The Marshall Decision -- Who and what are behind vigilantism and "bigotry" in the fisheries?

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By Tony Seed

"I am for the Natives. I am for their right to participate in our fishery, and to invest and build their resources and expand the fishery by squeezing out the corporations." Fred Sears, South West Nova Fishermen's Rights Association (SWNRA)

Fred Sears, an inshore handline fisherman from Cape Sable Island and former lobster captain, was standing outside the red, bunker-style, government building in Barrington, just east of Yarmouth. Sears spoke with me on October 14 about the Marshall decision of the Supreme Court. It was during a recess in the trial of young Michael Cunningham -- one of fourteen handliners arrested for exercising their traditional rights in a protest fishery in August, 1997 (see page 4). There were no boats out today. About fifteen of us, fishermen, men and women, husbands and wives, are huddled in an alcove, sheltered from a high wind which was roiling the gray sea in the bay some hundred yards away. I was there as part of shunpiking's ongoing coverage of the trial and this struggle. Apart from myself, there is not a single journalist present though, in my estimation, the case is as important as Donald Marshall's. Sears' sentiments are echoed by others. Despite the unhappy situation which exists for those depending for their livelihood on the fishery, the discussion was lively and animated, direct

and personable, intelligent and knowledgeable. They're proud of their work, concerned about their future, and furious about a government they have to deal with practically every day of their working lives in order to exist. In early 1996 handliners occupied the DFO office in Barrington Passage in a mass revolt against its Individual Transferable Quota (ITQ) system. ITQs enable quotas to be bought and sold, and gobbled up by corporate fishing interests. The occupation spread to six other offices, from Yarmouth to Sydney and a 5,000-strong demonstration in Halifax. The DFO office in Yarmouth was occupied by women. Whole schools walked out in solidarity. "No to DFO!" was the slogan of the day. Inside the court, Sarah Huskilson, Lockeport Mayor, details how DFO, since 1996, had singled out the inshore groundfishery in Shelburne County for forcibly implementing ITQs. Ste testifies for an entire day, backing up what she says with correspondence stretching back seveal years, memos, reports anf fishing statistics. Her testimony is extraordinary. She eleborates a developed "divide and rule" policy. For instance, DFO affirms the principles of "conservation" and "community consensus" -- except when it does not serve the corporate agenda. But Huskilson maintains that DFO overturned the consensus and management plans of seven fishing associations in Shelburne County. In their place, it creates two management groups as its vehicle to impose its own plan. No vote is held. DFO attempts to "use our associations to sanction our members," she states. Ron Wolkins, president of the SWFRA, is absent from court; he's up in Halifax meeting with Mi'kmaq chiefs. They first met in Clark's Harbour on September 30. The message of the SWFRA, and members such as Sears, is unequivocal. "The problem is not native and non-native fishermen," vice-president Don Grady told me after that meeting. "The inshore

and Native fishermen share common problems. We face a common enemy, relentless in its opposition. That enemy is DFO and a large corporate set of interests whose commitment to the fishery is only to put profit on their own tables." Not a single fisherman echoed the incendiary calls that I heard broadcast in the media. Why? I would like to set out my opinion on this question straightforwardly.

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Two trends were unfolding, representing conflicting, opposite forces. These two trends contrast dramatically. Instead of enlightened journalism, the mass media spread disinformation, by focusing on one. In the main media scenario, every inflammatory statement and act of vandalism or conflict is faithfully reproduced and highlighted. Here are but three examples. In New Brunswick, five days after the Marshall Decision was released on September 17, editorialist Phillip Lee evokes the spectre of "anarchy and violence" from Mi'kmaqs in the Irving-owned Telegraph Journal (9/22/99). On September 23, a CBC-TV report is headlined, "Maritimes in 'Civil War' Over Native Fishing." It is ten days before Burnt Church (10/3/99). On CBC-TV's First Edition and Newsworld, reporter Tom Murphy finds a fisherman down in St. Mary's Bay, Digby County, who spoke of a "war I'd say, civil war, something's going to happen" on the one hand, and a Native fisherman on the other hand: "Natives sleep armed near their catch," Murphy reports ominously ("Divided Fishery," 9/29/99). No mention is made of two years of dialogue between Mi'kmaq chiefs and licensed fishermen over the native food fishery. The major media portrays Native and non-Native fishers at each other's throats with spontaneous, racially-motivated "mob" actions. It repeats claims that Natives burned a fisherman's house near Yarmouth. Local

RCMP state the next day that the two are not connected. The RCMP reportedly allows the destruction of Native lobster traps and fails to arrest those responsible, though traps clearly constitute property and vigilantism is still illegal in Canada. In Burnt Church, a similar situation of taking the law into one's own hands unfolds, where charges were not laid until October 12 (see pages 14-16). The objective conflict in the fisheries is portrayed as a racial conflict. Yet there are but 40 Native boats of 2,893 lobster licensed holders in the Scotia Fundy region. One million lobster traps are set by commercial fishermen and 4,000 by Natives: in New Brunswick it is 600,000 and 5,000. Yet nine offshore license holders -- mainly Clearwater and Basil Blades -- control 25% of the total lobster catch.

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Was the ugly conflict and vigilantism the handiwork of "bigoted" individual fishers acting spontaneously? Or are they the direct results of definite policies put into practice by the economically powerful who, in my

estimation, are behind the "bigots"? This problem was created by the federal government in concert with a cartel of the main fish corporations. From the prime minister on down, it presented the recognition of Aboriginal rights as the problem. It played the race card. Chretien said that the Supreme Court ruling should be suspended for six months, and the Mi'kmaq abandon their right to fish lobster as a "temporary measure" to sort out "conservation" regulations -- to force them to submit to the regime of DFO. It incited the first trend. Far from standing "between the two sides" as the lawmaker/conservationist, the DFO, which had arrested Donald Marshall as well as hundreds of other Mi'kmaq over the past two decades, plays its role. In a DFO meeting at White Point Lodge, Jim Jones, divisional

manager in Charlottetown, states that DFO did have a plan "to maintain control over the fishery." "The cat was out of the bag," recounts Don Grady, who attended the meeting with Ronnie Wolkins. "DFO would limit aboriginal rights and the Mi'kmaqs would have to enter under its regulatory regimes. They reassured the mainstream fish organizations that the vision of 'white fishermen' was supported by DFO. 'The main orchestrators of this whole dreadful ballet is the fisheries cartel aided and abetted by DFO and the media, essentially egging on those elements most amenable to incitement and fear-mongering." The cartel coalesced the smaller fish brokers through "coalitions" to speak for the "fishing industry" -- along with the Reform Party, National Post, the Globe and Mail and the Atlantic Institute of Market Studies. They found the Marshall Decision extremely convenient. Grady paraphrases the Old Testament to illustrate: "To him who has, it shall be given, and from him who has not, it shall be taken away." Over the past 20 years, DFO has increasingly restricted and denied access to the fishery. What better way than putting people at loggerheads by redirecting fears about their future onto the First Nations, and away from the government, the fisheries cartel and their offshore fleets? The growing insurgency by fishermen and the concept of a self-governing-, community- and ecological-based fishery, with a sovereign 200-mile limit, alarms this status quo. The arrival of another new interest, with fishing rights upheld by the Marshall Decision, representing a potential challenge, is similarly threatening. The fish brokers also fear the entrance into the lobster fishery of Mi'kmaq bands, able to compete economically with them in buying commercial licenses as fishermen retire. Beneath their insistence that the security of "our community" lies in the "conservation" of "our resources" is an old tradition of Eurocentric ethnic cleansing in the Americas -- that Natives must simply

leave behind their aboriginal nations to enter the political and economic cultures of their colonisers as equal citizens.

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Another trend emerges, largely unreported. Native and inshore associations are meeting, and discussing how to co-operate in managing the fisheries themselves -- on the South Shore, on St. Mary's Bay, on the Bay of Fundy and around Cape Breton. Here fishermen had formed democratic and accountable organizations to pursue their collective interests. For their part, the Mi'kmaqs set an agenda to meet with some 90 fisheries groups. They have a common philosophical foundation to build unity and practical solutions. The SWNFRA and others boycotted the Yarmouth rally on October 16. That very same day -- an hour's drive away -- a meeting is held between fishermen from St. Mary's Bay and the Mi'kmaq Fish and Wildlife Commission. Everyone agreed that "the key to short term needs and long term goals is face-to-face co-operation, respecting the points of view of both nations, in meeting our shared responsibilities to manage the resources." Arthur Bull, spokesman, says that the two groups are not "negotiating" an agreement. Instead, they hope to co-operate in a way that ensures sustainability of the resource, while respecting the autonomy of both groups in managing the fishing activity of their members.

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In my opinion, what all this shows is that the federal government and DFO are incapable of dealing with the situation. Divide and rule, anarchy and violence cannot be considered a solution. A DFO license is a privilege, a piece of paper that can be arbitrarily withdrawn -- or granted -- at any time; it is not a right. The rights of the Mi'kmaq and other Aboriginal

nations together with the rights of the fishermen and others can be brought about only if they affirm their right to make the decisions which affect their collective and individual lives, as Donald Marshall did when he affirmed the treaty rights of the Mi'kmaq. This is the living trend of the future.