholding its trust responsibility to many tribes, allowing innumerable resources to slip out of tribal control into the hands of non-Indian developers. This was clearly the case for treaty guaranteed Indian fisheries in the Pacific Northwest (Cohen 1986). Throughout the early 1900’s, tribal fishers facing arrests from State agents and a dwindling salmon population, continually asked the BIA to intervene on their behalf, with little success.×iv Meaningful federal support for treaty fishing rights would not come until decades of violent riverbank confrontations and increased Indian protests and fish-ins made the issue impossible to ignore (Cohen 1986). The result was federal intervention in a number of tribal test cases, including Puyallup Tribe v. Department of Game, Sohappy v. Smith (which would become United States v. Oregon) and, ultimately, United States v. Washington.

After the decision in U.S. v. Washington, the federal government took a more active role in ensuring the protection of Indian treaty fishing rights. Looking back, Federal District Court Judge Boldt was one of the tribes’ most important allies. The Judge saw the recognition of tribal fishing rights as the start of “a new era of Indian
relations,” in which tribal equality would finally be taken seriously (Mayne 1974). Even after the decision, Judge Boldt remained dedicated to enforcing his ruling and even assumed jurisdiction over the State’s fisheries for several years to ensure the State’s cooperation. Other allies could be found in the State’s Congressional delegation. Once these individuals accepted the inevitability of tribal-State cooperation, they were instrumental in securing much needed federal funding for fisheries research, monitoring and hatchery initiatives (See e.g. Frank 2007a). More recently, regional federal agents, such as those in the Environmental Protection Agency, have become key partners for the tribes in achieving water quality and other habitat protections (Frank 2006).

For many years, even after Judge Boldt’s ruling in 1974, tribes had few non-Indian allies at the State level. This began to change in the early 1980’s once people started to realize the inevitability of tribal involvement in fisheries management. In 1982, Washington Governor John Spellmen appointed Bill Wilkerson as director of the State Department of Fisheries. Wilkerson would become an advocate for State-tribal coordination and he quickly abandoned the Department’s earlier policy of non-cooperation (Woods 2005). Around the same time, Curt Smitch, the president of a local sport’s fishers’ organization, approached Billy Frank, Jr. with a proposal to work together to ensure the protection of the steelhead fishery for tribal and recreational fishers alike (Woods 2005). These two first steps would open the door for greater cooperation between tribes and non-Indian stakeholders over fisheries allocation, co-management, and conservation. Over the past 30 years, State-tribal co-management partnerships have become widely accepted and institutionalized into State regulatory regimes, with most
State resource managers now recognizing the benefit of having tribal experts and resources in their camp (Bowhay and Grayum Interview). These cooperative arrangements have also set a standard for other State-tribal initiatives, such as the Shared Strategy for Puget Sound Salmon Recovery and the Timber/Fish/Wildlife Agreement that join State, tribal, and industry stakeholders in the commitment to restore and protect fragile fisheries habitat (Frank 2007; Frank 2007a).

Relations between tribes, recreational fishers and other private citizens have not developed as beneficially. With some exceptions, animosity over Indian fishing rights remains prevalent among this group, who continue to see the treaty rights as an unfair interference into their “god given” right to go fishing. Private landowners are also resistant to tribal shell-fishing on their tidelands, viewing this as an affront to the closely-held American value placed on private property rights. Tribes feel they must constantly re-educate citizens, as well as new generations of state resource managers, about the legal foundations of their treaty rights (Bowhay and Grayum Interview). The same goes for industry stakeholders and their governmental allies who, at the end of the day, continue to make policy decisions that promote the commercial development of increasingly fragile salmon habitat. And, while conservation organizations seem likely allies for tribes, relationships between tribes and environmental NGO’s are often-times strained by philosophical conflicts concerning the tribes’ advocacy of sustainable utilization of natural resources versus conservationists’ proposals favoring complete bans on harvesting.
Indian reservations in the United States are more than merely plots of land set aside for the residence of Native American people. They are, in most cases, the product of legally binding negotiations between tribes and the American colonial government over the transfer of lands to the fledgling nation for settlement and the reservation by the tribes of homelands, within which their governmental authority would persist. Notwithstanding their economic marginalization from mainstream American society and the consistent political attacks on communal landownership and traditional governing structures, reservations have always been places where tribal cultural norms and values could carry on. Even during the early 20th Century, which is arguably the most oppressive time for Indians living on reservations, traditional knowledge linking Native American people with essential natural and cultural resources was generally able to survive. This was particularly true for the fisheries knowledge held by Native Americans in the Pacific Northwest who, as a general matter, lived on their ancestral homelands and continued to supplement their diets and their incomes through fishing. With the passage of the Indian Reorganization Act of 1934 and the Indian Self-Determination and Education Assistance Act of 1975, tribal governing structures and social institutions on the reservations were strengthened. This shift contributed to growth in tribes’ infrastructural capacity and their political legitimacy, both of which provided greater opportunities to further realize their traditional, cultural and economic prerogatives. Thus, the independent nature of the reservations, both in terms of their geographic locations and the tribal governing
structures attached to them, contribute to their significance as places where counter-hegemonic perspectives, discourses, and aspirations can be cultivated.

**Conclusion**

There are striking similarities and differences in the existing resources available to Indigenous actors in Australia, New Zealand and the United States who are seeking to secure rights to access and manage traditionally-significant aquatic resources. In all three sites, Indigenous actors are able to draw from a combination of institutional and extra-institutional resources that originate from both inside and outside their communities. These include formal tribal governments and organizations, pan-Indigenous bodies that are operated by Indigenous people for the benefit of Indigenous rights, charismatic Indigenous leaders within their communities, Indigenous intellectuals and experts who have infiltrated mainstream political institutions, and non-Indigenous allies from the public and private spheres. What is most striking, however, is that the unique combination of resources available to Indigenous actors, and the relative power of those resources to influence the recognition of Indigenous fishing and marine rights, depends primarily on the distinct histories of colonization in each national context and the enduring systems of laws and policies that emerged from them.

Indigenous people in Australia, New Zealand and the United States have always governed themselves according to their own systems of authority. Although colonization significantly disrupted tribal governance through the reduction and dispersion of Indigenous populations and the intentional weakening of tribal leadership and customary
practices, most communities found ways to persist and to maintain some semblance of governance, even if at significantly reduced level. However, because colonial governments dictate the terms by which institutionalized political challenges must be made (Loveman 2005), the recognition of tribal governing structures by the state and the capacity of tribal governments to represent Indigenous interests within mainstream channels, are the most important characteristics for tribal organizations in serving as viable resources for Indigenous mobilization against the state. For the three cases under examination, state recognition of and support for tribal governing structures varies significantly, with real consequences for the power of Indigenous communities to influence policies that govern their fishing rights.

By far, Indian tribes in the United States have had the most long-standing and wide-ranging recognition of their tribal governments. Indeed, upon contact, European colonizers recognized the inherent political autonomy of Indian tribes and conditioned settlement upon the agreement by individual tribal governments, either through peaceful negotiations or military influence. These agreements were then codified into treaties, which remain legally binding contracts between the sovereign parties. The validity of the treaties, as well as the semi-sovereign status of the tribes, has been repeatedly recognized by the highest courts in the United States. Since the 1930’s, tribal governments have also been strengthened through laws and policies specifically aimed to facilitate the creation of tribal governing bodies and to promote tribal self-determination. While these policies ultimately favored the implementation of Western governance protocols requiring elections, the adoption bylaws, and other mechanisms for ensuring transparency, they
also enabled tribes to build the capacity necessary to interact with State and Federal
governments as formally equal sovereigns. What’s more, the general support and
increased funding for tribal governments since the 1970’s has meant that many tribes
have been able to construct bureaucratic infrastructures that facilitate the management of
natural resources, including fisheries. The tribes’ existing regulatory capacity helped ease
their transition to full-time fisheries managers after the decision in *U.S. v. Washington*
took effect.

In Australia and New Zealand, on the other hand, there has been no official
recognition of tribal systems of governance until fairly recently. The situation is
particularly challenging for Indigenous people hoping for meaningful recognition of their
rights to access and manage their traditional sea countries. Consistent with the colonial
philosophy of terra nullius, manifestations of Indigenous systems of governance in
Australia have been historically ignored. With the recognition of native title in the
1990’s, the Australian government has required the creation of Native Title
Representative Bodies to facilitate claims making and the oversight of lands and
resources. In actuality, however, NTRB’s are corporations rather than governing bodies,
and they are required to adhere to Western forms and procedural requirements that are
often unfamiliar to the Aboriginal people who live on country and are required to operate
them. What’s more, they are often poorly suited to deal with marine rights, which are
themselves legally marginalized within the native title system.

Similar to the situation in Australia, Maori tribal systems of governance have also
been ignored by the national government until relatively recently. That being said, Maori
iwis have much greater power to assert and manage their fishing rights than is the case for their Aboriginal neighbors in Australia. This is due to the fact that the Maori fisheries settlement in New Zealand has institutionalized extensive Maori customary and commercial fishing rights and has formalized an intricate system for administering these rights. By conditioning the full allocation of settlement assets on the formation of Mandated Iwi Organizations and by providing consistent government funding and the direct assistance of Te Ohu Kaimoana, the settlement gave iwis the tools, the money and the motivation necessary to form functioning governing organizations, with the authority to regulate fisheries assets and resource management activities. While the overall structure of the MIO’s require the adoption of a Western corporate form, most of the iwis are in a better situation to implement these standards than Aboriginal Australian communities, by virtue of the facts that Maori are more widely integrated into the broader New Zealand population and they have had greater access to educational and occupational opportunities than their Australian counterparts. Fundamentally, had it not been for the original recognition of Maori sovereignty by the British at the time of settlement, and the codification of Maori fishing rights in the Treaty of Waitangi, the settlement and subsequent push to re-empower tribal governing structures would most likely not have occurred.

In addition to tribal organizations, Indigenous claimants in all three countries are bolstered by support garnered through alliances with other tribes and formal pan-Indigenous organizations. In Australia, independent regional bodies, such as NAILSMA and Balkanu, are available to facilitate the cultural, political and economic aspirations of
Aboriginal Traditional Owner groups with regard to their sea countries. Most significantly, these organizations are developed and staffed by Aboriginal people, and they prioritize the revitalization of Indigenous communities through the empowerment and capacity building of Traditional Owners who live on country according to their own needs and cultural principles. These organizations are particularly important for Indigenous people in Australia, who generally lack meaningful representation within government and, as of yet, have few legal protections guaranteeing their rights to access and manage culturally-significant marine resources. Unfortunately, these organizations are also subject to the whims of governmental and private funding agencies and, as such, often struggle to keep their projects operating.

In New Zealand and the United States, pan-Indigenous organizations that specifically represent the fishing interests of Indigenous people, as well as alliances between Indigenous groups established to promote fishing rights, are far more institutionalized and supported by the state. In particular, Te Ohu Kaimoana and Aotearoa Fisheries Limited were legislatively created by the New Zealand Parliament in the wake of the fisheries settlement for the purposes of overseeing the settlement allocation and ensuring the representation of Maori customary and commercial fishing interests at the highest levels of government. Likewise, Regional Iwi Forums were implemented by the New Zealand Ministry of Fisheries to facilitate the protection of Maori non-commercial, customary fishing rights. In addition, the execution of resource management agreements between neighboring iwi was included by Parliament as an explicit condition of settlement asset allocation. Significantly, each of these arrangements
was constructed by the state for the purpose of meeting its treaty obligations to the Maori people. Arguably, the New Zealand government’s acknowledgment of their legal obligation to facilitate Maori fishing rights has helped to ensure that the Crown will continue to provide sufficient funding and governmental support for these programs. In general, this seems to be the case with regard to the two statutory organizations, TOKM and AFL. Unfortunately, government support has been less consistent for the regional forums, which were created as a policy initiative of MFish to meet its’ broader treaty obligations. Overall, these pan-Indigenous forums provide valuable resources for Maori people in coordinating and facilitating their fishing rights, especially in the commercial arena. However, since most of these programs are tied to statutory and bureaucratic procedures that are codified by law, there is probably less room for them to be tailored to meet the unique, cultural needs of the Maori people themselves than is the case with the pan-Indigenous organizations in Australia.

The Northwest Indian Fisheries Commission and the Columbia River Inter-Tribal Fish Commission have become exceptionally valuable in coordinating the commercial, customary and resource management interests of Native American fishing tribes in the Pacific Northwest. Although these organizations have become integrated into State and Federal fisheries regulatory regimes, they were not statutorily created. Instead, they were developed by the tribes in recognition of the need to present a unified voice in their interactions with governmental regulatory bodies and other non-Indigenous stakeholders. On a fundamental level, these organizations are able to enjoy the legitimacy and consistency of federal funding that comes with their recognition as viable representatives
of Indian treaty fishing rights. What’s more, Federal support of these programs is likely assured as a means for the government to adhere to its trust responsibility to the tribes to protect their treaty rights and support tribal self-determination. At the same time, by being free from statutory and regulatory constraints, these organizations are able to operate independently for the benefit of tribal fishing rights on terms that are defined by the tribes themselves. Finally, because strong tribal governments have the capacity and political sovereignty to integrate their own, unique cultural concerns into their regulation of tribal fisheries, NWIFC and CRIFC are able to focus on providing the scientific, legal and political support to the tribes without having to coordinate the potentially conflicting cultural prerogatives of the different tribes.

Indigenous intermediaries who straddle the worlds of their native communities and mainstream societies, and have infiltrated dominant political systems in one form or another, are important resources for Indigenous people seeking recognition of their fishing and marine rights. In both the United States and Australia, there has been little to no representation by Indigenous people within government, with the exception of the primary agencies established to manage Indigenous affairs, including the Bureau of Indian Affairs in the U.S. and Aboriginal and Torres Strait Islander Commission in Australia. Indeed, Indigenous people from both countries have had to work very hard to infiltrate mainstream decision making bodies with authority over Indigenous resources. For the most part, those who have been successful in these endeavors come from a population of first or second generation urban Indigenous people who were relocated, or whose parents were displaced, from reservations and remote tribal communities through
official policies aimed to assimilate American Indians and mixed-blooded Aboriginal Australians into the mainstream populace. Their experiences living in two worlds provided them with unique skills and knowledge bases that facilitated their entrée into mainstream political systems. This was certainly the case for Indigenous Land Management Facilitators in Australia. These experiences also provided them with the insights necessary to mount successful political attacks for Indigenous rights, as exemplified by the leaders of the Red Power Movement who took up the cause of Indian fishing rights. Since the decision in *U.S. v. Washington*, Native American representatives and experts have had greater institutional support for their positions within co-management regimes and on decision-making bodies. Without a treaty, legislation or case law acknowledging the primacy of Indigenous Australians’ marine rights, institutional support for Aboriginal representation on similar bodies has been far more sporadic and inconsistent. This general rule is tempered only where Indigenous Australians have been able to convince resource managers and local stakeholders that their occupation of remote areas and their traditional knowledge regarding sea country make them particularly qualified to occupy such posts.

In New Zealand, on the other hand, Maori representation in Parliament has been guaranteed for well over a century. Although not on equal footing with their Pakeha counterparts, Maori representatives within the government have had a hand in shaping policies that impact Maori people for a very long time. Even more so than in Australia and the United States, assimilationist policies in New Zealand encouraged Maori people to integrate into the mainstream population by providing individual Maoris with
educational and occupational opportunities not available to Indigenous people elsewhere. Many of those who were able to take advantage of these opportunities have become the political leaders of today. Through pressure from both inside and outside government, Maori leaders were able to compel the Crown to enter into the fisheries settlement and were integral to constructing its provisions. Those leaders who were significantly involved in the settlement process now control many of the most important functions in regulating Maori fishing, whether through TOKM and AFL, within MFish, through regional forums, or at the iwi level.

Also important to Indigenous claimants in all three countries have been non-Indigenous allies from inside and outside government. These alliance are perhaps most meaningful for Indigenous Australians, who lack the legal protections necessary to compel outsiders to respect their interests in marine resources, than they are for Maori and Native Americans whose treaty rights provide such protections. Aboriginal Australians have been able to find allies within a new cohort of natural resource managers and within the academic ranks, where scientists are beginning to recognize the value of Indigenous people and their traditional knowledge to species protection.

Indigenous Australians have been particularly proactive about forging relationships with local stakeholders who also reside in remote areas and share interests in resources located within Aboriginal land and sea countries. To further bolster their tenuous legal positions, Aboriginal Australians have sought support from allies in the United Nations and in the broader human rights arena. This has provided them with greater legitimacy to compel at least nominal recognition of their rights to access and manage their marine resources.
Notwithstanding the existence of treaty rights, there has been little non-Indigenous support for the fishing rights of Maori in New Zealand and Native Americans in the United States. That being said, key non-Indigenous, institutional support was necessary for the initial recognition in both countries that treaty fishing rights existed after over a century of neglect, that they were broad in scope, and that vast reparations were required to put things right. In the U.S., this support came from the Department of Justice, which finally decided to represent the treaty tribes in *U.S. v. Washington*. It also came from Judge Boldt, who defined the treaty rights and governmental obligations broadly and facilitated the implementation of a new fisheries regulatory system in the Northwest that required the participation of tribes. In New Zealand, necessary support came from within the ranks of Parliament by those who thought broadly enough to accept the full breadth of Maori customary and commercial fishing rights and to entertain such a sweeping and complex revision of the national fisheries regulatory system.

Since the recognition of treaty fishing rights, Indigenous people in New Zealand and the United States have struggled to garner support from non-Indigenous stakeholders outside the ranks of the national government. In the United States, the primary opponents to Native American fishing rights have continued be State of Washington fisheries managers and non-Indian recreational and commercial fishermen. The recalcitrance of the State has largely been remedied thanks to the dedication and capabilities of tribal resource managers and the willingness of a few State political leaders and scientists to finally validate these partnerships. Support from the private sector, however, remains elusive. In New Zealand, on the other hand, support of Maori fishing rights by Pakeha
stakeholders remains divided according to interests, with members of the fishing industry supporting Maori commercial rights and recreational fishermen supporting Maori customary rights. Unfortunately, these rights are sometimes inconsistent with each other, creating divisions within the ranks of the Maori themselves.

Finally, in all three national contexts, Indigenous political actors have the benefit of some form of free space, where counter-hegemonic ideologies, practices and strategies of action can be cultivated. For the most part, these are tribal homelands or ancestral territories where Indigenous people are able to assert some form of political autonomy and where they are free to foster their own cultural norms and values. In the case of reservations in the United States, this autonomy is formally recognized, with tribal jurisdiction and self-determination codified into treaties as well as a body of case law and legislation. In New Zealand and Australia, on the other hand, such autonomy is more informal and exists primarily due to the geographic remoteness of tribal communities. More recently, tribal control over their countries has been reinforced by the reacquisition of legal title to these lands by the original Indigenous inhabitants. In all three nations, the unique significance of tribal lands as counter-hegemonic free spaces is further facilitated by the unsettled nature of the laws and policies that pertain to these territories and the people that reside on them. National assimilationist policies in each country have resulted, to greater or lesser degrees, in the breakdown of traditional systems of autonomy and the relocation of Indigenous people from their traditional homelands. That being said, reservations in the United States, Aboriginal lands in Australia, and mareas in New Zealand remain places where Indigenous people live, govern themselves, and foster
the continuation of their own unique cultural systems by bringing Indigenous people
together and reinforcing the link that exists between them and the natural world upon
which they have always depended. Perhaps not surprisingly, the lands, waters and
natural resources encompassed by these spaces are the primary focus of revitalization
efforts by Indigenous people and they remain at the very heart of what Indigenous people
are fighting to maintain.
CHAPTER 7
THE PROCESSES AND STRATEGIES OF MOBILIZATION

In light of, or in spite of, the structural limitations confronting them, Indigenous people in Australia, New Zealand and the United States have pursued an array of strategies for securing greater recognition of their traditional fishing rights, as well as their right to manage their fisheries and pursue commercial fishing opportunities. This section details these strategies, and specifically highlights the goals asserted by Indigenous fishermen, the institutional and extra-institutional arenas through which they assert these goals, and the tactical innovations that Indigenous people employ to maximize their opportunities for achieving their material objectives, while also ensuring that their cultural needs are met. This final point is perhaps the most compelling. As will be shown, the cultural concerns of Indigenous fishermen, including their ability to engage in traditionally significant hunting and fishing of aquatic resources, the ability to manage these resources according to culturally-prescribed, ceremonial obligations, and the ability to pass traditional knowledge down to future generations, are of paramount concern.

Indigenous actors are particularly masterful at innovating both within and outside of mainstream political structures to make sure that their cultural objectives are foregrounded. The result is a multi-level approach to political claims-making that spans local,
regional and national-level initiatives and simultaneously favors litigation, negotiation, civil disobedience, strategic partnerships and independent approaches, depending on which tactic, or combination of tactics, best achieves their material goals while maximizing their cultural objectives. Given the enduring colonial legacies that continue to dominate the lives of Indigenous people and, to greater or lesser extents, marginalize them from meaningful participation in political processes, one might expect assertions of Indigenous fishing rights to be particularly impotent. While, in many ways political structures still constrain the content and impact of these claims, as we will see, Indigenous actors remain able to strategically innovate in ways that, ultimately, are effective in bringing about legal and institutional changes.

**Australia**

**Goals Asserted**

Indigenous Australians asserting rights to their traditional sea country focus on three primary objectives. First, and perhaps most significantly, they assert their rights to access and take aquatic resources according to their traditional laws and customs. For many, access rights include the ability to hunt endangered and threatened species of dugong, sea turtles and, sometimes, saltwater crocodiles. However, given the sensitive condition of dugong and turtle populations, as well as the general belief among white Australians that traditional methods of hunting these creatures are outmoded and barbaric, Indigenous people face ongoing opposition in accessing and harvesting these traditional species. This is the case even though the recreational and commercial
activities of non-Indigenous people remain the primary threat to dugongs and turtles, and
notwithstanding Aboriginal Australians’ customary obligations to protect and preserve
these species. Indigenous claimants also demand access to traditionally harvested finfish,
such as barramundi, as well as shellfish, such as abalone and oysters. Opposition to these
claims generally comes from members of the commercial fishing sector who view
Aboriginal fishing without a license as an unfair incursion into their economic interests.

The second goal of Aboriginal fisherman is meaningful participation in the
management of fisheries and aquatic resources. While Indigenous Australians prefer to be
primarily responsible for managing traditional resources, when this is not possible, joint
management arrangements with other stakeholders and management agencies are seen as
workable, secondary options (Nursey-Bray 2001). At minimum, Indigenous people seek
active participation in management regimes where they are able to assert influence within
policy-making bodies and engage in management practices that are in line with their
traditional laws and customs. The Yolngu people describe the stakes of sustainable
management of sea country to their cultural continuity and identify the primary threats to
Indigenous participation and control over management initiatives:

We continue our care and guardianship as our ancestors have done. We have an
intimate knowledge of the environment and ecology in the places for which we
have rights and responsibilities. We want our children and grandchildren to
receive this knowledge so they can look after sea country. We do not come and go
like most non-Indigenous people do. We want to continue to stay here
permanently. However it is becoming increasingly difficult to undertake this work
because our interests are often ignored or seen as secondary to non-Indigenous issues of open access, economic exploitation and the welfare of the well known and loved marine animals like turtles, dolphins, dugong and whales (Dhimurru Land Management Aboriginal Corporation 2006).

The third important goal of Indigenous actors with regard to their sea country is to be able to make a reasonable living from the traditional aquatic resources that they have harvested for thousands of years. Indeed, Indigenous Australians do not separate and categorize their economic aspirations from their social, cultural, and political interests in sea country. Resources from the sea have historically provided for all of these aspects of Indigenous people’s lives. The separation of cultural and economic interests in sea country is a purely artificial one, imposed by white Australian society according to Western cultural and legal norms and favoring the interests of non-Indigenous commercial stakeholders. The commercial development of aquatic resources is a natural economic endeavor for Indigenous people, who have historically cultivated, harvested, and managed these resources to provide for their material needs for millennia, both through consumption and trade. Commercialization of their traditional fisheries offers real potential for Indigenous Australians to achieve economic independence and reduce their reliance on public assistance. While Indigenous people’s dependence on the Australian welfare system remains a source of contempt for white Australians, few are willing to concede to Indigenous people a meaningful place in the commercial fisheries market, arguing that commercial activities are not “traditional” enough to justify exempting Indigenous fishermen from commercial licensing regulations.
In light of these general attitudes and the legal barriers to an Indigenous commercial fisheries based on native title rights, Indigenous efforts to secure economic opportunities for their sea country remain secondary to their objectives regarding access to and management of aquatic resources. Jon Altman, from the Centre for Aboriginal Economic Policy Research believes that greater advocacy by Indigenous Australians for commercial opportunities based on customary marine native title rights might bear fruit. According to Mr. Altman, Aboriginal Australians have not yet put their legal might behind the notion that traditional economic pursuits should have a place in contemporary markets. Altman notes that Aboriginal Australians,

almost don’t advocate hard enough for themselves in terms of how important these things are. It’s almost like Indigenous people have bought this notion that there is something backward, on an evolutionary scale, about being foragers, hunter gatherers, fishers…. It’s because the dominant discourse here is all about modernization, mainstreaming and incorporation in the market economy and neoliberalism has beaten these people over the head for the last decade. And they just started to think, ‘well, maybe they’re right. Maybe if we want to make a living we’ve got to forget all that old stuff.’ (Altman Interview).

Running through each of these three goals is an over-arching concern with sustaining and preserving Indigenous cultural and normative systems. This includes passing down traditional knowledge regarding ceremony and stewardship to future generations and restoring Indigenous communities through the revitalization of Indigenous cultures, the empowerment of Indigenous youth as future leaders, the
promotion of economic self-sufficiency, and the conservation of the lands and resources that comprise their country.

**Settings and Strategies for Claims-Making**

Decisions regarding where to assert claims of rights to access, manage and acquire economic opportunities from marine resources are strategic in nature and demonstrate Aboriginal political actors’ keen understanding of the political opportunities and obstacles that they confront. With their three primary objectives in mind, Aboriginal actors choose to assert their claims in a variety of institutional and extra-institutional settings. The choice of where and how to pursue their claims depends on the nature of the institutional processes available to them, the opportunities for negotiated agreements, as well as the likelihood of success for self-directed, independent initiatives. But, because cultural objectives are of primary concern to coastal Aboriginal people, political actors asserting claims of rights to aquatic resources find a way to make sure that cultural goals are addressed, whether it’s by linking material and cultural objectives in the same forum or separating these claims out to take advantage of institutional or extra-institutional opportunities.

**Litigation**

In Australia, the primary institutional setting established to handle the adjudication of Aboriginal rights to land and sea resources is the Native Title Tribunal. While initially positioned as a setting where Indigenous rights would be recognized in a manner that privileges Indigenous knowledge and traditional law, it has become increasingly evident that the native title process ultimately favors non-Indigenous
interests in the reconciliation of Aboriginal claims (Horrigan 2002). As a result, many Aboriginal stakeholders have decided to use the Native Title system for the limited purpose of adjudicating general claims of native title, while reserving the work of fleshing out the content of those rights for smaller-scale negotiated settlements, where Aboriginal actors have more persuasive power, or within smaller bureaucratic channels than can be more easily manipulated by Aboriginal stakeholders. Because the native title system is relatively new, there is still significant anxiety among white Australians about the potential for a native title determination to usurp broad swaths of conflicting non-Aboriginal interests to land and sea resources. While such an outcome is unlikely, Aboriginal stakeholders are able to capitalize on this fear of the unknown in order to secure favorable outcomes through negotiations.

In the years since the Mabo case, Aboriginal Australians have been willing to test the limits of native title and utilize this relatively new and undeveloped institutional channel for asserting rights to traditionally harvested fauna. Indeed, decisions in several early test cases came down on the side of Aboriginal claimants. Although these rulings were particularly limited in scope to the types of animals that could be caught and the appropriate methods for doing so, they effectively handed Aboriginal activists a legitimate tool by which they could demand access to traditionally harvested marine resources (See e.g. Yanner v. Eaton (1999); Stephenson v. Yasso (2006)). On a larger scale, a few Aboriginal groups have also utilized the Native Title system to assert general native title to their traditional sea country. xvi The foundational case which addressed this matter was Yarmirr v. Northern Territory (2001). As discussed above, the Australian
High Court affirmed Aboriginal native title over sea country. However, the existence of common law rights of navigation and fishing for the broader Australian citizenry meant that Aboriginal marine native title could only be non-exclusive in nature. What’s more, while native title rights were found to co-exist with the rights of licensed commercial and recreational fishermen, in the event of a conflict between these rights, native title rights are compelled to yield to those of non-Indigenous fishermen (Smyth 2001; See also Akiba on behalf of the Torres Strait Islanders of the Regional Sea Claim Group v State of Queensland (No 2) (Referred to hereafter as the Torres Strait Sea Claim); Northern Territory of Australia v Arnhem Land Aboriginal Land Trust (2008) (Referred to hereafter as the Blue Mud Bay case)).

Notwithstanding these limitations, native title rights to sea country generally include the right to access sea country and utilize traditional resources for customary and subsistence purposes. It can also include the ability to access, manage and protect sacred sites located within traditional marine territories. Of course, it almost went without mentioning that native title rights to marine resources were non-commercial in nature. What’s more, the courts have not recognized any inherent right of Aboriginal people to participate in the management of traditionally-significant natural resources, although an argument can be made that the existence of native title over a particular resource obliges the Australian government to ensure, at the very least, that the resource is available to Aboriginal people. If successful, this type of argument could give Traditional Owners some authority to demand the protection of traditional marine resources from over-harvesting by commercial and recreational fishers, or incidental impacts by recreational
boat, deep-sea mining and other industrial activities, where these activities significantly threaten the species.

**Negotiated Settlements and Local Co-Management Agreements**

While the Native Title system is far from perfect and, indeed, it’s utility as a truly powerful tool for asserting traditional fishing rights has been severely curtailed in the years after *Mabo*, the recognition of basic native title rights to sea country has provided Aboriginal people with a useful lever through which to negotiate their access to spiritually and socially significant aquatic resources. Negotiation has become a viable option for Aboriginal native title holders for several key reasons. For one, the procedural structure of the native title system itself promotes negotiation over protracted litigation (Murphy Interview). Determinations of native title are generally quite broad, simply ruling that native title either does or does not attach to particular territories or resources, and these determinations do not go into details about what, exactly, such rights confer on the Aboriginal owners (Smyth Interview). Fundamentally, such details depend on the particulars of the underlying system of traditional Aboriginal law that creates the rights in the first place. Beyond that, the specifics also depend on whether the native title rights are exclusive of other rights in the same resource or, as is more often the case, what the patchwork of other legitimate non-Aboriginal rights in that resource looks like, as well as which agencies have management jurisdiction over the resource. Once native title determinations are made by the courts, it is then up to the legitimate stakeholders work out for themselves precisely what those rights entail, with the courts providing a final forum for dispute resolution (Smyth Interview).
Even outside the native title system, it is becoming more and more common for management agencies and other legitimate stakeholders to proactively negotiate access and co-management arrangements with Traditional Owners of aquatic resources rather than waiting for official determinations by the courts. This is due to both increased pressure from Aboriginal groups who have become emboldened by the promise of native title recognition, as well as a general concern by non-Aboriginal stakeholders who remain uncertain about native title and are hoping to avoid protracted litigation. According to an attorney who represents Aboriginal groups in native title proceedings, “No one really expected Mabo. And ever since then, I think that native title makes governments a bit nervous, because they aren’t quite sure how it’s going to go, and what it’s going to mean when you put it across the whole country (Howard Interview).” Because native title recognition remains relatively new and sparsely litigated, significant uncertainty remains about the power of native title holders to ensure that, at the very least, those rights continue. Taken to its logical conclusion, this argument has significant implications with regard to the government’s obligation to prevent over-fishing and environmental degradation (Smyth Interview). So while, legally speaking, marine native title rights seem to give very little to Aboriginal Traditional Owners, these rights have provided them with an opportunity to sit at the table where decisions are being made. According to Dermot Smyth, “because [Australia] is a small country, just being at the table with legitimacy provides an opportunity for good things to happen (Smyth Interview).”

Historically, Indigenous representation within influential agencies, such as state Departments of Primary Industries or the Great Barrier Reef Marine Park Authority, has
been inconsistent and has lacked any real policy making authority (Roberts Interview). While meaningful Aboriginal influence within these agencies remains elusive, there is some indication that agencies are increasingly willing to include Aboriginal stakeholders on advisory boards and to at least consider their unique interests when making policies that impact native title rights to the sea. That being said, different stakeholders and jurisdictional regimes have chosen different templates for including Aboriginal concerns. Within the Great Barrier Reef Marine Park (GBRMP), where management is divided between the Commonwealth’s Park Authority (GBRMPA) and the state of Queensland’s Environmental Protection Agency, the mechanism of choice is the Traditional Use of Marine Resources Agreement (TUMRA). Through TUMRA’s, the details of Aboriginal native title rights to hunt marine turtles and dugongs, to engage in traditional fishing, and to protect culturally significant sites within the Park, are negotiated. Aboriginal groups are also able to assert their interests in the Park through their participation on local advisory committees that provide input on management and other decisions that may impact their rights. The hope is that these advisory committees will serve as community input mechanisms where local issues are taken up the ladder to management and policy boards (Murphy Interview).

Negotiated agreements establishing Aboriginal access to and co-management of culturally significant resources are also becoming increasingly common at the state and regional levels. In the Cape York region of northern Queensland, for example, where the majority of land holders are Aboriginal, negotiations with Traditional Owners, and their inclusion on decision-making boards, has been far more common than in many other
areas of the country. In 1996, Aboriginal groups, pastoralists and conservation organizations came together to sign the groundbreaking Cape York Peninsula Heads of Agreement (CYHoA). The primary purposes of the CYHoA was to facilitate the negotiation of Aboriginal native title rights, while protecting the cultural heritage and environmental values of Cape York and providing the cattle industry with some security that native title rights would not unduly infringe upon their existing interests (University of Melbourne 2007). The State of Queensland would later become a party to this Agreement in 2001. Although the CYHoA applies predominantly to terrestrial resources, its blueprint could easily be applied to multi-use and cooperative management arrangements involving Aboriginal traditional owners of sea country, commercial and recreational non-Indigenous fishers, State and Commonwealth managers of marine resources, and interested conservation groups.

It is far less common for multi-stakeholder agreements regarding Indigenous marine rights to occur at the national level in Australia. Perhaps this is due to the inconsistent jurisdictional patchwork governing marine resources and Indigenous affairs nationally. Or perhaps there is a lack of motivation to resolve these matters in a national forum as most of the stakeholders’ interests are more localized. As such, local agreements present more immediate and effective outcomes. It is also possible that the lack of any clear and consistent statement from the Federal government or the Courts regarding the nature and scope of Indigenous marine rights has tempered any sense of urgency among non-Indigenous stakeholders to concede anything to Aboriginal people through negotiation. In all likelihood, the absence of a national fisheries settlement or
even a working framework for Aboriginal, recreational and commercial fishers, and marine resource managers, is due to a combination of these factors, as well as a strong states’ rights movement in Australia that consistently presents obstacles to broad-scale consensus building.

**Local Management/Delivery Programs**

Negotiated agreements represent a sea change in thinking by non-Indigenous stakeholders and resource managers about the legitimacy of Aboriginal people’s rights to utilize marine resources, and they certainly provide Traditional Owners with a viable mechanism for ensuring that their basic customary rights to access and, to a lesser extent, manage, traditional marine resources are protected. That being said, except in the Northern Territory where Indigenous people hold significant bargaining power through recognized exclusive control over inter-tidal fisheries, the negotiated rights of Indigenous parties generally remain inferior to the interests of non-Indigenous parties. One approach that provides Indigenous groups with a bit more leverage in defining and meeting their own aspirations for sea country is the development of federally funded Aboriginal regulatory initiatives. By developing their own projects, or simply constructing their own agendas within existing management programs, Indigenous groups are generally more capable of meeting their needs according to their own culturally and socially determined priorities. This is the case even if it requires Aboriginal stakeholders to innovate within bureaucratic funding structures in ways not envisioned by the governmental agencies who are pulling the purse strings.

Various governmental institutions and programs have been particularly useful to
Aboriginal communities seeking greater recognition of their rights to fish, hunt and manage culturally-sensitive aquatic resources. One of those is the National Heritage Trust (NHT), which was established in 1997 for the purpose of helping to restore and conserve Australia's environment and natural resources. This program, which became the “Caring for our Country” program in June 2008, requires “viable community involvement” in resource management initiatives, and has funded thousands of community run environmental and natural resource management projects (Roberts Interview). To help facilitate and implement the country-based management plans of Aboriginal Traditional Owners, the NHT funded sixteen regional Indigenous Land Management Facilitators (ILMF’s) and various locally based Aboriginal Land Management Facilitators (ALMF’s). At the regional level, the ILMF’s are trying to build a structure of representation that meaningfully integrates Aboriginal people into decision-making regimes over essential natural resources (Hunter Interview, Roberts Interview). Locally, ILMF’s and ALMF’s are working with Traditional Owners to ensure that their own, culturally-relevant management aspirations are included in local programs and that these programs continue to receive federal funding (Hunter Interview). Several of these, including the Sea Ranger programs discussed below, have been particularly useful to Indigenous people in ensuring that their marine rights are protected on terms that culturally meaningful to them.

Indigenous Protected Areas (IPA’s) are also administered by the Caring for our Country program. IPA’s are tracts of Indigenous peoples’ lands that are set aside under Australia’s National Reserve System and managed by Aboriginal people for conservation purposes (Australian Department of Environment and Water Resources 2007). IPA’s are
innovative resource management initiatives for a couple of reasons. First, within IPA’s, the Australian government takes a particularly holistic approach to conservation that elevates biodiversity as a primary goal and recognizes that “protected areas conserve the healthy ecosystems that sustain human life. Our food and water, our agricultural industries and much of our infrastructure all rely on healthy functioning ecosystems (Australia Department of Environment, Water, Heritage and the Arts website 2010).” Second, through IPA’s, the government specifically acknowledges and legitimates Indigenous people’s capacity to manage their traditional resources and promotes Indigenous cultural revitalization as a valid policy objective. Indeed, the IPA program operates under the assumptions that: 1) Indigenous people, as the original managers of Australia’s fragile ecosystems for tens of thousands of years are ideally suited to be contemporary resource managers, and 2) the integration of Aboriginal traditional owners into contemporary resource management regimes will strengthen systems of traditional Aboriginal knowledge, which in turn will have significant social and economic benefits (Australia Department of Environment, Water, Heritage and the Arts website 2010).

While the original blueprint for IPA’s did not apply to sea country, with the support of Commonwealth, a few innovative Aboriginal groups have started to construct Sea Country IPA’s. These sea country IPA’s include meaningful opportunities for Traditional Owners to manage culturally significant marine resources in ways that not only protect those resources for future generations, but also preserves Indigenous Australians’ ancient system of customary knowledge and stewardship (Smyth Interview). The Department of Environment, Water, Heritage and the Arts is quick to point out,
however, that because native title to sea country is differs from native title to land,

a sea country Indigenous Protected Area could not and would not affect access or use of the area by any other stakeholder - including fishermen. Existing laws, regulations and responsibilities would continue to apply in any sea country Indigenous Protected Area - including existing bag limits and fisheries management arrangements (Australia Department of Environment, Water, Heritage and the Arts website 2010).

Sea Ranger Programs and Dugong and Turtle Management Programs provide further examples of Aboriginal peoples’ innovation within existing bureaucratic channels. These programs were originally established with the acquiescence and funding of the Australian government for the limited purpose of including Aboriginal communities in the management of marine resources in accordance with Western scientific paradigms of environmental protection. The primary objectives of these programs were to regulate Aboriginal hunting of dugong and turtle, and provide feet on the ground in remote locations to clean up environmental pollution, and occasionally to police illegal fishing by foreign vessels. Since their inception, however, Indigenous communities have utilized Sea Ranger and Dugong and Turtle Management programs to meet a host of cultural prerogatives. These include involving youth and elders in the preservation of traditional knowledge, revitalizing community economies by creating jobs for young Aboriginal people, educating and training a new generation of Aboriginal leaders, protecting cultural and natural resources that are essential to the spiritual well-being of Indigenous communities, and reinvesting community members with a new sense of purpose that is
directly tied to the reinvigoration of cultural, social and political values (North Australia Land and Sea Management Alliance 2004; North Australia Land and Sea Management Alliance 2007).

While government funding agencies have envisioned that these programs should adhere to Western scientific paradigms, the reality is that they are run by Aboriginal groups located in extremely remote areas. The lack of immediate oversight by funding agencies provides the community managers with a great deal of latitude in determining how to run their programs. This results in significant variety in whether Aboriginal Ranger and Dugong and Turtle Management Programs are based on Western management systems or more traditional systems of knowledge. The bottom line is that Aboriginal groups are able to assert self-determination over the management of culturally-significant resources. This autonomy is, in and of itself, essential to the cultural revitalization of local groups as well as the development of a pan-Indigenous community between Aboriginal groups. An Aboriginal Ranger recognized the link between inter-tribal cooperation, cultural revitalization and political power when he said,

I’d like to see a start for the ranger business, for myself and other young local fellas…go out and see different communities, different areas to see how they work so we can get ideas off them to help us with our goals and our aims for the future. We got to come together and share ideas as Aboriginal people. If we come together and share our ideas than we’ll be more recognised (North Australia Indigenous Land and Sea Management Alliance 2004:14).
Perhaps the most compelling example of an Aboriginal group utilizing governmental funding to further their cultural and social interests in sea country is the Dhimurru Sea Plan. Dhimurru is an incorporated Aboriginal organization established in 1992 by Yolngu land owners in the Northeast Arnhem Land of the Northern Territory. After registering the Dhimurru Indigenous Protected Area over a portion of their lands and successfully demonstrating native title to culturally significant islands and offshore sacred sites, the Yolngu developed and launched a comprehensive Sea Country Plan in 2006, with funding from the now defunct National Oceans Office (Dhimurru Land Management Aboriginal Corporation 2006). The Plan represents an innovative and community-driven initiative that puts Aboriginal interests in sea country into their own hands. Through the Plan, the Yolngu people outlined their cultural and material interests to their traditional sea country, the historical, social and ceremonial sources of those interests, and ideas for engaging other stakeholders to ensure that the Yolngu people’s needs are met while also respecting the interests of non-Indigenous resource users and managers. Instead of sitting back and waiting for government and industry representatives to dictate the terms of the Yolngu people’s rights, the Yolngu took their clear plan and set of aspirations to the government agencies. For its part, the government saw the Yolngu’s requests as reasonable, and helped them indentify funding resources and other logistical mechanisms for implementing their plan.

**Commercial Opportunities**

Unemployment rates in Aboriginal communities can reach as high as 95%. And
while non-Indigenous Australians bemoan Indigenous people’s reliance of on government welfare, few are willing to permit any meaningful participation by Aboriginal people in the primary industries, such as fisheries, if that participation could interfere with the economic pursuits of white Australians (National Native Title Tribunal 2004). Indigenous Australians, who have been harvesting and trading marine resources for millennia, are legitimately concerned that they have been denied any economic benefit from the commercialization of what were once their exclusive resources (Smyth 2001). While their commercial aspirations are often secondary to their claims to access and manage their resources, many Indigenous claimants maintain that there is a fundamental link between their cultural and economic interests in their traditional countries (Yu 2007). It is also becoming increasingly clear that native title jurisprudence holds little opportunity for the realization of these economic aims. This is especially true for their sea country, to which they hold only non-exclusive customary rights with no commercial component. That being said, the entire native title process has emboldened Indigenous political actors to either utilize their native title rights to leverage opportunities or to pursue such opportunities on their own (Howard Interview).

The reality for most Aboriginal communities is that they have few resources with which to pursue commercialization of their sea country on their own and they require governmental assistance through funding or licensing at the very least. And, given the government’s intentional marginalization of Indigenous people from the mainstream Australian economy for centuries, many Indigenous actors see it as the government’s responsibility to assist them on their journey to economic self-sufficiency. According to
Western Australian Aboriginal Leader and Former Chair of NAILSMA, Peter Yu,
“Despite the substantial Indigenous land holding interests, we are cash and asset poor and
with little opportunity to attract investment. Governments, both State and
Commonwealth, have been irresponsibly inept at providing a statutory land regime that
links our common law rights with our potential for economic and social development (Yu
2007:11-12).” As Mr. Yu points out, it would be preferable to Indigenous Australians to
have the legal recognition of their commercial rights so that they can assert their
autonomy in the pursuit of their economic independence but, at the very least, they
require substantial and consistent funding and support.

To some extent, government funding of Indigenous commercial activities has
been forthcoming. Since native title jurisprudence re-awakened concerns about
Aboriginal disadvantages in terms of economics, education and health, government
departments have started to develop programs to alleviate these inequalities. Specifically
in terms of economic disadvantage, fishing and aquaculture have been identified as
natural industries that can be developed for Aboriginal people to permit them to make a
living from their traditional resources, and, most importantly, remain on country and keep
their communities in tact (Dekkar and Mohr Interview). These new programs have
resulted in a handful of start-up fishing and aquaculture businesses in Aboriginal
Australia (See e.g. National Native Title Tribunal 2006).

What’s more, some Indigenous groups are entering into innovative partnerships
with the private fishing sector to develop commercial industries within their sea country.
A compelling example is an agreement to construct the world’s first sea sponge farm
within the Aboriginal community on Palm Island. This project represents a unique collaboration between Aboriginal Traditional Owners, a private business group, the Australian Institute of Marine Science (AIMS) and the State Development and Innovation Centre Townsville (SDICT). If funded, the project will provide employment and skill development opportunities for Aboriginal Palm Islanders and will be conducted in a way that respects the cultural heritage and values of the Traditional Owners (National Native Title Tribunal 2005b). To Walter Palm Island, one of the senior elders who negotiated the agreement, the opportunities that the project would provide to the Island’s youth are the most compelling reasons to pursue it. According to him, “A lot of young people here have talents and this is a way of nurturing them, giving them self esteem and making them feel important (National Native Title Tribunal 2005b:3).” This echoes a common theme among Aboriginal leaders, who recognize the inherent link between the survival of their communities and the well-being of their youth.

For many Aboriginal groups, the decision to enter into commercial enterprises is not easily made, and there is some conflict between Aboriginal people about whether to prioritize ecological preservation or economic development (National Native Title Tribunal 2007b). For the most part, however, Indigenous Australians choose a path that balances these interests and puts their traditional laws and cultural obligations first. For all of these fledgling Aboriginal commercial endeavors, however, consistency of funding remains a problem that Indigenous groups must contend with. They hope, of course, to build enough capacity and momentum to eventually be able to run these enterprises on
their own, free from the reliance on government funding and the procedural obligations attached to it.

Civil Disobedience

Given the relative dearth of meaningful institutional options for Aboriginal claims-makers to assert their rights to access, manage and utilize their traditional marine resources, it is somewhat surprising that widespread civil disobedience is not more prevalent. While certainly not an alien tactic to Aboriginal activists, as the massive protests during the land rights movement of the 1970’s and 80’s are testament, outright protest over Indigenous aquatic rights has been relatively lacking. There are, however, a couple notable exceptions. The first involves the open defiance of State laws prohibiting the poaching of abalone without a license by Aboriginal fishers in New South Wales and Tasmania. In spite of arrests, significant fines, and court rulings rejecting their native title rights to the shellfish, Aboriginal fishers vow to continue to exercise what they assert are their cultural rights to harvest abalone as they have been doing for generations without obtaining state licenses. Joe Carriage, an Aboriginal fisher who has been prosecuted for poaching abalone in New South Wales, explains why he intends to continue harvesting abalone in spite of State regulations:

This here is mother nature this is what our spirits give us to go out, and have that culture to go out and dive so why should we go out and get permits, and do this here we've been going behind the eight ball since I was a baby and it's about time I started to stand up for my own rights to go out in that water and do whatever I like to do (because) I’m not thieving off no-one (Murphy 2004).
Mr. Carriage claims that the sea provides the strongest cultural link to Aboriginal people in southern New South Wales and he fears, without political action, that this link will be lost for future generations. He contends that, “If us older fellas don't take a stand we’re going to lose everything we're going to have no culture, we're going to have nothing (Murphy 2004).”

The second example of direct activism by Aboriginal fishers comes from the Torres Strait in far northern Queensland. Along with their claims to native title over many of the islands in the Torres Strait, Indigenous Torres Strait Islanders have made claims to exclusive ownership of their sea country. Notwithstanding the Supreme Court precedent from the Croker Island case suggesting that only non-exclusive native title rights to the sea will be recognized by the Australian courts, Indigenous Islanders issued an ultimatum to commercial operators to stay away from traditional fishing grounds. In one case, approximately seventy Islanders also staged a peaceful protest against the presence of non-Indigenous commercial operators in the region (National Native Title Tribunal 2005a), although the possibility of armed conflict motivated the State of Queensland to send a boatload of police reinforcements to diffuse the situation. While many non-Indigenous commercial Cray fishermen “vowed to stand and fight for their rights against what they labeled as ‘pirates,’” others stated that they would rather leave the region than continue the dispute with the Torres Strait Islanders (National Native Title Tribunal 2005a).
What is notable about both of these instances of protest is that they are local in nature and they focus on immediate threats to Indigenous peoples’ culturally-derived rights to access, harvest and consume marine resources. The lack of any organized, pan-Indigenous mobilization around Indigenous marine rights is noteworthy. These facts, along with the numerous local and regional agreements discussed above, suggest that for Indigenous Australians the customary practices of fishing and harvesting marine resources are inherently local matters. Accordingly, their first choice is to resolve disputes between stakeholders at the scale where such practices occur. The relative absence of pan-Indigenous protest also reflects the broader political and institutional structures in Australia, which hinder pan-Indigenous mobilization by treating Indigenous claims-makers individually and failing to provide any meaningful national forums for adjudicating Indigenous sea country claims.

New Zealand

Goals Asserted

Like Indigenous fishermen in Australia, Maori claimants also demand recognition of their rights to access, manage and commercially harvest traditional fisheries resources. But the extent to which they focus on each of these goals varies according to the history of Maori claims-making and the political opportunities available in New Zealand for Maori fishing rights claims to be successful. In many ways, Maori people remain connected to their maritime cultures, with many maraes located on or near the coastline. Customary obligations to provide feasts for ceremonial, funerary and celebratory
purposes remain central to Maori community life, and each of these occasions requires considerable amounts of kaimoana ("seafood"). Furthermore, as coastal dwellers many Maori people remain part-time fishers, harvesting marine resources for the subsistence needs of their families, while also supplementing their incomes. Although access to sufficient fish resources has always been fundamental to meeting Maori’s cultural and economic needs, the imposition of colonial era policies that restricted Maori fishing to small fishing grounds, combined with rampant non-Maori overfishing, has made such access precarious. The final straw came in the form of the Quota Management System, which froze the issuance of new fishing licenses and privatized existing ones, resulting in the systematic exclusion of small-time fishermen, which included most Maori, from any type of commercial fishing (Waitangi Tribunal 1988).

For the Maori, however, any distinctions regarding the purpose of fishing, whether it be to provide food for ceremonies, to feed individual families, or to supplement individual or tribal incomes is purely artificial and irrelevant. To them, the fundamental issue centers solely on their authority to control their traditional fisheries for whatever purposes they deem appropriate. To support these claims, Maori representatives point to text from the Treaty of Waitangi as well as the scope of their control at the time that foundational document was signed. Significantly, in 1840, control by Maori iwi and hapu over their fisheries was not limited to particular fishing grounds, but rather spanned entire harbors and coastlines. What’s more, the English version of the Treaty explicitly reserved to the Maori “the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually
possess so long as it is their wish and desire to retain the same in their possession .... (Treaty of Waitangi 1840).” Armed with this evidence, Maori claimants from the Muriwhenua and Ngai Tahu tribes sought acknowledgement from the Waitangi Tribunal that their vast fishing rights had been breached and demanded that these rights finally be acknowledged by the Crown. The favorable determination by the Tribunal then paved the way for the groundbreaking settlement between the Crown and the iwi, wherein Maori participation in the New Zealand commercial fishing industry would become institutionalized, and federal protections for Maori non-commercial customary fishing interests would be assured.

Perhaps not surprisingly, the implementation of the Maori fisheries settlement has significantly shaped the goals that are presently asserted by Maori claimants. Broadly speaking, general access by Maori people to their fisheries has been largely acknowledged through the settlement. With regard to commercial fisheries, Maori access is determined by the share of particular species quota that has been allocated to each iwi, and is only limited by environmental policies, such as “no take” Marine Reserves, which impact the entire commercial industry. Accordingly, arguments by Maori commercial stakeholders for fewer governmental restrictions on the amount or location of their harvests tend to echo the claims made by the fishing industry as a whole. More uncertainty surrounds the scope of Maori’s non-commercial customary fishing rights, which have not been as thoroughly legislated as the commercial rights despite provisions in the settlement guaranteeing their protection. Some Maori leaders acknowledge that these protections only have value if there are sufficient fish to catch, and point to over-
fishing by the commercial industry as threatening future access for customary purposes (People’s Submission 2006; Tau 2006). Non-commercial Maori fishers who fall into the recreational fishing category (i.e. those who fish exclusively for their subsistence needs) are also concerned about the New Zealand government’s proposed “Shared Fisheries Policy,” which proposes to cap the in-shore catch of non-commercial fishers (Hokianga Accord 2006). Many believe that this move unfairly burdens local Maori fishers for the problems caused by the commercial sector.

Beyond asserting general rights to access marine fisheries for whatever purposes they deem appropriate, Maori claimants continue to demand greater participation in the management of sensitive marine resources. What’s more, they seek recognition of their rights to manage their fisheries in ways that emphasize their own methods, which are commonly rooted in culturally sensitive practices and employ traditional knowledge. The major impediment to Maori fisheries management is the fact that New Zealand’s fisheries, as a whole, falls under the exclusive jurisdictions of the federal Ministry of Fisheries and the Department of Conservation. As yet, the government has declined to cede any meaningful authority over fisheries management to Maori despite their obligations under the settlement. Particularly, the fisheries settlement and the legislation that codified it, places an obligation on the Crown to recognize Maori customary fishing rights, and these specifically include their right to manage their customary resources (Bess and Rallapudi 2007). What’s more, the Maori Fisheries Acts of 1989 and 1996 include provisions that purport to enhance Maori involvement in customary fisheries management by empowering local Maori traditional fisheries experts (kaitiaki) and
recognizing culturally-relevant methods, such as taipure local fisheries and mataitai reserves, to protect customary fishing grounds from over-fishing and other environmental harm (Bess and Rallapudi 2007). Many Maori customary stakeholders feel that these provisions have been underfunded and under-developed. They also worry that these initiatives remain vulnerable to the conflicting needs of the commercial fishing industry and to the implementation of the inconsistent management policies of the Ministry of Fisheries and the Department of Conservation.

According the terms of the 1996 Maori Fisheries Act, before the Crown can implement any new sustainability measures, it must “provide for the input and participation of tangata whenua [Maori people] having a non-commercial interest in the stocks concerned or an interest in the effects of fishing on the aquatic environment in the areas concerned and have particular regard to kaitiakitanga (Section 12(1) (a) and (b), reprinted in People’s Submission, emphasis in original).” Notwithstanding this provision, Maori leaders representing customary fishing stakeholders feel that meaningful consultation and participation have not been forthcoming. They are particularly concerned about the lack of consultation surrounding the Crown’s “Shared Fisheries” proposal, which would potentially bring all non-commercial fishing rights into the quota management system and, according to some, could threaten Maori customary take (People’s Submission 2006). Many see the Crown’s failure to adequately consult with Maori fishers, or to consider traditional fishing tools as viable alternatives to expanding the quota system, as inappropriately interfering with Maori’s authority over their fisheries and, ultimately, constituting an additional breach of the Treaty of Waitangi.
In contrast to the continuing uncertainty that plagues the management of Maori customary fisheries, Maori commercial fishing rights have been widely recognized and institutionalized through the codification of the settlement and subsequent allocation regime as well as the establishment of Te Ohu Kaimoana and Aotearoa Fisheries Limited. Now that the twelve year long process of negotiating the allocation of the commercial quota is behind them, Maori iwis and the two formal organizations that represent their interests have been able to move forward and turn their focus toward maximizing the economic returns from their commercial assets and determining how to best put their fisheries assets to work in revitalizing Maori people and tribal communities. With regard to this second goal, significant attention is being placed on developing Maori infrastructures, both at the tribal levels and through the representative bodies of AFL and TOKM. At the local level, fisheries assets are being used to staff tribal governments and resource management agencies, while also funding programs to improve Maori education and cultural revitalization (Douglas Interview). Through TOKM, fisheries assets are being used to train future Maori leaders in the fisheries sciences as well as in general social and economic development initiatives. These programs underscore the general objective of bolstering the capacities of individual Maori people, who themselves are seen as the most important resource for the future of Maoridom (Horomia 2008).

To maximize their assets, Maori commercial fishing proponents are looking toward the future and advocating lofty aspirations to become the primary players in national and regional fisheries endeavors. TOKM Chair, Peter Douglas, makes their intentions quite clear: “Our plan is to dominate the fisheries … because we are the
fisheries (Douglas 2008).” To meet these goals, Maori are pursuing a variety of strategies. The first is to ensure that the corporate assets that have accumulated for the benefit of the Maori people since the settlement in 1992 are invested and managed for the greatest benefit to the 57 iwi stakeholders. This continues to be the primary responsibility of the Aotearoa Fisheries Limited corporation (McClurg Interview). A second approach involves TOKM’s advocacy for Maori commercial fishing rights at the highest levels of government. A third strategy involves innovation and entrepreneurship by Maori commercial stakeholders who are hoping to expand the scope of the Maori fishing industry to include new species, such as eels and geoduck, as well as new trade partners. The latter tactic is exemplified by recent efforts by Maori entrepreneurs to build relationships in China, Japan and Korea (Horomia 2008; White 2008).

Similar to the case in Australia, each of the Maori fisheries claimants’ three primary goals reflect the greater aspirations of Maori people to protect their cultural autonomy and ensure their capacity to persist as culturally, politically and economically independent communities. Implicit in their claims for guaranteed access to their traditional fisheries, as well as the recognition of their rights to manage those fisheries according to their own normative systems, is the desire to reinforce the ceremonial and social obligations that continue to bind Maori people to their ancestors and to each other in ongoing systems of obligation, reciprocity and respect. Their economic aspirations also serve several purposes that Maori claim are central to their cultural and political persistence. For one, commercialization of Maori fisheries revitalizes a traditional industry that Maori once dominated, which simultaneously reinforces Maori people’s
connection to their past while providing them with culturally relevant means for shaping their future. Similarly, Maori’s success in developing their commercial fisheries has also reinvigorated the entrepreneurial and progressive spirit that seems so essential to Maori identity. Finally, commercial fishing provides Maori communities with the financial and infrastructural means to strengthen tribal governments, pursue local economic development initiatives and fund essential educational and cultural preservation projects. Most importantly, it provides Maori communities with the independence to pursue these objectives according to their own needs and values. And, while most Maori do not expect commercial fishing assets to create “vibrant communities in the middle of nowhere (McClurg Interview),” progress toward the restoration of Maori’s control over their traditional fisheries, in and of itself, has gone a long way towards enabling Maori people to reassert power over important economic, political and social processes. Minister of Parliament Shane Jones acknowledges how utilizing fisheries proceeds to fortify tribal life can strengthen Maori autonomy within a contemporary and globalizing New Zealand: “Each tribe has a cultural, political identity that would continue. And, they can only continue in a kind of modern nation state if they’re able to participate. Other than that they’ll just disappear as small, obscure and eventually neglected communities (Jones Interview).”

Settings and Strategies for Claims-Making

As in Australia, decisions by Maori fisheries claimants about where and how to pursue their claims are influenced in large part by the structure of political opportunities
available for claims-making. These opportunities are themselves shaped by several factors, including the unique history of colonization in New Zealand, the relative openness of different institutional arenas, including Parliament and the courts, to Maori claims, the strength of Maori organizations and leadership, the history of Maori activism and claims-making, and the legal tools available to them for successfully asserting their rights. While all of these factors are important, the presence of the Treaty of Waitangi as a legally binding and institutionalized contract between the Crown and the Maori people appears to be the most crucial in influencing both the overall shape of political opportunities available for successfully asserting Maori fishing rights claims, as well as strategic decisions about how best to pursue those claims.

**Litigation**

Once it became clear that the guarantees in the Treaty of Waitangi were doing little to protect Maori fishing rights from encroachment by Pakeha commercial and recreational fishers, Maori people wasted little time bringing their claims of rights in the courts. Unfortunately, the courts unilaterally dismissed these early claims, asserting that Maori fishing rights did not exist without explicit Parliamentary authorization (Waitangi Tribunal 1988). Undeterred by these early setbacks, Maori claimants began including their fishing rights claims within more general “land claims,” through which they asserted the ownership of lakes, rivers and foreshores as part of their terrestrial territories. Many of these land claims stagnated in the New Zealand courts for years and eventually culminated in further losses for the tribal claimants (Waitangi Tribunal 1988).
Although they were continually thwarted by the courts, Maori fishing continued, albeit on a smaller scale than was common in the years before, and shortly after, the treaty was signed. For most of the 20th Century, it was common for Maori who were charged with breaching New Zealand licensing laws to simply plead the Treaty of Waitangi as a defense (Waitangi Tribunal 1988). Indeed, the Waitangi Tribunal uncovered “a large number of examples” of cases between 1901 and 1985 where such defenses were unsuccessfully made (Waitangi Tribunal 1988). According to the Tribunal, “Though the law seemed settled by 1914, that the Treaty gave no protection to Maori fishing interests, numerous cases subsequent to that date, where the Treaty was pleaded, point to the consistency of Maori endurance, or obstinacy, according to one’s point of view (Waitangi Tribunal 1988).” Finally, in 1986, the Maori were partially successful in gaining recognition of their fishing rights from the courts. However, this favorable ruling was not based on the Treaty of Waitangi but, similarly to Australia, on the common law concept of aboriginal title. And, also like the scope of Indigenous fishing rights in Australia, the early judicial recognition of Maori fishing rights in New Zealand was strictly confined to a customary right with no commercial component.

In the 1970’s and ‘80’s, a couple events transpired that paved the way for what would ultimately result in the successful assertion of Maori fishing claims under the Treaty of Waitangi. The first was the passage of the Treaty of Waitangi Act of 1975, which established the Waitangi Tribunal as a permanent commission of inquiry to investigate Maori claims of breaches to the Treaty. While the Tribunal is not technically a court and it lacks the final authority to adjudicate points of law, its findings and
recommendations are taken quite seriously by the New Zealand government. Because it is not a formal judicial body, however, the Tribunal is able to take a more flexible approach to gathering evidence that is sensitive to Maori cultural values concerning the importance of consensus building, and the authority of oral histories and the testimonies of elders. While remaining an impartial adjudicatory body, the Tribunal’s mandate obligates the body to ensure that the principles of the Treaty are upheld in a manner that sustains its essentially bi-lateral and bi-cultural spirit.

A second transformative event occurred in 1983 when the New Zealand government proposed the QMS, which would further drive Maori out of the fishing industry by removing small and part-time fishermen from the licensing regime. In light of these events, representatives of five Muriwhenua tribes and two neighboring tribes brought actions in both the Waitangi Tribunal and in the New Zealand Courts asserting the breach of their exclusive fishing rights under the Treaty of Waitangi.\textsuperscript{xx} Seven hearings were held by the Tribunal between 1986 and 1988 in a variety of locations throughout the country, wherein a host of evidence was collected from historians and tribal elders. In 1987, the New Zealand High Court issued an injunction against the implementation of the QMS throughout the country pending the Waitangi Tribunal’s final recommendations. The Tribunal ultimately found that the Crown had significantly breached Maori’s commercial and non-commercial customary fishing rights by permitting Pakeha commercial fishing to interfere with Maori’s “full, exclusive and undisturbed right to maintain and develop their fishing capabilities (Waitangi Tribunal 1988).” As discussed more carefully above, the Tribunal recommended extensive and costly reparations to the
Muriwhenua people “to restore their fishing economy to what it might have been. (Waitangi Tribunal 1988).”

In light of these recommendations as well as concerns over the cost of settling future claims with dozens of other tribes, the New Zealand government sought to balance their need for a “once-and-for-all” settlement with concerns voiced by the Tribunal regarding the need for long-term rehabilitation programs for Maori fisheries. In many ways, the settlement has been successful in providing a workable, institutionalized, and legally protected policy for restoring Maori commercial fishing development to the point where it may have been had Pakeha interference not occurred. That being said, some Maori stakeholders remain concerned about any full and final settlement that freezes the terms at the present date without providing judicial recourse in the event of future circumstances that could restrict Maori rights. What’s more, some Maori remain dissatisfied that the guarantees in the settlement concerning Maori access to and management of their non-commercial fisheries have not yet translated into meaningful policies. While these claimants worry that the settlement precludes future litigation over these matters, some are starting to mull the possibility of returning to court to compel the Ministry of Fisheries to ensure that their non-commercial interests are more effectively protected.

**Legislative and Institutional Processes**

Given the fact that the Maori fisheries settlement, by its terms, constitutes a full and final settlement, combined with the fact that many of the practical details for the new fisheries regime remain in their formative stages, Maori claimants have shifted their
focus away from litigation toward working primarily within legislative and bureaucratic arenas to answer any unresolved questions. This is particularly the case regarding the scope of Maori customary fishing rights. In large part this has involved deferment to Te Ohu Kaimoana as the primary, institutionally embedded, representative of Maori fisheries interests in the post-settlement era. TOKM’s chief advocacy role has been to push back against Ministry of Fisheries’ management proposals that could threaten the value of Maori settlement assets by reducing sustainable yield levels and subsequently diminishing the amount of quota available to Maori fishermen. Most recently, TOKM has taken particular issue with MFish’s Shared Fisheries proposal, which would bring non-commercial and recreational fishing into the QMS, thereby reducing the quotas of the commercial sector and potentially reducing the amount of overall fish available for non-commercial stakeholders (See e.g. Hokianga Accord 2007).

The arbitrary division of Maori customary fishing rights into commercial and non-commercial components has caused some Maori stakeholders in the non-commercial sector to doubt the effectiveness of TOKM’s advocacy for their interests, viewing TOKM as an essentially commercial entity (Hokianga Accord 2007). What’s more, Maori advocates for non-commercial fishing rights feel, with some justification, that the provisions of the Fisheries Act that require Maori participation in fisheries management, have been woefully under-developed. For the most part, these claimants have turned to the regional forums, which were established by MFish as a matter of policy for the purpose of achieving greater Maori input into governmental fisheries management initiatives. While Maori stakeholders have taken the purpose of these forums quite
seriously, viewing them as gateways for meaningful participation in the bureaucratic process, there is increasing evidence, discussed more fully above, that MFish is losing interest in these forums as well as in their mandate to include Maori concerns in national fisheries management strategies (Hokianga Accord 2007).

Because New Zealand does not have a federal constitution, the political process has always been more focused on the enactment of legislation through Parliament, rather than through judicial processes of inquiry and binding judgments (Boast Interview). And, although the Waitangi Tribunal provided an effective forum through which Maori were able to demonstrate existing fishing rights under the treaty, it was ultimately through the Parliamentary process that the settlement was negotiated and enacted. xxiii Accordingly, the presence of Maori leaders as Ministers of Parliament and influential advisors has been, and continues to be, critical to the success of Maori fishing activists. Crucial to the future success of Maori interests will likely be the presence of the Maori Party in Parliament, which was established in 2004 and presently occupies five seats, all of which represent Maori constituents. According to the Party’s mission statement: “The Māori Party is driven by values that come from a Māori worldview, and believes strongly that such values are of benefit to all who call Aotearoa home. The values centre around building relationships between Māori and the Crown, between communities, and in so doing, provide a rich basis for development for the nation (Maori Party website 2010).” In 2008, the Maori Party signed a “confidence and supply agreement” with the National Party in exchange for the opportunity to staff ministerial positions and to advance certain key pieces of Maori-driven legislation. One significant bill advanced under this new
alliance would repeal the Foreshore and Seabed Act of 2004 and would restore Maori customary ownership over certain tidal lands (Maori Party website 2010).

**Negotiations and Collaborative Efforts**

The settlement’s perceived proscription against future fishing rights lawsuits has, over the past 18 years, kept Maori claimants out of the courtrooms and focusing on alternative means of hashing out the details of their post-settlement rights. In addition to concentrating more on institutional, bureaucratic and Parliamentary processes, as discussed above, Maori are also engaging in direct negotiations and collaborative ventures with fellow fisheries stakeholders. For the most part, negotiations and collaborative agreements are utilized by Maori non-commercial stakeholders, who view institutional processes as ill-suited for meeting their primary objectives, which include the management of local fisheries according to traditional methods and the preservation of fish stocks for the customary and subsistence uses of present and future generations.

One notable example of this approach is the Hokianga Accord, discussed in detail in Chapter 5. The Hokianga Accord is a regional forum in Northern New Zealand established by MFish to provide greater access by Maori non-commercial claimants into fisheries management decisions. The forum has been innovatively utilized by Maori leaders as a platform for Maori and Pakeha customary and recreational fishers to present a unified front to the Crown regarding potential infringements upon non-commercial rights (Hokianga Accord 2006). This alliance also provides opportunities for Maori customary fishing experts to garner support from their Pakeha neighbors for the implementation of Maori traditional management methods.
Another joint Maori-Pakeha collaborative effort is the “People’s Submission for More Fish in the Water/ Kia maha atu nga ika i roto te wai (People’s Submission 2006).” This document was drafted and presented to the Crown by several Maori and Pakeha non-commercial fisheries stakeholders in Northern New Zealand in response to the Crown’s Shared Fisheries proposal. The Crown’s proposal sought to bring recreational fishing rights into the Quota Management System by proportionally allocating recreational takes along with commercial and Maori customary takes. The “People’s Submission” was chiefly organized by Option4, an affiliation of concerned New Zealand recreational fishers, as well as the New Zealand Big Game Fishing Council and several iwi including, Ngati Whatua and Ngapuhi, in response to perceived threats by MFish to New Zealand citizens’ common law right to fish. The “People’s Submission” is noteworthy for a couple of reasons. The first is simply its unified approach to making fishing claims, which takes the interests of both Maori and Pakeha fishers into account. Second, the document takes seriously Maori fisheries management methods and argues that these are better suited for rebuilding and protecting local fisheries than any unilateral allocation regime imposed by the national government (People’s Submission 2006).

Civil Disobedience

Maori political claimants have always been adept at utilizing multiple strategies for asserting their indigenous rights. Over the years, these have included civil disobedience and direct protest, in addition to making use of more formal and institutional forums, as discussed above. As in Australia and the United States (discussed below), local acts of civil disobedience often involve decisions by Maori stakeholders to
simply continue accessing and utilizing their resources according to their own needs and cultural prerogatives, regardless of the existing of laws proscribing such activities. Indeed, the Waitangi Tribunal noted substantial evidence of Maori fishers who were arrested for violating New Zealand licensing laws and pleading the Treaty of Waitangi as a defense, even though the Treaty had been explicitly rejected by the courts for nearly the entire 20th Century.

On a broader scale, the contemporary Maori protest movement emerged nationally in the 1970’s and employed public protests as a means of drawing attention to the shared grievances of Maori people throughout the country. These activities were relatively successful, and were influential in the passage of Treaty of Waitangi Act of 1985, which resurrected the Treaty as a legally binding document and empowered the Waitangi Tribunal to investigate Maori claims against the Crown. Maori protests have also been credited for the return of certain lands to Maori ownership as well as the establishment of Maori as an official language of the New Zealand (Durie 1998; Smith 2005). Since the 1970’s and 1980’s, public protests by Maori have been used to target primarily local issues. The major exception to this was the eruption of massive civil disobedience by Maori and their Pakeha allies in 2003 and 2004 over the passage of the Foreshore and Seabeds Act. By vesting ownership of the foreshores and seabeds in the Crown, this legislation explicitly foreclosed the possibility of Maori customary title attaching to those lands. As of yet, nationally focused Maori protests have not specifically targeted fishing rights, and the comprehensiveness of the settlement may preclude the necessity for this type of collective action. That being said, the history of
Maori activism certainly reveals civil disobedience and collective action to be viable strategies within Maori people’s claims-making repertoires.

**United States**

*Goals Asserted*

Native American fishermen in the Pacific Northwest of the United States primarily focus on the same three goals as their Indigenous counterparts in Australia and New Zealand. Fundamentally, they seek continued access to their traditional fisheries, meaningful participation in the management of those fisheries, as well as opportunities for tribal members to make a reasonable living through the harvest of fisheries resources. However, the emphasis that they place on each of these goals depends, in large part, on the changing structure of political opportunities for achieving them. The present political opportunity structure confronting Native American fisheries claimants has been shaped, in large part, by the history of successful claims-making by earlier Native American fisheries activists. In particular, the groundbreaking victory for Native American fishing rights in the case of *U.S. v. Washington*, completely altered the playing field for activists by determining that the Stevens Treaties reserved for its tribal signatories all harvestable fish running through reservations and 50% of all fish at off-reservation sites that were the “usual and accustomed” locations for historical tribal fishing activities. With this landmark ruling, the question of Native American access to their traditional fisheries was determined, once and for all, in the tribes’ favor. And, while it would take nearly a decade of continued judicial oversight for State of Washington officials to accept this
ruling, Native American’s right to access and harvest their traditional fisheries has subsequently become institutionalized in federal, State and tribal regulatory regimes. More recently, tribes have been making claims to access other marine and estuarine species, like shellfish. Like the finfish claims before them, these later claims would also be decided in the tribes’ favor (See United States v. Washington, Sub-proceeding 89-3 1994).

The terms of the *U.S. v. Washington* decision would also affirm tribal claims for economic development and their participation in fisheries management. Specifically, Judge Boldt reinforced tribal autonomy and self-determination, generally, by ruling that the Treaty tribes could utilize their fisheries for whatever purposes they saw fit, including commercial development. Unlike New Zealand, however, there was no settlement in the United States within which the treaty tribes were able to acquire a significant ownership interest in any already successful and operational fishing company. Without this opportunity, few tribes have been able to integrate themselves into the already saturated U.S. commercial fishing industry (Frank 2002a). The lack of a federal subsidy for Indian fishing has also meant that few individual Indians have been able to amass enough capital to purchase the equipment necessary to become full-time fishermen (Boxberger 2000). At best, most individual Indian fishermen remain part-timers, using their catch to provide food for their families and selling the excess to supplement their incomes. Notwithstanding these obstacles, tribal aspirations within the commercial fishing industry persist (Hollowed Interview).
While institutional support for Native American commercial fishing has been somewhat lacking since *U.S v. Washington*, the same cannot be said for tribal participation fisheries management. Beyond simply ruling that tribes had a right to manage their on and off reservation fish stocks, Judge Boldt recognized that off-reservation management would require meaningful partnerships between State and tribal policy-makers and scientists. Given the State’s overwhelming mistrust of tribal regulatory authority, Judge Boldt assumed federal jurisdiction over fisheries management in the State of Washington pending the creation of viable and meaningful co-management regimes. To facilitate this process, he established quasi-judicial Fisheries Advisory Boards (FAB’s) through which lingering conflicts could be mediated. For a good ten years State resistance to tribal management was consistently rehashed in the courts and the FAB’s (Bowhay and Grayum Interview). During this time, tribes took full advantage of federal funding that was provided to implement *U.S. v. Washington* to develop the scientific and regulatory capacity of their own fisheries management agencies (Wilkinson 2000:64). The constitution of the NWIFC reveals this mission: “We, the Indians of the Pacific Northwest, recognize that our fisheries are a basic and important natural resource and of vital concern to the Indians of this state, and that the conservation of this resource is dependent on effective and progressive management (Cohen 1986:170).” By the time State fisheries managers finally came around to accepting the court-ordered partnerships with tribal scientists in the early 1980’s, they could no longer ignore that the tribes had both the best interests of the fisheries in mind and as well as the scientific capacities to effectively regulate their harvests.

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All in all, the greater institutional support for tribal fisheries management over commercial development has translated into a greater focus by Native American claimants on the scope of their management authority rather than on the commercialization of their traditional resources. The emphasis on management and de-emphasis on commercialism is only exacerbated by an environmental situation that is, at least so far, unique to Indigenous fisheries in the United States. In the Pacific Northwest, tribal fishers must contend with the severe depletion of salmon due to unchecked commercial exploitation in the early 1900’s and the continued destruction of fragile salmon habitat through the construction of hydropower dams, pollution from agriculture and forestry, and unrestrained residential development (Frank 1998). Over the past thirty years, Northwest salmon fisheries have been dramatically cut by 80% to 100% in some areas (Frank 2005d). By the late 1990’s, seven species of Washington salmon had been placed on the Endangered Species list (Boxberger 2000). Given that Native American fishermen have recognized the declining state of the salmon fishery for decades, it is no real surprise that fisheries management was such a central objective of the claimant tribes in *U.S. v. Washington* or that it continues to be today.

In light of the declining salmon population, and the centrality of these fish to the ways of life of Native Americans in the Pacific Northwest, tribal fisheries claimants are presently putting most of their efforts into salmon rehabilitation. As Charles Wilkinson notes in his biography of Nisqually fishing activist, Billy Frank, Jr., “Saving the fish was the first priority for the tribes. Commercialism seemed a distant second (Wilkinson 2000:65).” For contemporary tribal claimants the emphasis on fisheries management has
moved beyond simply demanding meaningful participation in the process. Now, their
demands often focus on advocating a particular approach to salmon rehabilitation that
aims to protect entire habitats and watersheds, rather than simply managing species by
regulating the harvests. Not only is a habitat-based approach to fisheries management in
line with Native Americans’ more holistic and naturalistic worldviews, many argue that it
is also simply the only rational solution to the unchecked destruction of salmon runs and
rearing grounds due to the damming and polluting of rivers (Bowhay and Grayum
Interview).

To some extent, the tribes’ emphasis on habitat regulation appears to be
influencing the perspectives of State resource managers. According to one official within
NWIFC, “There has been a 180 degree change since the 1970s on the part of State
managers in their attitude about tribes’ concern about habitat …. and many feel lucky that
tribes and treaty rights are around to ensure that habitat concerns are met (Bowhay and
Grayum Interview).” That being said, tribes still have a ways to go toward changing
official State regulatory policies, which oftentimes privilege the needs of developers,
sports fishermen, and the forestry and energy industries over the needs of the salmon,
even with many species’ survival on the line (See e.g. Frank 2000; Frank 2006a). Native
American proponents of habitat management also confront an ambivalent public who
continue to view fishing itself as the primary threat to the salmon and commonly oppose
Treaty fishing along these lines. Billy Frank, Jr. directly challenges the assumption that
fishing is the chief culprit of salmon depletion: “The truth is, tribal and non-tribal
fishermen could pull every net and release every hooked salmon from here to eternity,
but those weak runs of wild salmon would never recover because their spawning and rear ing habitat just isn’t there (Frank 2005b).” He goes on to argue that fishing, when done under the strictures of good science is not a bad thing, but rather a good sign for salmon recovery:

Tribal fisheries management is based on science, not public perception. If identifiable surpluses of salmon can be harvested in Elliott Bay, the Strait of Juan de Fuca or anywhere else in western Washington, the tribes will fish. Non-Indians should fish, too. It isn’t bad to fish and it isn’t wrong. Fishing is the desirable outcome of good fish management that is consistent with the productivity of salmon populations (Frank 1998).

Like the claims being made by their counterparts in Australia and New Zealand, the primary goals of Native American fisheries claimants to access, manage and commercially harvest their traditional fisheries are, in many ways, infused with cultural significance. Indeed, many who work on tribal fisheries issues consistently assert the importance of fishing to tribal cultural identities (Frank 2002a). What’s more, they acknowledge the centrality of preserving tribal fishing to revitalizing tribal communities by providing economic and cultural incentives for tribal members to return home, and ensuring that future generations are able to enjoy and appreciate their cultural heritage.

According to the former Chairperson of the Upper Skagit Tribal Community,

We, as Indians, have a responsibility to preserve our right, now that it has been secured, just as our elders fought to preserve it. We must preserve that right, for more than the value it carries today, for more even than the value of saving the
past. Our obligation is to preserve the right to fish for our future, for the many Indian children who will wake to the far-off sound of the splash of the first salmon of the season (Cohen 1986: xxvi).

Tribal autonomy to determine the appropriate methods for managing fisheries resources is also culturally relevant. While Western science has taken center stage in most tribal fisheries management regimes, many Indian resource managers also recognize the importance of traditional knowledge in shaping their environmental ethos, their holistic view toward habitat management, and their legacies of stewardship that are so intrinsically tied to their cultural identities (Frank 2007c).

Alongside these cultural concerns is a significant emphasis on tribal self-determination, which Native American claimants see as being explicitly protected within their treaty rights. For many fisheries claimants, upholding the treaty rights for their political and symbolic significance alone is critical to the tribes’ contemporary assertions of sovereignty. And, it is not lost on them that this is precisely what their ancestors bargained for over a century and a half ago (See discussion in Chapter 8). Indeed, with the federal court’s validation of Indian treaty rights in the Pacific Northwest, many tribes have become significantly empowered to assert their autonomy over what is essentially their most significant cultural and economic resource. During the public debate over whether Indian treaty fishing rights could or should be bought out by the federal government, William Smith, former Executive Director of the NWIFC, acknowledged the opportunities that treaty fishing rights presented for empowering tribes to achieve their economic and cultural aspirations: “We don’t want to live off the guilt of whites.
We want to be self-sufficient. This is a renaissance, a new beginning. I see our culture being restored, people leaving unemployment lines. No way we’re gonna sell those treaty rights (Brack 1977:4).”

*Settings and Strategies for Bringing Claims*

**Litigation**

As was the case in New Zealand, Native Americans in the Pacific Northwest have utilized litigation as one of several strategies aimed toward achieving the legal recognition of their treaty fishing rights since the earliest non-Indian infringements of those rights. Daniel Boxberger (2000) recounts the long history of activism and litigation employed by the Lummi Tribe against non-Indian industrial stakeholders and the State of Washington for driving Lummi fishermen out of the commercial fishing market. As early as 1894, the Lummi Tribe had hired its own attorney and had petitioned the Commissioner of Indian Affairs to intervene on its behalf against commercial fishermen who were placing fish traps over their traditional reef nets. Ultimately, the Tribe’s case was unsuccessful and the Lummi, like many tribes in the area, were forced to abandon their formerly lucrative reef netting activities and turn to predominantly substance fishing on or near their reservation (Boxberger 2000).

The Lummi case represents just one example of several suits brought by tribal litigants to halt non-Indian encroachment into their treaty-guaranteed fishing rights. While most of these cases were not favorable to tribal fishing interests, there were a couple notable exceptions. In 1905, for example, the United States Supreme Court ruled
that the Yakama Treaty, which was virtually identical to the other treaties negotiated by Governor Stevens, reserved the right for Indians to fish and hunt at usual and accustomed places off of their reservations, free from State regulation (United States v. Winans (1905)). In 1942, the Supreme Court reinforced this ruling when it determined that the State of Washington could not require Indians to purchase licenses for off-reservation fishing, nor could the State otherwise regulate such fishing, except where reasonable and necessary to conserve species (Tulee v. Washington (1942)). While these definitive Supreme Court rulings should have been the final word on the matter, the determinations generally lacked consistent enforcement and they did not include any mechanisms through which to facilitate Native American’s re-integration into off-reservation fishing, either for commercial or subsistence purposes. It only took the State of Washington about decade from the Tulee decision in 1942 to adapt to the constraints of the ruling and start imposing near-unilateral regulation of off-reservation Indian fishing under the guise of conservation necessity. Notwithstanding this increased pressure from the State, many Indian fishermen were not deterred, and instead viewed their persistent fishing as acts of protest against the unlawful breach of their treaty rights (Wilkinson 2000; See e.g. State of Washington v. Satiacum (1957)).

It was within this litigious historical context, marked by decades of suits and countersuits and inconsistent judicial determinations, that the federal government, led by U.S. Attorney for Western Washington, Stan Pitkin, finally brought action against the State of Washington. Pitkin specifically alleged that the State breached the tribes’ treaty fishing rights by impermissibly regulating Native American off-reservation fishing. xxv
The three-year proceedings that ensued in *U.S. v. Washington* became the focal point of decades of strife between the tribes, the State, and the State’s non-Indian commercial and recreational fishing allies. Although Judge Boldt’s groundbreaking ruling in favor of the tribes did not end the controversy -- on the contrary, it instigated a decade of amplified litigation and lobbying by the State seeking to avoid its enforcement -- it ultimately paved the way for the formal recognition and institutionalization of Indian treaty fishing rights, and the integration of tribal stakeholders into State-Tribal co-management regimes.

With the landmark judicial determination validating Indian treaty fishing rights and the eventual acceptance of these rights by State regulatory officials, the Stevens Treaties have been revitalized as essential tools for tribes to ensure that the full breadth of their rights continue to be upheld. In the years since Judge Boldt’s ruling, tribes have not shied away from wielding their treaty rights in the courts to further ensure their ability to access, harvest, and manage traditional fisheries resources. One notable example is the treaty tribes’ suit for recognition of their right to harvest shellfish according the “usual and accustomed” places clause in the Stevens’ Treaties. Based on the argument that shellfish are not “fish” under the meaning of the treaties, the State of Washington ultimately rejected the tribes’ offers to settle their claims in exchange for 18% to 26% of the available harvest. In 1989, the Treaty tribes filed suit in federal court as a sub-proceeding to *U.S. v. Washington*. In 1994, Judge Edward Rafeedie upheld the tribes’ treaty-reserved right to a full 50% of the harvestable shellfish in inter-tidal waters and established them as co-managers of the resource along with the State of Washington (*U.S. v. Washington, Sub-proceeding 89-3* (1994)).
Another key example of post-Boldt tribal litigation is the “Culvert Case,” which is also a sub-proceeding of *U.S. v. Washington (Sub-Proceeding 01-01 (2007))*). Following failed negotiations with the State, the treaty tribes sued State resource managers, arguing that the existence of tribal treaty fishing rights obligated the State to manage species’ habitat. In this particular case, that meant maintaining State-owned culverts in such a way that ensures that there are enough fish in the water to meet tribal needs. In 2007, the federal court ruled in favor of the tribes, stating that the treaty rights impose “a duty upon the State to refrain from building or operating culverts under State-maintained roads that hinder fish passage and thereby diminish the number of fish that would otherwise be available for Tribal harvest (*U.S. v. Washington* (2007)).” Notwithstanding this duty, further negotiations to settle the matter have not been fruitful, leading to an increased likelihood that the matter will proceed to a full trial. While both of these cases demonstrate the tribes’ willingness to pursue their fishing rights through litigation, such tactics remain a last resort for tribes, who prefer cooperation and relationship-building to resolve disputes (Grayum Interview). Tribes are also careful about what issues they bring in front of the courts, citing concern that shifting political climates and varying court compositions may result in the rollback of hard-won rights (Hollowed Interview).

**Negotiation**

The long history of litigation in the Pacific Northwest paints a picture of Native American claims-making as chiefly litigious and antagonistic. According to many stakeholders and experts in Indian fishing rights, however, litigation is predominantly used as a final resort after negotiation has failed (Bowhay and Grayum). Even at the
height of the fishing conflict in the 1970’s, the Commissioner of Indian Affairs advocated for negotiation and settlement between the states and the tribes noting that “Indians are very familiar with the negotiation process. They have been at it for the past five hundred years … two hundred of them with the United States (United States Department of the Interior 1978:6).” The legal status of Indian tribes as sovereign governments further provides them with the legitimacy and the jurisdictional authority to engage with local, state and federal officials through government-to-government relationships. Because the agreements that emerge from these types of negotiations often attach to governmental funding and have the backing of bureaucratic authority, they have greater potential to be enforced and implemented in ways that produce meaningful outcomes than is likely the case for agreements where one or both of the parties are private citizens. These types of agreements are exemplified by the numerous co-management arrangements between tribes and the State of Washington emerging out of the mutual rights and obligations set forth in *U.S. v. Washington*. Billy Frank, Jr. talks about the benefits of cooperation and negotiation between tribes and the State:

> By staying out of the courts and at the government-to-government negotiation table, we can seek common solutions to common problems. We can work together, as a team, to protect and restore salmon habitat. We can produce cooperative harvest plans and catch accountability programs. I know we can do these things, and much more, because we already have done them. In fact, the past 15 years were unofficially dubbed the “era of cooperation” between the state and the tribes, and it was an era of progress. Co-management, based on understanding
and mutual respect, is the one and only path to progress in natural resource management in the future (Frank 1996).

The tribes take negotiations with private stakeholders just as seriously as they do agreements with state and federal agencies. Unfortunately, as with the State, it sometimes requires a little persuasion from the courts to get these parties to the negotiating table. When they have been successful in doing so, mutually beneficial arrangements have generally been the result. According to one Indian fishing rights expert, while the tribes’ always prefer to build partnerships with local community members, this approach is getting tougher due to uncontrolled growth in the area. As a result, the tribes’ general strategy is to use the court to create a judicially-enforceable hammer and then start working with local communities who come to the table because tribes have that hammer (Bowhay and Grayum Interview). While tribes are willing to be aggressive when necessary to achieve recognition of their treaty rights, they are predominantly interested in taking a cooperative approach to the implementation of those rights since, ultimately, “these people are their neighbors (Bowhay and Grayum).”

Notably, when private stakeholders are willing to negotiate with tribes, they have generally been able to work out more holistic watershed management approaches than those generally feasible through negotiations with the State alone. One notable example is the Timber Fish and Wildlife (TFW) Agreement, which was negotiated in 1987 between the tribes and the State of Washington as parties, but also included members of the timber industry as well as conservation organizations. This groundbreaking agreement, discussed in greater detail in Chapter 5, ensures tribal input into the
management of privately owned timber lands in order to preserve essential salmon habitat (Ross 1998). Another example is the 2007 Commercial Shellfish Growers Settlement between seventeen treaty tribes and commercial shellfish growers in and around Puget Sound (Northwest Indian Fisheries Commission website 2010). This settlement was negotiated in order to implement the terms of the federal court’s 1994 ruling entitling the tribes to 50% of the harvestable shellfish and to mediate any confusion surrounding the fact that most of the tribes’ “usual and accustomed” shell-fishing grounds had been sold by the State and federal governments to private developers over a century ago (See also Jamestown S’Kallam Tribe 2008). According to the NWIFC, “Rather than turning to the courts to resolve the issues, tribes and growers worked together with state and federal leaders to craft an agreement that complements ongoing efforts … to ensure that local waters remain clean and healthy for future generations – of shellfish and people (Northwest Indian Fisheries Commission website 2010).” A key component of the settlement was the tribes’ agreement to forgo their treaty right to harvest $2 million worth of shellfish annually from private growers’ beds in exchange for the private growers’ agreement to provide $500,000 for shellfish enhancement on public tidelands. The agreement also included the establishment of a $33 million trust from State and federal funds for the seventeen treaty tribes to acquire and enhance other tidelands to which they will have exclusive access (Northwest Indian Fisheries Commission website 2010).

**Tribal Governance**

Unlike most Indigenous groups in Australia and New Zealand, Native American tribes are able to assert governmental authority over the territories and resources that they
control by virtue of their political jurisdiction. Such jurisdiction exists as a result of Indian tribes’ semi-sovereign status, which was codified within the hundreds of treaties signed between tribes and the British and American colonial governments. With some complex exceptions, tribal jurisdiction extends over lands and resources located within their reservation boundaries and, to a lesser extent, over resources such as treaty fisheries, that are located off the reservation as well. The recognition of tribes as semi-sovereign nations enables them to exercise such authority by establishing and implementing binding laws and policies that promote their own agendas first and foremost.

The ability of tribes to exercise governmental authority has been further facilitated by the passage of the Indian Self-Determination and Education Assistance Act of 1975 (“Self-Determination Act”), which established the mechanisms for tribes to implement essential programs that were previously administered by the BIA. The Act also provided federal grants for bolstering the regulatory capacity of tribes. This support, combined with federal money allocated to tribes specifically for the purposes of implementing *U.S. v. Washington*, has contributed to the proliferation of tribal fishing regulations and fisheries management regimes and projects. As mandated by the Boldt decision, each treaty tribe developed its own fisheries regulations and fisheries management agencies, which are staffed by biological scientists to regulate on-reservation fishing.

In addition to establishing these foundational institutions, many tribes have gone on to develop new and innovative programs to ensure that their interests in accessing, managing and commercially developing their fisheries are met. Although there are
countless examples, a few notable ones include the Jamestown S’Kallam Tribe’s habitat restoration and geoduck and shellfish research and monitoring projects, the Lummi Tribes’ shellfish hatchery, the Nisqually Tribe’s dike removal and estuary rehabilitation project, and the Squaxin Island Tribe’s salmon hatchery. The ability of tribes to exercise self-determination over their own lands and resources through the direct implementation of policies and the creation of projects specifically aimed to advance their treaty fishing rights is invaluable to the tribes. This is a significant departure from the situation in Australia and New Zealand, where the Indigenous peoples’ political sovereignty is not recognized by the national governments and, as a result, Indigenous groups are not able to assert control over their fishing rights through direct governance.

Civil Disobedience

As discussed previously, Native Americans have a long history of activism, both nationally and locally. In the Pacific Northwest, political advocacy for Indian treaty fishing rights has been central to the aspirations of local Native American people as well as to Indian activists hoping to build a more unified pan-Indian movement. To Native American people, the ability to fish for salmon is fundamental to nourishing their cultural values, while also meeting their social obligations to their fellow community members, to future generations and to the natural environment that has sustained their societies since time immemorial. Fishing is also important to their economic prosperity, by providing jobs in fisheries management and rehabilitation and by enabling tribal people to supplement their incomes by selling what they catch. The recognition of tribal fishing rights also validates the treaties upon which the foundations of tribal sovereignty are
guaranteed. Given the importance of fishing to these multiple and fundamental values and aspirations, as well as the topic’s resonance to Native American people throughout the country seeking control over similarly meaningful natural and cultural resources, it is not surprising that the fishing controversy became a touchstone for the budding Red Power Movement during the 1960’s and ‘70’s (Cantzler 2008a). Indeed, it was through the fish-ins on the riverbanks in Oregon and Washington that local and national Indian activists converged. There they molded a more unified agenda for the fledgling movement, which would henceforth focus on the overarching objectives of empowering tribal governments, revitalizing Native American communities, and improving the lives of individual Indian people. Strategically, the fish-ins in the Pacific Northwest “also influenced the more widespread use of highly publicized, symbolic protest events as a means of getting messages about Native American rights across (Cantzler 2008a:1130).”

With the ruling in *U.S. v. Washington* the need for direct activism over Indian fishing rights has diminished. That being said, the history of Native American protest over Treaty fishing rights, which has included both organized riverbank fish-ins in the 1960’s and 70’s as well as individual defiance by scores of Indian people who continued to fish throughout the 20th Century despite the personal risks of arrest and injury, demonstrates the continuing relevance of civil disobedience as an available strategy in Native American fishers’ repertoire of contention that they could very easily activate again if the need presented itself (Wilkinson 2000).
Conclusion

Scholars of contentious politics and mobilization have spent significant effort analyzing the influence of political opportunity structures on the mobilization strategies of social movements (See e.g. Jenkins 1983; Kitschelt 1986; Kriesi et al 1997; McCarthy 1996; Zald et al 1996). In this study, political opportunities are conceptualized as including the histories of colonization, the institutional arrangements governing Indigenous affairs, and the relative openness of these institutions to Indigenous claims-making, as well as the general support for Indigenous people’s rights by government officials and members of the general public. McCarthy (1996) defines mobilization structures as the choices activists make about how to mobilize. Such choices include critical decisions about the utilization of particular mobilization tactics, including the claims they choose to advance, the formality of their organizations, and the settings where they ultimately advance their claims. In this chapter, I have focused specifically on the goals that Indigenous fisheries activists advance and the settings where they choose to bring their claims. In the case of Indigenous fishing rights, choices regarding goals and strategies are intrinsically linked to the relative openness of institutions for advancing their claims, the level of support for their claims from other fisheries stakeholders, agents of the government, and members of the general public and, in light of these factors, the likelihood that such claims will be successful.

Political contexts are relevant to understanding both why movements advance particular claims over others (Meyer 2004) as well as why they pursue their claims in particular arenas (Jenkins 1983; Kitschelt 1986). Although political opportunity
structures constrain Indigenous fishing activists’ choices regarding the goals and strategies they employ, the tactical innovations utilized by Indigenous political actors in light of these structural constraints are relevant to understanding manifestations of Indigenous peoples’ agency both within episodes of political contention over valuable resources as well as within broader processes of decolonization. Such agency can only be critically understood in terms of the political structures that constrain it (Meyer 2004). Also pertinent to understanding the goals and strategies of action utilized by Indigenous claimants in fisheries debates are theories that define a link between mobilization structures and the cultural attributes of movement adherents (See. e.g. Polletta and Jasper 2001). Specifically, Polletta and Jasper (2001) advocate for research that explores the relationships between the cultural and discursive dynamics of movements, on the one hand, and legal, political, economic and social structures on the other. They contend that “the challenge is to identify the circumstances in which different relations between interests and identity, strategy and identity, and politics and identity operate (Polletta and Jasper 2001:285).” In this case, decisions by Indigenous claimants regarding the claims they advance and, to a lesser extent, the arenas for asserting those claims, are culturally relevant.

Across the three cases, there are significant similarities and differences in both the goals that Indigenous activists assert, as well as the strategies they employ for achieving those goals. Strikingly, in each country, Indigenous claimants assert the same overarching goals. These are, namely, the right to access their traditional fisheries free from interference by non-Indigenous stakeholders and regulatory bodies, the right to
participate in the management of traditional fisheries resources according to their own methods and, finally, the right to economically develop their fisheries in order to achieve greater economic independence for individual Indigenous people and tribal bodies. These over-arching goals are also linked to the broader cultural aspirations of the Indigenous populations. Specifically, each of these goals is commonly linked to the desires of Indigenous people to continue their traditional subsistence practices in order to preserve fundamental cultural and normative systems for future generations. What’s more, fishing is conceptualized as a focal point for Indigenous self-determination and political power, in that it provides opportunities for the training and empowerment of future leaders, it promotes economic self-sufficiency and independence from governmental institutions of social control -- including the welfare system and the regulatory agencies with authority over Indigenous affairs -- and it solidifies the political authority of Indigenous people over traditionally-significant natural resources. Given that Indigenous fishing activities have always been imbued with sacred meaning and tied to traditional norms and values related to social obligation, political authority, economic opportunity and environmental stewardship, it is not surprising that contemporary assertions of these goals reflect loftier aspirations related to Indigenous cultural and political revitalization.

Indigenous fishing activists in Australia, New Zealand and the United States all utilize a variety of institutional and extra-institutional settings for bringing their claims, which span local, regional and national foci. In all three cases, claimants pursue an array of strategies that, to a greater or lesser extent, involve litigation, legislative lobbying, negotiated settlements with government actors and members of the private sector,
relationship building with local stakeholders, direct policy making, and civil disobedience. In light of Indigenous groups’ over-arching aspirations for self-determination, many prefer to engage in direct governance and policy-making wherever possible. This is evidenced by the exercise of governmental jurisdiction over tribal fisheries in the United States, the development of Sea Plans by Yolngu Traditional Owners in Australia, and the implementation of mataitai reserves by Maori non-commercial stakeholders in New Zealand as well as the more general control by Maori stakeholders of Te Ohu Kaimoana and Aotearoa Fisheries Limited.

While Indigenous fishing claimants in Australia, New Zealand and the United States focus on the same three primary objectives, which implicate over-arching aspirations for cultural and political revitalization and self-determination, there are fundamental differences in the emphases that are placed on these goals across the cases. These differences are shaped primarily by variations in political opportunity structures that have resulted from crucial distinctions in the patterns of colonization and subsequent development of political institutions for regulating Indigenous affairs in each country. Primarily, the presence of revitalized treaties in New Zealand and the United States, which include legally binding obligations for the national governments to protect Indigenous fishing rights, has been central to the success of Indigenous fishing claims through litigation in those two countries. The absence of any similar foundational document in Australia has seriously constrained the opportunities for Aboriginal Australians to achieve anything close to the successes experienced by their counterparts in the U.S. and New Zealand. Notwithstanding favorable court rulings that revitalized the
treaties in New Zealand and the United States, major differences in the interpretations of
the treaties’ requirements have further shaped the political opportunities available for
future claims-making in these two countries.

In New Zealand, the favorable ruling from the Waitangi Tribunal was followed by
the groundbreaking fisheries settlement between the Crown and the Maori, which not
only codified their expansive rights, but provided a significant subsidy for Maori entry
into the commercial fishing industry. It also created an extensive regulatory regime for
Maori commercial fishing along with two Maori-run quasi-governmental bodies, in
TOKM and AFL, to support Maori commercial and, to a lesser extent, non-commercial
interests. This outcome has impacted the goals of Maori claims-makers in two primary
ways. First, by significantly facilitating Maori’s economic aspirations, the settlement has
enabled Maori claimants to move beyond simply demanding rights to develop their
fisheries and to now focus on maximizing their assets, developing tribal infrastructures,
and training future governmental and industry leaders for the purposes of becoming
major players in the domestic and international fisheries markets. Second, by leaving
significant gaps in the protection of Maori non-commercial fishing rights, the settlement
has galvanized Maori activists to put renewed effort into asserting their rights to actively
participate in the management of traditional fisheries in ways that are culturally-relevant.

The federal court’s ruling in United States v. Washington similarly acknowledged
Native American tribes’ rights to access, manage and commercially develop their
fisheries according to the terms of their respective treaties. A major difference from the
situation in New Zealand, however, was that implementation of the ruling did not include
a subsidy for the integration of Native Americans into the fishing industry. This reality was further constrained by the significant depletion of salmon resources in the Northwest at the time of the ruling as well as the prevailing saturation of the market by non-Indigenous commercial stakeholders. While the federal ruling included no support for Indian commercial fishermen, it did include significant assistance for tribal integration into fisheries management regimes. This came in the forms of direct funding to tribal resource management agencies, federal oversight of State-Tribal co-management arrangements, and support for habitat management agreements between governmental, tribal and private stakeholders. In general, the greater institutional support for tribal fisheries management as opposed to economic development, combined with the dire condition of many harvestable species, has led to greater emphasis by the tribes on the scope and methods of fisheries management rather than on commercialization of the resource. That being said, tribal leaders maintain that economic development remains an important aspiration for Native Americans in the Pacific Northwest, but one that can only occur after species populations have been revitalized to the point where sustainable harvests become tenable (Frank 2002a; Wilkinson 2000).

In Australia, there is no treaty protecting Indigenous peoples’ natural resource rights. What’s more, the prevailing native title system remains ill-suited for adjudicating Aboriginal claims to access and manage aquatic resources and there is no legal recognition of Traditional Owner’s rights to commercially harvest traditional species free from governmental licensing and regulation. In light of the blanket proscription against commercialization of traditional resources, and the unlikelihood of movement in this area
anytime soon, Aboriginal claimants rarely focus on these goals, although they continue to maintain their relevance to Aboriginal self-sufficiency and community revitalization (See Yu 2007). Much more of their attention is directed toward ensuring their continued ability to access culturally significant species, especially dugong and sea turtles, and to manage these species according to their own traditional laws and customs. While they are generally unable to assert direct governance over their sea country, they actively seek out joint management arrangements as well as active input into bureaucratic policy-making regimes with authority over their traditional aquatic resources.

The unique political contexts present in each of three sites, and the degree of openness of various institutional settings to Indigenous fishing claims, are highly relevant to understanding the strategic choices Indigenous claimants make about where to assert their claims of rights. These choices are in no small part influenced by the presence or absence of treaty fishing rights across these cases. In New Zealand, for example, the revitalization of the Treaty of Waitangi and the empowerment of the Waitangi Tribunal for adjudicating treaty breaches legitimated the judiciary as a viable arena for asserting Maori fishing rights claims. What’s more, the Tribunal’s bicultural mandate meant that the forum would be open to accepting the more interconnected view of Maori customary fishing rights as including subsistence, ceremonial and commercial components. Significantly, the subsequent settlement of Maori fishing rights by the Crown has foreclosed the possibility of future litigation and has succeeded in keeping Maori claimants out of the courts. Instead, Maori fisheries stakeholders now tend to focus on bureaucratic and legislative processes for fleshing out the details of their treaty rights.
These strategies are facilitated by direct representation of Maori interests through Maori Ministers of Parliament, as well as through the establishment of the Maori Party and their recent alliance with the ruling National Party. Bureaucratic tactics have also been facilitated by the institutionalization of the Maori-staffed Aotearoa Fisheries Limited and Te Ohu Kaimoana as formal agencies for advocating Maori fishing interests at the highest levels of government.

The arbitrary division of Maori commercial and non-commercial fishing rights into distinct regulatory categories has also influenced the strategies of Maori claimants. The perceived preference for Maori commercial interests over their non-commercial rights by the national government has compelled stakeholders of non-commercial rights to pursue those interests outside formal institutional channels. Notably, non-commercial claimants have forged alliances with Pakeha recreational fishermen. They have also innovatively transformed regional forums into cooperative bodies that best reflect their aspirations. These forums are seen as having the greatest potential for creating change at the local level, where their non-commercial fishing interests are most relevant.

In the United States, as in New Zealand, where treaties explicitly guaranteed Indigenous fishing rights, litigation has been a primary strategy for seeking legal recognition for well over a century. Prior to Judge Boldt’s favorable ruling in *U.S. v. Washington*, Native American fishing activists utilized a variety of strategies for bringing attention to their plight. These strategies combined litigation with direct lobbying of Congress and the BIA, as well as significant organized protests and impromptu individual acts of civil disobedience. The Boldt decision not only affirmed treaty fishing rights as
valid and enforceable, but also legitimated the federal courts as viable avenues for asserting Native American treaty rights in general. Unlike New Zealand, there has been no formal settlement that has foreclosed future litigation by Native American claimants. As a result, tribes continue to utilize the courts to establish and enforce their rights where negotiation is untenable. That being the case, Native American fishing rights activists view cooperation with state regulatory officials, private stakeholders and local citizens as the most ideal strategy for building relationships and ensuring long-term support for their fisheries management and habitat rehabilitation initiatives. Thus, wherever possible, negotiated settlements are prioritized over litigation as a means for ensuring that everyone’s needs are met. Finally, unlike their counterparts in Australia and New Zealand, tribes in the United States enjoy governmental status similar to that of states, which allows them to exercise jurisdiction over their lands and resources. This enables tribes to make their own policies for their fisheries, which they can enforce in tribal courts. Tribal governmental authority also provides tribes with the freedom to develop their own initiatives for restoring habitat and species on tribal lands, which are best suited to meet their own political, cultural and economic agendas.

In Australia, the absence of a treaty or any other enforceable legislative protections for Aboriginal resource rights means that the courts remain relatively unfavorable places for Indigenous claimants seeking acknowledgement of their rights to sea country. Generally, where native title rights to sea country have been recognized, they are limited to subsistence and ceremonial purposes only, and are inferior to pre-existing non-Indigenous interests. That being said, the development of native title jurisprudence
over the past twenty years has provided Indigenous claimants with a lever through which to negotiate with governmental resource managers and private stakeholders who remain uncertain about the application of native title to marine resources and are hoping to avoid protracted litigation.

State and Commonwealth Parliaments also remain relatively closed to Aboriginal claims-makers. At present, there are no Aboriginal representatives in Parliament and there is no longer any formal agency that oversees and advocates for the interests of Aboriginal people. Even at lower levels of government and within agencies with regulatory authority over natural resources, Aboriginal representation is virtually absent. Where Aboriginal stakeholders are included, it is generally only in advisory roles with no decision-making authority over the processes and resources that impact their lives. Notwithstanding these significant obstacles, Indigenous fisheries activists have innovated in the tactics they employ by focusing their efforts within the arenas where they are most likely to have an impact. These predominantly include negotiated stakeholder and co-management agreements with local resource users and managers, the development of federally-funded local management and delivery programs, such as Sea Ranger and Dugong and Turtle Management Programs, and the creation of Indigenous Protected Areas and Sea Plans, within which Traditional Owners are able to develop and implement comprehensive agendas for their sea countries that are most relevant to their own culturally and socially defined aspirations.

The examples set forth in this chapter demonstrate that choices made by Indigenous fisheries claimants in Australia, New Zealand and the United States about
what claims to pursue and where to pursue them are constrained by the political
opportunity structures present in each national context. In light of, and in spite of, these
constraints, Indigenous claimants engage in a variety of institutional, extra-institutional
and innovative strategies for pursuing their objectives. Their strategies and goals reflect a
nuanced understanding on the part of Indigenous political actors about the opportunities
and limitations presented by the utilization of particular tactics over others. The unique
combination of goals and strategies utilized in each national context are designed to
maximize the material objectives of Indigenous fisheries stakeholders, while also
fundamentally ensuring that their cultural aspirations -- which include the revitalization
of Indigenous communities and the protection of traditional resources, practices and
social obligations for future generations -- are continually asserted.
CHAPTER 8
THE ARTICULATION AND IMPORTANCE OF FRAMES

Framing ultimately refers to the process by which individuals and groups construct meanings about social phenomena and challenge constructions of meanings that conflict with their views (Benford and Snow 2000). “Collective action frames are action-oriented sets of beliefs and meanings that inspire and legitimate the activities and campaigns of a social movement organization (Benford and Snow 2000:614).” Framing serves multiple functions for social movements, including identifying and attributing blame for the perceived causes of problematic situations (diagnostic framing), and articulating solutions and developing strategies to address those problems (prognostic framing) (Benford and Snow 2000). Additional functions include mobilizing ideas and supporters to facilitate consensus and action as well as demobilizing opponents (Benford and Snow 2000). In order to achieve these ends, social movements may engage in adversarial framing whereby protagonists and antagonists are constructed and boundaries between “good” and “evil” are delineated (Benford and Snow 2000; Gamson 1995). Activists also commonly engage in motivational framing to provide adherents with a rationale to act by amplifying the severity and urgency of a given situation (Benford and Snow 2000). Framing, thus, creates an overall framework of beliefs, motivations, rationales, and
strategies that serve as both resources and guides for activists. Previous studies and theoretical work suggest that the framing devices employed by movements are constrained by various internal and external factors. These include prevailing political opportunity structures (Benford and Snow 2000; McAmmon et al. 2004), the ideologies of potential movement constituents (Babb 1996), and the broader cultural context, including the beliefs, values and practices of the dominant population (Zald 1996; Benford and Snow 2000).

Cultural dynamics are relevant to framing processes for several reasons. On one level, the beliefs, motivations, and values that provide the content for movement framing are rooted in the culture of a social movement’s membership. A movement’s culture is emergent, in that it is constantly reproduced by virtue of the changing experiences of participation within the movement, as well as being somewhat static, in that it is rooted in the historical experiences of members who share similar social locations (See e.g. Johnston and Klandermans 1995; Melucci 1995; Polletta and Jasper 2001). According to Swidler, culture influences action by providing people with “the vocabulary of meanings, the expressive symbols, and the emotional repertoire with which they can seek anything at all (1995:27).” Culture, in this way, provides movements with “tool kits” of symbols, rituals, stories, and worldviews that are called upon during social movement framing to define shared identities, formulate grievances, and construct strategies of action (Johnston and Klandermans 1995; Swidler 1995).

Although the details of their cultures and their experiences of colonization differ, Indigenous activists in Australia, New Zealand and the United States share general...
cultural similarities shaped by their continuing occupation of ancestral territories, their reliance on traditional resources to meet their subsistence, social and economic needs, and their holistic and naturalistic worldviews, which place their continuing relationship with their natural environment at the center of their normative systems. They also share a very general trajectory of interaction with the European occupants of their traditional homelands, which has been marked by warfare, population decline, forced relocation and assimilation, extreme poverty, and their systematic marginalization from dominant economic, political and social opportunities. These experiences have also become part of Indigenous actors’ cultural tool kits and, as such, they may influence the discursive mobilization strategies utilized during episodes of contention in similar ways.

The beliefs, values and worldviews of the dominant population are also relevant for understanding the adversarial and motivational framing techniques used by Indigenous activists to garner mainstream support for their claims and affect changes in the prevailing systems of laws and policies that regulate Indigenous natural resource rights. According to Benford and Snow (2000), movements are not merely the carriers of ideas and meanings that have grown out of existing structural arrangements and ideologies; they are also actively engaged in the production of meaning. Framing is an active and dynamic process that implies agency, interaction and contention over the construction of reality. To affect change, movements draw from the ever-shifting, broader cultural stock and the prevailing repertoires of contention (Zald 1996). When successful, movements are able to add to the cultural stock by providing counter-hegemonic alternatives that are then translated into new policies and symbols that become part of the
general culture (See also Tarrow 1992). Such change is most likely during periods of social and structural uncertainty, which provide movements with expanding cultural opportunities to align their frames with changing cultural repertoires (McCammon et al. 2004). Although these frames must resonate to some extent with mainstream cultural norms and values, to effectively create change, they must also present plausible alternatives to mainstream beliefs, by containing elements that are oppositional to prevailing ideologies (McCammon et al 2004; Tarrow 1992). In this study, I contend that Indigenous activists strategically frame their fishing rights in ways that are antagonistic and oppositional to prevailing practices and philosophies governing non-Indigenous fisheries utilization and management, while simultaneously reflecting mainstream values regarding the importance of resource conservation and the appropriate strategies for achieving those ends. They do this in order to present counter-hegemonic alternatives to the prevailing systems of non-Indigenous fisheries management, in which they present Indigenous people as best suited to manage their own fisheries for the benefit of Indigenous and non-Indigenous people alike.

This chapter analyzes key similarities and differences in the framing devices utilized by Indigenous fisheries advocates in Australia, New Zealand and the United States. The purpose of these analyses is threefold: 1) to reveal the influence of political opportunities on the discursive strategies utilized by the Indigenous activists across the three national contexts; 2) to explore the instrumental and autonomous influences of cultural dynamics on framing processes; and, 3) to shed light on the multiple and strategic functions of framing for Indigenous fishing rights activists, while paying
particular attention to how framing is used to affect change in the hegemonic foundations of the policies and institutions that continue to regulate Indigenous natural resources.

**Key Similarities**

**Oppositional Frames**

Indigenous fishing rights activists in all three countries engage in oppositional framing tactics that serve several different purposes. Their tactics also reflect the continuing cultural relevance of fishing to Indigenous peoples’ cultural, political and economic aspirations, while highlighting the enduring dissimilarities that persist between Indigenous peoples’ worldviews and those of the settler population. On one level, Indigenous actors strategically link their claims of rights to preexisting oppositional identities and values as well as to Indigenous people’s unique experiences with colonization. These types of framing devices essentially legitimate contemporary Indigenous fishing rights as being “traditional” enough to justify their continuation outside of the application of prevailing bodies of laws and regulations. On another level, such framing devices are utilized to challenge stereotypes about Indigenous people and call into question broader hegemonic assumptions about governance, citizenship and culture that have historically legitimated the political domination and marginalization of Indigenous people.

**Pre-existing Oppositional Identities**

In asserting claims for the recognition of their rights to access, manage, and harvest traditionally-significant aquatic resources, Indigenous political actors in all three
national contexts commonly frame their arguments in terms that reflect oppositional identities that are rooted either in traditional cultural characteristics or in their unique histories of conflict against colonial authority. For example, the Tribal Chairman of the Squaxin Island Tribe in Washington State begins the Tribe’s annual report outlining their achievements in fisheries and natural resource management in a way that emphasizes a tribal identity that is rooted both in their legacy as fishermen and in their history of survival despite the devastation of colonization: “We truly are a People of the Water. We have so much to be proud of. We have survived treaty making, germ warfare, coercive assimilation and outright genocide … The Squaxin Island Tribe is strong and resilient. We have taken positive steps to retain and maintain our identity as a people and a government (Squaxin Island Tribe 1998).” At a very basic level, many Indigenous actors legitimate their claims based on their status as the original occupiers of the lands and users of fisheries resources, with the implication that any subsequent non-Indigenous interests are the result of illegitimate appropriation. The Yolngu people make such claims in their Sea Country Plan:

The court found that our rights sit alongside those of others who currently use our sea country. Yet without exclusive control over our country we are still faced with the problems of unlawful intrusion, overfishing, habitat damage and disruption to our coastal communities. We still have difficulty seeing how the rights to fish – only recently exercised by non-Indigenous people in our sea country – can sit equally with our requirements of cultural survival and well-being (Dhimurru Land Management Aboriginal Corporation 2006:14).
These arguments become even more oppositional when non-Indigenous resource consumption is blamed for species decline and environmental degradation, as is repeatedly asserted by tribal fisheries leaders in the United States. Here are just two examples:

First, steelhead were abundant in our streams years before there was a sportsmen’s club. The Indians caught these fish for hundreds of years prior to the coming of the white people for their livelihood and for trade among tribes. And, because of their conservation practices, there were plenty of fish in the rivers when the white settlers first came here. Only after over-fishing and pollution by the non-Indians were fish runs depleted (Jones 1974).

Yet we have lived here for thousands of years, in harmony with nature. Many non-Indians ways are strange to us. They permit their children to dine on meat without teaching them to be grateful to the animals that died to feed them. Even vegetarians can be hypocritical. Agricultural practices kill more of nature’s creatures through habitat destruction than fishing and hunting ever will (Frank 1999).

In addition to citing the longevity of their civilizations to legitimate their claims and set themselves apart from settler populations who are seen as relative newcomers with lesser claims to valuable natural resources, Indigenous political actors also frame their goals for their fisheries in terms of their broader aspirations to persist as culturally distinct communities into the future. Specifically, many Indigenous claimants assert that
their longevity and survival demonstrates their resilience as peoples and, ultimately, is suggestive of the permanence of Indigenous cultures, regardless of the realities of colonialism. A non-Indian attorney working for the Northwest Indian Fisheries Commission explained this concept to me when discussing tribal litigation strategies. According to this attorney, “tribes have this ethos that they don’t have to win it all right now, because they are going to be here forever (Hollowed Interview).” Although he admits to being anxious to see changes occur as quickly as possible, or at least in his lifetime, tribes are less concerned about this. In New Zealand, the notion of permanence has been used to set Maori commercial stakeholders apart from non-Indigenous industrialists who have historically plundered the fisheries. A TOKM officer contends: “Our plan is to dominate the fisheries … because we are the fisheries. And, we were fishing a thousand years ago and we plan to be fishing in a thousand years’ time. You can’t fish in a thousand years’ time if you plunder it now. So I don’t like being patronized by ministers or officials who tell me I haven’t thought about sustainability (Douglas 2008).” In Australia, where Indigenous cultures have thrived for over 65,000 years, the concept of permanence is even more prevalent. In the Dhimurru Sea Plan, for example, the Yolngu people assert their permanence to justify their authority to sustainably manage traditional marine species within their sea country. According to the Plan,

We are interested in the long-term benefit of our sea country to Yolnu people. We are interested in making sure that conservation and management of our sea country brings long-term human well-being and benefit to Yolnu users and other users who have interests and values there … We don’t come and go like most
non-Indigenous people do. We want to continue to stay here permanently …
(Dhimurru Land Management Aboriginal Corporation. 2006:12).

Frames that emphasize the notion of Indigenous permanence become even more oppositional when they are used to suggest, as one Aboriginal Australian activist does, that Indigenous Australian societies will out-last the Australian nation-state. While discussing the importance of preserving Aboriginal ways of life and protecting the environment for future generations of Aboriginal people, this activist asserted that he was confident that Aboriginal communities will still persist according to their traditional values “even when a different flag flies, or no flag at all.” The fact that these types of frames are represented by Indigenous fisheries and natural resource advocates across the three national contexts is suggestive of a common conceptualization among Indigenous political actors, who perceive Indigenous societies as persisting outside of dominant colonial paradigms. These types of frames also establish long-term agendas for Indigenous rights that emphasize Indigenous independence and sovereignty, even if only implicitly.

Willingness to Fight, Be Proactive

Beyond placing blame on non-Indigenous individuals and state actors for depleting fisheries resources and unfairly marginalizing Indigenous people from their traditional resources, Indigenous fisheries activists also utilize oppositional discursive strategies to put their opponents on notice of their demands and their willingness to fight for their rights. For example, Traditional Owners from the Torres Strait Islands in Australia have made their demands for greater management authority over traditionally
harvested sea turtles and dugongs plain. According to NAILSMA, “The message from people has been loud and clear – “We say- give us our rights to impose our own traditional laws on our own traditional tucker (North Australia Indigenous Land and Sea Management Alliance 2007:5).” Likewise, at a meeting of the Hokianga Accord regional forum in New Zealand it was noted that, “Government agencies were fooling themselves if they thought that tangata whenua [Maori people] would stop sustenance fishing within areas classified as marine reserves, if they were not consulted in an appropriate manner (Hokianga Accord 2006).” Similar themes were echoed by Native American fishing activists involved in fish-ins and riverbank conflicts of the 1960’s and ‘70’s. According to one activist, “We set the net and waited for the state. We have to let them know we’re not going to stop fishing. We have this treaty right, the supreme law of the land under their Constitution. It’s a treaty right we’re fighting for (Wilkinson 2000:43).” Other Indigenous claimants evoke links to past activism in order to frame their current struggles as part of ongoing political mobilization for Indigenous rights. For example, Aboriginal Australians claiming ownership of intertidal zones of the Northern Territory explain that, “back in 1963 we were fighting for the legal recognition of our land and sea rights – we were objecting to the proposed Nabalco bauxite mine at Nhulunbuy (Gove). That struggle for recognition has led us all the way here – to Blue Mud Bay (Wunungmurra 2008:1).”

Similarly oppositional arguments are utilized to mobilize Indigenous supporters by encouraging them to be proactive in demanding recognition of their fishing rights. This type of rhetoric is common among Maori fisheries activists in New Zealand,
especially regarding their claims for greater protection of their non-commercial fishing rights. For example, Maori leader, Sonny Tau, asserted:

Thomas Jefferson, the third American president and an architect by trade, reminded us that “the price of freedom is eternal vigilance.” Why then have we been so silent when armies of bureaucrats are regulating our freedoms away for nothing in return? We are indeed fortunate that some individuals and organisations are keeping a watchful eye on the antics of some in Government. Maori need to be ever vigilant if we are ever to hold onto what our Tupuna [ancestors] fought so hard to retain (Tau 2006).

Another Maori fisheries expert called on Maori to be proactive in regulating their own non-commercial fisheries, “It’s up to us, and if we don’t do it, no one will. We can’t rely on the Ministry of Fisheries to write our regulations, to prescribe how it will be done and enforce compliance if it’s not done their way. We have to re-write that book (Colston 2008).” One Maori leader at the Maori Fisheries Conference in 2008 went a step further when he asserted that, “We didn’t come all this way to be slaves to someone else’s regime. So today is the next step to taking back our rangatiratanga [authority] that has been dislocated from our hands over the last 150 years. We didn’t spend a thousand years building up our ethos, our tika … to willingly give it away (Tomoana 2008).”

The same sentiment was echoed by an Indigenous natural resource advocate in Australia:

We shouldn’t assume the victim position where we wait and anticipate for others to make the first move, we need to be alert and creative, people need to
understand the rights agenda is still very much important, but it’s not the rights agenda alone, it’s a matter of being able to balance that with getting immediate outcomes that improve the lifestyle of our mothers, fathers, auntie’s, uncle’s and grandparents. So it’s up to the indigenous people to set their own agenda … and not wait to be asked or ‘consulted’ … yet again. It is time too for indigenous communities to both protect the north from bad developments and to gain benefit from appropriate ones. We should never forget the enormous contribution made by indigenous men and women to the economy of the north. We should never forget that thousands of workers were not paid for their work, that they experienced outrageously bad working conditions … violence …sexual exploitation … malnutrition … and little thanks or even respect. The time has arrived for indigenous communities to take their own destiny into their own hands …. (Yu 2007:2).

By emphasizing Indigenous agency, self-determination, and independence from settler governments, Indigenous activists are empowering and motivating Indigenous stakeholders to act, while simultaneously presenting an agenda for decolonization that is clearly oppositional to prevailing systems of authority and hegemonic conceptualizations of a unified citizenry.

Calls for Pan-Indigenous Support

Some Indigenous claimants in each country are quite explicit in their desire to mobilize pan-Indigenous support for fishing rights claims, emphasizing the importance of unity among Indigenous groups to increase the likelihood of success in achieving their
rights, while also facilitating movement toward greater Indigenous political power and autonomy more generally. For example, in Australia, where there has been relatively little pan-Indigenous mobilization, especially over marine rights, one young stakeholder in Northern Queensland recognized the opportunities to be gained from greater interaction between Indigenous groups:

I like to see a start for the [sea] ranger business, for myself and other young local fellas … go out and see different communities, different areas to see how they work so we can get ideas off them to help us with our goals and aims for the future. We got to come together and share ideas as Aboriginal people. If we come together and share our ideas than [sic] we’ll be more recognized (North Australia Indigenous Land and Sea Management Alliance 2004:14).

Even among the Maori, where centuries of warfare and discord between iwis has not been easily forgotten and where twelve years of conflict during the settlement allocation process ignited old rivalries, collectivism and unity have taken center stage. These themes were continually emphasized by participants at the 2008 Maori Fisheries Conference, and were reflected in various ways, including: the increased faith placed on TOKM and AFL as the primary representatives of shared Maori commercial fishing interests; the calls for unity among commercial and non-commercial stakeholders; the drive to nurture Maori leadership and entrepreneurship, as opposed to focusing simply on iwi development; and, finally, the focus on asserting a collective, Maori identity in all global commercial fisheries initiatives.
Counter-Framing Devices

The ways that Indigenous activists frame their fishing rights claims commonly take an oppositional tone when used to counter-frame assertions by opponents that either directly challenge the legitimacy of Indigenous fishing rights or are at odds with Indigenous peoples’ general vision regarding the scope and content of those rights. Specifically, Indigenous fishing rights are often targeted by non-Indigenous opponents as illegitimate if they are carried out in ways that are not viewed as sufficiently “traditional” and do not conform to the dominant population’s common stereotypes of Indigenous cultures. These discourses are most likely to arise where Indigenous groups propose to fish and hunt marine mammals using contemporary methods or to engage in the economic development of their fisheries. Both of these activities are viewed as predominantly modern and Western endeavors that run counter to prevailing stereotypes of Indigenous societies as primitive, rooted in the past, and not “progressive” enough to include an economic or commercial component.

The way Indigenous actors frame their rights, on the other hand, is consistent with a more fluid view of culture than that commonly presented by their non-Indigenous opponents. This fluidity is expressed by an Aboriginal Australian elder when discussing the potential for Indigenous Protected Areas to facilitate the conservation of Aboriginal land and sea countries according to traditional laws and customs. He says, “Things change, but the idea can remain the same. The yakirri [symbolic headband] we wear is made of wool. It used to be made of possum skin or hair, but now it’s made of wool, and white fellas make the wool. But it’s still a yakirri and it’s still the law. The IPA’s could
be like this – a white fella way [of doing the job we used to do] (North Australia Indigenous Land and Sea Management Alliance 2007:32).” Similarly, an attorney for the NWIFC explained to me that tribes in the Pacific Northwest often confront non-Indians who argue that they should engage in more “traditional” activities rather than focusing on the commercialization of their fisheries. To these critiques, they simply answer that “we’re here because we evolved. We changed (Hollowed Interview).” In New Zealand, a Maori Minister of Parliament defended the groundbreaking fisheries settlement by utilizing a similar argument to refute the concern that the settlement would disrupt traditional Maori normative systems. According to this MP, “Some would probably say that it [the fisheries settlement] was too dynamic; that it diluted the culture. Whereas, I thought it was the only decision we could make. And, it challenged the notion that nothing is static; that things change. And, this was the change that took place (Jones Interview).”

Indigenous claimants also frame their approaches to fisheries and natural resource management in ways that align with a more holistic view of nature. What’s more, their approaches often contradict non-Indigenous worldviews and management approaches that divide species and activities (e.g. recreational fishing, commercial fishing, boating, mineral extraction, agriculture, etc.) into distinct categories for regulation. According to many Indigenous stakeholders, non-Indigenous management of marine resources and habitats are significantly inferior to Indigenous practices, which are rooted in centuries of traditional knowledge and expertise. A Native American fisherman made such a claim in a letter to the editor of Seattle Times in 1974, at the height of the “fish wars:’’

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We Indians feel we can do a better job of regulating our fisheries than the [Washington] Game Department. Our rules and regulations are more stringent than those of the state … Since 1855 we have planted millions of coho, chums and rainbow trout on the streams and rivers of our reservation …. This fish benefit the sportsmen, the commercial fishermen and the Indians (Jones 1974).

A similar argument is made by a Maori member of the Hokianga Accord:

Sooner or later MFish will have to realise that academics such as Wellington-based policy analysts do not have the necessary skills to manage local fisheries when compared to tangata kaitiaki [Maori fisheries experts] born and bred beside the water. The collective knowledge of kaitiaki who had been together for ten years or more is far more valuable (Hokianga Accord 2007).

Along these same lines, a Traditional Owner from Northern Queensland, Australia bemoaned the sorry state of Aboriginal people’s traditional land and sea countries after centuries of non-Indigenous resource exploitation and government management noting, “That country, government bugger him up.” To bring these traditional Aboriginal territories and resources back to health, this individual argues that “Indigenous Knowledge needs to form the basis of all [land and sea] management plans” within all Indigenous estates [emphasis in original] (North Australia Indigenous Land and Sea Management Alliance 2005). In each of these statements, Indigenous claimants are asserting the practical superiority of their resource management approaches, which are rooted in traditional systems of environmental knowledge and practice, over
government regulatory regimes, which often privilege non-Indigenous resource
development, and generally lack the benefit of history, locality and cultural relevance.

*Relationship with Nature*

Indigenous fisheries claimants in all three countries tend to situate their claims for
greater recognition of their traditional fishing rights within the context of the deep-seated
and sacred relationship that exists between Indigenous people and their natural
environments. This framing device serves several purposes, including, most notably, the
legitimation of their rights in terms of their historical and cultural relevance, and the
rationalization of their broader aspirations for the cultural, political and economic
revitalization and empowerment of Indigenous communities.

*Naturalistic Cultural Identities*

Across the board, Indigenous fisheries activists position their arguments for the
contemporary recognition of their rights to harvest and manage aquatic resources in
reference to their long-standing historical and inherent cultural connections to those
resources. This includes drawing ties between their present-day practices and the creation
stories that form the cultural and spiritual foundations of their societies. Here are a few
examples of how these connections are made across the cases:

More of our totems come from the sea than from the land; sacred sites, although
they have been underwater for thousands of years now, are still sung about; our
ceremonial dances are about the sea and many of our creation spirits began in the
sea. And as most of our food traditionally comes from the sea, both spiritually and
physically the wellbeing of the sea has always been and remains crucial to our wellbeing (Dhimurru Land Management Aboriginal Corporation 2006:6).

The laws of Tangaroa (God of the fish) are still observed by many. We were told that incantations must be offered to Tangaroa before going out to fish. Only certain days are suitable for fishing, according to the Maori calendar, and only if approved by the tohunga (experts or priests). When someone drowns at a particular place the spot is prohibited for fishing. No seafood is taken until Tangaroa returns the dead. 'Only then can the tapu be lifted', said Niki Conrad, 'indeed, three months must pass' (Waitangi Tribunal 1998, Elder Testimony).

They [the Salmon People who taught the Salish People to fish] still come back to visit every year. It is very important for us to make sure that they are welcome, taken care of, and everything is waiting for them, including clean beaches and streams (*The Salmon People*, told by Elder Cecil Cheeka, Squaxin Island Tribal Museum Exhibit).

Given that their fisheries and sea countries comprise such an important part of the sacred stories that form the spiritual foundations of their societies, it is perhaps not surprising that they continue to be framed as an essential part of Indigenous people’s cultural identities and worldviews. Along these lines, the centrality of aquatic resources to Indigenous identities and cultures is framed as a primary motivator for prioritizing species and habitat management in all three cases. Native American fisheries expert and activist, Billy Frank, Jr., emphasizes the link between fishing and Indigenous identity.
when explaining the importance of fishing, and protecting fisheries resources, to American Indian people. “Yes, we would prefer to make some money for our efforts. We have families to support, too. But even if we don’t make money at it, we will still fish. It’s who we are [emphasis added] (Frank 2002).” He continues, “We will not stop trying to restore wild salmon stocks. To do that would be to deny our heritage, our culture, our identity, and the needs of future generations. That we will not ever do. Ever. (Frank 2002).” Aboriginal stakeholders in the Northern Territory of Australia make this connection succinctly: “We are sea people and the sea and the coast are a major part of our lives and belief systems. Protecting the marine environment is one of our highest priorities (National Native Title Tribunal 2007:42).” In New Zealand, the message is very much the same. For example, in the People’s Submission, the cultural significance of the sea to Maori people is addressed: “Maori have an infinite relationship with Moana (sea) and it is an integral part of their spiritual and cultural history. For centuries Maori have continued to provide kai (food) from both land and sea utilising the practice of kaitiakitanga [traditional management] in order to provide abundance for present and future generations (People’s Submission 2006:115).”

In light of their connection to the resources, Indigenous stakeholders claim to understand the association between the relative health of their traditional resources and the health of local communities who rely on them for their subsistence, economic and spiritual needs. When talking about sea turtles, the Yolngu people of Northern Australia note that, “We believe our wellbeing and turtle (miyapunu) wellbeing are inseparable. To put it another way, we belong to turtles and turtles to us; we sustain them and they us
(Dhimurru Land Management Aboriginal Corporation 2006:25).” A Traditional Owner from the Northern Territory expressed similar concerns: “Country needs[s] laughter. If we don’t look after country, we’ll shrivel up (North Australia Indigenous Land and Sea Management Alliance 2005:6).” A project officer from the North Australia Indigenous Land and Sea Management Alliance went further to emphasize the importance of culture and traditional knowledge in sustaining healthy lands and healthy Indigenous communities: “[F]or many countrymen caring for country includes a whole cultural dimension – ceremony, ritual, hunting, harvest, family, fire, and knowledge – where all things are connected and make an essential contribution to the maintenance of healthy people and healthy country (North Australia Indigenous Land and Sea Management Alliance 2005:6).”

Similar observations are made by Native American fisheries activists. According to Billy Frank, Jr., “Throughout time, we [Native Americans in the Pacific Northwest] have known that when harvestable runs of salmon return to Northwest rivers, it means good health and vitality to all who live here (Frank 2006).” The connection between environmental health and social wellbeing is not limited to tribal communities, but extends to the non-Indigenous societies that now occupy traditional lands and utilize traditional resources. Billy Frank comments that, “Whether you are Indian or non-Indian, fishing is a true measure of the environmental and long-term economic health of the Northwest. These two strengths are always ultimately connected. If there is no fishing because of an unhealthy environment, or poor governmental choices, society will no longer prosper (Frank 2006b).”
In their opinion, Indigenous peoples’ continued connection to traditional natural resources, which is rooted in their creation stories and sustained through ceremony, traditional knowledge and their locality, makes them naturally suited resource managers. In all three cases, Indigenous claimants argue that the centrality of aquatic resources to their cultural values and obligations, combined with their continued occupation of remote and ecologically vulnerable territories, and their daily interaction with their sea countries and fisheries, provides them with the *environmental capital* necessary to be the primary stewards of the resources. American Indian fisheries activist, Billy Frank, makes this argument clearly: “Tribes are natural stewards, and the lessons passed along to us by our ancestors carry the wisdom of a thousand generations. None of these is more important than the need to be caretakers of this fragile planet and do all we can to sustain ample clean, free-flowing water to keep our salmon alive and well (Frank 2004).”

In their Sea Plan, the Yolngu of Northern Australia echo this sentiment:

We hunt and fish according to customary rules and principles that guide when, where and how we should take and use our resources. This means that our customary activities and management are sustainable. Our travel and voyaging throughout our sea country means that we monitor and watch what is happening. No one else is as well placed to do this as we are (Dhimurru Land Management Aboriginal Corporation 2006:12).

Former NAILSMA Chair, Peter Yu concurs, adding “[Aboriginal] people have intellectual knowledge of their own environments and this puts them in a position to dictate or negotiate their position in terms of what external pressures or interests may
come into their area. It brings home the authority, gives recognition and respect (North Australia Indigenous Land and Sea Management Alliance 2004:2).” In another essay Yu appeals to government to include Aboriginal stakeholders as front-line managers in order to provide centuries of expertise in ensuring the sustainability of northern Australia’s fragile coastlines. He argues, “Rather than think of us as an afterthought, think of us as primary movers and shakers that can assist the future of this country (National Native Title Tribunal 2007a:4).”

In addition to being best suited to manage fisheries resources, many Indigenous activists claim that their methods for doing so are superior. While Indigenous resource managers utilize a variety of management techniques and philosophies, including those derived from Western science, Indigenous advocates across the board argue that the integration of Indigenous traditional knowledge is best suited for sustainably managing vulnerable aquatic species. Billy Frank Jr. asserts that, “I’ve spoken about the traditional knowledge of our ancestors for many years because within its teachings are the answers to the environmental challenges we face today (Frank 2007b).” Likewise, in New Zealand, Maori non-commercial stakeholders argue for the exclusive management of local customary fisheries according to kaitiakitanga, which is defined as “the exercise of guardianship; and, in relation to any fisheries resources, includes the ethic of stewardship based on the nature of the resources, as exercised by the appropriate tangata whenua [Maori people] in accordance with tikanga Maori [the Maori way of doing things] (Maori Fisheries Act of 1996, Section 2(1) quoted in The People’s Submission 2006:114).”
Linking Aspirations: Nature, Culture, Politics and Economic Development

Across the board, Indigenous actors link their aspirations for their fisheries and marine territories to their broader ambitions for political, economic and cultural revitalization. These ambitions are not framed separately from one another, but instead are linked to each other and to the essential task of strengthening the connection between Indigenous people and their traditional aquatic resources. For example, in Australia, where the political structure specifically rejects any economic entitlements stemming from Indigenous resource rights, Aboriginal actors continue to assert a connection between their legal rights to access and utilize traditional resources and opportunities for economic development. Peter Yu, former Chairman of the North Australia Land and Sea Management Alliance contends that that northern Australia is currently experiencing a resources boom and that Indigenous Australians, as major land owners and resource custodians, should benefit from this boom with “innovative and culturally appropriate planning for commercial development (North Australia Indigenous Land and Sea Management Alliance 2005:5).” According to Yu, “now is the time to build on and move to the next phase of claiming and defending rights to country, to a time when our people can get relief, enjoyment and benefits out of exercising these rights (North Australia Indigenous Land and Sea Management Alliance 2005:5).” Thus, even in the face of hostile institutional systems, Aboriginal leaders continue to press for their rights in an integrated fashion, linking their legal entitlements to natural resources with broader goals for economic self-sufficiency.

Indigenous fisheries activists in the United States also stress the connection
between the cultural and economic significance of fishing to Native American people.
For examples, tribal attorneys in *United States v. Washington* argued that because fishing was part of American Indians’ cultural heritage, it should be “built up as an economic base for them (Mayne 1973).” Andy Fernando, Former Chair of the Upper Skagit Tribal Community, also acknowledged the importance of the legal recognition of Indian treaty fishing rights for facilitating the broader, interconnected goals of economic and cultural revitalization. According to Fernando,

the court decree [in *U.S. v. Washington*] would mean return to a traditional vocation and to new opportunities that vocation supports. [Tribal members] would carry out a livelihood and lifestyle, through traditional forms of fishing, that retains the best parts of their Indian culture, and permits them to attain that level of respect in the Indian community bestowed upon good fishermen and women (Cohen 1986: xxiv).

Taking their guidance from the numerous Maori elders and traditional fishermen interviewed during the *Muriwhenua* proceedings, the Waitangi Tribunal in New Zealand noted that, “Fishing is a source of food, an occupation, a cornerstone of the rural mixed economy, a part of the relationship between the Maori, their ancestral lands and waters, and a source of income (Waitangi Tribunal 1988).” In all of their innovative and lucrative commercial endeavors, the “cultural sustainability” of Maori communities and the strengthening of Maori cultural identities are framed as paramount. In his keynote address to the 2008 Maori Fisheries Conference, the Minister of Maori Affairs noted that “the development of our most precious asset, our people, must keep pace with the
development of our land, sea and other assets (Horomia 2008).” He went on to explain
that in 15 to 20 years, the Maori may be highly commercially savvy and relatively
wealthy. But even if this does happen, what’s most important is that the Maori people
retain their tika (ethos). “It is very important that they understand and maintain it because
it is our tika and our relevance to those things that we have inherited which gives us the
experience and the excuse to go after the global markets (Horomia 2008).” Similarly,
Peter Douglas, Chairman of TOKM, asserts that Maori cultural sustainability is the
“umbrella for bringing other dimensions together,” adding that when Maori are culturally
strong, unemployment tends to be low (Douglas Interview).” Finally, Allison Thom, a
member of Ngapuhi Iwi, eloquently explained the importance of the fisheries settlement
for the cultural revitalization of her community, which transcends national boundaries: “I
believe that the fisheries settlement process was a catalyst for the re-emergence of a
global Ngapuhi confidence. It is a belief that Ngapuhi can perform on the global stage in
every sphere of business, sporting or cultural activity and that where ever its people are,
they remain of member of Ngapuhi Nation (Thom 2006:16).”

Finally, Indigenous fisheries claimants fundamentally understand the importance
of their fishing rights for meeting the social, cultural and economic needs of Indigenous
youth and future generations, who are seen as fundamental to the prosperity and survival
of Indigenous communities. Here are just a few examples of the numerous ways the
needs of future generations are emphasized by Indigenous fishing rights advocates across
the three national contexts:

Whether the family is earning its income from fishing or simply stocking a home
smokehouse or freezer, the children can see firsthand the benefit of its labor. The child learns that the fisherman or woman is a respected member of the tribal community- a person who carries on an honorable tradition … The child is learning that, as Indians, the people form a strong community (Andy Fernando, Former Chairman, Upper Skagit Tribal Community, *in* Cohen 1986: xxv).

We want salmon to survive to feed the bodies and spirits of our children for generations to come (Billy Frank, Jr., *in* Frank 2005).

When these people are fishing, they became men again, fathers to their children, providers. That’s what it’s all about. People have found meaning to life. It’s good to see people going somewhere, talking, laughing. They feel a bit more secure. You can see hope in their faces (Native American leader, Harry Dillon, *in* Anderson 1973: B-1).

There is the need to ensure the environmental, economic, social, political and cultural sustainability for the purpose of ensuring our fisheries future for our future generations (Horomia 2008).

For Maori, confidence in one’s culture, in one’s identity, is very often a prerequisite to being successful in whatever chosen walk of life. When identity is strengthened young people are assisted to start the journey of finding their own success and those already successful can be driven into bigger and better things…. In the context of building identity and new confidence, for Ngapuhi
[iwi] the fisheries settlement was a catalyst, the first dawn in the new history of Ngapuhi (Thom 2006:5-6).

We celebrate, protect and revitalise the sacred links and relations between us and our sea country through ceremony. This means we strengthen and safeguard our cultural heritage and ensure that it is passed on to the next generation (Dhimurru Land Management Aboriginal Corporation 2006:12).

They [the kids] have got elders who are able to teach them and bring them into culture again … because they get disoriented with western culture. May it be an example for others to possibly try out … I think this is the beginning for us (Olive Knight, Aboriginal Traditional Owner in Fitzroy Crossing, Queensland, talking about local Caring for our Country initiatives, in North Australia Indigenous Land and Sea Management Alliance. 2004:6).

The integration of political, economic and socio-cultural values is consistent with the more holistic view through which Indigenous people tend to see the world. The social, spiritual and economic well-being of Indigenous communities has always been tied to their land and sea countries. Thus, it seems only natural that Indigenous leaders draw upon rhetoric that links the recognition of their land and sea rights with the potential for achieving cultural and social revitalization. On a more oppositional level, these types of claims also challenge hegemonic assumptions that divide matters of culture from the realms traditionally occupied by politics and economics. In so doing, they proffer a
fundamentally Indigenous alternative to such arrangements, in which matters of culture form the foundation for political power and economic prosperity.

**Dominant Discourses and Interests**

Finally, through collective action frames Indigenous actors across the three cases draw from discourses that are consistent with the broader cultural tool kits and material interests of the dominant populations in Australia, New Zealand and the United States. This is especially the case in framing devices utilized to advance Indigenous aspirations to be central players in local and regional fisheries management initiatives. In making these claims, Indigenous actors commonly appeal to unity among Indigenous and non-Indigenous people. In addition, they assert that their aspirations and approaches to fisheries management will be good for all citizens, not just Indigenous people. They also tend to advocate for utilizing Western scientific approaches to fisheries management in lieu of or, most commonly, in combination with traditional approaches to sustainability. I argue that by framing their aspirations in ways that are culturally and materially relevant to the mainstream population, Indigenous actors are strategically making appeals that are most likely to change the hearts and minds of key decision makers and their constituents and, as a result, break down the ideological foundations of fisheries management regimes that have historically marginalized Indigenous people. This is consistent with the work of Williams (2004) and others, which suggests that in order to affect counter-hegemonic change, social movement claims must resonate with broader discourses (see also Ewick and Silby 2003; Steinberg 2002).
Alongside appeals for greater self-determination and unity among Indigenous people, are pleas by for cooperation between Indigenous and non-Indigenous stakeholders in managing and protecting marine resources. Such a plea was made by a Traditional Owner in Australia after the *Blue Mud Bay* decision, calling for cooperation in protecting the coastline of the Northern Territory: “There has to be real contact with other landowners so both Yolngu and whites are looking after the land, doing [it] hand-in-hand, partner-to-partner, together (Wunungmurra 2008:2).” Advocates for Maori management of their non-commercial fisheries made a similar appeal, contending that “an ongoing relationship is needed between the kaitiaki (guardians) and local (often non-Maori) people. What tangata whenua [Maori people] need is cooperation of the whole community, but that will only come through awareness and understanding (People’s Submission 2006:120).” Billy Frank, Jr. made a similar call for cooperation between Indians and non-Indians in the United States: “It is the truth that everyone who lives here is responsible and accountable for taking care of these great gifts from the Creator. There are no exceptions. That’s why federal, state, tribal, and local governments must come together – and most of all the citizens of this region – to focus collectively on the task before us and forge solutions (Frank 2005).”

Next, Indigenous activists repeatedly assert that their involvement in fisheries and marine management initiatives will not only benefit Indigenous communities, but will also have significant positive impacts for non-Indigenous people. While instances of this type of rhetoric abound, here are a few notable examples:
I like to have peace and quiet in my country and be able to help people (white people and Aboriginal people) when they come to our community so we can show them our custom and way of life … it’s important for us and if it’s important for us than [sic] it’s important for the whole of Australia and all Indigenous people from this country (Aboriginal Traditional Owner discussing the importance of Aboriginal Rangers in their traditional country, North Australian Land and Sea Management Alliance 2004:15).

It demonstrates that having Indigenous people on country managing their lands, delivering environmental benefits for all Australians, is an important asset for the national good (Joe Morrison from NAILMSA on winning award for recognition for his work supporting Aboriginal land and sea management programs (North Australia Indigenous Land and Sea Management Alliance 2008a).

There is a very deep concern in this forum that these kaitiaki [guardians] need to be resourced. We are very serious and passionate about this kaitiaki role. Everybody in New Zealand is going to benefit (New Zealand Ministry of Fisheries 2005).

We’re the advocates for the salmon, the animals, the birds, the water. We’re the advocates for the food chain. We’re an advocate for all of society (Billy Frank, Jr., in Wilkinson 2000:103).

Some non-tribal people have asked how tribes can bring themselves to be so
altruistic, here and in the South, given the atrocities Indians have suffered at the hands of non-Indians for so many years. The answer’s fairly simple. Sharing and taking care of communities is a long-standing tribal tradition. It’s not new to us. We know that if the American “village” is to survive, we must all be willing to share with one another in trying times. People have long forgotten that when whites first came to our shores, their survival absolutely depended on Indian benevolence. It is a quality that has stood the test of time, even though knowledgeable historians would tell you the tribes have been disdained and subjected to seemingly endless persecution in return (Frank 2005c).

Finally, Indigenous fishing activists appeal to mainstream discourses by proposing management initiatives that adhere to Western scientific methods as either a primary or joint component of their regulatory protocols. In the United States, the adoption of Western scientific methods into tribal fisheries regulations was, to some extent, directly mandated by the terms of the Boldt decision. More than this, however, tribes see such an approach as the most effective means for facilitating co-management with State regulators. According to Billy Frank, Jr., “better data enables managers to make better management decisions. It also allows tailoring of management plans to take into consideration the differences that exist between groundfish populations from different areas along the coast. This is especially important to tribes, who are limited to fishing only within their treaty-defined usual and accustomed fishing areas (Frank 2002).” What’s more, they recognize that their scientific superiority, on terms that are recognizable and legitimate to other governmental regulators, provides them with a great
deal of power in dictating the terms of their involvement in co-management relationships (See Grayum and Bowhay Interview).

In New Zealand and Australia, there is perhaps more of an emphasis on blending Western scientific and traditional approaches into the management of fisheries and marine resources. In New Zealand, this is certainly the case with regard to the management of non-commercial fisheries. According to one Maori customary fisheries liaison to the Ministry of Fisheries, “This is a good example of one of the biggest benefits of the Deed of Settlement- the obligation for the Ministry of Fisheries to involve tangata whenua in fisheries management. The exchange of customary and scientific knowledge also helped give tangata whenua a better understanding of the workings of the Ministry (New Zealand Ministry of Fisheries 2007).” With regard to their commercial interests, the focus, at least at this point, has been on the scientific methods of management utilized by the New Zealand Ministry of Fisheries and Department of Conservation, which have exclusive regulatory authority over the fisheries.

In Australia, Aboriginal resource managers commonly make appeals for a “both ways” approach to the management of their land and sea countries, which blend the best of traditional knowledge and Western science. The Yolngu people specifically advocate for such an approach in their sea turtle tracking program, which they have been conducting in partnership with Charles Darwin University since the mid-1990’s (North Australia Indigenous Land and Sea Management Alliance 2007). Notably, the integration of Western science into traditional management approaches is not done simply to placate non-Indigenous funders, but is viewed as a better means for ensuring the protection of
traditionally significant species and meeting Aboriginal groups’ broader cultural objectives. This is reflected by a member of the Kimberley Turtle and Dugong Steering Committee when discussing the benefits of a new turtle and dugong tracking program that integrates Western science with traditional knowledge:

The project is a good thing for the community as it will help to accurately count how many turtle and dugong we are taking (hunted). If it is found we are taking too much then we can look to slow that down. We have got knowledge of the green turtles, but not much on the hawkbills and the loggerheads that also come here. We also want to show our kids the right way for hunting, making sure they’ve got a hunting future too (North Australia Land and Sea Management Alliance 2007:7).

**Key Differences**

There are far fewer notable differences in the ways Indigenous activists frame their claims for recognition of their fishing rights across the three national cases than there are similarities. What differences there are, however, reflect important variations in the colonial histories and political opportunities for Indigenous mobilization over fishing rights in each nation. These findings demonstrate that structural differences across sites of contention are relevant for understanding the strategic frames utilized by Indigenous actors during episodes of political contention over valuable natural resources.
Australia

A primary difference in the framing devices utilized by Indigenous claimants in Australia reflects a reaction to the legal distinctions that inhibit the full recognition of their fisheries and marine title rights. The Australian High Court’s denial of significant Aboriginal native title rights to their sea country essentially turns upon an arbitrary legal fiction that divides ownership of the land and sea according to Western common law assumptions that the sea is part of the “commons,” which cannot be owned by any individual or group. This distinction runs counter to Indigenous beliefs that their lands and waters are inseparable components of their traditional countries. As a result, Indigenous actors commonly challenge the artificial legal division of their land and sea countries as antithetical to both their traditional normative systems and to their aspirations of achieving the full recognition of their rights to access, manage and commercially harvest, culturally-significant marine species. For example, when discussing the possibility of ending negotiations for fishing rights in the proposed Cape Byron Marine Park in New South Wales due to resistance by the Park Authority, a spokesperson of the Arakwal people said, “Indigenous fishing and water access is no different to the Indigenous access and management of land. We want our people to look after water, just as we do on the land (National Native Title Tribunal 2004a).” A Traditional Owner from the Wellesley Islands off of Queensland expressed a similar sentiment when outlining the aspirations in his group’s proposed Sea Plan: “That sea is part of our land. Our ancestors lived off it and so do we. It’s no stranger to us. We can
talk the language that belongs there. When you talk that language, the sea will look after you (North Australia Land and Sea Management Alliance 2008:7).”

Another discursive strategy that differentiates the claims of Indigenous Australians are counter-frames that challenge mainstream assertions blaming Aboriginal harvests for depleting threatened dugong and sea turtle species. These arguments are commonly raised by opponents of the traditional harvest of sea turtles and dugongs from within the scientific community as well as the general public, in an effort to remove these species from Aboriginal native title ownership. It is noteworthy that these arguments tend to minimize the impact of non-Indigenous recreational and commercial fishing and boating activities as significant threats to these species. Peter Yu, former Chairman of NAILSMA, addresses these charges in his response to a national draft report on the “Sustainable and Legal Harvest of Marine Turtles and Dugongs in Australia.” Mr. Yu contends that,

The draft national approach places undue emphasis on the threats of Indigenous harvest to these marine animals. We feel insulted that our long tradition of guardianship, management and use of these animals is diminished by such claims; as is our hard work in recent years embracing and using the new tools and methods available to us from contemporary conservation science and management. We support NAILSMA’s response to the draft national approach. NAILSMA correctly positions Indigenous harvest in relation to other well documented threats to turtle and dugong. The major threats lie elsewhere (Yu 2007:26).
In their Sea Plan, the Yolngu community also challenges assumptions made by non-Indigenous opponents to Aboriginal harvests of sea animals by contending that these assumptions are based on emotionalism rather than good science and that they fail to afford due respect to Indigenous obligations and methods of stewardship:

No other use of the marine environment can demonstrate such a clear record of sustainability over time. We are concerned about the overly romantic sentimental concern for the charismatic marine mammals shown by some sections of the environmental movement. They need to look at the bigger picture – in which we respect and revere many marine creatures; and in which kinship, ceremony and ritual bind us and these creatures together. We always seek to act responsibly and protect our sea country where genuine threats are identified, whether threats come from Yol'nu or others; after all, we want our sea country to stay healthy for future generations of our people and for the benefit of all people (Dhimurru Land Management Aboriginal Corporation 2006).

New Zealand

In New Zealand, the distinct frames used by Maori fisheries activists tend to reflect their relative success in garnering the legal recognition of their rights. Now that commercial rights have been institutionalized, there is a significant focus on maximizing those rights and on leveraging the Maori identity into a successful commercial identity on the global stage. The innovative and progressive spirit of the Maori people is commonly framed as a key cultural attribute that will serve Maori commercial and political interests
into the future. Indeed, it is the Maori’s ability to translate their traditional skills and values into global application that gives them a market advantage, or as one Maori leader dubbed it, “The Maori Edge.” The Minister of Maori Affairs hinted about this when raising the possibilities for future Maori endeavors in fishing and beyond:

Entrepreneurship and innovation amongst Maori is high. Maori participation in the tertiary level of new sciences is huge and the Maori language and culture is more visible. Factor in the significant and growing asset base of $16.5 billion, and the demographic stretch of the Maori population which has a very large cohort of young people, and Maori are well positioned to launch into the future (Horomia 2008).

Part of this essential Maori identity is the ability to adapt and progress, while remaining culturally grounded. This was epitomized by the title of a conference session at the Maori Fisheries Conference: “Staying Maori as we Go Global.” In his keynote address to that Conference, the Minister of Maori Affairs talked about these new opportunities and what they require of Maori people:

The world economy is changing and will be more and more influenced by intellectual capital and the ability to translate ideas into new technologies, products and services. Maori will need to keep changing and adapting to stay relevant in the new innovation economy and our biggest asset will be our people. We need to understand future opportunities to ensure that our people will have full access to the business opportunities, the governance opportunities, and most especially, the benefits that come off any of these activities (Horomia 2008).
A Maori officer of Te Ohu Kaimoana went even further in reiterating the importance of adapting to the needs of a changing global community: “Maori will become colonized all over again at a global level if they do not educate themselves about the global business and social framework (Te Ohu Kaimoana 2006).”

Unlike Indigenous fisheries activists in Australia and the United States, Maori claimants also frame their fishing rights and the gains made through the fisheries settlement in terms of contributing to the biculturalism of the broader national identity in New Zealand. Along these lines, one influential Maori leader who was significantly involved in the fisheries settlement process explains how the settlement has enabled the Maori to redefine the national identity on more bi-cultural terms than ever before. According to this individual, he and his colleagues saw it as an opportunity to infiltrate further into the life of the nation in all different ways, so over the generation or two generations, we changed the whole nature of what it means to be a New Zealander. And, circuitously, organically, [we] reclaimed the identity of this country, so it’s driven more and more by its indigeneity. That was our real achievement. It wasn’t really about discreet tribes having food gathering rights, that was just a byproduct (Jones Interview).

Fundamentally, it is understood, that many of the successes Maori have experienced with regard to accessing, managing and commercially developing their fisheries, as well as their integration into the broader political system, is because they have a treaty that defines and guarantees their rights, and establishes the Maori as bi-cultural partners in the
governance of the country and the development the nation’s most valuable resources (See e.g. Jones Interview).

United States

In the United States, the entire discussion over contemporary Native American fishing rights is overshadowed by the inescapable reality that many traditionally harvested fish species are severely threatened or endangered. On one level, this has lead to a prevalence of statements by Native American activists that blame non-Indian recreational, commercial and state actors for species decline and deflect blame away from themselves. This is perhaps not surprising given the decades of antagonism and conflict between Indians and non-Indians over valuable, yet dwindling, fisheries resources that continue to overshadow the debate. Billy Frank, Jr., for example, utilizes this type of rhetoric when blaming the failures of State resource managers for species decline: “It is likely that there will be only a few salmon – or perhaps none - for the tribes to harvest in 20 to 100 years. As a result, the tribes’ treaty-reserved rights to harvest salmon will have been made meaningless because the State of Washington has failed to protect and restore salmon habitat (Frank 2000a).” Several other examples of these types of frames are included in the discussion of oppositional framing, above.

The reality of species depletion also provides a context for the prognostic framing of Native American fisheries advocates who contend that salmon repopulation is only possible through the protection of vital salmon habitat. They further contend that prevailing State methods of fisheries management, which regulate on species-by-species
and river-by-river bases, are simply not effective. In his work at the Northwest Indian Fisheries Commission, Billy Frank, Jr., constantly tries to educate the public about habitat destruction while advocating for a more holistic approach to salmon restoration. This approach focuses on the underlying causes of resource destruction instead of wasting valuable resources concentrating exclusively on harvesting as the primary culprit for decline. Here are a few examples of Billy Frank’s words on the matter:

When you’re driving on a highway, you’re driving on the backs of salmon. The highway is paved with salmon carcasses. Sadly, most salmon are killed before they hatch from eggs. They die because their parents didn’t have spawning habitat to return to. They die every time a river is diked, a housing development is built in a floodplain, or a watershed is paved. They are killed just the same as if they were caught in a net or on a hook (Frank 2005b).

The tribes are working to restore salmon habitat. A few years ago we sued the State of Washington to open up hundreds of miles of salmon habitat blocked by failing culverts under state roads. That suit is still winding its way through the legal system (Frank 2005b).

This is important, so I’m going to say it again: fishing alone does not kill salmon (Frank 2005b).

Some say harvest is to blame for the downward trend in salmon populations. They make big news of the occasional successful harvest of fish, rare though it might be especially if it’s by a tribe. Not only are such reports highly discriminatory,
they’re misleading. Harvest has been cut back more than 80 percent for more than a decade. The real problem is habitat destruction caused by over-development and overappropriation of our limited water resources. And it’s made worse by the failure of local, state and federal government to take a courageous stand on behalf of future generations (Frank 2005a).

Perhaps even more than their counterparts in New Zealand, Native American fisheries activists emphasize their treaties as quintessential components of their political legacies, with inherent and symbolic significance to Native American people. This was the sentiment voiced by a young fishing activist when justifying her participation in the “fish ins” of the 1960’s and ‘70’s: “We have this treaty right, the supreme law of the land under their Constitution. It’s a treaty right we’re fighting for (Wilkinson 2000:43).” In a contemporary context, Native American fishing advocates continue to cite their treaties as laying the foundation for their fisheries aspirations both now, and into the future. According to Andy Fernando, former Chairman of the Upper Skagit Tribal Community,

    We, as Indians leaders, have a responsibility to preserve our right, now that it has been secured, just as our elders fought to preserve it. We must preserve that right, for more than the value it carries today, for more even than the value of saving the past. Our obligation is to preserve the right to fish for our future, for the many Indian children who will wake to the far-off sound of the splash of the first salmon of the season (Cohen 1986:xxvi).
To Billy Frank, Jr., the treaties and the rights they represent are inseparable from each other and are all essentially to tribal persistence:

In their wisdom, tribal leaders who signed the treaties with the U.S. government in the 1850s reserved those things that were most important for the tribe's continued physical, spiritual and cultural survival: fish, shellfish, game and, in case of the Makah, whales. It's important to understand that the tribes kept these rights when they signed the treaties. They never gave them up. They never will (Frank 1999).

Along these lines, Native American fisheries advocates are often compelled to explain to non-Indians why the treaties are relevant to Indians and non-Indians alike, and why they should continue to be recognized as legally binding. Here are two notable examples:

People forget that non-Indians in western Washington have treaty rights, too.

Treaties opened the door to statehood. Without them, non-Indians would have no legal right to buy property, build homes or even operate businesses on the millions of acres tribes ceded to the federal government (Frank 2007a).

The treaty is a contract, and fishing rights are payments for lands the Indians gave up (Francis Rosander, Quinault Tribe, in Van Nostrand 1974).

Finally, Native Americans acknowledge the treaty rights as their most valuable political and legal tool for ensuring their rightful place as the primary stewards of these resources. Marlin Holdin, from the Squaxin Island Tribal Fish Committee acknowledges the importance of treaty rights for providing the Tribe with the authority to enforce their
fisheries regulations: “We take an aggressive position in favor of our treaty rights. We have a responsibility to our natural resources to make sure that we (the Tribe) are doing the right thing regarding catch, and hitting violators of regulations hard, so that we respect our resources (Squaxin Island Tribe 2000).”

Conclusion

The key similarities revealed in this chapter indicate that Indigenous activists frame issues pertaining to their fishing rights in multiple ways, and that the frames they utilize target diverse audiences and serve an array of strategic purposes. What’s more, reflected within many of the frames are key aspects of the cultural values, beliefs and worldviews of Indigenous and non-Indigenous people alike. Analyses of the cultural relevance of Indigenous fishing rights frames highlights both the strategic and autonomous influence of culture on the discursive tactics of political activists. Significantly, the culturally-oriented framings of Indigenous fisheries activists reveal a fundamental mechanism in the broader process of decolonization, which will be discussed in more detail below. Finally, the key differences in the mobilization frames utilized by Indigenous fishing rights activists across the national contexts reveal the constraining effects of political opportunities in shaping the discursive strategies employed by social movement actors over the course of political mobilization.
Multiple, Strategic Functions of Framing

The findings in this chapter reveal significant similarities in the ways that the contemporary Indigenous fishing rights are framed by their proponents. In all three cases, traditional fishing and the harvesting of marine resources are framed as culturally significant to the beliefs, values and worldviews of Indigenous people and form a fundamental and continuing part of Indigenous identities. Discourses that frame Indigenous fishing as culturally significant serve primarily to legitimate Indigenous claims by placing such rights within a deep-seated and long standing history of Indigenous utilization, stewardship and ceremony. Because these framing devices simultaneously emphasize the historical relevance of fishing as well as its ongoing centrality to Indigenous identities, they also provide a rationalization for the broader aspirations of Indigenous advocates, which link the recognition of their contemporary fishing rights to opportunities for the cultural, political and economic revitalization and empowerment of Indigenous communities.

In addition to simply legitimating their claims of rights and justifying their broader aspirations, Indigenous activists utilize culturally-significant frames to demobilize opponents by specifically counter-framing arguments that reject the full recognition of their fishing rights. These include claims by non-Indigenous actors that question the cultural legitimacy of contemporary Indigenous fishing practices or blame Indigenous harvests for the decline of endangered aquatic species. To address the first claim, Indigenous activists commonly advance a more fluid and evolving view of Indigenous culture that is simultaneously rooted in traditional laws and customs, while
constantly adapting and changing to post-colonial realities. As evidence of their commitment to resource sustainability, Indigenous actors point to the centuries over which their environmental expertise has developed and to the continuing significance of traditional resources to the cultural, economic and social well-being of their societies.

Indigenous activists in all three national contexts engage in a significant amount of *diagnostic framing*, where they identify obstacles to the full realization of their fishing rights and attribute blame to those responsible for them. For many Indigenous activists, species decline due to unchecked non-Indigenous commercial and industrial activities constitutes a primary threat to Indigenous people’s use of traditionally significant aquatic resources. Consequently, Indigenous discourses are replete with oppositional frames that blame non-Indigenous private and state actors for their part in resource depletion and for their unjustified reluctance to include Indigenous people as key participants in natural resource management. Indigenous fishing rights activists also utilize oppositional, or *adversarial*, frames to put their opponents on notice that they will not abandon their fishing rights and that they are willing to fight to preserve them. Along with *diagnostic* and *adversarial framing*, Indigenous activists engage in *prognostic framing* as well, where they articulate solutions and strategies for addressing the challenges they confront. This type of framing usually involves demands to include Indigenous people as front line resource managers and calls to recognize the legitimacy of Indigenous methods of conservation.

Finally, Indigenous activists in Australia, New Zealand and the United States engage in *motivational framing*, through which they provide potential adherents with the
incentive and rationale to support the full recognition of Indigenous fishing rights. On the one hand, they do this by making explicit appeals for pan-Indigenous support. More subtly, they encourage potential adherents by appealing to themes that are common in broader Indigenous rights movements, such as the importance of Indigenous people taking control of their own destinies (“self-determination”), being proactive, and not “assuming the victim” role. Linking the recognition of their fishing rights to their ability to realize broader aspirations for cultural, political and social revitalization also resonates with these broader movements and is aimed, in part, to garner support.

Importance of Culture

Social movement scholars are increasingly willing to acknowledge the influence of culture in shaping the content of social movement framing (See e.g. Johnston and Klandermans 1995; Melucci 1995; Polletta and Jasper 2001). The shared historical experiences, values and ideologies of movement constituents contribute to the cultural “tool kits” of social movements and emerge through the framing devices that are utilized by movements for a wide range of purposes. These include the definition of shared identities and motivations for action, the diagnosis of problems and the proscription of solutions, and the construction of strategies of action, among other things. In the case of Indigenous mobilization for fishing and marine rights, Indigenous worldviews and logics are clearly represented in the ways activists frame their grievances and strategies of action. The foregrounding of Indigenous peoples’ cultural obligations and the cultural revitalization of their communities within their claims is evidence of the significance of
culture in shaping the discursive repertoires of Indigenous political actors. Furthermore, pre-existing oppositional identities, which are rooted in Indigenous peoples’ original occupation of lands and utilization of resources, their survival through colonial and post-colonial oppression, and their willingness to fight for their rights, as evidenced by their histories of conflict with national governments over prized lands and resources, are all aspects of Indigenous cultural repertoires that are activated during the course of mobilization for fishing rights.

The cultural framings of Indigenous fishing rights activists are also significant for understanding a fundamental mechanism in the broader process of decolonization. In this case, a central task of Indigenous activists is transforming, or decolonizing, the institutions and policies that regulate Indigenous people’s access to and utilization of traditionally significant fisheries and aquatic resources. Through framing, Indigenous activists strategically target the hegemonic assumptions that legitimate the historically discriminatory policies that have long marginalized Indigenous people from their traditional resources. They do this in two, inter-related, ways: 1) They align their interests and strategies with the mainstream population, using cultural frames that resonate with the broader society; and, 2) They provide counter-hegemonic alternatives to the status quo, which elevate Indigenous interests and values into positions of prominence.

Indigenous activists align their interests and strategies with non-Indigenous people in various ways. First, many make explicit calls for unity between Indigenous and non-Indigenous individuals in efforts to protect valuable fisheries and ensure that they are accessible to all citizens. Secondly, activists argue that Indigenous participation in marine
resource management, and the utilization of traditional methods of management, will not only promote the interests of Indigenous stakeholders, but will benefit all citizens. These arguments are buttressed by claims that Indigenous people are naturally situated resource managers, due to their residential proximity to vital resources and their continued occupation of ecologically sensitive areas, combined with their centuries (and even, millennia) of accumulated environmental expertise. Finally, Indigenous actors appeal to non-Indigenous values surrounding knowledge production, by advocating the use of Western scientific resource methods in concert with more traditional methods of managing traditional fisheries and aquatic resources. I argue that these types of frames are more likely to be effective in changing mainstream attitudes toward Indigenous fisheries rights because they target non-Indigenous stakeholders’ interests in the fisheries, while emphasizing mainstream cultural values that promote conservation and the utilization of Western scientific methods in natural resource management.

Several social movement scholars have noted that in order to affect counter-hegemonic change, movements must present plausible alternatives to mainstream beliefs, which contain elements that are oppositional to prevailing ideologies (McCammon et al. 2004; Tarrow 1992). Indigenous fishing rights activists in Australia, New Zealand and the United States do this in various ways. For one, they foreground Indigenous people’s environmental expertise, which is rooted not only their long-standing use of aquatic resources, but is also strengthened through the deep-seated, cultural and religious obligations that link Indigenous people to the resources. Indigenous activists contend that their traditional knowledge, which informs their deep understanding about the health of
species, as well as the best methods to employ for ensuring sustainability, are best suited for contemporary resource management, either by themselves or along with Western scientific approaches. They point to the relative prosperity of marine resources, despite significant Indigenous utilization, prior to non-Indigenous over-harvesting and development as evidence to support these claims. Framing Indigenous people as environmental experts, runs counter to lingering mainstream stereotypes about Indigenous people that presents them as uneducated and generally incapable of caring for or managing their own affairs, let alone valuable resources upon which all citizens depend. Furthermore, the framing of traditional methods and philosophies as superior to non-Indigenous approaches, conflicts with mainstream beliefs about non-western methods as non-scientific and rudimentary. It also diverges from the preferred methods of non-Indigenous managers, which tends to focus on individual species instead of taking a more holistic, habitat level approach that adheres more to Indigenous knowledge, experiences and cultural worldviews.

Significantly, Indigenous fisheries advocates advance their fishing rights as one small part in their broader, interconnected aspirations for the political, economic and cultural revitalization of Indigenous communities. Consistent with Indigenous peoples’ more holistic worldview, the obligations and opportunities that are derived from the natural world are framed by Indigenous people as having the potential to provide for all of their social needs, within which their subsistence requirements, political power, economic prosperity, and cultural integrity are all linked. By framing their fishing rights holistically, and linking the full recognition of these rights to the fulfillment of their
broader aspirations, Indigenous people are challenging non-Indigenous viewpoints that tend to categorize the economic, the political, and the social into discreet realms. If accepted, Indigenous activists’ counter-hegemonic alternative would open the door to policy-making agendas that prioritize Indigenous autonomy over traditional resources as a means to simultaneously legitimate Indigenous people’s legal and political rights, while also promoting their economic independence and their self-determination over their own cultural prerogatives.

Ultimately, by framing their aspirations in ways that are culturally and materially relevant to the mainstream population, while also presenting counter-hegemonic alternatives to the status quo, Indigenous actors are acting strategically in an effort to change the hearts and minds of key decision makers and their constituents and, as a result, break down the ideological foundations of fisheries management regimes that have historically marginalized Indigenous people. It is my contention that this is a fundamental mechanism in the broader process of decolonization that Indigenous political actors are engaging in through their efforts to secure greater autonomy over culturally-significant natural resources.

Political Opportunities and Framing Devices

In addition to key similarities in the framing devices utilized by Indigenous fishing rights activists, key differences in the frames are also theoretically informative in confirming the influence of political opportunity structures on the discursive strategies of social movements (See e.g. Benford and Snow 2000; McAmmon et al. 2004). Across the
three national contexts under examination, the most striking differences in how
Indigenous fishing rights are framed are linked to specific variations in the colonial
histories and the contemporary political systems regulating Indigenous affairs and natural
resource rights. In Australia, the native title system’s proscription against the economic
development of Aboriginal fisheries resources coincides with a relative downplaying of
commercialism as an attainable aspiration for Indigenous Australian claimants. The
focus, instead, remains on access to and management of culturally significant resources.
The lingering opposition to Indigenous participation in marine resource management and
the prevalence of discourses blaming Aboriginal harvests for the endangerment of
dugong and turtle species has also led Aboriginal claimants to engage in significant
counter-framing activities. In New Zealand, on the other hand, where Maori commercial
rights have been institutionalized, there is a significant focus on maximizing those rights
and on leveraging the Maori identity into a successful commercial identity on the global
stage. These successes have enabled Maori activists to move beyond claims for the
recognition of their rights to now focus on leveraging those rights for greater Maori
political and economic power and, potentially, the ability to redefine the national identity
on more bi-cultural terms.

Finally, in the United States, the entire political discourse surrounding
contemporary Native American fishing rights is influenced by the dire condition of the
salmon fisheries and habitat. The result is a significant amount of diagnostic framing by
Indigenous activists that places blame on non-Indigenous overfishing and shoddy
resource management for the state of the resource, as well as prognostic framing that
emphasizes management by Native Americans with a focus toward protecting habitats as best suited to revitalize the species. Furthermore, the importance of the individual treaties in providing the legal foundation for Indian fishing rights are consistently cited by Native American advocates and continue to form a central part of their political identities. While there are perhaps more striking similarities than differences in the ways that Indigenous fishing rights are framed across the three national contexts, the differences that do exist demonstrate the relevance of the prevailing political opportunity structures in each country for understanding the discursive strategies utilized by Indigenous actors during episodes of political contention over valuable natural resources.
CHAPTER 9
CONCLUSION

Because Indigenous populations in many former settler societies continue to occupy remote territories and remain generally invisible to dominant populations, it is perhaps easy for non-Indigenous citizens to hang onto antiquated beliefs that native societies are “disappearing cultures.” On the contrary, the fact remains that Indigenous communities have not disappeared, nor have they been entirely assimilated into dominant cultures. While it is true that Indigenous peoples continue to confront huge challenges when it comes to disparities in their education, overall health, and poverty levels, many tribal groups in former settler societies are starting to experience positive changes in their abilities to control their own destinies while achieving culturally relevant solutions to the challenges they face. Much of this positive change is directly linked to the significant political, cultural and economic revitalization that is occurring within Indigenous communities (See e.g. Nesper 2002). This revitalization is, itself, a direct result of successful mobilization by Indigenous political actors utilizing an array of political, legal and extra-institutional strategies to affect changes in the systems of domination that continue to impact the overall well-being and autonomy of Indigenous societies.
At the heart of many of these revitalization efforts are claims to greater self-determination over traditionally harvested, natural resources that remain central to Indigenous peoples’ cultural identities as well as their subsistence needs and their economic aspirations. These claims are contentious, however, due to the fact that many traditionally harvested Indigenous resources are often highly valued by non-Indigenous stakeholders for predominantly economic reasons. This is certainly the case with Indigenous fisheries, which have been systematically dismantled by systems of laws and policies aimed to remove them from Indigenous people’s control and place them into the hands of non-Indigenous commercial and recreational stakeholders.

Notwithstanding the evidence of Indigenous peoples’ political revitalization, there remains predominantly little sociological theorizing about the outcomes of episodes of political contention between states and Indigenous actors (But see Cornell 1988; Nagel 1996). What’s more, much of the work that does focus on these types of political interactions tends to view them as largely one-way streets, with states unilaterally dictating the terms and outcomes of episodes of contention between them (See e.g. Fenelon 1998; Stotik et al. 1994; But see Cornell 1988; Nesper 2002). Not only is this unilateral political theorizing contradicted by the reality of Indigenous peoples’ recent legal and political successes, but it is also at odds with cross-national evidence that shows distinct differences in the social situations of Indigenous peoples. Even between First World countries, there is wide variance in Indigenous people’s relative social statuses, political sovereignty, level of political representation, incorporation into dominant political systems, and economic self-sufficiency, among many other things. These
divergent trajectories suggest the need for more nuanced theoretical explanations for the nature and dynamics of political contention between Indigenous peoples and the state that conceptualizes political conflict as more interactional and dynamic, is more sensitive to the influence of variations in historical and political contexts, and that gives weight to the cultural dimensions of mobilization in order to explain how Indigenous logics and claims of rights are capable of successfully challenging dominant legal structures and their ideological foundations. Constructing a more interactional, dynamic, and culturally cognizant model of Indigenous-State contention is a major aim of this study.

Another aim of this study is to highlight the mechanisms through which Indigenous political actors and activists can affect broader changes in prevailing systems of domination, despite the lingering structural and cultural obstacles they face. After reviewing evidence of successful Indigenous mobilization and influence, it is my contention that counter-hegemonic change – in this case, the decolonization of legal systems controlling rights to Indigenous natural resources -- must be a two-pronged attack, targeting both the institutional and ideological foundations of state power.

Finally, much of these analyses focus on the law and the various roles it plays in constraining and facilitating Indigenous mobilization, while also being the primary focus for change. Catherine Lane West-Newman, a Sociologist from New Zealand, conceptualizes the connection between law, hegemony and decolonization rather well:

Law is the focal point for the engagement of anger in the politics of decolonization. Once a significant mechanism for colonization, it now mediates possibilities of material decolonization and even restoration of submerged (but
never lost) languages and cultural practices. Because the majority do not easily
give up their material and intellectual dominance, this is a process of contestation

The findings set forth in the previous four chapters suggest the following
theoretically compelling insights: 1) Different sites of contention are relevant to
understanding the strategies of action utilized by Indigenous actors and their
opportunities for how and where change is likely; 2) Despite structural obstacles,
Indigenous actors are still able to innovatively deploy strategies of action that allow them
to assert themselves upon dominant political processes in culturally and materially
meaningful ways; 3) There is evidence of progress toward decolonizing the legal systems
that govern Indigenous natural resources. Such evidence reveals that decolonization is a
two-part process that involves dismantling legal and institutional systems as well as the
ideological and discursive foundations of those systems; and, 4) The cultural paradigms
of both the dominant population and Indigenous political actors are relevant to
understanding the dynamics of contention over valuable resources. Each of these insights
and their theoretical implications will be discussed in greater detail below, as will the
relevance of the findings to McAdam et al.’s Political Process Model. I will conclude by
drawing attention to some broader implications of this study for issues related to
environmental justice and policy-making activities surrounding Indigenous fisheries and
natural resources, as well as more general matters pertaining to Indigenous self-
determination.
Sites of Contention and Indigenous Political Mobilization

There is a longstanding history of scholarship that examines the influence of political opportunity structures on the mobilization strategies of social movements (See e.g. Jenkins 1983; Kitschelt 1986; Kriesi et al. 1997; McCarthy 1996; Zald et al. 1996). According to Kitschelt (1986), the structure of political opportunities varies according to different political regimes and is comprised of the different configuration of resources, institutional arrangements and historical precedents for mobilization in each national context (See also Kriesi et al. 1997). Along these lines, this study conceptualizes political opportunities as including the histories of colonization, the institutional arrangements governing Indigenous affairs, and the relative openness of these institutions to Indigenous claims-making, as well as the general support for Indigenous people’s rights by government officials and members of the broader public.

The findings presented in the previous chapters suggest meaningful similarities and differences in the political opportunity structures confronting Indigenous advocates for fisheries and aquatic resource rights, and that these have significant implications for the mobilization strategies utilized by Indigenous actors during episodes of political contention. On a very basic level, these findings confirm the observations of various social movement scholars, including Kitschelt (1986) and Kriesi et al. (1997), among others, who emphasize the constraining influences of political systems, institutions and other structural manifestations of state authority, on mobilization strategies and dynamics. More notably, this study provides insight into McAdam et al.’s (2001) Political Process Model by demonstrating, through cross-national comparison, how the
influence of political opportunities on the mobilization strategies and framing devices of Indigenous political actors is relational and varies across national contexts.

In many ways, Indigenous people in Australia, New Zealand and the United States shared similar experiences of colonization, which was marked by contact, violent conflict, population decline, forced removal from their homelands, assimilatory policies, extreme poverty, and their systematic marginalization from prevailing economic, political and social systems and opportunities. Conflict over valuable, culturally-significant natural resources was also a defining characteristic of colonization in all three sites. Across the board, colonial conflicts over resources involved episodes of violence as well as the institutionalization of laws and policies aimed to separate Indigenous people from their traditional resources and weaken their traditional system of authority and legal claims to those resources. Clashes over Indigenous fisheries, which were quickly targeted by settlers as valuable commodities, also followed this general pattern. Thus, in terms of Noel’s (1968) and Blauner’s (1972) insights into processes of colonization and stratification, the contact situations in all three sites included significant competition over resources and differentials in power that eventually tilted the playing field in favor of the colonizers.

Notwithstanding the general similarities in the histories of colonization and usurpation of Indigenous natural resources across the three sites, there were significant variations in the assumptions about and treatment of Indigenous peoples in these three nations. These analyses reveal that such differences, which were manifested through assertions of cultural ethnocentrism at the time of contact (See Noel 1968), were crucial
in shaping the political structures that continue to define the parameters of Indigenous peoples’ lives and influence Indigenous actors’ opportunities for achieving meaningful autonomy over their fisheries, and other culturally-significant natural resources. In particular, these differences have been instrumental in the development of bodies of laws that define and regulate the rights of Indigenous peoples, as well as the institutional arenas available to them for asserting their rights to access, manage and economically develop their traditional resources. These differences are also reflected in the dominant discourses that continue to shape conflicts over contested resources, as well as prevailing stereotypes of Indigenous ethnicity and the relative status of Indigenous people within the national citizenry.

While the earliest British colonizers of Australia, New Zealand and the United States all confronted Indigenous civilizations whose occupation of the lands and use of valuable natural resources constituted barriers to settlement and nationhood, the way the colonizers dealt with these obstacles varied in significant ways. These differences had meaningful implications for the contemporary political opportunities of Indigenous peoples and, ultimately, the mobilizing strategies they would employ during episodes of contention over valuable fisheries and aquatic resources. Fundamentally, the current political structures governing Indigenous affairs and resources in each of the three nations evolved from political and, as will be discussed below, cultural assumptions about the status of Indigenous communities made by the British at the time of contact. In the United States and New Zealand, Indigenous populations were viewed as politically sovereign nations who owned their lands and the resources that they utilized. In
Australia, on the other hand, Indigenous people were seen as essentially “non-people,” with no pre-existing rights whatsoever. As a result, the colonial governments in the United States and New Zealand entered into legally binding treaties with Indigenous peoples as a matter of necessity to achieve sovereignty and pave the way for settlement and nationhood. Colonization of Australia, however, was accomplished through reliance on the legal fiction of terra nullius, which declared the continent “empty” at the time of contact and legitimated the appropriation of Indigenous lands and resources, as well as immeasurable atrocities to Aboriginal Australian people during the century that followed.

The presence or absence of treaties was enormously significant in shaping the opportunities for Indigenous people to successfully assert their fishing and aquatic resource rights. Through treaties, the Indigenous people in New Zealand and the United States were able to negotiate and reserve for themselves rights to lands and specific resources, including fisheries. These treaties then became part of the foundational laws of the land in each country, backed by the common law in New Zealand and the Constitution of the United States. Although ignored for nearly a century, these treaties would be revitalized and, once again, become the cornerstones for the legal recognition of sweeping Indigenous fishing rights in both countries. With the promise of legal entitlement enshrined in those treaties, Indigenous activists in New Zealand and the United States were inevitably able to dismantle many of the political barriers that stood in the way of the full recognition of their rights. In both cases, this was achieved through groundbreaking court cases, in which Indigenous treaty fishing rights were legitimated and given expansive meaning. These rulings were instrumental in the creation of
comprehensive institutional systems for Indigenous claimants to further ensure that their rights to access, manage and economically develop their fisheries would be guaranteed. It is worth noting, however, that the post-judicial trajectories varied in both countries, with Maori success in the Waitangi Tribunal leading to the revolutionary fisheries settlement and the establishment of TOKM and AFL, and Native American’s victory in *U.S. v. Washington* resulting in the institutionalization of Tribal-State co-management regimes. These variations were meaningful in shaping the political opportunities for future claims-making by Indigenous fisheries activists in New Zealand and the United States, as will be discussed below.

The absence of treaties in Australia has also been particularly significant. Without treaties providing basic protections for Aboriginal rights, colonizers of Australia were free to appropriate Indigenous resources without the threat of legal recourse against them. Across the board, Aboriginal Australians were forced to concede their rights to non-Indigenous stakeholders, whose interests in resource exploitation and commercialization was and, in many cases, still is considered superior to Indigenous rights. With regard to fishing, non-Indigenous commercial and recreational interests have been uniformly prioritized over the subsistence, customary and economic interests of Aboriginal fishers. The absence of a treaty has required Aboriginal Australians to rely on the common law doctrine of native title as a foundation for their marine rights. While some Aboriginal groups have been relatively successful in achieving the judicial recognition of their native title rights to land and other terrestrial resources following the *Mabo* case, the same cannot be said for fisheries and other marine resources. Due to the Australian court’s
application of the European legal fiction that conceptualizes the sea as part of the “commons” that cannot be owned, native title rights to the sea have very little legal significance. At most, such rights enable Aboriginal stakeholders to access and harvest aquatic resources for ceremonial purposes, but explicitly not for the purpose of economic development. What’s more, these rights carry no obligation for Aboriginal people to be included in resource management functions.

In many ways, the assumptions about Indigenous peoples that were held by the earliest settlers of Australia, New Zealand and the United States and encapsulated in the institutions and policies of colonization, persist in the lingering stereotypes and attitudes held by members of the general public in each of the three nations. In all three cases, Indigenous fishing rights advocates confront an indifferent and, sometimes, hostile citizenry, who continue to be influenced by the stereotypes, revisionist histories and myths about nationhood that were constructed by their forefathers to accomplish their imperialist agendas. In all three countries, it is not uncommon to hear arguments against Indigenous rights based on lingering stereotypes that Indigenous peoples are lazy, welfare dependent, undeserving of what’s perceived as “special rights,” and generally incapable of managing their own affairs. These attitudes are perhaps most prevalent in Australia and are consistent with colonial discourses and policies that simultaneously denied Aboriginal communities’ their status as self-governing, autonomous groups and refused individual Indigenous people their membership in the Australian citizenry, but then later tried to assimilate them into the dominant Australian culture. Such convoluted and inconsistent rhetoric can still be heard to justify the marginalization of Aboriginal
political and economic interests, including their abilities to commercially develop their aquatic resources and to be the primary managers of their traditional sea countries.

Differences in the political opportunity structures in each of the three cases are relevant for understanding the mobilizing strategies and framing devices that Indigenous actors employ during episodes of contention over fisheries resources. The ability of Indigenous political actors to successfully assert their claims depends, in part, on the availability of existing resources from which they can draw from to facilitate claims-making. These resources come from both inside and outside of the aggrieved group (Zald 1992) and, according to social movement scholars, are influenced by the overall structure of political opportunities in a given time or place. In Australia, New Zealand and the United States, Indigenous fisheries advocates have access to an array of resources from both inside and outside their communities that they can potentially call upon during the course of political activism. The exact nature of these resources, and whether or not they are accessible to Indigenous activists, varies in each national context and depends primarily on the unique histories of colonization and the codification of colonial philosophies and objectives for acquiring and regulating Indigenous resources into systems of laws and institutions designed to govern Indigenous people and their rights.

In all three places, Indigenous actors are able to draw from a combination of institutional and extra-institutional resources, including formal tribal governments and organizations, pan-Indigenous bodies that are operated by Indigenous people for the benefit of Indigenous rights, charismatic Indigenous leaders within their communities as well as Indigenous intellectuals and experts who have infiltrated mainstream political
institutions, and non-Indigenous allies from the public and private spheres. Key differences are evident, however, in the unique combination of resources available to Indigenous actors, and the relative power of those resources in influencing the recognition of Indigenous fishing and marine rights across the three cases. For example, given the federal recognition of tribal sovereignty in the United States, Native American tribes are able to utilize their governmental power to assert regulatory autonomy over their fisheries and enforce those regulations in their own courts of law. The lack of any similar tribal authority in Australia and New Zealand means that Indigenous claimants in these countries must focus their efforts elsewhere. In New Zealand, Maori fisheries advocates are able to rely on Indigenous intermediaries in Parliament and in other governmental and quasi-governmental capacities to advocate their interests from within institutional channels.

In Australia, where Aboriginal groups lack tribal political authority and where there are no Aboriginal representatives within the national government, fisheries claimants have focused on developing relationships with non-Indigenous allies. They have found such allies among local non-Indigenous stakeholders, within the younger generation of natural resource managers and within academic ranks, where scientists are beginning to recognize the value of Indigenous traditional knowledge for ensuring natural resource protection. To further strengthen their tenuous legal position, Aboriginal Australians have also sought support from allies in the United Nations and in the broader international human rights arena. Unfortunately, Aboriginal Australians have been generally unable to leverage their international support into a meaningful advantage in
their efforts to achieve broad based recognition of their marine rights. This is most likely due to the relative impotence of international organizations and the United Nations, in particular, in enforcing compliance with international Indigenous rights agendas. The UN’s ineffectuality in protecting the interests of Indigenous peoples is best reflected in the convoluted history of the UN’s Declaration on the Rights of Indigenous Peoples (for a discussion see Morris 2003). While this Declaration was passed in 2007, fourteen years after its original submission and over the opposition of the United States, Australia, New Zealand and Canada, it remains an unbinding and unenforceable document.xxvii

The political and historical contexts in Australia, New Zealand and the United States are relevant to understanding why Indigenous fisheries activists advance particular claims over others and why they choose to pursue their claims in particular arenas. Choices regarding goals and strategies are intrinsically linked to the relative openness of institutions for Indigenous claims-making, the level of support for such claims by non-Indigenous stakeholders, government actors and members of the general public and, consequently, the likelihood that such claims will be successful. Strikingly, Indigenous claimants in each of the three sites assert the same over-arching goals: namely, the right to access, manage and economically develop their fisheries and marine resources according to their own cultural and social prerogatives and free from non-Indigenous interference. Furthermore, in each of the three cases, the goals of Indigenous fisheries activists are linked to broader cultural and political aspirations that ultimately involve the revitalization and persistence of Indigenous communities as distinct and thriving societies within their broader nations. These similarities are meaningful because they suggest the
existence of an Indigenous agenda for controlling traditionally-significant natural resources that spans populations and colonial contexts. It is possible that these similar goals are rooted in shared notions of indigeneity as well as commonalities in the post-colonial political statuses and economic opportunities of Indigenous populations in former settler states. Although outside the scope of this study, the social processes that result in such similarities are theoretically compelling and warrant further examination in future research.

More pertinent to these analyses are differences in the goals and strategies employed by Indigenous fisheries activists across the sites. While the over-arching goals of Indigenous actors are the same, specific aspirations are either emphasized or minimized depending on the political opportunity structure in each national context. For example, in Australia, the economic development of traditional marine resources is “off the table.” While groups continue to assert these rights through litigation, the goal of acquiring commercial fishing rights has taken a back seat to more ascertainable goals related to resource access and management. In New Zealand, on the other hand, where the fisheries settlement provided significant political and financial support for Maori commercial fishing, Maori goals have shifted to focus on maximizing their commercial assets and emphasizing their rights to participate in customary fisheries management using culturally-sensitive methods. The lack of a subsidy for commercial fishing in the United States, coupled with the institutionalization of Tribal-State co-management regimes and the significant depletion of salmon stocks, has resulted in greater emphasis
by the tribes on the scope and methods of tribal management rather than on economic
development.

Political contexts have also influenced the strategic choices Indigenous claimants
make about how and where to assert their claims. At a fundamental level, the presence or
absence of treaties is perhaps the most influential contextual variable for understanding
Indigenous mobilization strategies. In the United States and New Zealand, where
revitalized treaties explicitly guarantee Indigenous fishing rights, litigation has been the
primary legal strategy employed by Indigenous activists for well over a century. This
tactic resulted in landmark cases in both countries, which gave legal recognition to
sweeping Indigenous fishing rights. That being said, key differences in the
implementation of these judicial mandates has necessitated divergent strategies by
Indigenous actors seeking to further ensure the full recognition of their treaty rights.
Specifically, in New Zealand, where the settlement has foreclosed the possibility of
future litigation, contemporary Maori claimants have largely stayed out of the courts,
focusing their efforts on bureaucratic and legislative channels, where their interests are
represented by Maori agents and political leaders. Without a similar settlement or direct
representation in government, tribes in the United States continue to utilize the courts to
establish and enforce their rights when negotiation with local and governmental
stakeholders is unsuccessful.

In Australia, the lack of an enforceable treaty or other meaningful legal
protections for Aboriginal rights means that the courts remain relatively unfavorable
places for Aboriginal claimants to assert their rights to aquatic resources. What’s more,
Aboriginal Australians lack direct representation of their interests within any level of government. As a result, Aboriginal activists tend to focus their efforts on negotiations with local stakeholders, as well as on the implementation of federally-funded local management programs and the creation of Indigenous Protected Areas and Sea Plans, through which they can develop comprehensive and culturally-relevant agendas for their sea countries. Aboriginal people’s moderate successes through these channels are due, in no small part, to the evolution of native title jurisprudence over the last thirty years. This has provided Aboriginal claimants with just enough legal influence to demand a place at the negotiating table. It has also ushered in a new era of relations between Aboriginal and non-Indigenous citizens in Australia, within which Aboriginal rights are slowly, but increasingly, considered valid.

The colonial histories and institutional dynamics in Australia, New Zealand and the United States are also influential in shaping the discursive strategies utilized by Indigenous activists during episodes of political contention over fishing and other aquatic resources. This conclusion is consistent with the work of McCammon et al. (2004), and others, who have also established that social movement frames are constrained by factors external to the movement, including prevailing structures of political opportunities. Across the three cases, the most noteworthy differences in how Indigenous fishing rights are framed appear related to explicit variations in the colonial histories and contemporary institutional systems regulating Indigenous affairs and natural resource rights.

Specifically, the prevalence of institutional and discursive opposition to the aquatic rights of Aboriginal Australians has required activists in that country to engage in
a significant amount of counter-framing to legitimate their claims. They also employ
diagnostic and prognostic frames that focus on resource management, where they enjoy
some mainstream support, rather than on economic development, where they have little
support. In New Zealand, on the other hand, where there is much greater institutional
support for Maori commercial fishing, the diagnostic and prognostic framing activities of
Maori claimants tends to focus on maximizing their economic opportunities and on
leveraging the Maori identity into global markets. Maori framing devices also emphasize
the indigeneity of New Zealand’s national identity. These types of frames are constructed
by some activists for the purpose of redefining what it means to be a New Zealand citizen
on more bi-cultural terms. Because these types of frames are consistent with the earliest
approaches to colonization in New Zealand, which envisioned a relatively equal
partnership in nation-building between Pakeha and Maori, there is a greater likelihood
that they would find resonance with the broader population there than would be the case
in Australia or the United States. Finally, Native American framing is driven, in many
ways, by the dire condition of the salmon fisheries in the United States. As a result,
activists engage in a significant amount of diagnostic framing that places blame on non-
Indigenous actors for the state of the resource. Furthermore, the treaties, which are central
in forming the foundation of Native American fishing rights, are framed as essential
components of Native American political identities.

The comparison of episodes of political contention over traditionally significant
aquatic resources across these three national contexts provides compelling support for
McAdam et al.’s (2001) Political Process Model. Instead of focusing on a single aspect of
mobilization, this study has answered the call of McAdam and his colleagues to expand the scope of the Political Process Model by examining and comparing all three aspects of the model across national contexts. The findings reveal that these three mechanisms are dynamic and relational, and that the unique ways that they interact and combine across the three sites results in different trajectories, or processes, of contention. Taken together, and compared against each other, these different processes of contention also help explain the different levels of success experienced by Indigenous fishing rights advocates in each of the three countries to date.

*Indigenous Innovation and Agency*

The findings discussed in the previous section reveal that Indigenous advocates of fishing and aquatic rights use a variety of innovative, adaptive strategies to meet their material and cultural objectives and that these strategies vary depending on the structure of political opportunities present across the three national contexts. These findings are pertinent not only for demonstrating the constraining influence of political structure on mobilization tactics, but also for highlighting the agency and innovation of Indigenous actors in deploying strategies of action that allow them to assert themselves upon dominant political processes in culturally and materially meaningful ways. This is the case despite formidable political barriers that remain as a result of the long and destructive history of colonization, the marginalized status of Indigenous people, and the persistence of prejudicial attitudes and discriminatory policies in each country.
Despite these barriers, Indigenous claimants in Australia, New Zealand and the United States utilize multi-level approaches to claims-making, which span local, regional and national initiatives and simultaneously favor litigation, negotiation, civil disobedience, strategic partnerships and independent enterprises. The emphasis that claimant populations place on particular strategies of action depends on which tactic, or combination of tactics, best achieves their material goals while maximizing their cultural objectives. As outlined above, the existence of treaty rights in New Zealand and the United States has enabled Indigenous actors in those countries to focus their efforts on litigation, while simultaneously utilizing protests and relationship building to bolster their claims. Subsequently, with favorable rulings in their arsenal, Indigenous claimants turned their focus to other, relatively “open,” institutional settings. In New Zealand, this tended to be Parliament, where there is a sizable Maori contingent, as well as bureaucratic agencies and quasi-governmental organizations, which are staffed by Maori people and charged with representing their interests. In the U.S., Native American tribes continue to assert their treaty rights through direct governance, which is attached to their statuses as federally-recognized sovereign entities, and through judicially mandated co-management relationships with State agencies. Where institutional arenas are less effective, American Indians and Maori fishing rights advocates are willing to assert their interests through extra-institutional channels. In both cases, this has primarily been through relationship building with local, non-Indigenous stakeholders. The Maori have also innovatively transformed regional forums into cooperative bodies that best reflect their interests and
are capable of creating change at the local level, where Maori customary interests are most relevant.

In Australia, Aboriginal advocates continue to assert their native title rights to sea country through litigation and through bureaucratic channels. However, because the courts, the states and the Commonwealth government remain relatively closed to Aboriginal marine rights, Aboriginal claimants must deploy other innovative strategies to assert their interests. One such strategy involves wielding potential native title rights as leverage in negotiations with local stakeholders. Another involves the strategic manipulation of small-scale government programs in order to more relevantly meet their cultural needs. These programs were originally established to provide necessary services to Indigenous people and to involve Indigenous communities in the co-management of natural resources. However, the operation of such programs is often removed enough from bureaucratic oversight to enable Indigenous people to assert a significant amount of agency over their implementation. Notable examples include Sea Ranger programs, Indigenous Protected Area designations and Sea Plans.

The utilization of a variety of institutional, extra-institutional and innovative strategies for pursuing traditional aquatic rights reflects Indigenous political actors’ nuanced understanding of existing political opportunities as well as the benefits and drawback of utilizing particular tactics over others. The unique combination of strategies employed in each site is designed to maximize the immediate material objectives of Indigenous stakeholders while also ensuring that their long term cultural and political aspirations are continually pursued. Taken together, Indigenous mobilization strategies
demonstrate persistence and willingness to strategically adapt to divergent structural realities.

The case of Australia is perhaps the most compelling for its insights into processes of “tactical interaction” between movements and the states as well as “tactical innovation” by collective actors in light of the political opportunities and constraints they face (McAdam 1983). According to McAdam, the key challenge facing excluded groups “is to devise some way to overcome the basic powerlessness that has confined them to a position of institutionalized political impotence (1983:340).” They initially do this by using non-institutional tactics to force their opponents to deal with them. Once they’ve succeeded at this stage, they must either “parlay [their] initial successes into institutionalized power … or continue to experiment with noninstitutional forms of protest (McAdam 1983:340).” Indeed, the failure of Aboriginal activists to achieve the institutionalization of their aquatic rights has resulted in their greater focus on innovative, extra-institutional strategies, including negotiated agreements and the manipulation of governmental programs to meet their needs. McAdam contends, however, that where excluded groups confront a political establishment that is largely opposed to its interests, they will be unlikely to even attempt tactical innovation given the “widely shared feelings of pessimism and impotence that are likely to prevail under such conditions. Tactical innovations only become potent in the context of a political system vulnerable to insurgency (McAdam 1983:341).”

While the recognition of native title and the reversal of *terra nullius* certainly demonstrates the vulnerability of the broader Australian political culture to
transformations regarding the status and regulation of Indigenous peoples and their lands, recent legal decisions show little movement on the issue of Aboriginal aquatic rights. Even within this constraining context, Aboriginal activists continue to engage in a variety of institutional and extra-institutional tactics. What’s more, they utilize an array of discursive strategies that are simultaneously aimed at building solidarity among Indigenous people while also changing the hearts and minds of the broader non-Indigenous citizenry. Specifically, many of the arguments Aboriginal activists deploy are aimed at strengthening community solidarity and reinforcing traditional values among Aboriginal people. Other arguments consistently challenge the ideological foundations of oppressive laws and policies by providing alternatives to the status quo, which are counter-hegemonic while also resonating with broader cultural paradigms. It is noteworthy that these discursive strategies are not appreciably different than those utilized by Indigenous fisheries activists in the United States and New Zealand, where sweeping institutionalization of Indigenous fishing rights has largely occurred. This suggests that even in more oppressive political climates, the tactical innovation of political activists from excluded groups is not necessarily constrained to the extent theorized by McAdam (1983). More likely, in these circumstances, strategies of action shift away from focusing on immediate institutional changes to focus instead on transforming the hegemonic underpinnings of oppressive laws and policies that continue to resonate within the beliefs and values of the dominant population. The next section will probe deeper into the strategic significance of utilizing discursive strategies to break
down the cultural foundations of institutional power as a fundamental mechanism in the process of decolonization.

**Decolonization: Indigenous Influence and Social Change**

Given the significant political barriers that keep Indigenous people from participating fully in political processes and, in many ways, continue to stand in the way of successful Indigenous claims-making, one might expect assertions of Indigenous fishing rights to be particularly ineffectual in achieving consequential changes. On the contrary, the rights and interests of Indigenous people as they pertain to fisheries and other aquatic resources are starting to be recognized as legitimate, as evidenced by transformations in laws, policies and dominant discourses surrounding these interests. For example, since the judicial recognition of treaty fishing rights in the United States and New Zealand, Indigenous fisheries agendas have been increasingly codified into official laws guaranteeing rights to access, manage and commercially harvest fisheries resources. In the United States, this is reflected in mandatory State-Tribal co-management policies as well as the formalization of binding agreements between Tribes, governmental and non-governmental stakeholders.

In New Zealand, Maori commercial fishing interests have become institutionalized into a comprehensive body of laws as well as an entirely new bureaucratic system of quasi-governmental agencies, which are staffed by Maori people for the purpose of advancing Maori fishing rights at the national level. And, while Maori customary fishing rights lag behind commercial rights in terms of their formal
incorporation into binding legislation, the Maori Fisheries Acts of 1989 and 1996 have
codified the New Zealand government’s commitment to establishing bureaucratic
fisheries management regimes that include Maori people in management functions and
endorse Maori experts’ use of culturally-relevant methods for sustainable utilization of
species. What’s more, Maori stakeholders have been able to leverage their growing
political clout to push for additional rights, over and above those presently embodied in
the vast and groundbreaking fisheries settlement. This is corroborated by the recent
alliance between the Maori Party and the conservative National Party and their joint Bill
to repeal the 2004 Foreshore and Seabed Act, which foreclosed Maori native title to
valuable lands and waters along New Zealand’s coastline. The National Party’s
willingness to forge this alliance and co-sponsor this controversial piece of legislation
further demonstrates a general change in thinking in New Zealand about the legitimacy of
Maori fisheries and natural resource rights.

Critics could argue that the institutional achievements of Indigenous activists in
New Zealand and the United States merely reinforce hegemonic power and formal
structures of racial domination in those nations. I contend, however, that these
accomplishments are in line with agendas for decolonization that have been theorized by
Maaka and Fleras (2005), Young (2000), and others. Rather than seeking full sovereignty
and independence, Indigenous actors engaged in contemporary projects of decolonization
are more likely to seek transformations of colonial systems of governance to
accommodate the self-determination and overlapping jurisdiction of Indigenous peoples
within the wider polity. I contend that Indigenous mobilization strategies that utilize and
innovate within dominant political structures for the purpose transforming these structures from within to more fully encompass Indigenous rights and autonomy over traditional lands and resources are consistent with these visions of decolonization.

In addition to including Indigenous aspirations into laws and policies in the United States and New Zealand, there have also been transformations in prevailing discourses surrounding the legitimacy of Indigenous people’s interests in fisheries. In New Zealand, such changes are primarily exhibited through alliances between Maori customary stakeholders and local Pakeha recreational and small-time fishers who, for the first time, saw their aspirations as mutually valid and aligned. In the People’s Submission, which represents a groundbreaking alliance between Maori and Pakeha local fishers, it was acknowledged that “… the aspirations of Maori customary fishers appear to be no different from recreational fishers, and after seven hui [meetings] with the Hokianga Accord, a common goal has been established: ‘More fish in the Water, ‘Kia maha atu nga ika i roto te wai (People’s Submission 2006:78).’” The inclusion of both English and Maori in this mission statement further establishes this alliance to be a truly bicultural one.

In the United States, as in New Zealand, there has been an increased willingness by local and private stakeholders to enter into binding negotiations with tribal governments. The terms of these agreements have covered both Native American user’s access to aquatic resources as well as the parties’ commitment to protect vital salmon habitat. It is unclear whether these accomplishments represent a real shift in mainstream values about the legitimacy of Treaty fishing rights, or are more reflective of the power of
legal mandates favoring tribal rights to compel non-Indian acquiescence in order to avoid litigation. That being said, an appreciable shift in values is being seen among Washington State natural resource managers who, just two to three decades ago, were among the most vocal opponents of Native American fishing rights. This change was echoed by a policy expert for the Northwest Indian Fisheries Commission who noted that,

There has been 180 degree change since the 1970’s on the part of State resource managers on their attitude about tribes’ concern about habitat. After Boldt, the State rhetoric was concerned about how tribal co-management would result in depletion of the resource since tribes would naturally regulate to accommodate maximum take. Now there’s full recognition that tribes care about habitat, and many feel lucky that tribes and treaty rights are around to ensure that habitat concerns are met (Bowhay and Grayum Interview).”

Even in Australia, where significant institutional and popular resistance to Aboriginal marine rights remains, there is evidence of an increasing acceptance of Aboriginal people as uniquely suited to manage aquatic resources. What’s more, there has been a growing recognition of the importance of traditional knowledge and the potential for Aboriginal Australians to take on leadership roles in marine management initiatives, especially with regard to the management of threatened dugong and sea turtle species. Australia’s Minister of Environment Protection, Heritage and the Arts, Peter Garrett, echoed this at an awards ceremony recognizing the work of NAILSMA when he described Indigenous people as “…the ‘front-line’ managers of the north Australian coast where dugong and turtle remain abundant (North Australia Land and Sea Management
Resource managers have also been more open to incorporating Indigenous access and management aspirations into aquatic regulatory schemas along the Australian coast. Given the lack of any legal mandate requiring such accommodation, these changes imply a meaningful shift in thinking about the legitimacy of Indigenous marine title in Australia.

The influence of Indigenous people’s agendas on the laws, policies and dominant discourses surrounding fisheries and aquatic rights is theoretically informative to the broader processes of decolonization in former settler states. First, these transformations reveal the increasing vulnerability of colonial myths surrounding the inferiority of Indigenous beliefs and practices regarding the natural world, as well as the legitimacy of Indigenous people’s claims of rights to natural resources by virtue of their original ownership, occupation of the land, or political sovereignty. These changes reveal the past thirty years to be fairly “unsettled times (Swidler 1986),” in Australia, New Zealand and the United States, regarding the social and institutional statuses of Indigenous people and their acceptance within the broader citizenry in each country.

Analyses of the histories of colonization across each site reveal the past few decades to be highpoints in Indigenous mobilization, marked by watershed judicial recognition of Indigenous land, fisheries and other natural resource rights, and the concomitant reversal of some of the most discriminatory philosophical and legal foundations of colonization in each nation. In Australia, this occurred through the recognition of Aboriginal native title and the reversal of terra nullius through the Mabo case. In New Zealand, it was the revitalization of the Treaty of Waitangi and the
establishment of the Waitangi Tribunal for investigating Crown breaches of Maori Treaty rights, which included the defining Muriwhenua fishing rights case, that marked the most significant changes. In the United States, major upheaval followed the Red Power Movement, including the passage of the Indian Self-Determination Act and the groundbreaking ruling in *U.S. v. Washington*. These momentous changes in the legal and institutional statuses of Indigenous people and the legitimacy of their claims to traditionally-significant natural resources reveal the existence of political and “cultural breaks (Zald 1996)” in the dominant society’s regulation and valuation of Indigenous people and their rights. These cultural breaks created significant uncertainty surrounding Indigenous affairs, generally. Consequently, they created an atmosphere of potential for further transformations in the realm of Indigenous fishing and aquatic rights by providing political and discursive opportunities for Indigenous activists to replace prevailing cultural “myths” (Meadows 1951) and dominant regulatory practices with counter-hegemonic alternatives.

The counter-hegemonic alternatives that Indigenous activists are able to assert are linked to their continued occupation of *unsettled spaces* within the broader societies where they reside. I contend that unsettled spaces are sociopolitical contexts where expectations for formal (e.g. legal) or informal (e.g. social or cultural) interactions between groups are either undefined or are significantly contested. This is certainly the case for Indigenous communities in post-colonial settler states, whose cultural and political distinctiveness from the dominant society is, on the one hand, constantly contested and, on the other, is codified into formal policies and laws that regulate
Indigenous peoples’ lives. The unique status of Indigenous communities is further bolstered by their continued occupation of remote and, in many cases, legally differentiated territories that are set apart from the rest of society. Within these territories, Indigenous communities are able to exercise varying degrees of autonomy, either as a matter of law or of common practice.

Due to Indigenous peoples’ continuing territorial, cultural and socio-legal differentiation from mainstream citizens, I contend that Indigenous groups are naturally and institutionally constructed oppositional cultures. Through Indigenous peoples’ lived experiences in these differentiated realms, dominant ideologies are constantly challenged by alternative, more culturally relevant Indigenous ideologies. These ideologies comprise essential components of Indigenous activists’ “cultural toolkits (Swidler 1986),” which, in turn, are activated through framing devices during episodes of political contention for the purpose of affecting change in the laws and policies that continue to regulate the rights and interests of Indigenous peoples.

Indigenous activists’ assertion of culturally-relevant, post-colonial alternatives as strategies of action, combined with the transformations of mainstream institutions and discourses regarding Indigenous aquatic rights that have occurred in all three national contexts, are relevant for understanding essential, yet under-theorized, mechanisms in broader processes of decolonization. First, the findings in this study reveal that decolonization is fundamentally a multi-level process that involves dismantling the legal and institutional legacies of colonization as well as the ideological foundations that uphold those laws and institutions. This conclusion is consistent with the work of Omi
and Winant (1994) on racial formation and hegemony. They contend that manifestations
of race include both institutional and organizational forms, as well as discursive and
representational meanings and significations (1994:60). What’s more, they link processes
of racial formation and the creation of systems of inequality to the “evolution of
hegemony (1994:56),” through which dominant group rule is normalized and legitimated
by the acceptance of ideological assumptions that justify the organization of society. My
conclusion is also in line with Mara Loveman’s (2005) conceptualization of state making
as an inherently cultural and symbolic endeavor. Loveman asserts that state power
consists of *both* the naturalization of state legitimacy in particular bureaucratic realms as
well as the imposition of ideological power through the assertion of cultural myths and
nationalistic identities. If the construction of racial hegemony and state power are
fundamentally institutional and cultural/ideological projects, as theorized by Omi and
Winant (1994) and Loveman (2005), it follows that the dismantling of these systems
would require both the transformation of state institutional authority as well as the de-
legitimation of state ideological authority. This is the central task of Indigenous activists
seeking to decolonize the institutions and policies that continue to regulate their interests.
The multi-focus strategies of actions employed by Indigenous fishing rights activists in all
three countries reveal their nuanced understanding of the dynamics of institutional power
and the tactical approaches that are best suited to dismantling those institutions that
continue to marginalize Indigenous people and their political, cultural and economic
interests.
Second, the findings provide specific insights into the mechanisms through which state ideological authority over Indigenous natural resources is de-legitimated. Through strategic framing devices, Indigenous activists target the hegemonic assumptions that validate the historically discriminatory policies that have long marginalized Indigenous people from their traditional resources. They do this in two, inter-related, ways: First, they align their interests and strategies with the mainstream population, using cultural frames that resonate with the broader society. Second, they provide counter-hegemonic alternatives to the status quo, which elevate Indigenous interests and values into positions of prominence. These observations are consistent with the work of several social movement scholars who contend that in order to affect counter-hegemonic change, movements must present plausible alternatives to mainstream beliefs, which draw from the same cultural stock as those they oppose (Della Porta 1996; Zald 1996), while also containing elements that are oppositional to prevailing ideologies (McCammon et al. 2004; Tarrow 1992).

The findings in this study reveal that Indigenous fishing rights activists assert alternative Indigenous logics that present Indigenous peoples as savvy environmental experts, frame Indigenous societies as complex and evolving, and conceptualize their interests as legally, ethically and culturally legitimate. What’s more, they advocate for unity between Indigenous and non-Indigenous peoples, and contend that the recognition of their rights would ultimately benefit all citizens. Through these discursive strategies Indigenous activists are presenting a vision of Indigenous justice that is, on the one hand, essentially at odds with mainstream views of equality. On the other hand, they are able to
present a plausible alternative possibility for co-equal participation in natural resource management that appeals to mainstream values regarding environmental conservation and knowledge production, while emphasizing Indigenous self-determination and revitalization. I contend that this discursive approach is most likely to be effective in changing mainstream attitudes toward Indigenous resource rights. As such, it is essential to the task of decolonizing the ideological foundations of natural resource management regimes that have historically marginalized the interests of Indigenous peoples. In addition to shedding light on the mechanisms through which Indigenous activists can assert political influence, these findings are potentially instructive for understanding the broader opportunities for ethnic identity movements, and other excluded groups, to affect social and political transformations.

**Culture Matters**

The findings in this study also reveal that the cultural paradigms of both the dominant population as well as social movement actors are relevant to understanding dynamics of contention and, in particular, the mechanisms that constrain and enable meaningful social change. For a long time, the majority of sociological work on mobilization focused on either structural factors, such as institutional systems, organizational form, and available resources, or cultural dynamics, including framing devices, non-material incentives, and identities, to elaborate processes of collective action. More recent work has attempted to bridge the structural-cultural divide by integrating these dynamics together and analyzing them as interactional, relational,
mutually constitutive, and mutually transformative (See e.g. Kane 1997; McAdam et al. 2001). McAdam et al.’s (2001) Political Process Model is a notable attempt to link structural and cultural dynamics together into an overarching framework for explaining the dynamics of contention. Even within their model, however, structural and cultural variables are generally divided into distinct categories, with political opportunities and mobilizing structures capturing the structural factors, and framing devices incorporating the cultural attributes. Unfortunately, such an approach neglects the fact that political systems, institutions, and formal organizations are themselves structural manifestations of the cultural beliefs and ideological expressions of the dominant population and that these cultural factors are relevant to elaborating the opportunities and limitations for collective action by members of excluded groups (See e.g. Morris 1992).

I contend that a richer understanding of the causes and consequences of political contention, especially between excluded ethnic groups and the state, requires analyses of the cultural, as well as the material and political foundations of institutional structures, including the legal and political systems of state governments. In its application of McAdam et al.’s Political Process Model as a guiding theoretical framework, this study attempts to elevate matters of culture to a place of greater centrality than has been the case in earlier work. It accomplishes this task by acknowledging both the strategic and embedded nature of cultural meaning systems and their autonomous influence on all aspects of the Political Process Model, including the dominant political structures that constrain and enable Indigenous mobilization, the mobilizing strategies employed by Indigenous activists, and the discursive frames through which Indigenous grievances,
rationales for action, and political and oppositional identities are constructed. I contend that this approach provides greater analytical potency in explaining the divergent trajectories of political contention over Indigenous fisheries across the three sites, as well as the mechanisms through which meaningful political transformation is possible.

Along these lines, the ideological dimensions of early contact and colonization in Australia, New Zealand and the United States are particularly compelling for understanding the contemporary institutional systems of domination that continue to present challenges to Indigenous people in these three nations. As a consequence of their impact on existing political systems, these cultural dynamics were also influential in shaping the political opportunities available to contemporary Indigenous political actors to affect change. These analyses highlighted significant differences in the histories of colonization across these three countries that, I argue, have been hugely influential in shaping the playing field upon which all contentious interactions between the state and Indigenous claims-makers have been played out. The roots of these differences can be traced to the early racialized moments that occurred during the “contact situations (Noel 1968)” between British colonizers and the original occupants of these three future nations, and reveal the consequences of the settlers’ divergent perceptions of cultural disjuncture between themselves and the Indigenous inhabitants of those different territories.

Colonial histories reveal that in the United States and New Zealand, British settlers encountered Indigenous populations that, in many ways, exhibited certain societal characteristics that were largely similar to those in Europe. For example, tribes in North
America and New Zealand had systems of governance, as well as, land and resource
tenure systems that were recognizable by European standards. What’s more, many of the
tribal societies that British colonizers came across were hierarchically organized and
militarily oriented. In light of these similarities, and by virtue of European definitions of
sovereignty, Indigenous groups in the United States and New Zealand were considered to
nations. Once tribal sovereignty was acknowledged, the colonizers were compelled to
adhere to international conventions of colonization, which required the formal agreement
of the colonized before settlement could begin. This paved the way for treaty making in
the U.S. and New Zealand, with the only major differences being that in U.S., there were
many treaties that codified the sovereignty of the tribes, while in New Zealand, there was
only one treaty, and through it, Maori sovereignty was ceded to the Crown. In all of the
treaties, however, Indigenous people were able to negotiate and reserve for themselves
rights to lands, and specific resources, including their fisheries. These treaties then
became part of the foundational laws of the land in each county. And, although they were
ignored for nearly a century, these treaties would again form the foundation of the legal
recognition of sweeping Indigenous fishing rights in both countries. As detailed above,
the existence of binding treaties would be the most significant factor influencing the
strategies of action employed by Indigenous claimants in these two countries, including
the various framing devices deployed during episodes of contention.

In Australia, on the other hand, the story since contact has been completely
different. Even though Indigenous Australians had complex systems of governance and
land and sea tenure, they way these systems operated were very different than in Europe.
Noel (1968) defines ethnocentrism as the tendency to judge other groups as inferior by the standards of one’s own culture. He further conceptualizes the presence of ethnocentrism at the time of contact as one of the fundamental predictors of the emergence of ethnic stratification. According to Noel, the greater the perceived cultural differences between the groups, the lower the relative rank of the out-group will be. Significant perceived differences in Indigenous social arrangements as well as in their cultural practices and worldviews appears to have contributed to the high degree of ethnocentrism shown by early Europeans in Australian. What’s more, these perceived differences provided the colonizers with an excuse to discount the sovereignty of Aboriginal Australians and basically write them off as civilized people subject to the protections of international law. Instead, they utilized the legal fiction of terra nullius, which declared the land empty of civilized people, to justify settlement without the formal agreement of the Indigenous occupants. The lack of a treaty and the legal protections negotiated within it would prove to be extremely significant in limiting the opportunities for Aboriginal Australians to achieve the same kind of sweeping recognition of their fishing rights as Indigenous people in the United States and New Zealand were able to achieve. What’s more, just as the presence of treaties in the U.S. and New Zealand would influence the tactical strategies of movement actors in those nations, the lack of a treaty in Australia would also shape movement strategies by foreclosing the possibility of direct governance and limiting the effectiveness of litigation.
In addition to shedding light on the institutional structures of domination that continue to impact Indigenous people’s rights, cultural attributes of the dominant population are also relevant for understanding the opportunities and mechanisms for affecting broader cultural and institutional changes. As discussed in greater detail in the previous section, this study reveals that the strategies of Indigenous fisheries activists target both discriminatory laws and policies that impact their rights as well as the ideological foundations of those laws and policies. This latter objective is accomplished through discursive strategies of Indigenous actors, within which Indigenous interests are aligned with the mainstream populations using culturally resonant frames, while simultaneously differentiated through the deployment of counter-hegemonic alternatives to the status quo. In order for these types of frames to be effective, activists must appreciate which mainstream cultural logics are most persuasive, as well as which ones are most vulnerable to transformation. In the case of fishing rights, Indigenous political actors have been most effective deploying frames that are antagonistic and oppositional to historical beliefs and values that have marginalized Indigenous peoples from participation in fisheries and natural resource management, while simultaneously reflecting contemporary mainstream values regarding the importance of environmental protection and the implementation of scientific methods for achieving those ends.

This study also highlights the various ways that Indigenous culture continues to exert an independent influence on the mobilizing strategies and discursive frames deployed during political contention. On a fundamental level, decisions by Indigenous advocates regarding the claims they advance and, to a lesser extent, the arenas for
asserting those claims, are culturally relevant. Across the three national contexts, the over-arching goals of fishing rights activists reflect broader aspirations to preserve and revitalize cultural knowledge, values and ways of life for future generations. What’s more, the focal point of mobilization remains the Indigenous communities. In most cases, these communities continue to occupy ancestral homelands and their members still engage in the harvesting of traditional resources for ceremonial and subsistence purposes, while adhering to customary laws and methods in these endeavors.

The frames that Indigenous fisheries activists deploy also reflect key aspects of the cultural values, beliefs and worldviews of Indigenous peoples. The prevalence of mobilization frames that emphasize Indigenous people’s cultural obligations and traditional expertise to legitimate their claims of rights highlights the significance of Indigenous people’s cultural prerogatives in shaping the discursive repertoires of political actors. What’s more, the content of Indigenous oppositional identities and frames are rooted in Indigenous people’s original occupation of lands and utilization of resources, their survival through colonial and post-colonial oppression, and their willingness to fight for their rights, as evidenced by their histories of conflict with national governments over prized lands and resources. I contend that these are all aspects of Indigenous people’s cultural repertoires, which are commonly activated during the course of mobilization for fishing rights.
Environmental Justice and Policy-Making

Finally, the findings in this study are pertinent to elaborating theoretical debates surrounding issues of environmental justice. They also have policy-making implications for those involved in negotiating and regulating the parameters of Indigenous peoples’ natural resource rights as well as broader issues of Indigenous self-determination. While analyses of environmental inequality and injustice have skyrocketed recently, little work has focused on the struggles of Indigenous communities to control and protect their natural environments (But see Ambler 1990; Cantzler 2007; Hall 1994; Krakoff 2002; Robinson 1992). This omission has curiously left Indigenous people out of the discussion of environmental justice. That is the case regardless of the fact that nearly every political struggle that Indigenous populations have engaged in since the time of European contact, whether they occurred on the battlefield, in the courtroom, or on the streets, has had environmental implications. Oftentimes, these battles concerned land and many times they involved access to and control over historically significant natural resources, like the fishing rights battles detailed in this study.

Environmental inequality encompasses much more than simply disproportionate exposure to environmental harm, and includes unequal protection under existing environmental laws and the exclusion of groups from access to natural resources (Getches and Pellow 2002). Clearly, the long history of institutional discrimination that systematically removed valuable traditional resources from Indigenous peoples’ control and marginalized them from any meaningful participation in the economic development or environmental management of those resources constitutes environmental inequality.
On a fundamental level, the enduring struggles of Indigenous people to regain autonomy over those resources are struggles for environmental justice (See e.g. Cantzler 2007).

The findings in the previous sections reveal that Indigenous assertions of rights to access and manage environmental resources are starting to gain traction in Australia, New Zealand and the United States. Across all three contexts, there is some evidence that Indigenous groups are starting to be included in crucial fisheries allocation and management decisions and that, in more and more cases, their unique standing as original owners of fisheries resources is being taken into account. What’s more, policy makers as well as local stakeholders are beginning to see Indigenous people as “front line” managers of these valuables resources and, to some extent, are starting to acknowledge the use of traditional management methods as legitimate. These transformations are in line with the discursive strategies utilized by Indigenous activists in all three sites, which frame Indigenous people as uniquely situated environmental managers with centuries, if not millennia, of accumulate expertise in ensuring resource sustainability. The findings provide anecdotal evidence that Indigenous people in former settler societies retain increasingly influential environmental capital that they are able to leverage to gain greater access to decision making bodies with authority over these resources. This capital is rooted in Indigenous people’s naturalist identities and is reflected through the enduring centrality of traditionally-significant natural resources to Indigenous people’s cultural values and obligations, combined with their continued occupation of remote and ecologically vulnerable territories and their daily interaction with their natural world. Future research is warranted to investigate the contours of Indigenous communities’
environmental capital outside the arena of fishing rights, as well as its potential for increasing Indigenous people’s participation in natural resource management and policy-making, and for infusing regulatory protocols with alternative Indigenous logics. xxviii

Finally, this study has policy implications for Indigenous and state actors currently embroiled in struggles for control over natural and cultural resources as well as debates over more general issues pertaining to Indigenous sovereignty and self-determination. First, the findings in this study reveal the tactical approaches that have been most effective for Indigenous fisheries claimants in achieving meaningful transformations of the laws, policies and discourses that continue to impact their rights. It is hoped that this information will assist Indigenous parties in becoming more central players in political decision-making processes over matters that are fundamental to their cultural, political and economic well-being.

In addition, this study reveals the structural constraints that shape Indigenous-state relations in the United States, Australia and New Zealand, and their historical foundations. In so doing, it reveals the institutional opportunities and obstacles for the negotiation and resolution of disputes over valuable resources. By exposing the discriminatory colonial legacies that continue to present obstacles to the inclusion of Indigenous peoples and their aspirations within contemporary regulatory frameworks, this study aims to shine a light on these barriers and provide ammunition for those on the both sides of the debate who seek to move beyond the past in order to construct more equal and bicultural blueprints for citizenship and governance in each nation. To these ends, the study also aims to highlight the shared interests of Indigenous and non-
Indigenous stakeholders and suggest how Indigenous people’s expertise, interests and vision of sustainable utilization can benefit all stakeholders. By understanding their commonalities, it is hoped that interested parties on both sides of resource debates will have greater motivation to overcome the institutional and cultural obstacles that have kept them divided for so long, in order to come together to negotiate broad and creative settlements to their resource disputes that are respectful and mutually beneficial to their interests.
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Exhibits


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Before embarking on data collection, I envisioned including the perspectives of Indigenous respondents regarding their colonial histories and, in particular, their cultural connections to their fisheries and marine resources. As it turned out, most of my respondents tended to be Indigenous and non-Indigenous experts on contemporary fishing rights issues and, as such, they never really addressed issues of colonization, history and culture directly. This is a reflection of both the types of respondents I was able to gain entree to (e.g. policy-makers, fisheries experts, and tribal and community leaders versus cultural leaders), as well as the parameters of the questions that I asked. For reasons of cultural sensitivity (discussed in greater detail later in this chapter), I was reluctant to ask direct questions about Indigenous cultural values and traditional knowledge and practices regarding their fisheries. Much of the information that I gleaned on this topic was from documentation written by Indigenous people for mass consumption. I was also trying to avoid leading questions about identity formation processes, in particular, as I was hoping to capture these as emergent themes. Where these themes were addressed, they were generally specific to contemporary fishing rights struggles and, as such, are discussed in detail as framing processes in Chapter 8.

ii ATSIC, which was established in 1989 and was comprised of national and regionally-elected Aboriginal representatives, had the most broadly defined and influential powers
of all its predecessors, including the power to develop policy initiatives, advise governments on matters pertinent to Aboriginal affairs, and deliver programs directly to Aboriginal people at the regional level (Australian Indigenous Law Reporter 2005).

iii “Native title” loosely translates into legal ownership although, unlike freehold title, it cannot be sold. The scope of native title rights can also vary according to the particular resource at issue and the content of Aboriginal traditional law that governed the use and/or occupancy of that resource at the time of European contact. For example, Aboriginal native title to land may include the rights to occupy the land permanently and exclude others, or it may simply allow access for hunting or ceremonial purposes, depending on the ancestral uses of such lands.

iv Indeed, recent literature points to New Zealand’s increasing openness to Asian immigration and greater interest in cultivating its place as part of the growing Asian-Pacific economic market to suggest that the country is actually in the process of re-defining itself on more multi-cultural terms (West-Newman 2005).

v Since 1848, Slade Gorton’s family has owned and operated Slade Gorton & Co., one of the largest seafood companies in the country.

vi It should be noted that many Native American populations faced similar depredations in the early years of American settlement. Indeed, the compulsory education of Indian children in white boarding schools was widespread during the late 19th through mid-20th Centuries. However, because of their semi-sovereign status, the codification of their inherent rights through treaties, and the guarantee of reservation land bases, Native Americans had at least some legally-backed protections against being forced into servitude or completely losing their homelands and traditional resources to white encroachment.

vii The term “Traditional Owner” is now a commonly accepted way of referring to Aboriginal Australians, and refers to their original and ongoing native title to traditional lands and resources. It will be used going forward, interchangeably with Aboriginal Australians and Indigenous Australians.

viii The dedicated Maori Parliamentary seats remained at four until 1996 when they were increased to five. In 2002, they were increased again to seven seats. These seats were originally allocated as a concession to the Maori under the fear that the Maori vote would overwhelm the white/Pakeha vote in more rural areas. Only registered Maori individuals can vote for these dedicated seats (New Zealand Ministry for Culture and Heritage 2007).

ix While members of the seafood industry were originally opposed to the settlement, the few major players that survived the restructuring of the industry due to the implementation of the QMS received huge windfalls in terms of increased quotas and the property rights that attached to them. This added to their willingness to accommodate Maori commercial fishing rights in the post-settlement years.
Perhaps not surprisingly, the educational and community-based recovery programs that are funded by TOKM and the individual iwi out of the fisheries settlement proceeds tend to occur at the level of the marae.

The forced assimilation of American Indian people was accomplished in several ways. The most egregious method was probably the removal of Indian children to white boarding schools where traditional customs were prohibited and curricula emphasizing Christian and American values were taught. This was common practice during the late 19th and early to mid-20th Centuries. Many children were particularly traumatized by their experiences at these boarding schools, citing physical and emotional abuse by the teachers. While many children returned to their reservations after they completed school, many others felt alienated from their families and communities and chose, or were compelled, to remain in White society. The assimilation of Indian people was also accomplished by the removal of Indian children from their families and placement into white foster and adoptive homes. Prior to the enactment of the Indian Child Welfare Act (ICWA) in 1978, as many as 35% of Indian children had been adopted out of Indian homes into white homes (Cantzler 2008).

Treaty tribes in Oregon have a similar organization, the Columbia River Inter-Tribal Fish Commission, which serves many of the same functions as the NWIFC in Washington.

In 1974, after the decision in U.S. v. Washington, Hank Adams was hired by the Puyallup Tribe as their Fisheries Coordinator.

One exception is the case of Tulee v. Washington, 315 U.S. 681 (1942), which was brought after a Yakima man was charged with catching salmon and selling it without a State license. The U.S. Supreme court eventually ruled that although the State of Washington could regulate Indian fishing, they could not require tribal members to purchase State licenses. This decision was largely ignored until U.S. v. Washington in 1974.

Although the BIA has much more stability and authority than ATSIC and other regulatory bodies in Australia, the roles of leaders in each agency are generally advisory in nature and have little actual power to make or change policy.

Perhaps the most successful assertion of the legal might of Indigenous Australians through litigation pertaining to sea country is the case Northern Territory of Australia v Arnhem Land Aboriginal Land Trust (2008) HCA 29 (the Blue Mud Bay case). In 2008, the Australian High Court ruled that the Aboriginal Land Rights Act (Northern Territory) of 1976, which granted freehold title to Indigenous people in the Northern Territory included title to huge swaths of intertidal lands (lands between the low and high water marks). As a result, the Northern Territory government does not have authority, through the granting of fishing licenses, to permit non-Indigenous commercial fishermen to enter
and fish within these intertidal zones without the permission of the Aboriginal Traditional Owners. Given that the intertidal zones in the Northern Territory are vast, sometimes stretching for several kilometers and that Aboriginal groups own 85% of the coastline, the ruling has immense ramifications for the commercial fishing industry, which has harvested large quantities of lucrative species of barramundi, trepang (sea cucumbers) and mud crabs from this area. By determining that Aboriginal groups own the fisheries within the intertidal zones and that the Northern Land Council, which represents Aboriginal groups in the Northern Territory, is the only body authorized to grant commercial licenses in this area, the Court took an unprecedented step that gives Aboriginal people in the Northern Territory a huge advantage in the fisheries, and provides them with the means of controlling resource management and participating in the commercial fishing industry (Kerins Interview). Rather than excluding non-Indigenous fishers from these waters right away, the Northern Land Council took a more measured approach, choosing instead to negotiate with the recreational and commercial fishing industry to find a solution that works for everybody. It is important to note that because the finding hinged upon the Aboriginal Land Rights Act, which is specific to the Northern Territory, rather than native title, which is rooted in the Australian common law, a similar outcome is unlikely in other States. That being said, the Blue Mud Bay case presents a compelling example of Aboriginal Australians flexing their legal muscle in the courts with positive results.

xviii In July 2010, the Federal Court ruled that Torres Strait Islanders maintained their native title to marine territories, including over 40,000 square kilometers of sea country, but that these rights were, like those in the Croker Island case, non-exclusive in nature. Unlike the previous cases on point, the Court in the Torres Strait Sea Claim concluded that the Torres Strait Islanders had a native title interest to use fisheries resources for commercial purposes. However, the Court also found that these rights were subject to state and Commonwealth policies regulating commercial fishing activities, generally. As such, it remains unclear whether the ruling confers any new benefit on the commercial fishing activities of Torres Strait Islanders (National Native Title Tribunal 2010)

xix Where established, mataitai reserves are for Maori customary purposes and exclude all commercial and recreational activities. Not surprisingly, mataitai reserves remain a controversial management tool and are generally opposed by commercial stakeholders.

xx Around the same time, tribes of the Ngai Tahu area on the South Island brought similar claims asserting extensive Crown breach of their fishing rights under the Treaty of Waitangi (Waitangi Tribunal 1988).

xxt While Parliament remains an essential forum for achieving success, it also continues to be place where Maori authority over their natural resources remains contested and where major setbacks occur. This was certainly the case with the Foreshore and Seabed Act of 2004, which overruled an Appeals Court determination that the Maori could seek
customary title to foreshore and seabeds by unilaterally vesting ownership over these areas in the Crown.

xxii Although fishing rights are certainly implicated by ownership of foreshore and seabeds.

xxiii Only a few tribes have small scale commercial operations (See e.g. Quinault Pride Seafood Co., Swinomish Fish Co.). Many of these enterprises target non-anadromous species, or shellfish (e.g. the Squaxin Island Tribe’s Harstine Oyster Co.).

xxiv See e.g. State v. Towessnute, 89 Wash 478 (1916); State v. Alexis, 89 Wash 492 (1916).

xxv A similar case was already being pursued by the federal government and several tribes in Oregon (See Sohappy v. Smith (1969)).

xxvi In the People’s Submission, Maori advocates explain that “Kaitiakitanga means and implies far more than just fisheries management. Kaitiakitanga is a way of life and an expression of what mother earth means to tangata whenua (People’s Submission 2006:63).”

xxvii The concerns of all four opposing nations centered on the Declaration’s expansive definitions of self-determination and Indigenous peoples’ rights to traditional lands and resources. After finally agreeing that these concepts could be worked out according to each nation’s own domestic policies, all four nations have decided to endorse the Declaration.

xxviii The increasing influence of an alliance of Inuit people from various Arctic nations on international climate change debates and policies might be an interesting and relevant case study for this purpose.