

THE FORTUNE BAY DISPUTE:
NEWFOUNDLAND'S PLACE IN IMPERIAL TREATY RELATIONS
UNDER THE WASHINGTON TREATY, 1871-1885

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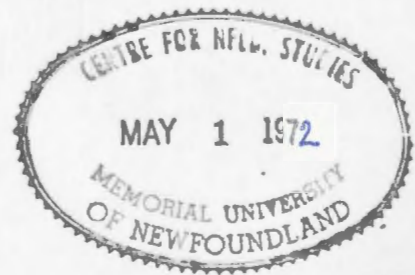
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UNDER THE WASHINGTON TREATY, 1871-1885



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Submitted in Partial Fulfillment of the Requirements for
the Degree of Master of Arts, Memorial University of Newfoundland,
St. John's, Newfoundland, March 24, 1971.

ABSTRACT

Newfoundland following its acceptance of the Treaty of Washington in 1874 had to cope with the presence of large numbers of American fishing vessels in its inshore waters. The Americans, who fished mainly on the Grand Banks, resorted to the colony for bait and ice. An extensive trade in these two commodities developed between American and Newfoundland fishermen. Considerable confusion was aroused - especially at the Halifax Commission in 1877 - over whether or not this traffic was permitted under the treaty's terms. In 1878 at Fortune Bay a group of Newfoundlanders violently obstructed American fishermen who attempted to catch their own herring. This one incident brought the problems associated with the bait traffic to a head.

The confrontation at Fortune Bay largely stemmed from economic self-interest on the part of Newfoundland fishermen. It later expanded to involve the issue of whether or not American fishermen were liable to colonial fishery regulations. The Americans had violated local laws respecting a close time, Sunday fishing, and the in-barring of herring. However, they subsequently claimed that the Treaty of Washington had given them unrestricted access to the colonial fisheries. The resultant diplomatic quarrel over treaty

rights versus local legislation was of importance to Newfoundland. An effective control of the bait fishery had become basic to its drive to increase local autonomy.

The Fortune Bay Dispute involved several related aspects. On one level, Anglo-American diplomacy was central; on another, colonial ties with the Imperial government. In the latter instance, the relationship between the Colonial and Foreign Offices played a crucial role. Throughout, Newfoundland watched carefully to see that its fishery legislation was not compromised. When an Anglo-American settlement was reached in 1881, the colony became acutely aware that its interests were not identical with those of Great Britain. It immediately set about clarifying the terms under which the settlement might be accepted. The thesis of this paper is that Newfoundland obtained from its participation in Anglo-American affairs a clearer definition of its position within the Imperial system.

PREFACE

Newfoundland's involvement in the Anglo-American controversy arising from the Fortune Bay incident enabled it to clarify its position within the British Empire. This process of defining colonial authority, of delimiting the relationship between colony and mother country, forms the thesis of the following paper. It is not a political or economic history of either Newfoundland or the United States. Internal considerations, especially on the American side, are introduced only when pertinent to the paper's central theme.

The following paper is written almost entirely from primary materials. The principal sources were the Colonial Office records (the C.O. 194 series), the Newfoundland newspapers, the Halifax Commission records, and the British Parliamentary Papers dealing with the Fortune Bay Dispute. The accent on Newfoundland and British sources reflects not only expediency but also the paper's main theme. The American contributions were largely gleaned from relevant documents in the British materials as well as from a limited number of secondary works. One American source which proved indispensable for its technical information on the New England fisheries was G.B. Goode's The Fishery Industries of the United States. This

extensive work detailed the growth of the American bank fishery and its dependence on Newfoundland bait supplies.

The author is particularly indebted to Dr. James Tague for his guidance and criticisms throughout the course of this paper. Considerable assistance was also received from the staffs of the Gosling Memorial Library, the Provincial Archives of Newfoundland, and the Centre for Newfoundland Studies at Memorial University. In addition, the author wishes to thank Mrs. S. Snook who took time out from a busy schedule to do the typing.

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CHAPTER I

THE BACKGROUND

The Treaty of Washington signed by representatives of Great Britain and the United States on May 8, 1871, outlined procedures to settle the long standing Alabama Claims Dispute. It also provided for the settlement of a number of other Anglo-American problems, among them fishery troubles. The inshore fisheries of British North America and the United States were opened to the fishermen of each country and in addition reciprocity in fish and fish oil was arranged. Article XXXII stipulated that the treaty's trade and fishery provisions should extend to Newfoundland provided assent was not withheld by "... the imperial parliament, the legislature of Newfoundland, or the Congress of the United States...."¹ The colony had to decide whether or not the opportunity of entering a reciprocal trade arrangement with the United States was sufficient recompense for granting fishery rights to American fishermen in Newfoundland waters. Its decision, in the affirmative, was to involve a new definition of the colony's role in Anglo-American relations and by extension its position within the Imperial system.

¹U.S., Department of State, Papers Relating to the Foreign Relations of the United States, 1871 (Washington, D.C.: Government Printing Office, 1871), p. 528. The Fishery Articles of the Treaty of Washington are printed in Appendix A, p. 136.

In theory Newfoundland's position within the British Empire was clearcut. The colony had been granted Responsible Government in 1855 and its affairs were administered by a British-appointed Governor and an Executive Council chosen from the majority party in the local legislature. In practice the colonial government's sphere of authority was indeterminate inasmuch as the British government had granted to foreign powers, especially France, treaty rights to fish in Newfoundland waters. Now with the signing of the Washington Treaty a new involvement, this time with the United States, was being undertaken. It was here in this morass of imperial treaty relations that a Newfoundland identity had to be developed.

The terms of the Washington Treaty of relevance to Newfoundland were Articles XVIII-XXVI. In Article XVIII it was provided that

... the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shellfish, on the sea-coasts and shores, and in the bays, harbors and creeks, of the Province of Quebec, Nova Scotia and New Brunswick, and the colony of Prince Edward's Island, and the several islands thereunto adjacent without being restricted to any distance from the shore, with permission to land upon the said coasts and shores, and islands, and also upon the Magdalen islands, for the purpose of drying their nets and curing their fish provided that, in so doing, they do not interfere with the rights of private property, or with British fishermen in the peaceable use of any parts of the said coasts in their occupancy for the same purpose.²

Apart from Article XVIII the other major portion of the agreement was outlined in Article XXI which provided for the duty free

²Ibid., pp. 523-24.

admission of "fish oil and fish of all kinds" of each country into the other.³ A time limitation for the Fishery Articles was provided by Article XXXIII which stipulated a period of ten years, and a further two years after either party should give notice of its wish to terminate the agreement.⁴ The trade and fisheries arrangement contained one further significant stipulation. Article XXII provided that commissioners should be appointed to determine any inequality in the concessions made by each party and to assess compensation owing to the one found to be at a disadvantage.⁵

Newfoundland, being offered the opportunity of joining the Washington Treaty was compelled to evaluate the implications not only for its fisheries and trade, but also for its jurisdiction over its major industry. The outcome of the colony's evaluation was indicated on March 31, 1873, when the legislature in St. John's passed an act to bring Newfoundland into the treaty.⁶ A prime factor in

³Ibid., p. 524.

⁴Ibid., p. 528.

⁵Ibid., pp. 524-25.

⁶Newfoundland, Journal of the Assembly, 1873, p. 94. Several factors lay behind the delay in the colony's acceptance of the treaty. Internationally, the failure of the Canadian government to accept the treaty until June of 1872 and an Anglo-American dispute over the Geneva Arbitration threatened the whole arrangement. In Newfoundland a wrangle over whether "fish oil" included seal oil proved to be a stumbling block. Also, C.F. Bennett's anti-confederate government had been upset when the Canadian government as an inducement to accept the treaty had received a British guarantee for a \$2,500,000 public works loan. And finally, one or two south coast legislators, particularly T.R. Bennett of Fortune Bay, had expressed misgivings over possible interference from American fishermen. However, their anxieties were somewhat alleviated by the inclusion in the Newfoundland Act of a proviso reserving to the colony the right to regulate the time and manner of taking fish. See infra. p. 9.

the colony's decision was its trade experience under the Reciprocity Treaty of 1854 and in the years after its abrogation. Although Newfoundland had failed to develop any sizeable market in the United States for its codfish - only 14,116 quintals worth \$63,552 had been shipped there in 1865⁷ - it still depended on that country as the chief consumer of its salmon and herring.⁸ Following the termination of reciprocity Newfoundland's average annual exports to the United States dropped from \$367,500 under the treaty to \$348,241 in the ensuing seven years.⁹ Under such circumstances the new trade and fisheries arrangement received the strong support of the St. John's Chamber of Commerce.¹⁰

The Washington Treaty's favourable reception was also determined by the failure of American fishermen to make use of the fishing rights bestowed upon them under the Treaty of 1818 and the Reciprocity Treaty. The Treaty of 1818 had granted the Americans fishing rights along Newfoundland's west and southwest coasts as well as along the Labrador Coast.¹¹ In return for these specific

⁷Newfoundland, Journal of the Assembly, 1866, Customs Returns, Appendix, pp. 322-23.

⁸In 1865 the United States had absorbed \$35,006 worth of salmon and \$96,128 worth of herring. Ibid., pp. 324-25.

⁹Newfoundland, Legislative Assembly, Proceedings, 1885, in Evening Mercury (St. John's, Newfoundland), May 12, 1885.

¹⁰St. John's Chamber of Commerce, Carton III, Annual Reports, 1849-1884, Annual Report for 1870. The Chamber of Commerce records are located in the Newfoundland Archives, St. John's.

¹¹U.S., Department of State, Papers Relating to the Foreign Relations of the United States, Vol. III, 1873, Papers Relating to the Treaty of Washington Treaty (Washington, D.C.: Government Printing Office, 1874), p. 282. Article A of the Treaty of 1818 is printed in full in Appendix B, p. 144.

privileges the United States had given up its disputed claim of possessing fishing rights in all British North American waters. Renounced was the right to fish within the three mile limit in the non-assigned areas; the American fishermen were allowed to enter these areas only for the four purposes "of shelter, and of repairing damages therein, of purchasing wood and obtaining water, and for no other purpose whatever."¹² This limitation was to cause much discord in the waters of mainland British America where United States fishermen carried on an extensive mackerel fishery for much of the nineteenth century. However, the Americans did not avail of their specific privileges on the Newfoundland coast, restricting their activities largely to the Labrador fishery.¹³

This comparative freedom from American competition continued under the Reciprocity Treaty which provided for mutual freedom of the fisheries and a free trade in an extensive list of articles.¹⁴ Despite the fears of many Newfoundland merchants of increased American competition in the fishery, no such eventuality occurred.¹⁵ The Americans continued to concentrate their efforts in the mainland mackerel fishery. The one area of contact between

¹²Ibid.

¹³W.G. Gosling, Labrador, Its Discovery, Exploration and Development (London: Alston Rivers Ltd., 1910), pp. 350-351.

¹⁴Article III of the Reciprocity Treaty is printed in Appendix C, p. 146.

¹⁵St. John's Chamber of Commerce to James Crowdy, June 25, 1853, in "Papers Relative to the Fisheries", Part II, Great Britain, Colonial Office, Colonial Office Records, Series 880, Vol. 3, p. 128.

Newfoundlanders and American fishermen was in the Fortune Bay herring fishery which was essentially a commercial enterprise. The Americans beginning in 1855 had come to Fortune Bay during the winter months where they purchased large quantities of herring from the local fishermen.¹⁶ The herring served a dual purpose, being sold in the United States as an article of food and as bait for the New England bankers sailing to the George's Bank. Some twenty to forty vessels each taking about 500 barrels valued at between \$1.00 and \$2.00 per barrel meant an annual trade of between \$20,000 and \$40,000, a considerable sum spread among the fishermen of Fortune Bay.¹⁷

In addition to trade advantages and the apparent lack of American interest in the colonial fishery, Newfoundland had yet another reason to react favourably to the new treaty. The colony had some justification for believing its jurisdiction over the fisheries would not be impaired even if the Americans did resort to its shores. Although Newfoundland under the Washington Treaty was to clarify and improve its position respecting fisheries jurisdiction, it was not entirely without safeguards when the treaty was accepted. Several had originated during the operation of the Reciprocity Treaty. A key document was the Marcy Circular of 1856 written by United States Secretary of State William Marcy to Charles L. Peasely, the Collector

¹⁶U.S., Commission of Fish and Fisheries, The Fisheries and Fishery Industries of the United States. Prepared for the tenth census by George Brown Goode and Associates (Washington, D.C.: Government Printing Office, 1887), Section V, Vol.I, p. 440.

¹⁷Robert Reeves, a Gloucester fisherman, estimated that each vessel paid from \$600 to \$1000 for its herring. Great Britain, Attorney-General's Office, The Halifax Fisheries Commission, 1877, The United States Evidence, 1878, pp. 225-26.

of Customs at Boston; it was formulated to remind American fishing captains of the necessity of obeying conservation acts of the British and American colonial legislatures which were meant for British and American citizens alike. The circular stressed that "By granting the mutual use of the inshore fisheries, neither party had yielded its right to civic jurisdiction over a marine league along the coasts. The laws are as obligatory upon the citizens and subjects of the other as are upon its own."¹⁸ The Marcy Circular's affirmation of the supremacy of civic jurisdiction was echoed by the British Crown Law officers in 1863 when they were asked to report to the Secretary of State for the Colonies, the Duke of Newcastle,¹⁹ on the relationship between colonial laws and American fishing liberties granted under the Treaty of 1818 and the Reciprocity Treaty of 1854. The law officers reported that the "terms and spirit" of the treaties were "in no respect violated by bona fide regulations made for the government of those engaged in the fisheries and applicable to British subjects so employed."²⁰ Yet, nowhere in either the Marcy Circular or the Crown Law Officers' opinion had there been any indication as to who was to decide whether or not regulations were bona fide.

¹⁸Inclosure in Colonial Minister H. Labouchere to Governor Darling, August 15, 1856, printed in Newfoundland, Journal of the Assembly, 1857, Appendix, p. 412. Printed in full in Appendix D, p. 148.

¹⁹Sometimes referred to as the Colonial Minister, a term hereafter employed.

²⁰W. Atherton and R. Palmer to the Duke of Newcastle, January 6, 1873, Journal of the Assembly, 1874, Appendix, pp. 662-63.

The problem of demarcating the relative spheres of authority of colonial legislation and treaty rights was frequently linked with the sale of bait to foreigners. After the signing of the Washington Treaty this combination of issues was to mark Newfoundland/United States relations with the French. Although the latter's specific rights were limited to St. Pierre, Miquelon and the "French Shore",²¹ their treaty relations with Great Britain made Imperial officials sensitive to any colonial efforts to restrict the bait trade. When a select committee of the Newfoundland legislature in 1862-1863 recommended its regulation, the colony was reminded by the Imperial government "that no Act can be allowed which prohibits expressly, or is calculated by a circuitous method, to prevent the sale of bait."²² Yet, notwithstanding such an injunction, the history of Newfoundland's involvement with the French had not been entirely barren of benefits to the colony. In 1857 a French/British convention had proposed to settle the problem of disputed French fishery rights in Newfoundland by granting to France exclusive rights to specified portions of the colony's coasts. So indignant and outraged was the reaction of Newfoundlanders that Colonial Minister Henry Labouchere was forced to concede "that the consent of the community is regarded by Her Majesty's Government as the essential

²¹The "French Shore" at this time extended from Cape Ray to Cape St. John. For a definitive account of the French Shore problem see F.F. Thompson, The French Shore Problem in Newfoundland (Toronto: University of Toronto Press, 1961).

²²Duke of Newcastle to Governor Bannerman, August 3, 1863, Journal of the Assembly, 1864, Appendix, pp. 607-08.

preliminary to any modification of their territorial and maritime rights."²³ The existence of this despatch often called the "Magna Carta" of Newfoundland fisheries history,²⁴ prompted Newfoundland Legislative Council member John Kent to remark in 1871 that "it assured us that no modification of our rights should take place without out consent."²⁵

Yet, despite the confidence that local jurisdiction would be adequately protected, there was no guarantee that the various safeguards would be effective under the new treaty. It was not long before a specific issue raised serious doubts. The act by which Newfoundland had accepted the treaty had contained a proviso reserving to the colony the right to regulate the time and manner of conducting the fishery. The section containing the proviso read as follows:

As soon as the Law required to carry into operation, on the part of the United States of America the articles set out in the schedule to this Act, had been passed by the Congress of the United States, and come into force, all laws of this Colony which operate to prevent the said articles from taking full effect, shall, so far as they so operate be suspended and have no effect during the period mentioned in the article numbered thirty-three in the schedule to this Act: Provided that

²³ Labouchere to Darling, March 26, 1857, quoted in Harold A. Innis, The Codfisheries, The History of an International Economy, rev. ed. (Toronto: University of Toronto Press, 1954, p. 396.

²⁴ R.A. Mackay, ed., Newfoundland Economic, Diplomatic and Strategic Studies (Toronto: Oxford University Press, 1946), p. 284.

²⁵ Newfoundland, Legislative Council, Proceedings, April 19, 1871, in Public Ledger (St. John's, Newfoundland), June 6, 1871.

such laws, rules and regulations, relating to the time and manner of prosecuting the Fisheries on the coasts of this Island, shall not be in any way affected by such provisions.²⁶

When the Newfoundland act was transmitted to Washington, the Americans objected on the grounds that it contained restrictions not embodied in the treaty.²⁷ Despite repeated explanations on the part of the Newfoundland government that the proviso was aimed at conservation of the salmon and herring fisheries, the United States State Department, headed by Secretary of State Hamilton Fish, refused to issue the necessary proclamation to bring the colony into the treaty.²⁸ Newfoundland's entry was delayed a full year until the legislative session of 1874 could remove the objectionable proviso.

The wrangle over the proviso provided some clarification of the colony's position vis-a-vis Great Britain and the United States. The latter had rejected a formal agreement which contained an explicit recognition of the colony's authority to regulate its fishery. However, the State Department did provide some unofficial assurance; the British minister in Washington, Sir Edward Thornton, after a conversation with Acting Secretary of State J.C. Bancroft Davis reported

²⁶ 36th Victoria, Cap. 3, Newfoundland, Statutes of Newfoundland, 1873-1879 (St. John's: J.C. Withers, Printers to the Queen's Most Excellent Majesty, n.d.), author's underlining. The relevant fisheries legislation is printed in Appendix E, p.150.

²⁷ Hamilton Fish to Sir Edward Thornton, June 25, 1873, in U.S., Department of State, Papers Relating to the Foreign Relations of the United States, Vol. I, 1873 (Washington, D.C.: Government Printing Office, 1874), pp. 429-30.

²⁸ Ibid.

Mr. Bancroft Davis added that Mr. Fish admitted that as the United States authorities could expect British fishermen in American waters to observe the police regulations with respect to the fisheries, so the Government of the United States would make no objection to similar regulations being enforced against American fishermen in British waters.²⁹

In essence Bancroft Davis' remarks were a reaffirmation of the earlier principle set down by former Secretary of State W.L. Marcy during the Reciprocity Treaty.

A further confirmation of the same principle was provided by the British Crown Law Officers when the whole matter was referred to them by the Imperial government. The legal experts contended

... since Mr. Fish admits that the rights of laying down reasonable police regulations exists, it would be observed by all who fished in the waters in question. Police regulations meaning, by the context rules as to a close time, the objection raised to the Newfoundland Act is more technical than real and that the operation of the treaty, as respects Newfoundland ought not to be delayed or break down on such an objection.³⁰

This opinion of the Crown Law Officers was a theoretical justification of the attitude of the Newfoundland government as represented in the proviso. Moreover, it reaffirmed their earlier opinion, that of 1863, on the amenability of American citizens to local laws. However, as it

²⁹Thornton to Governor Stephen Hill, July 10, 1873, Journal of the Assembly, 1874, Appendix, p. 1026.

³⁰Crown Law Officers to Foreign Minister Lord Granville, July 19, 1873, in Great Britain, Colonial Office, Colonial Office Records, Series 194, Vol. 188, p. 201. Hereafter, these records are referred to as C.O. 194. For example, C.O. 194/188.

recognized on the American side an acknowledgement of the same principle in unofficial terms, it felt that its formal inclusion in the Newfoundland Act was superfluous and an unnecessary obstacle to the treaty's ratification. The Crown Law Officers also realized that there was no American presence in Newfoundland waters substantial enough to make the question a really practical one. The same reasoning subsequently allowed the Newfoundland government to quietly remove its proviso.

Yet the assumption of both the Crown Law Officers and the Newfoundland government was based on questionable grounds. Developments underway in the New England fishery for some years were to transform a mainly academic question into one extremely practical and real. The major relevant change was in the bank fishery where since the late fifties or early sixties handlines had been supplanted by trawls, set lines containing large numbers of hooks tended to by men in dories.³¹ The new method brought problems not experienced in the handline operation.³² Chief of these was the procurement of huge supplies of bait. In the old type of fishery salted bait at \$5 to \$6 per barrel had sufficed, each vessel taking approximately fifty barrels for a season. But in the trawlline

³¹The growth of the trawlline operation is detailed in U.S. Fishery Commission, The Fisheries of the United States, Section V, p. 123. United States Evidence. On page 46 of the latter the testimony of Nathaniel Attwood gives details of the industry's origins in Provincetown, Massachusetts. The Gloucester contribution is outlined in George H. Proctor, The Fishermen's Memorial and Record Book (Gloucester: Proctor Brothers, 1873).

³²A good summary of the advantages and disadvantages of the trawlline operation was given at the Halifax Commission by the Assistant Secretary of the Smithsonian Institute, Spencer F. Baird. See Great Britain, Halifax Commission, United States Evidence, p. 456.

fishery at least 150 to 200 barrels were needed, thus making the expense prohibitive. Moreover, many of the American fishermen were coming to prefer fresh bait to salt bait believing that much larger catches were possible with the former. In effect, what was needed by the changing New England fishery was a new source of ample and comparatively cheap bait.

It was inevitable that the Americans would eventually turn to Newfoundland where the inshore waters teemed with herring, capelin, and squid. At the Halifax Commission in 1877 the earliest visits of American bankers to Newfoundland in search of bait were said to have occurred in 1870.³³ From an early date Fortune Bay on the island's remote south coast was the favourite baiting place. In the early seventies scores of American bankers visited the area chiefly for herring and capelin. Newfoundland judge T.R. Bennett testified during the Halifax Commission that in 1872 while the Washington Treaty was under consideration

[I] took special interest in the matter and made special inquiry, as at that time I was in the Legislature and Speaker of the House, and I was anxious to inform myself. I found over 200 vessels had entered Fortune Bay. I counted 47 vessels myself in one week.... At that time they had not gone further east than Placentia Bay. The people of St. John's had never seen any American fishing vessels after bait, nor had any been seen at Conception Bay or Bonavista Bay.³⁴

³³ Ibid., testimony of George Friend, p. 125, and Charles Orre, p. 131.

³⁴ Great Britain, Attorney-General's Office, The Halifax Commission, 1877, The British Evidence, 1878, testimony of T.R. Bennett, p. 139.

Once the American bankers were successful in obtaining the required supplies of bait on the Newfoundland coast, their continued and expanded recourse to colonial waters was assured. If a banker was fortunate, it could complete its catch with two trips into the coast for bait; sometimes it took as many as three to five 'baitings' for a banking schooner to catch sufficient fish for a cargo.³⁵ By 1873 these bankers were coming into the south coast so regularly that Premier C.F. Bennett reported the presence of 100 sail in the area looking for bait.³⁶

The expanding character of the American search for bait became more noticeable after the Washington Treaty was adopted. During 1874 the American activity spread outward from Fortune Bay into other areas of the island. In Placentia Bay Americans were baited at Lamaline, Oderin and Burin, some forty to sixty bankers being seen in the vicinity of the latter outport.³⁷ A reported shortage of bait caused American bankers to turn up in the St. John's and Bay Bulls areas,³⁸ while Harbour Grace in Conception Bay also

³⁵United States Fishery Commission, The Fisheries of the United States, Section V, pp. 182-83.

³⁶C.F. Bennett to Colonial Office Undersecretary H. Holland, July 28, 1873, in C.O. 194/188, p. 456.

³⁷Great Britain, Halifax Commission, British Evidence, testimony of F. Berteau, p. 64.

³⁸Morning Chronicle (St. John's, Newfoundland), July 28, 1874, in Harbour Grace Standard (Harbour Grace, Newfoundland), August 1, 1874.

experienced contact with the American fishermen.³⁹ But in 1874 the colony enjoyed a record fishery - some 1,609,724 quintals were taken⁴⁰ - and the occasional visits of Americans bankers attracted little attention.

The following year, 1875, the Americans increased their efforts to obtain bait. One estimate placed their total at no less than 150.⁴¹ In that year they first began to round Cape Race and sail along the Southern Shore and around to Conception Bay in appreciably large numbers. In the island's southeastern area American bankers were baited at Trepassey, Caplin Bay and Renewes.⁴² During the summer some forty to sixty vessels were reported to have seined 'immense quantities' of squid around Bell Island, a practice to which most Newfoundland fishermen were strongly opposed.⁴³ Apart from bell Island, American vessels were reported at other Conception Bay out-ports, for instance, Northern Gut, Holyrood, Cat's Cove, Carbonear, and Salmon Cove. The presence of the American bankers evoked little

³⁹No. 120, Consul T.N. Molloy to Assistant Secretary of State, March 19, 1875, in United States, Department of State, Despatches From United States Consuls in St. John's, Newfoundland, 1870-1882.

⁴⁰Newfoundland, Journal of the Assembly, 1875, Customs Returns, Appendix, p. 498.

⁴¹Newfoundland Assembly, Proceedings, February 18, 1876, in Public Ledger, March 7, 1876.

⁴²Information on the visits by American bankers was gleaned from the Newfoundland newspapers and the British and American evidence at the Halifax Commission.

⁴³Newfoundland Assembly, Proceedings, February 21, 1876, in Public Ledger, March 7, 1876.

comment until midway through what turned out to be a poor fishery season. The St. John's Newfoundlander in one of its periodic reports on the fisheries remarked "Among the novelties of the season we have to note the visits of large numbers of American fishing craft who have come here for bait and supplies."⁴⁴ It was not long before a connection was made between the poor fishery and the American procurement of bait; the Newfoundlander termed it a "very grave" situation.⁴⁵

During the ensuing fall and winter the problem of local fishermen supplying bait and ice to the Americans became a major topic of debate in the Newfoundland press, the intensity of which was increased by the prospect of larger numbers arriving in 1876. And as expected the 1876 season saw an unprecedented number of American vessels turning to Newfoundland for their bait. From the evidence presented at the Halifax Commission it would appear that their number was well over two hundred. As in 1875 the Americans did not confine their operations to Fortune Bay. In Placentia Bay their main baiting places were at Burin and Placentia; in St. Mary's Bay, at Salmonier; in Trepassey Bay, at Trepassey; on the Southern Shore, at Renew's, Ferryland, Caplin Bay, Bay Bulls and Cape Broyle; further north, at St. John's and Torbay; in Conception Bay, at Portugal Cove, Broad Cove, Holyrood, Harbour Grace and Carbonear; and also in Trinity Bay, at Heart's Content, Dildo and New Harbour. In just a few years

⁴⁴Newfoundlander (St. John's, Newfoundland), August 17, 1875.

⁴⁵Ibid., September 10, 1875.

the American presence had mushroomed from its originally localized efforts in Fortune Bay to encompass all the major bays around the eastern portion of Newfoundland.

The American activity had divisive consequences. One group composed mainly of operative fishermen and planters engaged in supplying the bankers supported the traffic. On the other hand there were those who opposed it, particularly planters and merchants who saw their interests threatened. A number of arguments in favour of its prohibition were put forward. Prominent were the following: the huge amount of bait carried to the banks kept the codfish offshore; the supply of bait to Americans was not a good practice while Newfoundlanders themselves were short; the large quantities taken by the Americans lessened the total supply; and the time spent by local fishermen in catching bait for the Americans meant less time at their own fishery and a consequent drop in the Newfoundland production. One group in particular which made its views known was the St. John's Chamber of Commerce, which commented:

The serious inroads which are being made in our coast fishery at the westward, by the large and increasing number of American fishing craft visiting these locations, ostensibly in quest of bait, renders some increased and vigilant protective measures necessary in reference to the movement of these vessels. Fortune Bay, particularly, is feeling the baneful result of this state of matters, so much so, that the local fishermen are becoming impoverished.⁴⁶

⁴⁶ Chamber of Commerce, Annual Reports, Report for 1876.

Evidently, the St. John's mercantile body which had done much to get the Washington Treaty accepted had now become disillusioned with its operation.

Apart from the surprising American search for bait there were other factors working to promote colonial dissatisfaction with the treaty. The example of American bankers in Newfoundland during the poor fishery seasons of 1875 and 1876 had given the colony incentive to start a banking fishery of its own. In 1876 the local assembly passed legislation to provide a bounty of \$6 per ton to be paid to vessels of twenty-five tons and upwards which were employed in the bank fishery for at least three months.⁴⁷ At least half a dozen vessels participated, Job's and Company alone outfitting four.⁴⁸ At the end of the year \$1,356 in bounty was paid out to the vessels which had completed the voyage.⁴⁹ The successful establishment of a Newfoundland bank fishery meant that local bankers would have to compete with American bankers to obtain bait. This element of competition was raised by English naval captain J. Erskine in his 1876 report on the Newfoundland and Labrador fisheries; he commented

The vast importance of using all our energies in competing with the Americans, both on the banks and on the shores of Newfoundland and Labrador, and especially in the taking and

⁴⁷Newfoundland, Journal of the Assembly, 1876, p. 108.

⁴⁸The North Star (St. John's, Newfoundland), December 9, 1876.

⁴⁹Newfoundland, Assembly, Proceedings, February 16, 1878, in North Star, March 10, 1878.

preserving of bait, so important an element in that fishery, must be self-evident, when the advantages now derived by the Americans by the Treaty of Washington are considered.⁵⁰

Clearly, from the standpoint of the bank fishery alone, the American search for bait had posed a very real problem, one which would eventually lead to a call for remedial action.

Another important area in which the Washington Treaty failed to live up to colonial expectations centred around trade relations. Newfoundland's exports to the United States for the years 1874-1876 were as follows:⁵¹

<u>Year</u>	<u>Value of Exports To The United States</u>	<u>Value of Total Exports</u>
1874	\$316,552	\$7,336,039
1875	\$197,269	\$6,432,003
1876	\$138,368	\$6,562,090

Several reasons can be advanced for the failure of the colony's trade with the United States. Apparently the American markets had wanted only a small quantity of codfish, that of a large size, and the American fleet itself could supply the demand.⁵² The other major species shipped to the United States, herring and salmon, also failed to make gains. Evidently that country's capacity to absorb these fish was limited and the removal of tariffs had made little difference. In effect, the colony's hopes for wholesale penetration of the American market had not been fulfilled.

⁵⁰Report on the Newfoundland and Labrador Fisheries, 1876, in Newfoundland, Journal of the Assembly, 1876, Appendix, pp. 726-72.

⁵¹Newfoundland, Journals of the Assembly, 1875-1877, Customs Returns.

⁵²Newfoundland, Assembly, Proceedings, February 21, 1876, in Public Ledger, March 7, 1876.

The final source of discord in Newfoundland-American relations stemmed from delays in the implementation of treaty articles XXII-XXV. These had provided for a commission to meet at Halifax to determine compensation for any inequities which might exist in the fishery concessions. In Newfoundland the arrival of the American bankers had given the commission a significance which it had not possessed at the time of the treaty's acceptance. Although the delay was due to developments in Anglo-American and Canadian-American relations, the Newfoundland press in particular attributed all responsibility to the United States. For instance, the St. John's North Star termed supposed American inaction as "unpardonable neglect",⁵³ while the Harbour Grace Standard labelled the Americans as "contemptible slaves of chicanery and double-dealing".⁵⁴ The Newfoundlander as well joined in, commenting "it seemed to be almost impossible to procure an enlightened enforcement of treaties with the government of the United States".⁵⁵ The tirade against the Americans reached a new peak in the summer of 1876 when it became apparent that the commission would not meet that year as expected.

All the causes of colonial discontent cumulated in a call for action against the Americans in the one area where they were thought to be vulnerable, the procurement of bait. In 1875 the

⁵³North Star, April 8, 1876.

⁵⁴Harbour Grace Standard, May 27, 1876.

⁵⁵Newfoundlander, April 25, 1876.

St. John's Chamber of Commerce concerned about reports that Americans were seining squids in Conception Bay had brought the matter to the attention of the government.⁵⁶ Similar complaints about the destruction of herring in Fortune Bay were made by such people as Joseph Small, a Burgeo merchant or trader,⁵⁷ and Philip Hubert, a government official.⁵⁸ Hubert provided an interesting comment on the reaction of the Fortune Bay fishermen to the Americans; he wrote:

I am told (I do not know if it is the case or not) that the Americans since the Washington Treaty are allowed to fish or haul bait anywhere on our coasts, at any time they please. If so - if you people were not allowed to haul for them - they would certainly bring seines with them (or borrow ours), and haul for bait themselves, which would take the labor and money from our people.⁵⁹

Apparently the prospect of Americans fishing for bait themselves worried the local fishermen. The Newfoundlanders wished the Americans to continue purchasing their bait. If the colony itself attempted to prohibit the bait traffic, opposition from many of its own fishermen was almost certain.

⁵⁶ Charles Bowring to Colonial Secretary E.D. Shea, July 31, 1875, in E.D. Shea to C. Bowring, August 11, 1875, in Newfoundland, Colonial Secretary's Office, Letter Books of the Colonial Secretary, 1872-1877, p. 383.

⁵⁷ J. Small to J.J. Rogerson, August 27, 1875, printed in Report of the Select Committee on the Preservation of Bait, Journal of the Assembly, 1877, Appendix, pp. 287-88.

⁵⁸ P. Hubert to J.J. Rogerson, September 25, 1875, in Ibid., Appendix, pp. 285-86.

⁵⁹ Ibid.

In addition, there were two other stumbling blocks to any such prohibition. The cost of enforcement over a wide expanse of coast could not be met by the colony's limited revenues. And secondly, the difficulty of legislating within the context of the Washington Treaty, not to mention previous British injunctions about restrictions on the sale of bait, was a major consideration. Yet, the call for remedial action, mounted especially by the press and the St. John's Chamber of Commerce, could not be completely ignored. Newfoundland in one sense was groping towards control over what had become an essential element in Anglo-American fishery relations, namely, access to the island's bait stocks. By extension an assertion of colonial rights in this area meant a step towards definition of Newfoundland's place within the Imperial system.

The colony's groping process was reflected in the minimal legislation recommended to the legislature in 1876 by a select committee. The already existing close time against the use of seines was extended to give further protection to spawning herring. The new close time was to be in effect from October 20th to April 25th instead of April 12th (sec. 1).⁶⁰ In addition, the provision in the original enactment prohibiting the hauling of bait for exportation within one mile of settlements between Cape Chapeau Rouge and Point Enragee between April 20th and October 20th was now changed to read between May 10th and October 20th (sec. II);⁶¹ this

⁶⁰"An Act to amend the Law Relating to the Coast Fisheries", in Statutes of Newfoundland, 1873-79, p. 108. The text of this Act is printed in Appendix F, p. 154.

⁶¹Ibid.

change was made necessary by the expanded restriction involved in the first section. Another major section of the new bill (sec. III)⁶² prohibited the hauling of squids by seine. This was a legislative response to the discontent aroused the previous summer when squids had been seined in Conception Bay for American fishermen. Also aimed directly at the Americans was a prohibition against taking bait on Sundays. Section IV stipulated "No person shall, between the hours of Twelve o'clock on Saturday night and Twelve o'clock on Sunday night haul or take any Herring, Caplin or Squids, with net, seine, bunt, or contrivance, for the purpose of such hauling."⁶³ In the following year, 1877, this section was extended to include a prohibition against jigging on Sunday, an extension made necessary by the Americans taking advantage of the loophole in the original act.⁶⁴

The fisheries legislation of 1876 and 1877 fell far short of a comprehensive restriction of the American presence. Yet Newfoundland's efforts were by no means finished. In 1877 the long delayed Halifax Commission finally met and during the course of its proceedings an important decision on the nature of the bait traffic was rendered. The American counsel in an attempt to whittle down

⁶²Ibid.

⁶³Ibid.

⁶⁴Newfoundland, Legislative Council, Proceedings, April 20, 1877, in Newfoundlander, April 24, 1877.

British claims⁶⁵ had argued that Article XVIII of the Washington Treaty had dealt with fishing only, that if strictly interpreted the treaty made no provision for the purchase of bait and other incidental privileges.⁶⁶ Thus, the Americans contended, this element was outside the terms for which the commission was to award compensation. On September 1 the United States counsel, Dwight Foster, introduced a motion which outlined his country's position; it read

The Counsel and Agent of the United States ask the Honourable Commissioners to rule, declaring that it is not competent for this Commission to award any compensation for commercial intercourse between the two countries, and that the advantages resulting from the practice of purchasing bait, ice, supplies, & c. and from being allowed to transship cargoes in British waters, do not constitute a foundation for award of compensation, and shall be wholly excluded from the consideration of this tribunal.⁶⁷

On September 5th and 6th Foster's motion was fully debated. However, the conclusion was inevitable. A strictly literal interpretation of the Washington Treaty showed that Article XVIII could in no way include

⁶⁵Great Britain, Foreign Office, Record of the Proceedings of the Halifax Fisheries Commission, 1877 (printed for the use of the Foreign Office, May, 1878), p. 79. Newfoundland's total claim amounted to \$2,880,000 of which \$1,440,000 was assessed for "the privilege of procuring bait, refitting, drying, transshipping and procuring supplies" (p. 75). The remaining amount was claimed on the basis of "the entire freedom of the inshore fisheries" and "the advantage of a free market in Newfoundland for fish and fish oil" (p. 75). The Newfoundland claim combined with a Canadian claim of \$12,000,000 to make a grand total of \$14,880,000.

⁶⁶Ibid., p. 89.

⁶⁷Ibid., pp. 169-70.

the so-called "incidental" privileges. On September 6 the commissioners handed down their decision "that it is not within the competence of this tribunal to award compensation for commercial intercourse between the two countries, nor for the purchasing of bait, ice, supplies, & c. & c., nor for the permission to transship cargoes in British waters."⁶⁸

In one stroke the Halifax Commission had apparently ruled out a major portion of the Newfoundland case. Yet the implications of the September 6 decision were not entirely negative. The American purchase of bait had raised vital questions concerning the colony's ability to regulate, in effect, to establish control over the practice within the terms of the Washington Treaty. Now that it had been decided the bait trade was outside the treaty's scope, the Treaty of 1818 became the operative document. And despite the widespread indignation in Newfoundland over the commission's decision,⁶⁹ its significant reversion to an older treaty was not overlooked. Practically all the local papers expected the upcoming legislative session, that of 1878, to take measures to restrict the American procurement of bait. For instance, the North Star commented

⁶⁸Ibid., p. 206.

⁶⁹Virtually every newspaper in St. John's either expressed its opinions editorially or reprinted the editorials of other papers. The general tenor of the editorials was condemnatory, as for example, the Newfoundlander (September 21, 1877) which termed it "a monstrous contention". The Harbour Grace Standard (September 22) concluded that the colony had been "fairly outwitted or cheated". The opposition paper Courier (September 22) lamented "our apprehensions were well founded" while the Morning Chronicle (September 27) felt that "it was but natural that the people of Newfoundland should be very much chagrined".

"... We have no doubt that in the next session of our legislature such measures will be adopted as will at least prevent, for the remaining part of the treaty's operation, such offensive and annoying proceedings as we have hitherto submitted to on the part of American fishing craft in our bays and harbours."⁷⁰

The North Star editorial was typical of press comment on the American presence during the fall of 1877.

Yet despite the press campaign for restrictive measures, the old problems of cost and the probable opposition of many Newfoundland fishermen still remained. Moreover, Imperial sanction would have to be obtained for any prohibitory legislation and the Imperial government was traditionally cautious where foreign fishing rights were involved. Some indication of the Imperial attitude was obtained in the winter of 1877-1878 after a report by Captain J. Erskine on the harmful effects of in-barring herring⁷¹ had impelled the colonial government to make representations to London. Erskine's report had become the occasion for an elaborate minute by the Executive Council on the general problem of prohibiting the sale of bait.⁷² The minute observed that the problem had been aggravated during "the last two years" because of the widespread baiting of American bankers around the island's coasts; it contended

⁷⁰North Star, September 22, 1877.

⁷¹J. Erskine to Admiralty, July 23, 1877, Journal of the Assembly, 1878, pp. 290-92.

⁷²Newfoundland, Executive Council, Minute Book, 1874-1883, entry for November 24, 1877, p. 149.

By the recent decision of the Halifax Commission this privilege is disallowed to the Americans under the Washington Treaty, and one shall in future be obliged to require compliance with the terms of the Treaty of 1818. While thus dealing rigidly with the Americans the Executive believe the legislature will insist on the adoption of a similar course regarding the supply of bait to the French unless they should meanwhile propose some fair equivalent.⁷³

The executive Council, by asserting itself against the Americans, evidently hoped to prepare the groundwork for a general definition of the colonial position within Imperial treaty relations.

In Great Britain Colonial Office officials balked at the idea of restrictions on the sale of bait.⁷⁴ They were especially concerned over the suggestion that the traffic with the French might be curtailed. The Colonial Office answer to the minute of council bluntly stated that the Imperial government would not be able to allow any act passed for this purpose. Referring to the Halifax Commission's September 6 decision Colonial Minister Lord Carnarvon commented "Whether it would be wise or expedient, as a consequence of this decision, to exercise the legal powers of the colony against the American fishermen so as to deprive them of the use of British ports except for the purpose of procuring shelter and necessities is a grave question...."⁷⁵ Carnarvon suggested that Newfoundland should not act until it had consulted with Canada nor should it adopt a course contrary to any adopted by the Dominion.

⁷³Ibid.

⁷⁴Colonial Office minutes on Governor Sir J. Glover to Colonial Minister Lord Carnarvon, October 31, 1877, in C.O. 194/193, pp. 529-30.

⁷⁵Carnarvon to Glover, January 8, 1878, in C.O. 194/193, p. 544.

In the meantime the Halifax Commission sitting throughout the fall of 1877 provided some additional clarification of American fishing rights in Newfoundland waters. The American counsel continued to depreciate these rights in his effort to minimize compensation. For instance, Foster argued that the Fortune Bay herring fishery, even if the Americans were to engage in it themselves, was by its very nature outside the treaty's terms; he elaborated

... this herring trade is substantially a seining from the shore - a strand fishing, as it is called - and we have no right anywhere conferred by this treaty to go ashore and seine herring, anymore than we have to establish fish traps. We have not acquired any right under the treaty to go ashore for any purpose, anywhere on the British territories, except to dry nets and cure fish.⁷⁶

Foster's narrow delimitation of American rights later returned to haunt his country in subsequent fishery negotiations. In these negotiations Newfoundland frequently used the American admissions to vindicate the colonial position.

The American arguments at Halifax did not go unchallenged. The Newfoundland counsel, Solicitor-General William Whiteway, in his closing speech concentrated on Article XVIII which provided American citizens with the right "to take" fish.⁷⁷ He pointed out that the bulk of the bait procured was taken by joint

⁷⁶Great Britain, Halifax Commission Proceedings, pp. 215-16.

⁷⁷Ibid., p. 305.

crews of Americans and Newfoundlanders; he contended "the arrangement under which the Americans obtain the bait, which they allege that they buy, is to all intent and purposes, and in law, a taking or fishing for it themselves, within the words of the treaty".⁷⁸ To bolster his argument Whiteway introduced new evidence, for example, an affidavit from Stephen Power of Placentia who testified that he had provided a seine and the Americans a crew for catching bait in Placentia Bay.⁷⁹ In this respect Whiteway's stress on the words "to take" and his labelling of the American bait procurement as "taking" did have some justification. Moreover, his arguments had additional force since the British concluding statements were presented last; the Americans had no opportunity for a rebuttal, a procedural arrangement to which the United States counsel had unsuccessfully objected.⁸⁰ Whiteway's word was in fact the last in the Newfoundland case.

It is difficult to assess the effects of Whiteway's argument but it is noteworthy that on November 23, 1877, the Halifax Commission made an award of \$5,500,000 to British North America, of which \$1,000,000 was to go to Newfoundland.⁸¹ This came as a pleasant surprise since the colony had expected little after the

⁷⁸Ibid.

⁷⁹Great Britain, Halifax Commission, British Evidence, testimony of Stephen Power, Appendix O, p. 24.

⁸⁰D. Foster to Secretary of State William Evarts, December 13, 1877, in Morning Chronicle, August 17, 1878.

⁸¹D.W. Prowse, A History of Newfoundland (London: Macmillan and Company, 1895), p. 503.

September 6 decision. The United States press had spoken in terms of a few hundred thousand dollars for the entire award and Newfoundland had apparently reconciled itself to receiving a minimal amount. The award was a majority decision, the American commissioner E. Kellogg dissenting. Exactly on what basis it was made is unknown since no justification for their decision was ever documented by the commissioners. Whatever the case the Halifax Award had provided the colony with its first really tangible benefit under the Washington Treaty.

In effect, the Halifax Commission had served Newfoundland well. Apart from narrowly defining American rights it had now left the colony with a substantial sum as compensation. The latter did not obscure the need to cope with the American presence in its waters. The rising demand for an assertion of colonial control over bait supplies was certain to find vent in the approaching legislative session of 1878. However, before the colony could effectively employ the argument that the bait trade was outside the Washington Treaty's terms, a sudden turn of events compelled an entrenchment on existing colonial legislation. This drastic turn, symbolized by the Fortune Bay "outrage" was to provide a new departure in Anglo-American fishery relations.

CHAPTER II

THE FORTUNE BAY DISPUTE

In January of 1878, a few weeks after the close of the Halifax Commission, a confrontation between Newfoundland and American fishermen occurred during the Fortune Bay winter herring fishery. This so-called Fortune Bay Dispute meshed with a developing controversy over the Halifax Award¹ to become the chief issue in Newfoundland/Great Britain/United States relations. It also markedly affected the course of demands cumulating within Newfoundland for restrictions to be placed on American fishermen. The incident itself was not so much an isolated affair as the major episode in a series, all with the same basic origin. The underlying cause of friction was the colonial fishermen's insistence that the Americans should continue to purchase their bait rather than catch it as was their treaty right.² Being of greater proportions than the others, the

¹The Halifax Award had been the cause of much surprise and at times indignation in the United States. In a survey of American press opinion the Halifax Chronicle (in Morning Chronicle, December 8, 1877) found it to be "exceedingly unanimous in expressing undisguised surprise". Some papers such as the Boston Advertiser had called for an examination of the process by which the judgement was reached before the award was paid. Similar expressions of surprise came from American officials. The American counsel, D. Foster, expressed the opinion that no award at all should have been made (D. Foster to Secretary of State William Evarts, December 13, 1877, in Morning Chronicle, August 17, 1878). Also, Secretary of State Evarts was reported to have been "greatly chagrined" at the size of the award (Chester L. Barrows, William M. Evarts, Lawyer, Diplomat, Statesman (Chapel Hill, North Carolina: University of North Carolina Press, 1941), pp. 396-97.).

²Such insistence on the part of colonial fishermen had already led to trouble in several instances reported to the Newfoundland press. See Public Ledger, August 4, 1876, and Terra Nova Advocate, July 11, 1876.

incident at Fortune Bay became the centre of a long and often embittered diplomatic wrangle. When it was finally resolved some five years later a new landmark for Newfoundland's position within the Imperial system had been established.

The Fortune Bay incident although part of a general pattern had variations peculiarly its own. The south coast bay, unlike other bays, experienced the Americans in both summer and winter, their fleet resorting to the area for herring in the latter season. The Americans in the wintertime sought herring not for bait alone as during the fishery season but to make up a full cargo for return to the United States. There as under the Reciprocity Treaty the herring was sold as a food article and as bait for New England vessels sailing to the George's Bank. Yet, whatever the use of the herring, the same factors operative in previous years were evident. The issue of American competence to take their own bait was a key one; so too was the continuing conflict between treaty rights and civic jurisdiction. If anything, the larger demand for herring at this time intensified the problems involved and brought the whole complex of issues associated with the American presence to a head.

Throughout the eighteen seventies the American winter herring fishery in Fortune Bay lost much of its earlier vigor as is evident from the following:³

³United States Fishery Commission, The Fisheries of the United States, Section V, p. 458.

<u>Year</u>	<u>Number of Cargoes From Newfoundland</u>	<u>Number of Cargoes From the Maritimes</u>
1866-67	44	1
1867-68	29	8
1868-69	32	12
1869-70	24	20
1870-71	23	36
1871-72	18	26
1872-73	18	44
1873-74	15	34
1874-75	23	33
1875-76	20	52
1876-77	28	57

The fishery had been hindered by short cargoes, as for instance, in 1876 when many schooners had to return home in ballast.⁴ The following season, the winter of 1876-77, the Americans for the first time decided to improve their efforts by bringing their own more efficient equipment. They were determined to break out of a purely commercial arrangement by availing of their rights under the Washington Treaty. Four large seines of the type used in the Gulf mackerel fishery were introduced at Long Harbour, Fortune Bay.⁵ Predictably the seines caused considerable resentment among local fishermen who saw them not only as a threat to a profitable endeavour but also as a means by which the Americans might engage in supplying bait to the French.⁶

⁴Reports in the Morning Chronicle, March 11, 25, 28, 1876. Also in the North Star, January 8, 1876, and Public Ledger, March 23, 1876.

⁵Extract from the Journal of Fisheries Inspector Henry Camp, 1877, enclosure 2 in Glover to Carnarvon, May 30, 1877, in C.O. 194/193, p. 320.

⁶Morning Chronicle, February 10, 1877; also Great Britain, Halifax Commission, United States, Appendix M, p. 226.

The next winter, that of 1877-78, the Americans arrived with additional large seines, at least six in all;⁷ they were quite likely fortified by the knowledge of their government having to pay a large compensation for access to the colonial fisheries. This, together with dissatisfaction over existing procedures of bait procurement, made it inevitable that the Americans should attempt to catch their own herring. It was equally inevitable that the Newfoundland fishermen would react. In view of the many partisan accounts subsequently provided it is difficult to definitely establish all the details of what happened; however, a basic outline is possible. The six vessels equipped with the seines were part of an American fishing fleet of approximately two dozen vessels which proceeded to Fortune Bay in search of herring.⁸ The seines were 200 fathoms long and 30 fathoms deep, much larger than the Newfoundland seines which were 120 fathoms long and 12-13 feet deep.⁹ By American estimates they were capable of hauling from two to five thousand barrels of herring at a time.¹⁰ Apart from those with the

⁷Report by Judge T.R. Bennett on the Fortune Bay affair, May 4, 1881, in Premier W. Whiteway to Kimberley, May 20, 1881, in Great Britain, Correspondence Relating to the Settlement of Claims arising out of the Transactions at Fortune Bay and Elsewhere, London, 1883, p. 6.

⁸United States Fishery Commission, The Fisheries of the United States, Section V; p. 446.

⁹Deposition of Alfred Noel, February 8, 1878, enclosure in Glover to Carnarvon, February 11, 1878, in Great Britain, Correspondence Respecting Occurrences at Fortune Bay, Newfoundland in January, London, 1878, p. 3.

¹⁰Extract from New York Herald, Deposition of David Malanson, in Ibid., p. 8.

seines, other American vessels came without fishing equipment, intending to procure their herring by barter or with cash.¹¹ The ones equipped to fish went mainly to Long Harbour, a deep arm suitable for using seines and well-known for its large yield. But even here, during this particular winter, the herring were exceptionally scarce and the American vessels arriving in December found few to either catch or purchase.¹²

On Sunday, January 6, 1878, herring in abundance came into Long Harbour and the American vessels there at the time - one estimate places the number at twelve¹³ - set about procuring cargoes. Immediately those equipped with seines put them in the water. Two of the six seines were carried by the large vessels Ontario and New England which were owned by the prominent Gloucester firm of John Pew and Sons; these were joined together to form one large one of about 2400 feet in length and 150 feet in depth.¹⁴ However, the Americans were not alone for anchored in Long Harbour

¹¹Judge T.R. Bennett's Report, Correspondence Relating to the Settlement of Claims, p. 7.

¹²Statement of John, Charles H., and John J. Pew to William M. Evarts, in Report of the Committee on Foreign Affairs of the United States House of Representatives in June, 1880, Report No. 1275, Relating to the Fisheries, enclosure 4 in No. 29, Thornton to Foreign Minister Lord Granville, June 14, 1880, in Great Britain, Further Correspondence Respecting the Occurrences at Fortune Bay, Newfoundland and Other Places, London, 1881, p. 42.

¹³Deposition of John Rumsey, enclosure in Glover to Colonial Minister Sir Michael Hicks-Beach, February 25, 1878, in R.G.W. Herbert to Lord Tenterden, March 28, 1878, Correspondence Respecting Occurrences at Fortune Bay, 1878, p. 10.

¹⁴Statement of the Pews, Further Correspondence, p. 42.

at the same time were approximately eighty other vessels, most of them from the Fortune Bay area with several from St. John's.¹⁵ Some two hundred Newfoundlanders gathered on the beach and remonstrated against the American use of seines on Sunday.¹⁶ The crowd apparently became angry, took up two of the seines and forced the Americans themselves to take up two others. One of the American captains, Job Jacobs, brandished a revolver at the crowd which caused it to turn in anger on the double seine employed by the two Pew schooners.¹⁷ The large seine was destroyed and an estimated 2000 barrels of herring which had been enclosed were released.¹⁸ Some sixty men participated in this act while, according to the Pews, the remainder stood on the beach and shouted encouragement. In the evening the parties responsible for the destruction were reported by the masters of the Ontario and the New England to have

made a jubilant demonstration, blowing horns, firing guns, and shouting as if celebrating a victory, to impress upon the masters and crews of the American vessels in said harbour that they were prepared to stand by and justify what had been done, and that the Americans might expect to be treated in future in the same manner should they attempt to catch herring in Newfoundland waters.¹⁹

¹⁵Deposition of Noel, Correspondence Respecting Occurrences, p. 2.

¹⁶Ibid., and statement of the Pews, Further Correspondence, p. 42.

¹⁷The gun wielding Captain Jacobs was actually a former Newfoundlander. See Judge T.R. Bennett's Report, Correspondence Relating to the Settlement of Claims, p. 6.

¹⁸Statement of the Pews, Further Correspondence, p. 42.

¹⁹Ibid.

To this 'demonstration' the Americans were said to have acted in a retaliatory manner, drifting their vessels around the harbour and dragging anchors through the Newfoundlanders' nets.²⁰ Many of the American vessels, particularly those two which had had their seines destroyed, returned at once to New England.²¹ Although others remained, little cargo was procured for the herring did not strike in again in large numbers;²² apparently there were no further attempts by the Americans to use their large seines.

The ostensible reason for the Fortune Bay confrontation was the American attempt to fish on Sunday. However, in view of the anxiety noticeable in previous years over the American use of large seines, the Sunday fishing cannot be assigned the major responsibility. James Tharnell of Anderson's Cove, a community in Long Harbour, put the matter in perspective when he later testified "We all consider it to be the greatest loss to us for the Americans to bring these large seines to catch herring."²³ He added "The seines will hold 2000 or 3000 barrels of herring ... and then when they [the Americans] have secured a sufficient quantity of their own they refuse to buy of the natives."²⁴ In effect the Newfoundland fishermen had resented the threatened disruption of a profitable commercial arrangement.

²⁰Deposition of John Saunders, enclosure 4 in Secretary to Admiralty to Lord Tenterden, July 11, 1878, in Correspondence Respecting Occurrences, p. 18.

²¹At least eight vessels returned; see depositions in New York Herald and in Evarts to Thornton, March 2, 1878, enclosure 1 in Thornton to Foreign Minister Earl of Derby, March 4, 1878, in Ibid., p. 4.

²²Deposition of George T. Snelgrove, enclosure 9 in Secretary to Admiralty to Lord Ternterden, July 11, 1878, in Ibid., p. 4.

²³Deposition to James Tharnell, enclosure 8 in Ibid., p. 21.

²⁴Ibid.

Reaction to the Fortune Bay incident was varied. In the United States the news of its occurrence was reported amidst continuing dissatisfaction over the Halifax Award. The Cape Ann Advertiser, the press voice of the Gloucester fishermen, immediately termed it an "outrage".²⁵ Basing its story on the report of eye-witness Peter Smith, a Gloucester captain whose vessel had been involved, the Advertiser attributed the outbreak to "the Newfoundlanders' fear of being supplanted by improved American apparatus".²⁶ Those who supported repudiation of the Halifax Award were quick to realize the incident's potential. The New York Herald, long an inveterate Anglophobe, gave prominence to several editorials on the "outrage" during the month of February. Typical was its contention "that the ill-disposed and belligerent natives of these parts set upon and maltreated the said Yankees ... and drove them from the fishing ground."²⁷ The Herald dismissed the argument that the Americans in fishing on Sunday had violated a Newfoundland law; it contended "no local law could limit the privileges conferred on American fishermen."²⁸ Brought to the fore was the issue of treaty rights versus local legislation, one transforming the Fortune Bay affair into something more than a mere squabble.

²⁵ Cape Ann Advertiser (Gloucester, Massachusetts), in Morning Chronicle, February 26, 1878.

²⁶ Ibid.

²⁷ New York Herald, February 10, 1878, in Morning Chronicle, March 3, 1878.

²⁸ Ibid.

Less quick to see the fundamental issue involved was Great Britain. Nor did it see the possible implications of a fisheries dispute coming when the Americans were already upset over the Halifax Award. The Times telegraph had first carried the story and shortly afterwards the Colonial Office received a communication from Newfoundland Governor Sir John Glover enclosing a report on the incident by F.B.T. Carter, the colony's Premier and Attorney-General.²⁹ Carter contended that Article XVIII of the Washington Treaty limited the Americans to fish "in common with" British subjects, that they had been guilty of three illegal acts when they used seines during a close time, in-barred herring, and fished on a Sunday.³⁰ The Colonial Office saw nothing wrong in the contention that Americans were amenable to local laws. Undersecretary R.G.W. Herbert commented "There does not appear to be much here for the Americans to complain of."³¹ This indifferent attitude on the part of an Imperial official was indicative of a general lack of concern with Newfoundland/United States relations. It was not until Governor Glover made a further report suggesting an investigation by a ship-of-war, that the British responded; arrangements were then made for an inquiry.³²

The Governor's initiative had been motivated by a more sensitive attitude on the part of the colony. The Fortune Bay incident,

²⁹Glover to Carnarvon, February 11, 1878, in C.O. 194/195, p. 31.

³⁰Report of Attorney-General F.B.T. Carter, February 8, 1878, in Ibid., p. 38.

³¹Colonial Office minutes on Ibid., p. 30.

³²Glover to Hicks-Beach, February 25, 1878, in C.O. 194/195, pp. 42-44.

the Halifax Award and the overall operation of the Washington Treaty were integral aspects of Newfoundland/United States relations which were highly publicized. The focus of these relations had shifted onto a diplomatic scale with the colony largely relegated to the role of spectator. Such circumstances, combined with increasing colonial concern over the bait traffic, made it necessary for Newfoundland to exercise caution in maintaining the rights it already possessed. The Fortune Bay Dispute appeared certain to call into question the existing limited regulations respecting the bait fisheries. If so, the extent to which local regulations were or were not subservient to treaty rights would undergo a practical test.

The colony's intention to protect its fisheries was evident in the strong attitude adopted by the local press on receiving news of the dispute. The Morning Chronicle railed against the "God-defying and foul mouthed American fishermen" and praised the moral principles of the Fortune Bay people.³³ The Newfoundlander argued "... treaty privileges cover no infraction of local laws"³⁴ while the Terra Nova Advocate viewed the local fishermen as "a sort of court".³⁵ The Chronicle summed up the general reaction "... we hope the "Gloucester Boys" will understand that they will not be permitted to violate our laws."³⁶ However, evident beneath the resentment was an undercurrent of uneasiness; the Advocate gave it

³³Morning Chronicle, February 8, 1878.

³⁴Newfoundlander, February 26, 1878.

³⁵Terra Nova Advocate, February 6, 1878.

³⁶Morning Chronicle, February 28, 1878.

voice when it hoped that the dispute would not "afford a pretext for delaying the settlement of that little account under the award."³⁷ Such press sensitivity was understandable in view of the one million dollars at stake.

Colonial anxiety over the Halifax Award was sustained by continuing reports from the United States. George B. Loring, a Massachusetts representative, carried the Fortune Bay matter to Secretary of State William Evarts³⁸ who in turn asked Great Britain for an investigation and the implementation of measures to prevent similar incidents. The Secretary deplored such outbreaks as possibly having "a tendency to complicate the good relations which so happily subsist between the Government of the United States and that of Her Britannic Majesty."³⁹ The American approach, much stronger than expected, made the British more aware of the possibility for further discord. By this time the whole affair had come within the jurisdiction of the Foreign Office which made its decisions after consultation with the Colonial Office. Through the latter Newfoundland kept its link with the progress of Anglo-American negotiations.

When the American representation was received in London, Colonial Office officials recalled the American objections to the proviso in Newfoundland's Washington Treaty Act of 1873. Clerk E.B. Pennell now termed the Fortune Bay matter as one "likely

³⁷Terra Nova Advocate, February 27, 1878.

³⁸Thornton to Derby, March 11, 1878, in C.O. 194/196, p. 281.

³⁹J. Welsh to Derby, March 19, 1878, in Correspondence Respecting Occurrences, p. 9.

to give rise to some trouble...."⁴⁰ However, it was realized that the Americans had not as yet formally questioned the applicability of local laws to their fishermen. The British reply was thus limited to an expression of regret at the violence employed and the information that an inquiry would be undertaken.⁴¹ As the latter could not be completed until spring it meant an effective shelving of the matter for several months.

While the British might seek to procrastinate, circumstances in the United States were not conducive to such an approach. The Fortune Bay incident had been directly linked to the Halifax Award controversy. On March 11 Loring presented a petition to the Executive on behalf of the citizens of Gloucester expressing their disapproval of the award as 'exorbitant' and 'unwarranted'.⁴² The petition drew the President's attention to the "recent outrages", exhorting "We trust the government will be disposed to take such prompt and efficient action as will prevent the recurrence of such flagrant violation of the rights of our fishermen and demand a suitable and adequate indemnification for the damages sustained."⁴³ Surprisingly, the petition did not advocate repudiation but only expressed a wish to put Gloucester's views on record, possibly with an eye to future fishery settlements.

⁴⁰Minute of E.B. Pennell on Thornton to Derby, March 11, 1878, in C.O. 194/196, p. 268.

⁴¹H. Malcolm to Lord Tenterden, April 26, 1878, in C.O. 194/196, p. 268.

⁴²Printed in the New York Herald, March 11, 1878, in Morning Chronicle, April 2, 1878.

⁴³Ibid.

The Gloucestermen's willingness to tolerate payment was not shared by the New York Herald or the award's most ardent senatorial opponent, James Blaine of Maine. The Herald suggested that trickery had occurred in the selection of E. Delfosse as the Halifax Commission's third member.⁴⁴ It also quoted ex-Secretary of State Hamilton Fish as saying that the United States could not be forced to pay the award. However, the Herald and Blaine were very much in a minority. Other New York papers such as the World, Journal of Commerce, and the Witness all supported payment as did such people as Senators Hannibal Hamlin of Maine and C. Dawes of Massachusetts.⁴⁵ When correspondence was produced before the Senate showing Fish had agreed to Delfosse's selection the call for repudiation was effectively squashed.⁴⁶ The Herald even predicted that a Presidential message would shortly be sent to Congress recommending payment.⁴⁷ In Newfoundland where the press had closely followed the course of events, the reaction was one of relief. The Newfoundlander in an unusually charitable editorial summed up the Americans as "wonderful chaps".⁴⁸ At this juncture the Fortune Bay Dispute did not appear to seriously threaten the payment of the award.

⁴⁴New York Herald, March 7, 1878, in Morning Chronicle, April 2, 1878.

⁴⁵Proceedings of Congress, March 11, 1878, in Morning Chronicle, April 6, 1878; also Halifax Chronicle, March 18, 1878, in Morning Chronicle, March 26, 1878.

⁴⁶Newfoundlander, April 9, 1878.

⁴⁷Ibid.

⁴⁸Ibid.

The Fortune Bay and Halifax Award controversies occurred amidst a continuing outcry against American exploitation of colonial bait resources. The debate on this issue had been kept alive by the Halifax Commission's September 6 decision and intensified by the new developments in 1878. When the Newfoundland legislature met in February its chief topic was the Washington Treaty. Yet the debate offered no evidence of any real consensus. The opinion of opposition members ranged from outright conviction that the Americans were doing great harm to the equally strong belief that their activities involved no real disadvantage.⁴⁹ On the government side the most ardent opponent of the bait traffic was the member for Harbour Grace, Ambrose Shea, who in a series of denunciatory speeches on "the all-absorbing question of the Washington Treaty" called for restrictive legislation.⁵⁰ Shea even expressed a willingness to do without the Halifax Award if it meant the colony's fishermen were to be "debased, degraded and pauperized".⁵¹ His sentiments were strongly supported by the Morning Chronicle and the Newfoundlander, both of which kept up a cry for colonial action.

It was realized early in the debate that an assertion of colonial rights against the Americans meant in effect against Imperial foreign policy. As the Courier noted "The Imperial Government will not allow itself to be involved in a quarrel with America

⁴⁹ Newfoundland, Proceedings of the Assembly, in Public Ledger, 1878.

⁵⁰ Ibid., February 12, 1878.

⁵¹ Ibid., February 19, 1878.

any more than with France on account of either Newfoundland or Newfoundlanders."⁵² One individual who did not subscribe to a silent submission to Imperial wishes was Shea; he contended that if the colony undertook specific restrictive measures against the Americans

The Government must expect to meet the frowns of the authorities at home, but it should be remembered that under the charter by which Newfoundland holds a Responsible Government, it is admitted fact that in such matters as the present, affecting our local interests, the local parliament is in the best position to judge what is best for the welfare of the colony. It was not to be supposed for a moment that the Home Government would disallow our legislation in this matter, but, supposing they did, this legislature would still have the credit of doing all in its power to protect the local interests.⁵³

Shea discounted the latter possibility on the grounds that any reversal of colonial policy would be a violation of Responsible Government. The Harbour Grace member had recognized the broader implications of gaining control over the bait fisheries; he viewed it as an effort to establish the colonial position in the shadowy area where domestic and foreign affairs intermingled.

Throughout the discussion the Government members other than Shea were comparatively quiet, possibly because of an awareness of the realities of power. The cool reaction of Imperial officials to the colony's 1877 proposals for restriction of the bait traffic must have had a discouraging effect on the Garter government. Moreover,

⁵²Courier, February 16, 1878.

⁵³Newfoundland, Proceedings of the Assembly, in Public Ledger, February 19, 1878.

the occurrences at Fortune Bay had been a violent demonstration of what might be expected from many Newfoundland fishermen if any such restriction were implemented. Premier Carter did admit the general premise of American amenability to local legislation when he stated "Any act now to be made regulating the prosecution of our fisheries in any particular manner, would be equally binding upon the Americans as upon ourselves."⁵⁴ In his opinion, the legislature's objective was "to ascertain whether they have left any power in reserve to modify and place ourselves in a better position."⁵⁵ Evidently the Carter government intended to avoid any rash action, opting instead for a cautious approach.

A similar attitude was noticeable throughout the Legislative Council debates. Yet, it was taken for granted that existing legislation should be sustained; in an allusion to the Fortune Bay affair P. Tessier asserted "experience teaches us that we must always be on the alert to prevent the infringement by the subjects of the United States in our waters of the terms of the Washington Treaty as well as our local enactments for protection and regulation of our industries."⁵⁶ On the other hand, a desire to avoid impractical measures was apparent. Financial Secretary W.J. Donnelly while acknowledging "a great outcry" against the treaty "doubted that Great Britain would lend herself to any pro-

⁵⁴Ibid., in Public Ledger, February 19, 1878.

⁵⁵Ibid.

⁵⁶Newfoundland, Proceedings of the Legislative Council, in Public Ledger, February 15, 1878.

ceedings that might have the shadow of an appearance of an infraction of the bargain that we have made under her approval."⁵⁷ Yet, as in the assembly, the advocates of caution had an able opponent. Robert Thorburn of W. Grieve and Company lamented "... the very fact of our fishermen leaving off their legitimate occupation of catching cod during a great portion of the fishing season must tend to lessen the total product of every settlement where it is followed."⁵⁸ In calling for restrictive legislation he claimed the support of "a large and influential portion of the business people".⁵⁹

The prevailing air of uncertainty evident in both houses led not to restrictive measures but to a referral of the whole matter to a select committee. This committee was to consist of A. Shea, J. Rorke, C. Ayre, L. Tessier, R. Kent, R. Alexander, M. Dwyer, T. Watson and P. Nowlan.⁶⁰ At least five of these people had definite mercantile connections which would certainly affect their stand on the bait traffic. Although the committee's deliberations were not publicized, public interest in the possible control of the bait traffic did not abate. The press continued its editorials on the subject and petitions from virtually every major area affected

⁵⁷ Newfoundland, Proceedings of the Legislative Council, in Public Ledger, March 16, 1878.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Newfoundland, Proceedings of the Assembly, in Public Ledger, March 7, 1878.

by the Americans poured into the assembly.⁶¹ The latter headed by one from John Munn and Company of Harbour Grace were mainly from merchants and planters; they were unanimous in calling for a check on the sale of bait and ice to American fishermen. An additional mercantile slant was given to the committee's investigation when Robert Thorburn, on Shea's motion, was summoned to provide evidence.⁶² In view of expressed merchant opposition to the bait traffic it appeared certain that the committee would adopt a strong stand.

Yet there was no indication that such a stand would receive much sympathy from the Government front bench. William Whiteway, who had replaced the retiring Carter as Premier, had remained silent during the discussions on the Washington Treaty; only in the Committee on Ways and Means did he respond to opposition promptings in an elaborate four hour speech.⁶³ Even then his comments were mainly directed at the circumstances surrounding the treaty's acceptance. Nowhere in his speech were there any denunciatory remarks or anti-American expressions.⁶⁴ Whiteway was well aware of the delicate

⁶¹Newfoundland, Journal of the Assembly, 1878, Index, pp. XXIII-XXIX.

⁶²Newfoundland, Proceedings of the Assembly, in Public Ledger, April 4, 1878.

⁶³Ibid., in Public Ledger, April 4, 1878.

⁶⁴Indeed, Whiteway was charged in 1878 by Governor Glover with having retained a political bias "for running Newfoundland into union with the United States". Whiteway's position, according to Glover, made him a "most dangerous person" (Glover to Hicks-Beach, May 30, 1878, in C.O. 194/195, p. 171). In view of Glover's extreme and well-known patriotism his opinions were not taken too seriously by Colonial Office officials. R.G.W. Herbert did provide an interesting indication of Colonial Office attitudes; he wrote "There is a good deal of Irish disaffection in Newfoundland, but it does not cause much practical harm; though it shows occasionally in rather a strong light the folly of our predecessors in granting Responsible Government to the little island". (Minute of Herbert on Glover to Hicks-Beach, C.O. 194/195, p. 166).

problems involved in taking restrictive action against the Americans, an awareness also shared by the Assembly when it considered the report of the select committee behind closed doors.⁶⁵ The twenty-page report had been definitive in asserting that unless the sale of bait to the Americans was checked, "immense injury" would result to the Newfoundland fisheries.⁶⁶ Its conclusion had read "the sale of bait within three miles of the coast should be prohibited - this prohibition not to affect any ways [sic] by which our fishermen obtain their bait".⁶⁷ The time suggested for this restriction was from April 25th to October 21st, practically all the baiting season.⁶⁸ In one sense the committee's recommendations represented one more step in the colony's groping towards control of the one commodity which would enable it to determine its position in Imperial treaty relations. How far these recommendations could be effectively translated into practical terms was another matter.

Predictably the first opposition came from the Whiteway government. The latter fully realized the problems involved in implementation: Imperial disapproval, prohibitive cost, and the

⁶⁵Letter to the Editor, the Terra Nova Advocate, May 11, 1878.

⁶⁶Minute of E.B. Pennell on Glover to Hicks-Beach, June 26, 1878, in C.O. 194/195, p. 324. The report was not available to the author. See also E.D. Shea to H.M. Jackson, June 12, 1878, in Newfoundland, Colonial Secretary's Office, Letter Books of the Colonial Secretary, 1877-1882, p. 116.

⁶⁷Minute of R.G.W. Herbert on Glover to Hicks-Beach, June 26, 1878, in C.O. 194/195, p. 328.

⁶⁸Ibid.

likely hostility of many Newfoundland fishermen. Thus it balked at putting the committee's suggestion into concrete legislation. In one respect this suggestion, the forerunner of the Bait Acts of the 1880's was ahead of its time; its implementation would have been too great a leap forward. The government decided to settle for a less comprehensive course, one directed more specifically at the Americans. It could hardly ignore the widespread call for control over the bait fisheries of which the select committee's report was but one manifestation. The action it opted for was an address to the Imperial Government, accompanied by the committee's report, expressing the opinion that the bait traffic should be prohibited and urging that a strict construction of the Treaty of 1818 be adopted.⁶⁹ This would exclude American fishermen from within the three mile limit except for purely fishing operations as allowed under the Washington Treaty and for the four purposes under the Treaty of 1818 of obtaining wood and water, shelter and repairing damages.

The colonial government's proposal was essentially the same as that discouraged in the fall of 1877 by the Colonial Office. However, it was now put forward as a retreat from the more extreme position advocated by the select committee and supported by the latter's evidence. Colonial Secretary E.D. Shea pointed out to the Governor "... the alternative of the present address was adopted at the suggestion of the Government who thought it the more expedient course of action."⁷⁰ It was especially "expedient" in view of the

⁶⁹E.D. Shea to H.M. Jackson, June 12, 1878, Letter Books, p. 116.

⁷⁰Ibid.

colony's suggestion that Great Britain enforce the Treaty of 1818 and thus relieve it of the burden of enforcement which would have been incurred by any purely colonial legislation. The first objective was the limitation of the bait traffic and an enforced reversion to the Treaty of 1818 would ensure its attainment.

In Great Britain the committee's report left the impression that the sale of bait to the Americans was doing a "great deal of harm" to the Newfoundland fisheries.⁷¹ Yet the diplomatic complications involved were not overlooked. Any differential restrictions applying only to the Americans and not to the French or Newfoundlanders were certain to have serious repercussions. Undersecretary Herbert commented "If, as seems certain, the shore fisheries are seriously damaged by the excessive collection of bait for export, it should be simple enough to pass a general law regulating and limiting the bait fishery, which would apply to all persons and nations equally."⁷² Herbert's views were endorsed by Colonial Minister Sir Michael Hicks-Beach. However, no hasty action was taken and in accordance with another of Herbert's suggestions the whole problem was referred to the English Fisheries Commissioners. These officials were asked if they could propose any "genuine regulations" for the bait fisheries.⁷³ The Imperial government had thus procrastinated on two major issues in Newfoundland/American

⁷¹Minute of E.B. Pennell on Glover to Hicks-Beach, June 26, 1878, in C.O. 194/195, p. 326.

⁷²Minute of R.G.W. Herbert on Ibid., p. 328.

⁷³Ibid.

relations, first the Fortune Bay affair and now the problem of prohibiting the bait traffic.

In the meantime, developments in respect to the Fortune Bay affair and the Halifax Award were progressing to the point where they would have a direct bearing on the latest colonial attempt to have the American presence restricted. In June three British warships put into Fortune Bay where the Senior Naval Officer, Captain George Sullivan, had conducted an investigation. The English officer echoing the earlier reports concluded that the Americans had broken three laws in seining during a close time, in-barring and fishing on Sunday.⁷⁴ In addition he contended that the Americans in seining from the shore had violated Article XVIII of the treaty which prevented their fishing in places where they might interfere with British fishermen. The major reason assigned by Sullivan for the outbreak was the American recourse to Sunday fishing.⁷⁵ As for the claim of the American fishermen that they had to leave because of violence, he dismissed it as "entirely without foundation", since many of their vessels had still been in the area several days later.⁷⁶ On the whole, his report was extremely favourable to the Newfoundland fishermen; it also completely sustained the operation of local laws.

⁷⁴Captain G. Sullivan to Vice-admiral E. Inglefield, June 21, 1878, enclosure 2 in Secretary to Admiralty to Lord Tenterden, July 11, 1878, in Great Britain, Correspondence Respecting Occurrences, 1878, p. 17.

⁷⁵Ibid.

⁷⁶Ibid.

Sullivan's report was accepted in London although Colonial Office officials were troubled by a lingering doubt over the American objections to the proviso in the Newfoundland act of 1873.⁷⁷ This insecurity may have influenced Foreign Minister Lord Salisbury's reply to the United States; he contended "that the Report in question appears to demonstrate conclusively that the United States fishermen on this occasion had committed three distinct breaches of the law".⁷⁸ Salisbury's tone together with the lateness of his reply - some six months after the American representation - was not too well received in the United States. At the time Evarts was preparing to undertake further negotiations to clarify the grounds on which the Halifax Award was to be paid.⁷⁹ Under these circumstances it was inevitable that the two matters should become linked.

On September 27th and 28th, Secretary Evarts wrote two elaborate letters for communication to the British government. In the first he outlined his opposition to the size of the Halifax

⁷⁷ Colonial Office minutes on Glover to Hicks-Beach, June 26, 1878, in C.O. 194/195, pp. 283-316. The Colonial Office suggested to the Foreign Office that it would be best to leave the question of local laws to the Americans if they wished to raise it.

⁷⁸ Foreign Minister Lord Salisbury to J. Welsh, August 23, 1878, Correspondence Respecting Occurrences, p. 26.

⁷⁹ The American government had quickly realized the potential of the Halifax Award for future valuations of the colonial fisheries. Evarts in reporting to President Hayes had concluded that "if the grounds for the award were not clarified, a perplexing situation would arise in 1885 when the treaty expired". As a result Hayes recommended to Congress that the money for the award be appropriated but that the Executive be left the discretion to decide on its payment. The president's second step was to authorize Evarts to obtain clarification. See Barrows, Evarts, pp. 395, 397.

Award;⁸⁰ the second dealt with the occurrences in Newfoundland and related these to its payment.⁸¹ The Secretary of State completely dismissed Salisbury's implication that American fishermen were bound to obey colonial or provincial laws. He bluntly stated

This Government conceives that the fishery rights of the United States conceded by the Treaty of Washington, are to be exercised wholly free from the restraints and regulations of the Statutes of Newfoundland, now set up as authority over our fishermen, and from any other regulations of fishing now in force or that hereafter may be enacted by that Government.⁸²

Evarts fully realized that the process of colonial self-assertion was the issue at stake; he contended that "protecting and nursing the domestic interest at the expense of the foreign interest, on the ordinary motives of human conduct, necessarily shape and animate the local legislation."⁸³ An obvious allusion to recent activities in the Newfoundland legislature was contained in his argument that local self-interest was "the guide and motive of such domestic legislation as is now brought to the notice of this Government".⁸⁴ Regretted was that "this vital question" had been raised at a time when the United States sought to clarify the basis on which

⁸⁰Paraphrased in New York Herald, in Public Ledger, December 6, 1878.

⁸¹Evarts to Welsh, September 28, 1878, Correspondence Respecting Occurrences, p. 29.

⁸²Ibid.

⁸³Ibid.

⁸⁴Ibid., Colonial Office undersecretary J. Bramston termed the allusion "insidious". See minutes on Evarts to Welsh, September 28, 1878, in C.O. 194/196, p. 455.

the Halifax Award was to be paid. The Secretary then called on the British government for "a fresh avowal or disavowal of the paramount authority of provincial legislation".⁸⁵

The stand taken by Evarts was solidly supported by the New York press. The New York World found it "particularly gratifying" and predicted "further and perhaps serious complications" in Anglo-American relations.⁸⁶ The New York Times lamented "The award was bad enough; the doctrine promulgated by Lord Salisbury is worse".⁸⁷ Somewhat confused the New York Herald griped "this Canadian fishery business gets worse and worse."⁸⁸ In support of its argument it referred to an incident which allegedly occurred at Broad Cove, Newfoundland, in 1877, when an American fisherman on refusing to buy squids was threatened by a mob. Another paper which was firm in its opinion was the New York Tribune; it declared "We are not going to pay \$5,500,000 for a privilege which a local assembly can at its pleasure render nugatory".⁸⁹ The question of local laws versus treaty rights in being raised immediately before the scheduled payment of the Award was assured of public scrutiny.

⁸⁵Ibid., p. 30.

⁸⁶The New York Herald, October 30, 1878, inclosure 2 in Thornton to Foreign Office, December 31, 1878, in C.O. 194/196, p. 501.

⁸⁷The New York Times, October 30, 1878, inclosure 3 in Ibid., p. 502.

⁸⁸The New York Herald, October 29, 1878, inclosure 5 in Ibid., p. 503.

⁸⁹The New York Tribune, October 30, 1878, inclosure 4 in Ibid., p. 503.

In Newfoundland where the events of the previous winter had been practically forgotten the American press attention to the Fortune Bay Dispute was termed "an extraordinary turn of events".⁹⁰ The whole affair once again became the subject of general discussion. For instance, the Terra Nova Advocate saw the connection between the dispute and the Award as one which "would puzzle a Philadelphia lawyer".⁹¹ The implication of Evarts' contention that American fishermen were "wholly free" from colonial restraints was not overlooked. The Newfoundlander termed it "a rank absurdity" and invoked Article XVIII's "in common with" clause and the Marcy Circular as support for the authority of local legislation.⁹² The colony's safeguards were also recalled by a Toronto Globe correspondent who labelled Evarts' contention as "one of the most preposterous claims ever set up".⁹³ Within such terms were Newfoundlanders prepared to keep a cautious eye on Anglo-American relations.

Evarts by his strong stand had raised a problem which British officials preferred to avoid in view of the removal of the proviso from the 1873 act. Their confidence was further shaken when Sir Edward Thornton reviewed the events of 1873 and detailed the

⁹⁰St. John's correspondence of the Toronto Globe, in Morning Chronicle, December 21, 1878.

⁹¹Terra Nova Advocate, November 20, 1878.

⁹²Newfoundlander, November 19, 1878.

⁹³Toronto Globe correspondence, in Morning Chronicle, December 21, 1878.

American objections.⁹⁴ For a time all the ingredients necessary for a Newfoundland-Great Britain rift over the question of colonial authority were present. R.G.W. Herbert commented that if the British conceded "... Newfoundland will be much dissatisfied, and will probably refuse to renew any fishing arrangement with the United States after the Washington Treaty had terminated."⁹⁵ Such an eventuality was avoided when Colonial Minister Hicks-Beach brushed aside his department's doubts by contending that the United States had yet to prove that colonial laws were not binding on American fishermen.⁹⁶

In replying to Evarts Lord Salisbury continued to re-affirm the colonial viewpoint on the necessity for American obedience of local laws. However, his stance was somewhat less rigid than earlier. He admitted that such obedience was conditional on the local laws not being inconsistent with treaty rights and offered to consider any representation the United States might make in this regard.⁹⁷ In effect, Salisbury had reverted to the old indeterminate relationship between treaty rights and local laws without giving any

⁹⁴ Colonial Office minutes on Evarts to Welsh, September 28, 1878, in C.O. 194/196, pp. 453-54; also on Thornton to Foreign Office, November 1, 1878, in C.O. 194/196, pp. 478-80.

⁹⁵ Minute of R.G.W. Herbert on Thornton to Foreign Office, November 1, 1878, in C.O. 194/196, p. 478.

⁹⁶ Minute of Sir Michael Hicks-Beach on Ibid., p. 478.

⁹⁷ Salisbury to Welsh, November 7, 1878, in Correspondence Respecting Occurrences, p. 30.

indication of where the distinction should be drawn. More definitive was his reply concerning the Halifax Award. Evarts was informed that the British "considered the matter closed except for payment of the money".⁹⁸ Although there was some talk in the United States of refusing to pay,⁹⁹ the money with a protest against its use in any future valuation was handed over to the British much to the delight of Newfoundlanders.

Yet, while the colony rejoiced at the receipt of the Award, it realized that the questions surrounding local legislation were still outstanding. By this time the English Fisheries Commissioners had reported on the Newfoundland government's address respecting the necessity of imposing restrictions on the sale of bait. The commissioners although admitting their lack of extensive knowledge on the specific problem doubted that the activities of man could seriously deplete bait stocks.¹⁰⁰ Their opinion, together with the problems arising from the Fortune Bay Dispute, made it inexpedient for the Imperial government to support further restrictions. Herbert commented

Lord Salisbury had promised Mr. Evarts that he will consider any representation (arising out of the Fortune Bay difficulty) which he may wish to make as to the extent to which Newfoundland legislation had interfered or can interfere, with the provisions of the Treaty of Washington,

⁹⁸Barrows, Evarts, p. 398.

⁹⁹Ibid.

¹⁰⁰Inspector of Salmon Fisheries to Colonial Office, September 30, 1878, in Newfoundland, Journal of the Assembly; 1878, pp. 409-10.

and we shall have to settle with the United States before we express any opinion as to the bait question.¹⁰¹

Herbert's views formed the substance of a letter to Governor Glover by Hicks-Beach, the Colonial Minister deeming it "inopportune" for any such course of action as that proposed by the Newfoundland government.¹⁰² Indeed, both the Imperial and colonial governments had enough problems arising from the Fortune Bay Dispute: the Imperial government, to work out an amicable settlement with the United States without yielding its position; the colonial government, to maintain a guarded eye on developments in Anglo-American relations stemming from the dispute.

Indeed, the proposal for comprehensive restrictions embodied in the Newfoundland government's address had been too large an effort too soon. The combination of adverse factors which had confronted it had been insurmountable. From without the colony's efforts were stymied by the exigencies of Anglo-American relations. From within it was undercut by the voluntary participation of many of its own fishermen in the bait traffic. Moreover, just at the moment when complaints against the American activities reached a climax, conditions within the colony began to show a slight change for the better.¹⁰³ When its address to the Imperial government

¹⁰¹Minute of R. Herbert, November 20, 1878, on Inspector to Colonial Office, in C.O. 194/196, pp. 527-31.

¹⁰²Hicks-Beach to Glover, December 25, 1878, in C.O. 194/196, pp. 527-31.

¹⁰³These changing conditions form the subject of the following chapter.

failed to elicit any real response, Newfoundland was compelled to turn its full attention to maintaining the legislation brought into question by the Fortune Bay Dispute.

CHAPTER III

IMPROVED NEWFOUNDLAND/AMERICAN RELATIONS

In Newfoundland after 1878 the volume of anti-American expressions directed at United States bankers underwent a sharp decline. The occurrence of the Fortune Bay Dispute and ensuing international negotiations had shifted the focus of Newfoundland's involvement with the United States onto a diplomatic plane. This redirection of the colony's interest was facilitated by a series of changing conditions in its fisheries, trade, and general economic outlook. These conditions were to lead to a gradual improvement in Newfoundland/United States relations.

An important milestone was the payment of the Halifax Award. The receipt of the \$1,000,000 had removed a source of friction and in one stroke had added to the colony's economy a sum beyond its yearly revenue.¹ Newfoundland could now afford the luxury of a debate on how to properly spend the money. As Legislative Council member A.W. Harvey pointed out, it had been placed "in a pecuniary position superior to that of any period in its past history".² The opportunities offered were well appreciated

¹In 1877 the colonial revenue had amounted to \$862,258.90; see Newfoundland, Journal of the Assembly, 1878, Appendix, p. 42.

²Newfoundland Legislative Council, Proceedings, February 13, 1879, in Newfoundlander, February 18, 1879.

by the Whiteway government which immediately took \$218,185.98 to liquidate the public debt.³ Of the bulk of the remainder, part was invested in British guaranteed Canadian stock and another portion was placed in the Union Bank in St. John's. The interest from the latter account was to be used in a variety of projects including equal grants to the electoral districts and a scientific inquiry into the fisheries. In view of the Colony's improved financial position, Harvey's opinion that the Washington Treaty had been "a blessing in disguise" had some merit.⁴ Under such conditions the campaign of anti-Americanism so bitterly waged by most of the Newfoundland press from 1875 to 1878 could not be sustained.

Another factor which made the American presence less aggravating was the diversion created by the railway issue.⁵ The Newfoundland public in the late eighteen-seventies had become increasingly involved in a debate on the merits of the trans-island railway system. A key cause of controversy was the arrangement of financing for the project; another was the role being played by the Whiteway government. When construction of a line to Harbour Grace was commenced in 1881, additional capital was injected into

³Newfoundland Legislative Council, Proceedings, April 18, 1879, Debate on the Resolutions on the Fishery Award, April 18, 1879, in Newfoundlander, April 29, 1879.

⁴Ibid.

⁵The construction of the Newfoundland railway is treated thoroughly in Frank Cramm, "The Construction of the Newfoundland Railway, 1875-1898". An unpublished Master's thesis, Memorial University of Newfoundland Library, 1961.

the Newfoundland economy. The new employment opportunities made the colony a little less sensitive to possible threats to its fishery. By the early eighteen-eighties railway matters had become Newfoundland's chief concern making the problems associated with the American presence commonplace by comparison.

Apart from the economic impetus provided by railway construction and the Halifax Award, the Newfoundland fishery itself improved from the short fisheries of the mid-seventies. This improvement was indicated in the colony's exports of cod from 1875 to 1883:⁶

<u>Year</u>	<u>Quantity</u>	<u>Value</u>
1875	888,489 qtls.	\$4,036,829
1876	757,218 qtls.	\$4,028,815
1877	760,446 qtls.	\$3,470,349
1878	694,339 qtls.	\$3,086,251
1879	994,334 qtls.	\$3,490,482
1880	985,134 qtls.	\$3,282,963
1881	1,173,510 qtls.	\$5,125,275
1882	1,027,269 qtls.	\$4,974,233
1883	1,163,934 qtls.	\$4,725,960

Coupled with these improved fishery returns was an increasing concentration of the colony's export business in the hands of the Avalon Peninsula mercantile community. Throughout the decade from 1870 to 1880, seven of the eight largest firms in St. John's had shown increases in their codfish export trade, substantial in the case of W. Grieve, P. & G. Tessier, and E. Duder.⁷ It was from

⁶Customs Returns, Journals of the Assembly, 1876-1884.

⁷Newfoundland correspondence of the Montreal Gazette, in Newfoundlander, June 24, 1881. In the ten year period W. Grieve's exports increased from 115,233 quintals to 170,946 quintals; P. & G. Tessier's from 95,334 to 117,293 quintals; E. Duder's from 38,381 to 69,502 quintals.

these people that a reaction would come if any adverse conditions threatened that fishery; they made their views known through the St. John's Chamber of Commerce, the legislature, and to some extent the press. The Chamber of Commerce, for instance, had complained about the bait traffic in its annual reports of 1876 and 1878.⁸ It is significant that in the years after 1878 its reports contained no further unfavourable references to American fishermen.

Despite the generally improved economic conditions of the early eighteen-eighties the value of the colony's exports to the United States remained at a low level. Nevertheless there was some indication of progress as is evident from the following figures:⁹

Year	Value of Exports to the U.S.	Value of Imports from the U.S.
1875	\$197,269	\$1,598,006
1876	138,368	2,048,772
1877	229,162	1,917,697
1878	176,959	1,946,197
1879	268,018	2,140,345
1880	333,854	2,069,684
1881	316,184	1,931,741
1882	308,722	2,214,733
1883	589,673	2,839,302

The overall figures do not tell the whole story. The slightly increased export trade to the United States contained a larger proportion of codfish than ever before. The amount and value of that staple product shipped to the American market were as follows:¹⁰

⁸ Chamber of Commerce, Annual Reports, Report for 1876 and 1878. The Report for 1876 is partially quoted at supra,

⁹ Customs Returns, Journal of the Assembly, 1876-1884.

¹⁰ Ibid.

<u>Year</u>	<u>Amount of Cod Exported to the United States</u>	<u>Value</u>
1875	9,488 qtls.	\$ 49,337
1876	4,905 qtls.	\$ 29,958
1877	5,961 qtls.	\$ 29,805
1878	13,339 qtls.	\$ 69,622
1879	17,588 qtls.	\$ 70,352
1880	15,021 qtls.	\$ 54,075
1881	23,098 qtls.	\$115,490
1882	23,364 qtls.	\$135,512
1883	43,693 qtls.	\$237,064

Notable was the more than double increase from 1877 to 1878. While still "mere bagatelle" it did represent an encouraging change; moreover, the 1878 price obtained for Newfoundland cod in the United States was \$5.20, higher than any obtained in the colony's other markets.¹¹ The type of fish preferred by the Americans was large in size. An 1879 list of quotations from the Boston firm of Kimball & Bates contained the following item "Codfish continues in good demand, and holders are firm. Large are scarce and wanted, and such as Newfoundland large would command highest prices. We quote Newfoundland large \$6 to \$6.50".¹² The most probable source of much of the large codfish going to the United States was the colony's developing bank fishery. From 1876 onward this new industry had shown steady progress as indicated by the following figures:¹³

¹¹Customs Returns, Journal of the Assembly, 1879, pp. 264-76.

¹²Correspondence to the North Star, April, 1879, in Harbour Grace Standard, April 26, 1879.

¹³From a comparative statement of the growth of the bank fishery, in Newfoundland Assembly, Proceedings, March 8, 1881, in supplement to Terra Nova Advocate, March 12, 1881.

<u>Year</u>	<u>Number of Bankers</u>	<u>Quintals of Fish Caught</u>
1876	4	1,702
1877	7	4,180
1878	10	7,180
1879	24	16,743
1880	33	25,773

During the early eighteen-eighties many prominent names became involved in the new venture; among them, W. Grieve, Bowrings, P. & G. Tessier, S. March, M. Monroe, J. Munn, A. Shea, and R. Goodridge.¹⁴ Certain of their vessels carried catches directly to Gloucester where they were sold in a wet state. This was reportedly more profitable than if the fish had been returned to Newfoundland for curing.¹⁵ The Terra Nova Advocate now praised the local merchants for their initiative in taking advantage of the Washington Treaty.¹⁶ It viewed the entire operation as part of a generally prosperous fishery in which supply could not keep up with demand and prices continued to advance. In these circumstances the earlier disappointment over the treaty's failure to open new markets could no longer be justified. Equally, it was improbable that the American presence in Newfoundland waters would arouse the opposition it had during the mid-seventies.

Indeed, the last year noticeable for its outpouring of anti-American sentiment had been 1878. The disillusionment evident during the immediate outcry over the Fortune Bay affair had

¹⁴By 1888 the number of Newfoundland bankers had risen to 330; see Thompson, The French Shore Problem, p. 76.

¹⁵Terra Nova Advocate, June 8, July 28, 1881. The Advocate reported that the P.L. Whitten and the Samuel S. McGowan, owned by W. Grieve and Prowse and Sons respectively, had taken their fish directly to Gloucester.

¹⁶Terra Nova Advocate, July 28, 1881.

continued into the fishery season. It was intensified by reports in June that American fishermen had mistreated two women at Rencontre, Fortune Bay.¹⁷ However, the charges made were later proven to be unfounded. Some reports did have a factual basis; for instance, those concerning a knife-fight on board a banker in St. John's harbour¹⁸ and the destruction by American fishermen of property at Bear's Cove, Conception Bay.¹⁹ As intelligence of the arrival of American bankers reached the local press, condemnation of the "damnable traffic" in bait mounted.²⁰ Again not only the American fishermen, "those sweepings of the United States", were condemned but also the Newfoundlanders who sold them bait. The Morning Chronicle scored the latter, writing "they glory in being ministerial to the proverbial sharpness of tooth that belongs to the Yankee Sharks".²² Every indication at the start of the 1878 season suggested that it would be a repeat of the previous two.

Yet in 1878 for the first time in almost three years there was a barely perceptible decrease in the frequency of reports about American fishermen. Also evident was a corresponding decline in the intensity of anti-American expressions. Such a change can be

¹⁷Newfoundlander, June 12, 1878.

¹⁸Public Ledger, June 18, 1878.

¹⁹Harbour Grace Standard, in Morning Chronicle, August 6, 1878.

²⁰Morning Chronicle, September 26, 1878.

²¹Ibid., June 13, 1878.

²²Ibid., June 15, 1878.

attributed in large part to factors already detailed: the improvement in trade already underway in 1878 and the unexpectedly large compensation awarded by the Halifax Commission. In addition, the Americans had experienced a disastrous fishery in 1877; it was likely that fewer bankers came to Newfoundland the following season.²³ Finally, the only good period in the colonial fishery had occurred during the squid baiting season when the American bankers were at their most plentiful.²⁴ This coincidence meant that a major reason for condemning the American presence had been seriously weakened.

After 1878 a change occurred in the character of press reports about American bankers. These were now printed in a straightforward factual manner without the hostile commentaries noticeable in previous years. The American bankers were no longer "novelties" as in 1875. Besides, there was a growing fleet of local bankers whose movements were of much greater interest to the Newfoundland public. At no time in the five-year period after 1878 did the American presence regain the attention it had attracted in the mid-seventies.

Yet the number of American bankers visiting Newfoundland, although admittedly less than earlier, was still substantial. This was borne out in requests made in 1881 and 1883 by the American

²³Newfoundland Assembly, Proceedings, February 19, 1878, in Public Ledger, March 5, 1878.

²⁴Apparently the American bankers had baited with squid from July 18 to July 23 at Holyrood and other places. The good period in the colonial fishery occurred in the first and second weeks of August, a time when the Americans were using their squid bait. A.W. Harvey called the coincidence "notorious". See Newfoundland Legislative Council, Proceedings, February 13, 1879, in Newfoundlander, February 18, 1878.

consul to his government for a ship-of-war to patrol the Newfoundland coasts.²⁵ On each occasion T.N. Molloy claimed that during the preceding season "over three hundred vessels" had arrived in the different outports in Fortune, Placentia, Conception, Trinity and Bonavista Bays.²⁶ However, these consular estimates differed from one provided by American fisheries expert G.B. Goode; he reported that in 1880 there were "almost 200" schooners in the American trawling fleet which baited in Newfoundland.²⁷ Additional indications of the American presence are available. For instance, the Chief Customs Officer of Newfoundland related that in 1879 one hundred United States bankers had bought 4,560,000 squids.²⁸ Another report by British Naval Commander W.R. Hall told of forty-five bankers arriving in Carbonear in one day.²⁹

While the Newfoundland press generally attached less significance to the American activity, there were occasional exceptions. Throughout the fishery seasons of 1882 and 1883 the

²⁵No. 273, Molloy to J. Blaine, April 4, 1881, in United States, Despatches From United States Consuls, 1870-1882. Also no. 345, Molloy to J. Davis, January 27, 1883, in United States, Department of State, Despatches From United States Consuls in St. John's, Newfoundland, 1882-1887.

²⁶Ibid. Molloy was especially concerned about a high rate of desertion among American fishermen who left their vessels to work on the railway, the St. John's drydock construction, and in the mines.

²⁷U.S. Fishery Commission, The Fisheries of the United States, Section V, p. 149.

²⁸Evening Mercury, April 13, 1883.

²⁹Commander W.R. Hall to Admiral W. Kennedy, August 23, 1880, in Kennedy to Sir J. Glover, August 24, 1880, in Great Britain, Further Correspondence Respecting Occurrences, p. 45.

Harbour Grace Standard carried weekly reports of bankers visiting the Harbour Grace area; for example, an 1882 edition contained the following note: "14 U.S. and N.S. bankers at Carbonear, some for the third time".³⁰ The Evening Mercury in nearly every edition during the summer of 1883 carried items about American bankers at St. John's, Torbay, and the Conception Bay outports of Portugal Cove, Holyrood, and Carbonear. On July 14, 1883, it reported that a strong American demand for ice in "the previous month or so" had raised the price to \$12 per ton.³¹ Although not accompanied by the same acrimony as before such notes did indicate that the American presence was still extensive.

Indeed, after 1878 there was some evidence that many Newfoundlanders had reversed their attitude towards the American fishermen. One such person was Ambrose Shea who was interviewed in the autumn of 1879 by a visiting Boston Herald correspondent.³² Shea now acknowledged the role played by the American example in the start of the Newfoundland bank fishery. He also admitted that bait fish, whose habits were a mystery, had disappeared many times before the Americans had come. In his assessment of the bait trade he referred to a matter which had been the cause of some anxiety to New England owners; he continued

³⁰Harbour Grace Standard, June 17, 1882.

³¹Evening Mercury, July 14, 1882.

³²Special Correspondent to the Boston Herald, September 10, 1879, in Morning Chronicle, October 21, 1879. Shea was termed the "leading political figure" in Newfoundland.

Undoubtedly it would be better for the Americans not to come here at all, for when they get ashore they literally rob their employers, they spend so much money for supplies and things for the trip. But besides having taught us our business they have built up a trade in which a great deal of money is invested in supplying ice and bait, a trade of a good many thousand dollars every year and they always pay cash.³³

In effect the Americans were bringing cash to pay for renewable resources in the form of bait fish, an exchange which could only be to Newfoundland's benefit.

The advantages of the bait trade were further elaborated upon by the Herald correspondent. To support his contention that the American fisherman was "undeniably a profitable visitor" he produced figures indicating that in 1875 the amount paid for bait of all different kinds was \$10,000; in 1876, \$13,000; in 1877, \$25,000; in 1878, \$20,000.³⁴ His estimate of the total amount spent by the American bankers per year approximated \$100,000.³⁵ Other expenditures apart from bait purchases were listed as follows: "light dues of 24 cents a ton, water rates of five cents a ton, harbour master's dues, 60 tons and over, \$2 per vessel, and pilotage, \$6, if under 80 tons".³⁶ The Herald correspondent also argued that many thousands of dollars were spent each year for supplies, "a fact any merchant's ledger will prove".³⁷ And finally, he complained.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

that sails, anchors, and equipment for American bankers coming to Newfoundland in transit were taxed since there was no provision for entry in bond.³⁸ All these different sources of revenue even if exaggerated by the Boston newspaperman must have made Newfoundlanders much more tolerant towards their American visitors.

The process of colonial adjustment to the Washington Treaty contained several interesting facets. In 1879 letters to the editors of the Harbour Grace Standard and the Newfoundlander from Trinity Bay told of the "good many" bankers which had visited that area in search of bait.³⁹ The fishermen's reaction was to form a league in order to maintain a uniform price. Whereas in previous years they had sold squid for ten or twelve cents per hundred, in 1879 they received thirty cents.⁴⁰ G.B. Goode recounts another instance in which the Newfoundland fishermen successfully coped with their American counterparts. This occurred at Carbonear where twenty-five bankers gathered at the one time, all eager to obtain bait as quickly as possible.⁴¹ The Newfoundlanders were described as masters of the situation who were wooed by the American captains with such inducements as free meals and supplies.⁴² Under such circumstances the support of many Newfoundland fishermen for a continuation of the bait traffic was assured.

³⁸Ibid.

³⁹Harbour Grace Standard, August 30, 1879; Newfoundlander, September 16, 1879.

⁴⁰Harbour Grace Standard, August 30, 1879. It was reported that the fishermen's ranks were rarely broken.

⁴¹United States Fishery Commission, The Fisheries of the United States, Section V, p. 454.

⁴²Ibid.

Another feature of the colony's adjustment process was the decline in expressions of concern over local fishermen leaving their jobs in order to procure bait for the Americans. In 1881 the Terra Nova Advocate reported that the owners of an ice house at Torbay had disposed of hundreds of tons of ice to the Americans but still had five hundred left for sale; this trade, the Advocate noted, was "of course, pursued jointly with the shore fishery and the sale of bait to the same craft".⁴³ Apparently a measure of reconciliation had occurred between the bait traffic and the fishermen's "legitimate occupation". Derogatory press comments on the susceptibility of local fishermen to the lure of the American dollar were no longer evident. In 1883 a minor controversy over the effects on the bait supply of a proposed Ferryland guano factory did elicit some comment. The Evening Mercury in attributing increased bait consumption to the Washington Treaty remarked that the Newfoundland fishermen had been transformed into "mere bait-catchers".⁴⁴ However, apart from such incidental references there was very little adverse reaction to the Newfoundland fishermen's participation in the bait traffic.

The reconciliation between segments of the Newfoundland community was not always matched by an equal accord between colonial and American fishermen. The degree of adjustment which did exist depended on the latter's continued willingness to purchase bait rather than exercise their treaty right to catch it themselves. At the

⁴³Terra Nova Advocate, July 6, 1881.

⁴⁴Evening Mercury, April 13, 1883.

Halifax Commission American fishermen had predicted strong opposition if they should attempt to procure their own bait. The Fortune Bay Dispute had provided a practical and highly publicized demonstration of the violent turn such opposition could take. Following that episode the Americans avoided any large scale independent action. There were, however, several incidents involving individual attempts; none of these assumed the proportions of the Fortune Bay affair or entailed its international complications. This was because of the smaller numbers involved, the lack of any real damage, and the general improvement in Newfoundland/American relations.

One of the incidents occurred at Smith's Sound, Trinity Bay, in 1879. Captain Daniel McFadden of the Gloucester schooner Howard Holbrook on attempting to seine squids had been stopped by the local residents.⁴⁵ A group of fishermen led by a man named Cooper had threatened to destroy his boat and seine. McFadden offered to buy herring at seventy-five cents per barrel but the local fishermen demanded \$1; he was finally forced to buy squids at twenty-four cents per hundred. Martin Ryan, a Torbay pilot and ice house owner who did a thriving business with the Americans, supported McFadden's story.⁴⁶ A subsequent inquiry prompted by the American consul and carried out by Judge D.W. Prowse concluded that the law

⁴⁵McFadden's story is found in no. 242, Molloy to Secretary of State, August 26, 1879, in United States, Despatches From United States Consuls, 1870-1882.

⁴⁶Ibid.

against seining squids was a wise one.⁴⁷ It was also decided that the action of the Newfoundland fishermen was not sufficient cause for a complaint. A second affidavit toning down the threats allegedly made to the Americans was obtained from Ryan.⁴⁸ Apparently the Torbay pilot was not averse to supporting both sides. Despite the welter of conflicting evidence this incident was really another indication of how strongly the Newfoundland fishermen were opposed to any curtailment of the bait traffic. Although Prowse's report was in the main taken as a dismissal of the affair, the basic factors which had been operative in the Fortune Bay outbreak were still evident.

At approximately the same time as the Smith's Sound affair a similar related incident occurred at Aspey Bay in Cape Breton.⁴⁹ Several American schooners bent on carrying large quantities of squid to St. Pierre to supply the French fleet had brought large seines to do their own fishing. However, the local population who were accustomed to the Americans' purchasing bait prevented the use of the seines; a number of vessels were forced to go to Trinity and Conception Bays in search of bait. Practically all the American captains likened the hostility of the Cape Breton people to that

⁴⁷Report of D.W. Prowse, August 23, 1879, in H.M. Morgan to Molloy, August 30, 1879, in no. 247, Molloy to Assistant Secretary of State, September 11, 1879, in United States, Despatches From United States Consuls, 1870-1882.

⁴⁸Ibid.

⁴⁹Thornton to Granville, June 7, 1880, in Further Correspondence Respecting Occurrences, p. 25.

experienced in Newfoundland.⁵⁰ Captain James Norwood described the taking of squid in Newfoundland as a community affair where women and boys joined with the men to exploit "the lucrative trade".⁵¹

The Americans gradually came to recognize the futility of independent action. During the 1880 fishery season two more incidents occurred. After that time, up to the treaty's termination in 1885, there was no indication that the Americans procured bait other than by means of a purely purchasing agreement. The two new outbreaks took place in Conception Bay, one at Small Point and the other at Job's Cove. Predictably the subsequent investigations were characterized by exaggeration and misstatement. The Newfoundlanders usually claimed that much ado was being made about nothing while the Americans complained that the local fishermen prevented them from exercising their treaty rights. In view of previous occurrences the American version has to be given greater credence.

The more serious of the two incidents occurred at Job's Cove, a small village north of Carbonear. Several American vessels, among them the Victor and the Moro Castle of Gloucester, visited the outpost in search of bait.⁵² The captain of the latter, Loren B. Naus, subsequently reported that a large party of Newfoundlanders

⁵⁰Depositions accompanying Ibid., p. 25.

⁵¹Depositions accompanying Ibid., p. 25.

⁵²Commander W.R. Hall to W. Kennedy, August 23, 1880, in Further Correspondence Respecting Occurrences, p. 45.

boarded his vessel with the intention of running it ashore. Apparently the latter had become upset after seeing "... parties jigging squid from boats along side, and from her deck".⁵³ When his vessel drifted towards the rocks, Naus induced the local fishermen to leave by promising that he would depart from the area. As opposed to Naus' interpretation the British fishermen all testified that the American captain had anchored among their nets.⁵⁴ It was also argued that Naus' crew by continuing to jig where they did would have drawn the squid into a tide and away from the baiting-place. Apparently the Americans had been warned four times by a party of 200 to 400 men who had gathered thereby from nearby Gull Island, Northern Bay, and Burnt Point. The boarding of the vessel was dismissed as a peaceable venture and the reason for its eventual departure was attributed to the rising of a strong onshore wind. This explanation, supported by meteorological records, was accepted by Commander W.R. Hall, the British officer who investigated the incident.⁵⁵ Hall also noted without comment that the next day the Americans returned and bought squid.⁵⁶ Again amidst the exaggeration of partisan testimony

⁵³Deposition of L.B. Naus, August 23, 1880, in Ibid., p. 50.

⁵⁴Depositions in Hall to Kennedy, in Further Correspondence Respecting Occurrences, pp. 45-46.

⁵⁵Hall to Kennedy, in Further Correspondence Respecting Occurrences, p. 45. At the beginning the Colonial Office had seen in the affair "... the elements of a difficulty"; it had suggested to the Foreign Office that Great Britain head off a probable American representation by making the first complaint. (R.G.W. Herbert to Foreign Office, September 17, 1880, in C.O. 194/199, pp. 419-20.) However, the Foreign Office replied that further complications should be avoided while the Fortune Bay Dispute was still outstanding (Pauncefote to Colonial Office, October 11, 1880, in C.O. 194/200, p. 400).

⁵⁶Ibid.

it is possible to see at work the reluctance of the Newfoundland fishermen to have the bait trade in any way curtailed.

The second incident, that at Small Point, was first reported by the New York Herald.⁵⁷ Although initially receiving wider attention, it turned out to be less serious.⁵⁸ Captain R. MacEntyre of the Gloucester schooner Minnesota claimed that on commencing to take his own caplin, he had been stoned from the shore by men, women, and children.⁵⁹ His pilot, T. Gosse of Torbay, was somewhat more restrained; he attributed the stone throwing to some five or six large boys.⁶⁰ Gosse noted that on leaving the area they

⁵⁷New York Herald, October 5, 1880, inclosure in H. Drummond to Granville, October 18, 1880, in Further Correspondence Respecting Occurrences, p. 57.

⁵⁸For some of the press comments on this as well as the Job's Cove affair, see infra, p. 95. By this time Imperial officials had come to realize the reason behind the recurring incidents. When first informed of the Small Point affair, Undersecretary E.B. Pennell noted:

The fact is I believe that generally speaking the Americans have not found it worthwhile to fish for bait themselves but have usually purchased it from the English fishermen. They now however appear to think it may be more profitable to them to take bait themselves, and the Newfoundlanders are not well pleased with the change in practice (Colonial Office minutes on Glover to Kimberley, September 30, 1880, in C.O. 194/199, pp. 455-457).

The affair at Small Point did serve one purpose. It was seized by the Foreign Office as an additional argument against proceeding with any representation to the United States on the Job's Cove outbreak (Pauncefoot to Colonial Office, November 17, 1880, in C.O. 194/200).

⁵⁹New York Herald, October 5, 1880, in Further Correspondence Respecting Occurrences, p. 57.

⁶⁰Deposition of T. Gosse, enclosure in Glover to Kimberley, September 3, 1880, in Further Correspondence Respecting Occurrences, p. 57.

were approached by a man named Trickett who allegedly stated "there are no one allowed to haul caplin here unless they bought them from the people".⁶¹ Trickett was then given nine dollars for which he guided the vessel to nearby Spout's Cove and assisted in hauling the required caplin. A magisterial inquiry into the incident was later held and three boys were brought before Carbonear Justice of the Peace, Israel McNeil. McNeil after fining and reprimanding the boys concluded that they had possessed "no malicious intent" in their action.⁶²

The American fishermen had also been discouraged from exercising their treaty rights during the Fortune Bay winter herring fishery. After 1878 only one instance of friction had been reported. In the winter of 1880-1881 American captain Michael Cunningham complained of threatened interference from local fishermen.⁶³ He said the Newfoundlanders had compelled him to let them use the large seine he had brought to procure his own herring. The matter came to the attention of the Newfoundland government after Secretary of State Evarts had made representation to the Foreign Office. Colonial authorities dismissed the charges on the grounds that Cunningham had voluntarily entered into a bargain with local fishermen.⁶⁴

⁶¹Ibid.

⁶²Report of Israel McNeil to W. Whiteway, October 28, 1880, in C.O. 194/199, p. 519.

⁶³Extract from Colonial Secretary's Office Letter Books, 1877-1883, June 7, 1881, pp. 248-249.

⁶⁴Snelgrove to Colonial Secretary E.D. Shea, April 27, 1881, quoted in Ibid.

Following this one complaint there were no further reports of strife. The Evening Telegram in the winter of 1881-1882 commented on the distribution of American money in Fortune Bay and the good relationship existing between local and American fishermen; it wrote "Everything seemed quiet enough, the Yankees and the Fortune Baymen 'pulling together' without a twist or 'kink' in the line of their intercourse anywhere".⁶⁵ Thus, even in Fortune Bay, some measure of reconciliation had occurred.

The several different incidents which took place after the Fortune Bay Dispute had not aroused the same uproar as their predecessor. The combination of circumstances evident in 1878 had not been repeated. The subsequent outbreaks had occurred during an upward swing in Newfoundland/American relations and as such were somewhat anticlimactic. They added further complications to Anglo-American negotiations on the Fortune Bay affair, but it was really the latter which involved a practical test of Newfoundland fisheries legislation. The vital issue of treaty rights versus local legislation had already been raised. The later incidents were part of the background circumstances for negotiations already in progress.

⁶⁵Evening Telegram, January 30, 1882.

CHAPTER IV

NEWFOUNDLAND'S ROLE IN ANGLO-AMERICAN DIPLOMACY

The fate of Newfoundland's fishery legislation lay in Anglo-American negotiations on the Fortune Bay Dispute. Following the payment of the Halifax Award in November of 1878 these negotiations entered a lull. Salisbury had offered to consider American representations respecting any colonial regulations which might be inconsistent with the Washington Treaty. The next move had been left to the United States. When negotiations resumed, Newfoundland remained vigilant to see that its interests were not compromised.

In the United States the payment of the Halifax Award was reported to have left the New England fishermen in "a sad state of mind".¹ One reaction was the circulation of petitions to have the duties reimposed on imports of British caught fish.² The fishermen found a vocal champion in Senator George Edmunds of Vermont, an aspirant for the 1880 Republican presidential nomination.³ In December of 1878 in a denunciatory speech on the Halifax Award he

¹New York Herald in Public Ledger, January 17, 1879; New York World in Newfoundlander, January 3, 1879.

²New York Herald in Public Ledger, January 17, 1879.

³Public Ledger, August 18, 1879.

moved a resolution in the Senate calling for a termination of the customs and fisheries arrangements.⁴ At the same time fishermen's delegations met with Secretary of State Evarts who promised to do his utmost.⁵ However, no prompt action was undertaken. Evarts' biographer, Chester Barrows, suggests that his efforts were hampered by the Senate which was trying to take the fisheries problems out of his hands.⁶ Moreover, the support for strong action against the British was by no means unanimous. Many Boston merchants favoured the reciprocity arrangement for it gave them access to a supply of comparatively cheap fish.⁷

In August of 1879 Evarts finally replied to Salisbury's offer. The Secretary re-emphasized his earlier "wholly free" contention and refuted in turn the applicability of each Newfoundland statute to American fishermen.⁸ He now put forward a claim for damages amounting to \$105,305.02 sustained by the owners of twenty-two vessels which had been in Fortune Bay during the winter of 1877-1878.⁹ The reasoning behind the claims was that the Newfoundlanders

⁴Ibid.

⁵Barrows, Evarts, pp. 399-400.

⁶Ibid., p. 400.

⁷New York Herald in Public Ledger, January 17, 1879. The Boston merchants wanted cheap provincial fish to make up cargoes for ships travelling to the West Indies for sugar.

⁸Evarts to Welsh, August 1, 1879, in Welsh to Salisbury, August 13, in Great Britain, Further Correspondence Respecting the Occurrences at Fortune Bay, Newfoundland, in January, 1878 (London, 1880), p. 1.

⁹Ibid., p. 6.

in forbidding the use of seines had let free enough herring to have completed the cargoes of all the vessels. Evarts in referring to the freedom of American fishermen from local laws did conclude on a conciliatory note; he signified his government's willingness to "gladly cooperate with the Government of Her Britannic Majesty in any effort to make these regulations a matter of reciprocal convenience and right...."¹⁰ In this respect the Secretary merely echoed Salisbury's views on the necessity of consultation between the two countries.

In Great Britain Colonial Office officials on receipt of the detailed American claims termed them "preposterous".¹¹ However, the British were well aware that the matter was a serious one. Referred to was an extract from the Pall Mall Gazette which suggested that bad feelings between American and Newfoundland fishermen were "liable to lead to bloodshed and international misunderstanding".¹² A further complication was added by the resignation of J. Welsh, the United States minister in London. Barrows writes that "difficulties with Great Britain had then become so serious that it was rumored that Evarts himself might resign to become Minister".¹³ The post was finally filled by J.W. Lowell, a reputedly brilliant diplomat who was transferred from Madrid.

¹⁰Ibid., p. 7.

¹¹Minute of R.G.W. Herbert, August 24, 1879, on Colonial Office to Foreign Office, August 22, in C.O. 194/198, p. 391.

¹²Ibid., p. 392.

¹³Barrows, Evarts, p. 391.

In the meantime the Foreign Office took steps to reply to the American presentation of the \$105,000 claim. After consultation with the Crown Law Officers and the Colonial Office, Salisbury set forward in April of 1880 a two pronged argument. In the first instance he maintained that the Americans in fishing from the shore had exceeded their treaty privileges.¹⁴ Recalled was the American contention at Halifax that the Washington Treaty did not grant any such right.¹⁵ In the second instance the Foreign Minister reaffirmed the authority of colonial laws but with a modification. The Americans were bound to obey only those laws which were in existence at the time the treaty was signed.¹⁶ Two of the three laws involved in the Fortune Bay Dispute, those respecting in-barring and a close time, were still applicable; the Sunday fishing law passed in 1876 was obviously subsequent legislation. Yet even here Salisbury did not give way entirely. His only concession was an offer to consider American opinion on whether specific pieces of legislation affected treaty rights. An equally firm line was adopted in respect to the \$105,000 claim. The Foreign Minister contended that the "first and real cause of mischief" had been the action of American fishermen and as such no claim for damages could be entertained.¹⁷

¹⁴Salisbury to W.J. Hoppin, April 3, 1880, in Further Correspondence Respecting the Occurrences at Fortune Bay (1880), p. 25. The American fishermen had affixed the ends of their seines to the shore.

¹⁵Ibid., p. 25; see supra, p. 28.

¹⁶Ibid., p. 26.

¹⁷Ibid., p. 27.

The British position on subsequent legislation had been adopted without reference to Newfoundland. Yet its interests were not entirely forgotten. The Colonial Office anticipated that the colony would register strong objections to any hint of concession.¹⁸ This problem pointed out the essentially divergent outlooks of the Colonial and Foreign Offices; the former possessed a much greater awareness of Newfoundland's interests, while the latter's prime motivation appeared to be the maintenance of amicable Anglo-American relations.

Salisbury's rejection of the American claim was greeted in the United States with considerable hostility. The New York Herald termed it "an outrage" called for immediate abrogation of the treaty¹⁹ while the Boston Post reported preparations on the part of New England Congressmen to have duties reimposed on British fish.²⁰ Secretary Evarts in a long and angry report to President Hayes contended that the central issue was not so much whether the Americans were shore or strand fishing but whether they were amenable to local legislation.²² Essentially Evarts concluded that Newfoundland did not have sovereignty over its fisheries; he argued

¹⁸ Colonial Office minutes on Foreign Office to Colonial Office, February 22, 1880, in C.O. 194/200, p. 233.

¹⁹ New York Herald in Evening Telegram, May 1, 1880.

²⁰ Boston Post in Evening Telegram, May 9, 1880.

²¹ Thornton to Granville, May 3, 1880, in Further Correspondence Respecting the Occurrences at Fortune Bay (1880), p. 43.

²² Report of W. Evarts to President R.B. Hayes, May 17, 1880, in Ibid., pp. 47-56.

The issue between the two Governments is as to what regulations of the freedom of the fishery, in the very matter of the time and manner of taking fish, remain a part of British sovereignty over the fishery under the color of sovereignty over the place, when exclusive sovereignty over the fishery has been parted with by Great Britain, and a participation in such fishery had been acquired by the United States in the terms and in consideration of the treaty of Washington.²³

The Secretary contended that on the signing of the treaty all parties had assumed the fishery was "at the unlimited disposal of British sovereignty".²⁴ In effect, he questioned Newfoundland's basic competency to regulate foreign participation in its fishery.

What Evarts suggested to Hayes was a recommendation to Congress to restore the duties on provincial fish, such a restoration to continue until the Fortune Bay affair was satisfactorily settled.²⁵ On May 17, 1880, the President followed Evarts' advice and sent the necessary message to Congress.²⁶ Transmitted with it were the Secretary's report and the relevant correspondence. On the following day Massachusetts representative George Loring introduced a bill embodying Hayes' recommendation to the House of Representatives.²⁷ The bill was referred to the Foreign Affairs Committee but little action was taken. The committee had earlier called for the appointment

²³Ibid., p. 49.

²⁴Ibid., p. 51.

²⁵Ibid., p. 56.

²⁶Enclosure in Thornton to Granville, May 18, 1880, in Ibid., p. 44.

²⁷Enclosure 2 in Thornton to Granville, May 24, 1880, in Further Correspondence Respecting Occurrences, p. 22.

of an Anglo-American commission to work out a new Reciprocity Treaty;²⁸ to reimpose the duties on British fish would hardly be consistent policy. Moreover, a reimposition of duties would primarily affect Canada, a country in no way connected with the Fortune Bay Dispute.²⁹

There was also another factor militating against decisive Congressional action. In England the Conservative government of Disraeli had given way to the Liberal government of Gladstone which had negotiated the treaty. Lord Salisbury and Sir Michael Hicks-Beach were replaced as Foreign and Colonial Ministers by Earl Granville and Lord Kimberley. In England the London Times editorialized that the arrival of the new government "would seem to be not unfavourable for a total adjustment of the whole dispute"³⁰ while in America the New York World compared Granville favourably with his "tart and captious predecessor".³¹ It was to this change in the Imperial government that Barrows attributed the Congressional failure to follow up Evarts' recommendations.³²

²⁸Newfoundlander, June 4, 1880.

²⁹A distinction pointed out by the New York Witness, in Evening Telegram, June 21, 1880.

³⁰The Times (London), May 19, 1880, in New York World, May 30, 1880, in Thornton to Granville, May 31, 1880, in C.O. 194/200, p. 379.

³¹New York World, May 30, 1880, in C.O. 194/200, p. 379.

³²Barrows, Evarts, p. 401.

The belief that the Gladstone-Granville ministry would provide a fresh start was shortly vindicated. In Great Britain the course of events in Congress had been closely followed through Sir Edward Thornton's almost daily telegrams. The initial reaction to Evarts' report was summed up by Colonial Office Undersecretary Herbert who expressed his belief that it showed "a good deal of small attorney's cunning".³³ When Kimberley arrived Colonial Office thinking showed signs of change. Herbert reported to his colleagues the new minister's view that the British case was shaky if it rested upon the colony's consolidated statutes of 1872.³⁴ Evidently at the time of consolidation all the old acts had been repealed prior to re-enactment; this meant that all Newfoundland fisheries legislation was technically subsequent to the signing of the treaty. This revelation caused consternation in the Colonial Office where it was now doubted whether Salisbury's earlier position could be maintained.³⁵ In effect, the break which the Americans had hoped for with the accession of the Gladstone-Granville ministry appeared to be developing.

The realization that the British case might be weaker than at first anticipated led to a new effort at agreement initiated

³³Minute of R.G.W. Herbert, June 11, 1880, in Sir J. Pauncefote to Colonial Office, June 7, 1880, in C.O. 194/200, p. 326.

³⁴Minute of Herbert, June 16, 1880, in Sir J. Pauncefote to Colonial Office, June 7, 1880, in C.O. 194/200, p. 326.

³⁵Ibid., pp. 326-27.

by Granville. The Foreign Minister asked J.R. Lowell "whether it would not be possible to separate the two questions of the interpretation of the treaty, and of the attack upon American fishermen".³⁶ In suggesting that the British might now consider indemnity Granville sought to remove the most immediate cause of friction. If successful, his efforts could mean less questioning about the colony's authority over American fishermen. The United States response was heartening; Lowell, three days later, signified the President's amenability to any proposal tending "to relieve the question of the fisheries from its present difficulties".³⁷ The first step towards eventual settlement had been made.

These diplomatic maneuvers, although replete with implications for Newfoundland's future, had transpired largely without its knowledge. The colony's participation had been limited. On the popular level it had kept a basic grasp of events mainly through the medium of press reports and reprints. On a governmental level it had undertaken discussions with the Colonial Office on its relationship with American fishermen. In addition, it had managed to keep Imperial officials informed of the colonial viewpoint. However, Anglo-American negotiations had not yet reached the stage where Newfoundland could see how its interests had fared. When this happened it could decide upon a definite course of action.

³⁶ Earl Granville to Thornton, June 9, 1880, in Further Correspondence Respecting Occurrences, p. 23.

³⁷ J.R. Lowell to Granville, June 12, 1880, in Further Correspondence Respecting Occurrences, p. 24.

In the meantime Newfoundland's involvement in Anglo-American diplomacy, although limited, had contributed to a new sense of self-awareness. The colony became especially upset, indeed, somewhat defensive over the \$105,000 claim. The Morning Chronicle avowed that it would take "something more than tooth-drawing before the Fortune Bay claim is paid"³⁸ while the Terra Nova Advocate sarcastically entitled its editorial on the subject "The Modest Yankee".³⁹ The Harbour Grace Standard and the Evening Telegram went so far as to speculate whether Great Britain would stand by the colony.⁴⁰ A measure of reassurance was provided by an excerpt from the London Times which read "The inshore fisheries are the inalienable heritage of the Dominion of Canada and Newfoundland, and these countries must say on what terms foreign countries must participate".⁴¹ The Times excerpt was widely publicized by the Newfoundland press which also printed supporting extracts from such diverse papers as the Toronto Globe and the Halifax Presbyterian Witness.

The great interest in the circumstances surrounding the American claim was indicated in a spate of articles, reprints, and correspondence in the Newfoundland press. This interest was intensified

³⁸Morning Chronicle, August 21, 1879.

³⁹Terra Nova Advocate, September 6, 1879.

⁴⁰Harbour Grace Standard, August 30, 1879; Evening Telegram, August 22, 1879.

⁴¹The Times, September 5, 1879, in Evening Telegram, September 29, 1879.

by news of the incident which occurred at Smith's South, Trinity Bay.⁴² When Judge D.W. Prowse subsequently dismissed the affair, the Newfoundlander called on the Americans for "a truce to the merely fabulous and ridiculous, in the name of common sense".⁴³

One noteworthy comment was provided by the Terra Nova Advocate which argued that the law against seining squids was much more justifiable than that respecting Sunday fishing.⁴⁴ The latter was the only major piece of Newfoundland legislation which was subsequent to the Washington Treaty. If the Advocate's view prevailed, this law could be discarded without too much adverse reaction.

A further contribution to the colony's sense of being scrutinized was provided by the arrival of the U.S.S. Kearsage in St. John's. The Kearsage had on board two commissioners, F. Babson, Gloucester Customs Collector, and A. Foster, son of Dwight Foster; they had been assigned to investigate the nature of American participation in the colonial fisheries.⁴⁵ The commissioners had embarked in New Brunswick and from there had travelled to Prince Edward Island and Pictou, Nova Scotia, before coming to Newfoundland. Predictably, their arrival touched off considerable comment and speculation as to their purpose. The Terra Nova Advocate remarked "Exaggeration may be expected to run riot and all sorts of imaginary grievances to be

⁴²The Smith's Sound incident is detailed on supra, pp. 74-75.

⁴³Newfoundlander, September 30, 1879.

⁴⁴Terra Nova Advocate, September 6, 1879.

⁴⁵Report of Special Correspondent of Boston Herald, North Star, September 27, 1879.

conjured up".⁴⁶ It was widely believed that the commissioners were preparing for a new agreement to come into effect after the Washington Treaty expired in 1885. This prospect was not exactly welcomed by the St. John's press.⁴⁷

The U.S.S. Kearsage remained in St. John's for almost a week while Babson travelled to Portugal Cove, Broad Cove, Harbour Grace, and Heart's Content in search of information.⁴⁸ Foster stayed in St. John's where he collected "statistics, newspaper opinion, correspondence, books and laws bearing on the subject".⁴⁹ After his travels Babson attributed the recurring hostility experienced by American fishermen to "the world old feeling of any class labor against new labour saving machinery".⁵⁰ Charging the Newfoundland merchants with oppression of the local fishermen, he claimed they were jealous over the lure of ready cash provided by the American bankers. The anti-American sentiment in the colony was also traced to the merchant community. Babson argued that this class had exploited the fishermen's discontent over superior American equipment in order to foster the fear of injury being done to the fishery.⁵¹ The

⁴⁶Terra Nova Advocate, September 6, 1879.

⁴⁷North Star, August 23, 1879.

⁴⁸Special Correspondent, Boston Herald, in North Star, September 27, 1879.

⁴⁹Ibid.

⁵⁰Ibid.

⁵¹Ibid.

collector's conclusions as reported in the local press sparked a new round of abuse. For instance, the editor of the North Star became so nettled he wrote a long argumentative letter to the Boston Herald; it contained an elaborate defence of the Newfoundland merchant and refuted Babson's charge of oppression.⁵²

It had been a Boston Herald correspondent who had initiated the extensive press coverage given to Babson's conclusions. Visiting Newfoundland at the same time as the Kearsage, the Herald correspondent had written lengthy articles on various aspects of Newfoundland life including its politics, the Fortune Bay Dispute, and the incident at Smith's South. The articles were published in Newfoundland papers under the heading "Uncle Sam and His Fish" and attracted widespread attention. Apparently the Fortune Bay Dispute and its aftermath had aroused considerable curiosity about Newfoundland. Largely because of the attendant publicity a Mrs. Gaylord Smith and her husband, Dr. Smith, toured the island for four months gathering information for lectures to the Lyceums of Canada and the United States.⁵³ According to Mrs. Smith who lectured in both St. John's and Harbour Grace, she had been asked to make the tour by "gentlemen in Washington, New York and Philadelphia".⁵⁴ Another American visitor caused some concern in official circles; this was the yacht America which spent eight days at the Bay of Islands. It

⁵²Special Correspondent, Boston Herald, in Morning Chronicle, November 20, 1879.

⁵³Evening Telegram, December 8, 1879.

⁵⁴Ibid.

carried as its passengers Generals Butler and Pryor, Commodore Deane and ex-General Smith along with Butler's two sons. News of the visit was reported to the Colonial Office by Governor Glover who was constantly anxious about the colony's possible annexation to the United States.⁵⁶ Whatever the America's purpose, its visit was one more example of increased American interest in Newfoundland.

The colony's defensiveness was further heightened in 1880 when the American government moved to retaliate against Salisbury's rejection of its claim. The local press supported the Foreign Minister's stand, viewing it as a victory for "the strength of facts".⁵⁷ When the New York Herald suggested cancellation of the treaty, the Morning Chronicle expressed its opinion that such a course would not be difficult to accept; yet, it did signify its own willingness to see the treaty run its required term.⁵⁸ By this time, the improved economic circumstances may have made the treaty more palatable to the Newfoundland press. Indeed, President Hayes' recommendation to Congress that duties be reimposed on British fish was viewed by the Chronicle as "a very startling step ... involving nothing less than the practical abrogation of the treaty so far as giving our fishermen access to United States markets is concerned".⁵⁹ An equally aggrieved tone was displayed by another erstwhile opponent

⁵⁶Ibid., see supra, p. 48.

⁵⁷Newfoundlander, April 27, 1880.

⁵⁸Morning Chronicle, May 6, 1880.

⁵⁹Ibid., May 22, June 1, 1880.

of the treaty, the Newfoundlander, which deplored the unilateral action contemplated by the United States as a possible "Washington Outrage".⁶⁰

When Congress adjourned without reimposing duties, the uproar subsided. However, the comparative quiet was soon broken by American press reports of the incidents at Job's Cove and Small Point. The Cape Ann Advertiser headlined its article on the Job's Cove outbreak "Another Newfoundland Riot"⁶¹ while the New York Journal of Commerce termed it "A new act in the Fishery Drama".⁶² In response the colonial press resumed its defensive stance. The Evening Telegram accused the Americans of mushrooming "that miserable little Job's Cove misunderstanding" into a major grievance.⁶³ A similar approach was evident during the Small Point affair; the Morning Chronicle charged that a New York Herald story was composed of "atrocious falsehoods".⁶⁴

⁶⁰Newfoundlander, June 11, 1880.

⁶¹Cape Ann Advertiser, in Evening Telegram, September 24, 1880.

⁶²New York Journal of Commerce, in Evening Telegram, October 4, 1880. This paper called the incident an "even more glaring" outrage than that at Fortune Bay. It called on the English government to restrain its "turbulent colonists". Another paper, the United States Economist, confused Newfoundland and Canada; it wrote "Emboldened by former successes the Canadians have cast the treaty to the winds and American fishermen are subject to all sorts of indignities" (United States Economist, in Newfoundlander, November 5, 1880).

⁶³Evening Telegram, September 29, 1880.

⁶⁴Morning Chronicle, October 16, 1880. The Chronicle called the uproar "the proverbial storm in the teapot". A similar attempt to play down the incident was noticeable in the Newfoundlander which termed the whole matter "exceedingly puerile in more senses than one" (Newfoundlander, November 5, 1880).

Once again the local newspapers claimed that Newfoundland was the victim of American injustice.

Newfoundland's involvement in Anglo-American relations was not limited to the press arena. On a governmental level the colony assisted Imperial officials in preparing a case to counter the \$105,000 American claim. When the claim was first presented, the Colonial Office sought the advice of Premier Whiteway respecting Evarts' arguments.⁶⁵ It had been Whiteway who had pointed out that the Americans in seining from the shore had violated Article XVIII of the treaty.⁶⁶ Equally, he had reaffirmed the principle that colonial laws were applicable to American fishermen; he asserted almost in a tone of dismissal that the whole question had been thoroughly considered - implicitly in Newfoundland's favour - by the Crown Law Officers' 1863 opinion and the Marcy Circular of 1857.⁶⁷ The premier did not rely entirely on precedent; he outlined his own views:

The power of legislation within the three mile limit must reside somewhere. Heretofore it existed exclusively in the Imperial and Colonial Parliaments. There is nothing in the treaty which divests either of this right and it must therefore be presumed to continue where it previously existed. Had it been asserted that such power should hereafter be exercised conjointly with the United States provision would have been made in the treaty for that effect.⁶⁸

⁶⁵Hicks-Beach to Glover, August 29, 1879, in C.O. 194/198, p. 407.

⁶⁶Whiteway to Glover, September 24, 1879, in Glover to Hicks-Beach, September 30, 1879, in C.O. 194/197, p. 275.

⁶⁷Ibid., pp. 285-86.

⁶⁸Ibid., p. 286.

Although Whiteway did not attempt to delimit the spheres of jurisdiction of the Colonial and Imperial Parliaments, he did emphasize that the signing of the Washington Treaty had not abridged the joint sovereignty. In essence, Whiteway was saying that Imperial treaty relations had not compromised Newfoundland's sovereignty in its own waters. The only concession he did make was to say that the "in common with" clause in Article XVIII meant any legislation operating differentially against the Americans could not be permitted.⁶⁹

The Newfoundland premier after dealing with the legal questions involved had some acerbic comments for the American claims; he termed them "simply preposterous".⁷⁰ To Whiteway the contention that four vessels using seines - and breaking the law in doing so - could have caught enough herring for twenty-two vessels was "such an extraordinary proposition that one could hardly imagine it to be seriously made".⁷¹ The premier concluded his remarks by reaffirming his long held opinion that the Washington Treaty instead of solving problems had created new ones.⁷² In London Colonial Office officials termed his lengthy exposition "an able document".⁷³ Of all the premier's arguments the most appealing was the one that the strand

⁶⁹Ibid.

⁷⁰Ibid., p. 287.

⁷¹Ibid., p. 289.

⁷²Ibid.

⁷³Minute of R.G.W. Herbert on Ibid.

fishery violated the Washington Treaty; undersecretary F.W. Fuller saw it as a possible cornerstone for the British position, one which was "probably better calculated to dispose of the present preposterous claim than any considerations arising out of the question of conflict between treaty and local legislation".⁷⁴ Whiteway in effect had provided the British with a way to steer around a confrontation on the latter issue.

On another level Newfoundland was concerned with the practical problem of how to treat the American fishermen still resorting to its waters. During the winter of 1878-1879 Governor Glover suggested to the colonial government that steps be taken to prevent repeated collisions in Fortune Bay.⁷⁵ The Executive Council proposed that a magistrate should be sent to Long Harbour to ensure the enforcement of local legislation.⁷⁶ Specified were the laws respecting a close time on the use of seines from October to April, the size of mesh used, the destruction of property, and Sunday fishing. These were to be outlined in notices issued by the government.⁷⁷ In addition, the magistrate's instructions were to contain a special provision for cases involving American fishermen. If the latter were convicted, their fines were not to be enforced; instead, they were to be informed that an appeal could be made to the Supreme Court.⁷⁸

⁷⁴Minute of F.W. Fuller on Ibid., p. 271.

⁷⁵Glover to Hicks-Beach, November 28, 1878, in C.O. 194/195, p. 497.

⁷⁶Extract from minutes of Executive Council, November 27, 1878, enclosure in Colonial Office minutes on Ibid., p. 495.

⁷⁷Glover to Hicks-Beach, December 9, 1878, in C.O. 194/195, p. 497.

⁷⁸Ibid.

When the Executive Council's proposals were transmitted to Great Britain, both the Colonial and Foreign Offices expressed skepticism.⁷⁹ It was feared that any precipitate action by Newfoundland would further complicate Anglo-American negotiations. Especially objectionable was a preface to the proposed notice which left an impression that the legislation discriminated against the Americans; the preface read:

The following enactments from the Fishery Laws of Newfoundland are to be enforced by the magistrate appointed to exercise jurisdiction at Long Harbour and neighboring places during the season when these parts of the coasts are visited by the Americans for fishing purposes.⁸⁰

The executive Council's choice of words was judged by Colonial Minister Kimberley to be "most injudicious".⁸¹ The governor was asked to postpone the issuance of instructions until the matter could be further considered. It was finally decided that some orders had to be given to the magistrate; the proposed notice was permitted on condition that its preface be deleted and the law respecting Sunday fishing suspended.⁸² The close time and in-barring legislation were to continue in effect.

The British decision had not come until March of 1879; by that time it was somewhat anticlimactic for the Americans had already

⁷⁹ Colonial Office minutes on Ibid., p. 517.

⁸⁰ Enclosure in Glover to Hicks-Beach, December 9, 1878, in C.O. 194/195, p. 519.

⁸¹ Minute of Hicks-Beach on Ibid., p. 517.

⁸² Telegram, Hicks-Beach to Glover, March 7, 1879, in C.O. 194/198, p. 213.

been to Fortune Bay, loaded, and left with their cargoes of herring. As compared with the twenty-two vessels which had been there the previous winter, only eight pursued the trade in the winter of 1878-1879.⁸³ Since none of the eight had brought seines,⁸⁴ the issue of law enforcement had been an academic one. Without seines the Americans could not fish for themselves; neither could they break any fishery laws. Glover reported to the Colonial Office on March 8, 1879, "Fishery season over in Fortune Bay; no breach of fishery laws: everything quiet".⁸⁵ The magistrate had apparently reported to the government that there had been no infraction of local laws. The implication was that one of his guidelines may well have been the maintenance of fisheries legislation despite the lack of definite Imperial sanction. After the initial British objection the magistrate had been given a blanket authorization "to preserve peace and order".⁸⁶

The Newfoundland government also exhibited a reluctance to issue notices specifying the rights which were possessed by American fishermen. The need for such notices had been referred to in September 1879 by Captain W.E. Kennedy of H.M.S. Druid; he had been dismayed at the ignorance of treaty rights displayed by Newfoundland

⁸³Telegram, Glover to Hicks-Beach, March 8, 1878, in C.O. 194/198, p. 53; also Evarts to Welsh, August 1, 1879, in Further Correspondence Respecting the Occurrences at Fortune Bay (1880), p. 8.

⁸⁴Ibid.

⁸⁵Telegram, Glover to Hicks-Beach, March 8, 1879, in C.O. 194/197, p. 53.

⁸⁶Newfoundland, Executive Council, Minute Book, 1874-1883, entry for December 20, 1878, p. 194.

fishermen.⁸⁷ However, the colony's hesitancy in issuing notices was understandable. Any definitive statement such as a notice might possibly place the colony at a disadvantage. When Anglo-American negotiations were so far from settlement, it was more expedient for the colony to adopt a wait and see attitude. Thus, despite repeated remonstrations on the part of Governor Glover, no notices were issued.⁸⁸

The colony's intention to maintain its position was evident in the circumstances surrounding an amendment to the Coastal Fisheries Act passed in 1879. The amendment dealt with the close time on the use of seines in the herring fishery. The original close time had been from October 21 to April 25.⁸⁹ Now in 1879 the government introduced a bill substituting April 15 for April 25, in effect, shortening the close time. However, the bill embodied new enforcement procedures;⁹⁰ it quadrupled the penalty for violations (sec. 3), made possession of herrings in bulk during close time a proof of illegal catching (sec. 4), and provided authorization for government

⁸⁷W.R. Kennedy to Vice-Admiral Sir E. Inglefield, September 17, 1879, in C.O. 194/198, p. 73. Commander W.R. Hall made a similar observation in his report on the Job's Cove incident in 1880; he wrote "The occurrence of these disputes may, I believe, be prevented by informing the inhabitants of the outlying settlements, which are frequented by bankers, in clear language of the rights of the Americans under the Treaty of Washington" (Report of Captain W.R. Hall, enclosure in Glover to Kimberley, September 2, 1880, in C.O. 194/199, pp. 413-14).

⁸⁸Glover to Kimberley, April 22, 1881, in C.O. 194/201, p. 203.

⁸⁹It had been amended to this in 1876; before that time it had been April 12. See supra, p. 22.

⁹⁰Information on this bill is contained in Colonial Office minutes on Glover to Hicks-Beach, September 30, 1879, in C.O. 194/201, p. 203.

officials to board suspected vessels (sec. 5). In addition, provision was made for extra officials and vessels,⁹¹ perhaps a reflection of the island's improved finances. For the first time an attempt was underway to give the close time some real meaning.

The potential repercussions of more stringent enforcement did not escape the Colonial Office. Undersecretary J. Bramston was moved to wonder why the Americans had not registered a complaint.⁹² A decision on the bill was put off until April of 1880 by which time Salisbury had developed his position on subsequent legislation.⁹³ The Foreign Office then indicated its willingness to have the colonial law disregarded as inapplicable to American fishermen.⁹⁴ But once again the Colonial Office objected to an apparent disregard of Newfoundland interests.⁹⁵ As a compromise the two departments agreed to ask Newfoundland "to consider carefully whether the present moment is a convenient one for bringing into operation or enforcing any Acts which are not urgently required and to which the United States fishermen might object".⁹⁶ The Imperial government's call for caution was met in Newfoundland by a blunt statement of the Executive Council's views:

⁹¹Ibid.

⁹²Minute of J. Bramston on Ibid., p. 265.

⁹³Foreign Office undersecretary Lord Tenterden to Colonial Office, November 18, 1879, in C.O. 194/198, p. 477.

⁹⁴Ibid.

⁹⁵R.G.W. Herbert to Foreign Office, May 8, 1880, in C.O. 194/200, pp. 294-97.

⁹⁶Kimberley to Glover, June 3, 1880, in C.O. 194/200, pp. 309-310.

The Council appreciates the observations of Lord Kimberley with regard to enforcing Acts not urgently required and to which American fishermen might object. They feel that wise policy is quite opposed to any restrictive measures not required for the conservation of the Fisheries; and those which have passed into local laws have been dictated solely by regard to this object, in which it had appeared to the Legislature that the United States fishermen and our own had a common interest in proportion to their common fishery privileges. In this view it seems necessarily to follow that such laws cannot be infringed without detriment to the interests of both nations concerned.⁹⁷

The Council's strong affirmation of the authority and necessity of colonial laws led Imperial officials to reconsider their position. It was decided that the power of disallowance need not be invoked given the current stage of Anglo-American negotiations. As Under-secretary E.B. Pennell put it, to decide against the Newfoundland legislation "would be to prejudge the case in favour of the United States".⁹⁸ The colonial government was mollified with a reassurance that the Imperial government had only intended to provide "a general caution".⁹⁹

The circumstances surrounding the Newfoundland act were enlightening in a number of ways. Some indication was provided of how the Foreign Office could seek an Anglo-American rapport

⁹⁷ Extract from minutes of Executive Council, July 3, 1880, in Glover to Kimberley, July 8, 1880, in C.O. 194/199, pp. 273.

⁹⁸ Colonial Office minutes on Ibid., pp. 269-270.

⁹⁹ Kimberley to Glover, August 23, 1880, in C.O. 194/200, p. 383.

without too much concern for the colonial position. In contrast the Colonial Office was generally more sympathetic towards the Newfoundland viewpoint. And finally, above all, the discussions illustrated the colony's opinion of its fishery laws. These were seen as necessary and applicable to Newfoundlanders and foreigners alike.

CHAPTER V

THE SETTLEMENT

The Fortune Bay Dispute had called into question the principle that American fishermen were amenable to local legislation. Anglo-American negotiations after 1878 were directed towards finding a solution. During the spring of 1880 the Imperial government proposed a novel approach entailing a separation of the two questions of indemnity payment and treaty interpretation. Its proposal was to eventually lead to a settlement. In turn the nature of this settlement and its residual problems led to a clearer definition of Newfoundland's position within the Imperial system.

When the United States responded favourably to Granville's proposal for a separation of issues, the Foreign Minister was provided with an opening to elaborate upon his suggestion. On October 27, 1880, he forwarded to the United States a follow-up letter which was both conciliatory and unyielding.¹ In one instance, he expressed the British desire for "an amicable solution"; in another, he reaffirmed with reference to Article XVIII's "in common with" clause and the Marcy Circular his rejection of Evarts' "wholly free" contention.² This firm stand was adopted after further legal

¹Granville to Lowell, October 27, 1880, enclosure in Pauncefote to Colonial Office, November 17, 1880, in C.O. 194/200, p. 439.

²Ibid.

advice had been obtained from the Lord Chancellor. The Crown's chief lawyer had expressed his opinion that the Marcy Circular was "altogether right" and United States fishermen were not exempt from reasonable regulations.³ Granville did concede like Salisbury that any regulations inconsistent with the Washington Treaty were not binding. The solution he proposed was the establishment of joint regulations; he offered to confer with the United States on their formulation.⁴ For the first time an element of practicality had been introduced.

A similar break was evident in the indemnity issue. Granville admitted that the violence employed at Fortune Bay was indefensible. He signified his government's willingness to consent to a joint inquiry to decide on a possible indemnity for the American fishermen.⁵ The British would abide by its findings. Yet, the Foreign Minister did not make a blanket concession. It was stressed that the indemnity should not cover all the fish reported lost by the Americans since much of it had been caught by strand fishing.⁶ His country's earlier stand on the illegality of this type of fishing was maintained. Thus, Granville while remaining firm on specifics had put forward definite procedures for reaching an overall settlement.

³Lord Chancellor to Granville, July 21, 1880, in Herbert to Foreign Office, June 19, 1892, in C.O. 194/205, p. 107.

⁴Granville to Lowell, October 27, 1880, in C.O. 194/200, p. 439.

⁵Ibid.

⁶Ibid.

The reaction of the press and government officials of both Great Britain and the United States was favourable. In the United States President Hayes referred to Granville's letter in his speech on the opening of Congress on December 6, 1880; he noted in it "a disposition towards friendly agreement".⁷ The President's opinion was shared by Evarts who also expressed his "general satisfaction".⁸ The New York press was equally approving. The New York Evening Post viewed the Foreign Minister's communication as "direct, reasonable and conciliatory";⁹ even the New York Herald welcomed its departure from the "offensively arrogant style" of Lord Salisbury.¹⁰ Under these circumstances the prospects for a settlement brightened.

In Great Britain the London Times viewed Granville's letter and the American response as the next thing to an accomplished settlement and an occasion for relief.¹¹ Colonial Office officials expressed a similar optimism. Indeed, they were somewhat surprised at the friendly tone of the American press and Evarts' apparent satisfaction. R.G.W. Herbert felt that "Mr. Evarts had 'caved in' to an unexpected extent".¹² The American reaction had vindicated the

⁷J.D. Richardson, ed., Compilation of the Messages and Papers of the Presidents, 1789-1897 (10 vols., 53d Cong., 2d Sess., House Misc. Doc. No. 210, Pts. 1-10; Washington D.C.: Government Printing Office, 1907), X, p. 4559.

⁸Thornton to Granville, December 13, 1880, in C.O. 194/200, p. 439.

⁹New York Evening Post (New York), December 11, 1880, in Ibid.

¹⁰New York Herald, December 11, 1880, enclosure in Ibid.

¹¹The Times, in Evening Telegram, December 27, 1880.

¹²Minute of R.G.W. Herbert on Pouncefote to Colonial Office, December 31, 1880, in C.O. 194/200, p. 475.

British approach. Salisbury's refusal to consider compensation had had been a major obstacle. Its removal now diverted attention from the most vulnerable question of treaty interpretation.

While these developments were underway, Newfoundland had watched from a distance. Granville's letter and the American reaction were viewed as one more round of diplomatic maneuvers. Yet, the colony realized that its stand on any final settlement would be crucial; in an immediate sense, the matter of liability for American damages had to be considered; in the longer run, its position within the British Empire was involved. The immediate implications attracted the attention of Governor Glover. Looking ahead to the proposed joint inquiry, he suggested to the Executive Council that it should gather evidence on the damage caused by American fishermen at Fortune Bay.¹³ This evidence would be used as the basis for a Newfoundland counter-claim. When Glover's suggestion was transmitted to Great Britain, the Foreign Office reaction was not too encouraging; it doubted whether any such claims could be properly advanced.¹⁴ However, it did recommend that they be prepared and forwarded but reserved the right to decide against their presentation.

¹³Glover to Kimberley, January 10, 1881, in C.O. 194/201, p. 5. The Americans had been accused of dragging their anchors through Newfoundland nets after they had been prevented from catching herring.

¹⁴Pauncefote to Colonial Office, February 3, 1881, in C.O. 194/202, p. 32.

The Imperial government was aware of the need to have Newfoundland agree to the outcome of a possible inquiry. To this end it sought the colony's prior consent.¹⁵ What it received was a strong positional statement; the Newfoundland Executive Council asserted:

Our fishermen were justified in resisting the Americans' unlawfully fishing - only liable if excess of force was used. Council assent to proposed enquiry and decision if limited to questions whether excess. This accords with Lord Salisbury's and Granville's Despatches, and provided damages be assessed for losses to Newfoundland fishermen from Americans contravening Treaty and injuries to our fishing property.¹⁶

This statement was made before news was received of the Foreign Office reaction to the Newfoundland counter-claim. When it was realized that automatic presentation was not assured, the Executive Council once again outlined its views:

Council respectfully contend American claims entirely inadmissible beyond damages to fishing gear from excess of force, if any, and that inquiry be limited to that basis, with the right of Newfoundland to be represented and to fullest investigation, cross-examination and production of testimony.¹⁷

The Newfoundland government had declared that it considered itself liable only for the damage caused by violence; no mention was made of the fish reported lost by the Americans. In its second minute

¹⁵Newfoundland Executive Council, Minute Book, entry for January 28, 1881, p. 271.

¹⁶Ibid.

¹⁷Ibid., entry for March 5, 1881, pp. 274-75.

it had injected a new element, the right of the colony to be consulted in any settlement affecting its interests. One more dimension had been added to the Fortune Bay Dispute.

Newfoundland received assurances from the Imperial government that it would be given every opportunity to state its case. The necessity of this was emphasized with the argument "that the colony should be held ultimately responsible for any damages, which, upon a friendly investigation, or if necessary, an arbitration, may be found due to the United States...."¹⁸ The Whiteway government, as if suddenly realizing what was involved, intensified its efforts to prepare counter-claims.¹⁹ The colony expected to be fully prepared when the joint inquiry opened.

Meanwhile, in the winter and spring of 1881 Anglo-American negotiations proceeded towards a final settlement.²⁰ And unknown to Newfoundland the prospects for a joint inquiry diminished. The British had offered the Americans a simpler solution, the payment of a lump sum of \$75,000 with the condition that treaty interpretation should not be prejudiced.²¹ The latter procedure despite the assurances to Newfoundland was favoured by the Foreign Office.²²

¹⁸ Referred to in Herbert to Pauncefote, February 12, 1881, in Further Correspondence Respecting Occurrences, p. 67.

¹⁹ Glover to Kimberley, February 21, 1881, in C.O. 194/201, p. 30.

²⁰ These negotiations are detailed at great length in the correspondence of C.O. 194/201 and C.O. 194/202.

²¹ Granville to Thornton, February 24, 1880, in Tenterden to Colonial Office, February 25, 1881, in C.O. 194/202, p. 63.

²² Ibid.

Once again, a divergence of opinion between Foreign and Colonial Offices became evident. The latter expressed its strong reservations about the lump sum approach.²³ When Newfoundland forwarded a portion of its counter-claims together with the information that the total would amount to \$2,000²⁴ the split became even more noticeable. The Foreign Office in a tone of dismissal viewed the damage allegedly caused by the Americans as "apparently accidental".²⁵ This patent disregard of Newfoundland's interests was strenuously opposed by the Colonial Office. It was only mollified when the senior department decided to submit the whole matter to the Crown Law Officers.²⁶

In the United States the arrival of the Garfield administration signalled the replacement of Evarts as Secretary of State by James G. Blaine. For a while negotiations on the lump sum arrangement lapsed. However, on May 6, 1881, the new Secretary indicated his willingness to accept \$15,000 in full satisfaction of all claims up to March 4, 1881.²⁷ The question of fishery rights was not to be prejudiced. On June 2 the British responded by forwarding to Blaine

²³Minute of R.G.W. Herbert on Ibid., p. 83.

²⁴Glover to Kimberley, March 8, 1881, in C.O. 194/201, p. 47.

²⁵Pauncefote to Colonial Office, April 5, 1881, and Colonial Office minutes in C.O. 194/202, pp. 144-146.

²⁶Ibid.

²⁷Granville to Thornton, May 27, 1881, in Pauncefote to Colonial Office, June 15, 1881, in C.O. 194/202, p. 289.

a Bill of Exchange for the required sum.²⁸ As far as the United States was concerned the problem of the Fortune Bay indemnity had been resolved.

In Newfoundland the initial press reaction to the news was subdued in comparison to earlier outbursts. A correspondent of the Montreal Gazette writing from St. John's reported "unmitigated disgust" at the British action; he predicted "unqualified condemnation from all classes here".²⁹ Elaborating on the astonishment evident in Newfoundland, he observed "If the British Government choose to pay such an outrageous sum for imaginary grievances of course they can please themselves; but they will surely never ask this colony to pay any portion of it".³⁰ Another correspondent, this one to the Evening Telegram, contended that the Imperial government had been outwitted; the Americans had gotten away with violating the laws of God and man.³¹ Obviously the lump sum settlement had been completely unexpected.

The editorial pages of the local press were much more restrained. The Newfoundlander, a government supporter, stressed that the inclusion of the Aspey Bay claims would lessen the amount for which the colony was liable.³² Apparently it hoped to soften the colony's surprise. A defensive stance was adopted following reports

²⁸Thornton to Granville, June 6, 1881, in C.O. 194/202, p. 289.

²⁹Correspondent to the Montreal Gazette, in the Newfoundlander, June 24, 1881.

³⁰Ibid.

³¹Evening Telegram, August 26, 1881.

³²Newfoundlander, June 7, 1881.

that Canadian papers blamed Whiteway's presence in London for the settlement. The Newfoundlander contended that the Premier had not arrived in England until after the settlement had been reached; he had then made efforts to have the matter reopened.³³ A completely different approach was taken by the opposition paper, the Evening Telegram. This paper blamed the colonial government, "Whiteway, Shea and Co.", more than the Imperial government.³⁴ It attributed to the former the subsidization of the government press which had incited the Newfoundland fishermen to acts of hostility.³⁵ At this time, the Telegram was above all a political paper.

The comparatively quiet public reaction can be attributed in the main to three reasons: the continuing uncertainty over who would ultimately pay the bill; the improved conditions of the colonial fisheries; and an upswing in Newfoundland/United States trade.³⁶ The St. John's Chamber of Commerce referred to the indemnity without unfavourable comment; it reported that a settlement had been reached "by Home authorities who without conceding their position have deemed this mode of settlement to be preferable to an insistence on what they considered right at the risk of disturbing the amicable relations now existing between the two nations."³⁷ Evidently the merchant community saw little to complain about in the turn which negotiations had taken.

³³Ibid., June 10, 1881.

³⁴Evening Telegram, June 1, 1881.

³⁵Ibid.

³⁶For instance, in 1881 a strong demand for Newfoundland cod oil existed in the United States. Report of the St. John's Chamber of Commerce, 1880-1881, in Newfoundlander, August 23, 1881.

³⁷Ibid.

The apparent mercantile satisfaction was not shared by the Whiteway government. The Premier had long been sensitive to the problems raised by the Fortune Bay Dispute. Yet, up to the time the indemnity had been paid, his government had been kept largely in the dark. In anticipation of a joint inquiry it had forwarded its counter-claims to Great Britain;³⁸ in addition, it had received a report on the American claims from Judge Bennett.³⁹ As late as May 3 Glover had been informed that Blaine and Thornton would soon commence an informal inquiry.⁴⁰ The Governor was asked whether the Newfoundland government could send a competent person to assist the British minister.⁴¹ Whiteway, about to leave for England to participate in Anglo-French negotiations, signified his intention to first visit New York. Immediately before he was to sail, the Premier was informed by telegraph that a lump sum arrangement had been finalized.⁴² This was his first indication that such an arrangement had played a basic part in negotiations.

The nature of the Anglo-American settlement necessarily left many questions unanswered. The major one centred around its implications for the colony's fishery legislation. Closely related

³⁸See supra, p. 111.

³⁹Memorandum by T.R. Bennett, May 4, 1881, enclosure in Whiteway to Kimberley, May 20, 1881, in Correspondence Relating to the Settlement of Claims, p. 1.

⁴⁰Herbert to Tenterden, May 7, 1881, in Further Correspondence Respecting Occurrences, p. 97.

⁴¹Ibid.

⁴²Colonial Office minutes on Pouncefote to Colonial Office, May 7, 1881, in C.O. 194/201, p. 213.

were several other problems: the continuing relationship between Newfoundland and American fishermen, the proposal for joint regulations, and a later suggestion by Granville that joint cruisers be employed.⁴³ In addition, there was the crucial issue involving repayment of a sum settled by an arrangement on which the colony had not been consulted; its basis was still hazy and possibly objectionable. All these problems, the climactic ones of Newfoundland's experience under the Washington Treaty, had some bearing on its fishery legislation. In its reaction to them the colony established new guidelines for its role within the Imperial system.

The first of the residual problems associated with the indemnity settlement concerned the practical relationship between Newfoundland and American fishermen. During the summer of 1881 Secretary of State Blaine instructed J.R. Lowell to complain to the British about the continued unwillingness of Newfoundlanders to allow American fishermen to catch their own bait.⁴⁴ The Secretary painted a very uncomplimentary picture of the Newfoundland fishermen; he portrayed them as "very poor and illiterate" and dependent on American bait purchases for subsistence.⁴⁵ When Lowell communicated these views to the Foreign Office, he also indicated the State Department's wish

⁴³The suggestion that joint cruisers be used to patrol the Newfoundland coasts was made by Granville in the course of his negotiations with Evarts. See Granville to Thornton, February 24, 1880, in Tenterden to Colonial Office, February 25, 1881, in C.O. 194/202, pp. 84-85.

⁴⁴Lowell to Granville, August 19, 1881, in Pauncefote to Colonial Office, August 29, 1881, in C.O. 194/202, p. 438.

⁴⁵Ibid., p. 441

... that the Imperial Government should impress upon the provincial authorities their duty to maintain and enforce the rights which the Treaty had conferred within their jurisdiction upon the citizens of the United States, and especially that they should place at the baiting stations - and on the frequented portions of the coast, officials with sufficient authority to restrain these outbreaks of violence.⁴⁶

In effect, the United States suggested that the Imperial Government assert its sovereignty over Newfoundland. Such a step, if carried out, would counter the colony's own process of self-assertion.

The Imperial Government avoided a strong line. It transmitted Lowell's letter to Newfoundland drawing attention to the paragraph respecting the maintenance of American rights.⁴⁷ Yet, even then the colony's reaction was vehement, indicating a wide divergence in colonial and Imperial interests. The Executive Council outlined its views in a long and bitter minute; it read

Fully appreciating the importance of the matter to which their attention has been directed the council regret that Lord Kimberley should have accepted as "facts" allegations which appear to have been made in very general terms by United States fishermen when endeavouring to sustain claims proved to his Lordship on the evidence of the claimants themselves to be fictitious, except as to a comparatively small amount which appeared to be justified only on the assumption of a position held by Lord Salisbury to be untenable.⁴⁸

⁴⁶Ibid., p. 443.

⁴⁷Kimberley to Office Administering the Government, September 9, 1881, in C.O. 194/202, p. 449.

⁴⁸Newfoundland Executive Council, Minute Book, entry for September 26, 1881, pp. 295-97.

The colonial government had voiced its displeasure with the Fortune Bay indemnity. The obscurity of the grounds on which it had been made was seen as encouraging further complaints by American fishermen.⁴⁹ The minute asserted:

The Council are not surprised that the success of such representations had induced others still more exaggerated on the part of United States fishermen; nor do they wonder that the acquiescence of Her Majesty's Government in the payment of such "large damages" without an investigation of each individual claim should embolden these fishermen to make charges which are unsustainable, with a view, it may be, for laying the foundation of future equally unfounded claims, should a short fishery occur as in 1878.⁵⁰

The Executive Council thus blamed the Imperial government for the continuing friction complained of by Blaine. As the matter of liability for the indemnity had not yet been settled, the colonial reaction may have been partly determined by economic motives.

The minute of council had reserved some barbs for the American fishermen. It blasted them as "a rough, unscrupulous class" which had introduced a demoralizing influence among colonial fishermen.⁵¹ Yet, the Americans were not the Executive Council's primary target; the bulk of its anger was directed at the British. The latter were taken aback when the minute reached the Colonial Office. Kimberley termed the council an "unreasonable Body" and lamented "I augur ill from this angry minute for getting back our

⁴⁹Ibid.

⁵⁰Ibid.

⁵¹Ibid.

£15,000".⁵² If the Newfoundlanders had attempted to create a climate conducive to a settlement, they had certainly succeeded. In addition, the colonial government had put on record its vigorous renunciation of the British handling of the Fortune Bay affair. As such, a statement of the colony's distinct position within Imperial treaty relations had been provided.

This awareness of separate colonial interests was further advanced during discussions on the proposals for joint regulations and joint cruisers. In the spring of 1881 the Imperial government sounded Newfoundland for its opinion on the establishment of a joint cruiser system.⁵³ It also asked the colony to submit those laws it considered acceptable as the bases for joint regulations. Whiteway reacted strongly to the cruiser proposal, viewing it as a threat to the colony's authority. He replied that joint cruisers were unnecessary, "that being in British territory all laws and regulations relating to the Fisheries should be carried out by British authorities and that such being the case the existing tribunals are sufficient".⁵⁴ The Premier's response also contained an expression of confidence in colonial fishery laws; he wrote:

With respect to those laws which it may be deemed advisable to enforce I may observe generally that the few statutes now existing upon the subject of the Fisheries were

⁵² Minute of Kimberley on Officer Administering the Government, September 26, 1881, in C.O. 194/201, p. 326.

⁵³ In Whiteway to Kimberley, June 13, 1881, in C.O. 194/203, pp. 418-19.

⁵⁴ Ibid.

enacted and thought necessary by the Legislators for their preservation and especially are those requisite which have reference to bait fishes.⁵⁵

Whiteway argued that existing legislation was sufficient. Implicit was his belief that these laws were applicable to both Newfoundlanders and Americans.

The Colonial Office on receipt of Whiteway's communication realized that the colony found the cruiser proposal "clearly unpalatable".⁵⁶ The Premier's stand on the sufficiency of colonial legislation attracted some support, notably from J. Bramston.⁵⁷ Yet Kimberley disagreed; the Colonial Minister fearing a series of Fortune Bay cases wished to proceed with Anglo-American negotiations to draw up a regulatory code.⁵⁸ Foreign Minister Granville concurred, noting his willingness to send the different Newfoundland acts to the United States.⁵⁹ The Americans would be asked to select those they found acceptable as the bases for a code.⁶⁰ When their views were made known, the Newfoundland legislature would be requested to make any necessary amendments. Whiteway on being asked to send the acts he

⁵⁵ Ibid.

⁵⁶ Minute of E.B. Pennell on Ibid., p. 414.

⁵⁷ Minute of J. Bramston on Ibid., p. 414.

⁵⁸ Minute of Kimberley on Ibid., pp. 416-417.

⁵⁹ Pauncefote to Colonial Office, August 11, 1881, in C.O. 194/202, p. 293.

⁶⁰ Ibid.

wished to have communicated to the United States responded by sending the entire fisheries legislation.⁶¹ This included the basic acts of 1862 - re-enacted in the consolidated statutes of 1872 - and the amending acts of 1876, 1877, and 1879. The Premier had not missed an opportunity to reaffirm the colony's fishery regulations.

The acts enumerated by Whiteway were sent to Washington with a request for American objections.⁶² The State Department did not respond until the spring of 1882. By that time another change in department personnel had occurred. The death of President Garfield had led to the replacement of Blaine by F.T. Frelinghuysen. The new administration worked out an elaborate memorandum which harked back to Evarts' "wholly free" contention.⁶³ It refused outright to even consider the Newfoundland acts as the bases for joint regulations. The objections to each act were specified.⁶⁴ Indeed, in the case of the law against in-barring, the State Department charged Newfoundland fisheries officials with discrimination; it asserted:

... the complaint of citizens of the United States, engaged in the herring fisheries on the coast of Newfoundland is that this provision has been wholly disregarded by the local magisterial officers, and that while the prohibitory provisions of the consolidated statutes were rigidly enforced against

⁶¹Whiteway to R.H. Meade, August 17, 1881, in C.O. 194/203, p. 471.

⁶²Granville to Charge d'affaires Drummond, September 12, 1881, in C.O. 194/202, pp. 473-74.

⁶³United States State Department memorandum in Tenterden to Colonial Office, May 26, 1882, in C.O. 194/205, p. 102.

⁶⁴Ibid., pp. 96-102.

American fishermen, the native fishermen were allowed complete immunity in the constant violation of the statutes.⁶⁵

The American memorandum also contended that the more stringent enforcement procedures in the 1879 act had led to a constant surveillance of United States fishermen.⁶⁶ Newfoundland fishermen, it charged, had not only been exempted but also called upon to assist officials against the Americans.⁶⁷ Its final suggestion was that if Newfoundland could not dispense with the different acts, it should pass a law declaring their inapplicability to American fishermen.⁶⁸ Evidently, the United States believed that the Newfoundland acts and the treaty's Article XVIII were totally irreconcilable.

The strong stand adopted by the Americans worked to Newfoundland's advantage for it forced Great Britain into an equally extreme role. Lord Kimberley viewed the State Department's arguments as "absolutely inconsistent" with the British position that American fishermen were bound to obey reasonable regulations.⁶⁹ His opinions were shared by the Foreign Office. The latter in its response to the Americans expressed regret that a discussion supposedly exhausted had been reopened.⁷⁰ It reaffirmed that Great Britain had never accepted Evarts' argument that American fishermen were "wholly free" from re-

⁶⁵Ibid., p. 100.

⁶⁶Ibid., p. 102.

⁶⁷Ibid.

⁶⁸Ibid.

⁶⁹Minute of Kimberley on Ibid., p. 91.

⁷⁰Draft of despatch, Granville to Sackville-West, July, 1882, in Pauncefote to Colonial Office, July 10, 1882, in C.O. 194/205, p. 124.

straints. However, the Foreign Minister did not close the door completely; he remarked that it was

... the hope of Her Majesty's Government that, upon further consideration, the Government of the United States will agree to let the disputed question of treaty rights remain in abeyance, and will unite with Her Majesty's Government in carrying out the revision of the Fishery negotiations in the spirit and with the object indicated by Mr. Evarts.⁷¹

Granville's hopes were in vain for the two questions of treaty interpretation and joint regulations were inextricably linked. During the remaining years under the treaty both questions remained in abeyance.

The diplomatic stalemate between Great Britain and the United States by no means detracted from Newfoundland's position. Although the problem of joint regulations had not been settled, the colony itself still maintained that its laws were necessary. This had been borne out by Whiteway's letter and the State Department memorandum. Moreover, Great Britain had not issued any instructions which might undermine the colony's stance. Indeed, the United States government by its reversion to an earlier position had compelled Great Britain to defend the colony's reasonable regulations. The move towards a joint regulatory code had been short-circuited. The indefinite situation which resulted left Newfoundland free to apply its own interpretation.

An additional opportunity for Newfoundland to determine its place in Imperial treaty relations arose during discussions on re-payment of the indemnity to Great Britain. The grounds on which it had

⁷¹Ibid., p. 125.

been paid had never been clarified to Newfoundland's satisfaction. Now the colony had to contend with both the Colonial Office and the British Treasury. The £15,000 had been charged against the Civil Contingencies Fund rather than placed before Parliament as a vote.⁷² Concerned over its eventual disposition, the Treasury lost no time in pressing for repayment.⁷³ On the other hand, the Colonial Office was inclined to be less insistent. It knew that the indemnity had been paid without Newfoundland's consent and to push matters would result in its further alienation.⁷⁴ Under these circumstances the three parties involved had to work towards a settlement.

The Colonial Office's concern over the failure to consult Newfoundland was justified. On May 4, 1881, two days before the lump sum arrangement had been accepted by Blaine, Judge T.R. Bennett had reported to the colonial government on the American claims.⁷⁵ The Harbour Grace judge had pointed out that only six of the twenty-two vessels involved had brought seines; the remainder had been trading vessels.⁷⁶ The latter had not incurred any direct losses. And since the Washington Treaty did not extend to trading vessels, they could not claim their rights had been violated. As for the six vessels

⁷²R.R. Lingen to Colonial Office, March 1, 1881, in C.O. 194/203, p. 233.

⁷³Ibid.

⁷⁴Colonial Office minutes on Ibid., p. 332.

⁷⁵Judge Bennett's Report, Correspondence Relating to the Settlement of Claims, pp. 1-8.

⁷⁶Ibid., p. 6.

which had brought seines, Bennett contended on the basis of their own claims that the maximum damages could not exceed \$17,300.⁷⁷ The judge emphasized that Newfoundland's liability was determined only by the use of violence.⁷⁸ No mention was made of claims arising because Newfoundlanders had prevented the Americans from breaking local laws. Such an omission suggested that the subject of colonial fisheries legislation was not open to debate. Although Bennett's report was temporarily eclipsed by news of the lump sum arrangement, its prominence in subsequent Anglo-Newfoundland negotiations on repayment of the indemnity was assured.

The Colonial Office in anticipation of opposition from Newfoundland had attempted to justify the lump sum arrangement. It stressed the money saved by not holding an inquiry and "the great advantage in terminating an irritating controversy".⁷⁹ Yet the British department was not too confident about the success of its arguments. It delayed requesting repayment until the relevant correspondence had been laid before Parliament.⁸⁰ But this move boomeranged. The Parliamentary papers when presented did not include Judge Bennett's report and the Newfoundland counter-claims. These

⁷⁷Ibid., p. 7.

⁷⁸Ibid.

⁷⁹ Colonial Office to Whiteway, May 26, 1881, in Kimberley to Officer Administering the Government, March 15, 1882, in C.O. 194/205, pp. 37-42.

⁸⁰ Colonial Office minutes on Pouncefote to Colonial Office, June 2, 1881, in C.O. 194/202, p. 253.

documents had not been considered pertinent to the procedure by which the settlement had been reached.⁸¹ Under such circumstances a favourable reaction from Newfoundland was improbable.

In October of 1881 the British finally suggested to Newfoundland that it take legislative action to repay the indemnity.⁸² The opposition expected from the Whiteway government materialized. Deploring the absence of Newfoundland papers among those presented to Parliament, the Executive Council asserted:

Confident of the just character of their defence and conscious of the fictitious basis upon which many of the American claims are founded, as distinct from the principal ground whether the Americans have any claims either legal or equitable under the terms of the treaty the council cannot but regret that a sum of money had been paid which appears a general admission of the justness of the claim.⁸³

To Newfoundland the size of the indemnity had lent an undeserved aura of credence to the American claims. In addition, the continued uncertainty over the exact grounds of the settlement was frustrating. The minute resumed:

The council also feel that this payment having been made "without prejudice to any question of the rights of either Government under the treaty of Washington", leaves the substantive matters in dispute in a most unsatisfactory state. For example, notwithstanding that it was stoutly contended by the American counsel

⁸¹Series of minutes on no specified correspondence but respecting papers to be presented to Parliament, in C.O. 194/202, pp. 285-87.

⁸²Referred to in Newfoundland Executive Council, Minute Book, entry for December 6, 1881, pp. 303-305.

⁸³Ibid.

that the Americans had no right of strand fishing, their claim can only be sustained upon the assumption that they have such right.⁸⁴

Noteworthy was the council's selection of the strand fishery as an example of substantive matters still in dispute. No mention was made of the involvement of colonial fishery legislation. Its applicability to American fishermen was considered settled.

The Executive Council was especially firm on the matter of consultation. It observed that if the original proposal for a joint inquiry had been followed, the colony would have "cheerfully acquiesced" in the decision reached".⁸⁵ The substitution of a different procedure "without reference to the Local Executive" now prevented it from submitting the matter to the legislature.⁸⁶ The minute asked the Imperial government to furnish the reasons which had induced it to accept the lump sum arrangement. In this opening round the colony had made clear its intention to obtain clarification.

Colonial Office officials, appreciating the colony's stand, viewed the Newfoundlanders as "naturally rather put out".⁸⁷ The new governor, Sir H. Fitzgerald-Maxse, on forwarding the minute of council had asked whether repayment was urgently required during the legislative session of 1882.⁸⁸ The Colonial Office obtained the

⁸⁴Ibid.

⁸⁵Ibid.

⁸⁶Ibid.

⁸⁷ Colonial Office minutes on Maxse to Kimberley, November 26, 1881, in C.O. 194/201, pp. 409-13.

⁸⁸ Maxse to Kimberley, November 26, 1881, in C.O. 194/201, p. 414.

grudging consent of the Treasury to a "further moderate delay"; it had pointed out that Newfoundland if pressed might completely reject the idea of repayment.⁸⁹ In the late spring of 1882 Colonial Minister Kimberley made another attempt to persuade the Whiteway government to propose a vote for the money. On May 2 he received a telegram from F.B.T. Carter, the Administrator in Maxse's absence; it read: "Have consulted Executive Council Am advised expedient to defer raising Fortune Bay question in Legislature for present Strong feeling irritation prevailing on the subject".⁹⁰ The Treasury now predicted "hard words" if Parliament were asked to vote the money.⁹¹ In response Colonial Office undersecretary J. Bramston observed "Hard words in Parliament will be returned by the Colony - without the money & the prospect will not terrify them".⁹² Of all the Imperial officials Bramston was consistently the most sympathetic towards Newfoundland's position.

When the colonial legislative session of 1882 ended, the required sum had still not been voted. Carter attributed the inaction to discontent over the Fortune Bay settlement; in a letter to the Colonial Office he described "an intense adverse feeling in

⁸⁹In Secretary to Treasury to Colonial Office, January 24, 1882, in C.O. 194/205, p. 5.

⁹⁰Telegram, Carter to Kimberley, May 2, 1882, in C.O. 194/204, p. 32.

⁹¹Secretary to Treasury to Colonial Office, May 20, 1882, in C.O. 194/205, p. 11.

⁹²Minute of J. Bramston on Ibid., p. 10.

both branches and in the country generally".⁹³ The Administrator enclosed a speech made by A.W. Harvey in the Legislative Council when the matter had been adverted to during the course of debate.⁹⁴ Harvey had decried the payment of so much money for "imaginary injuries" and stressed the colony's right to be consulted. In referring to the British request for repayment he had asserted:

They have no case whatever upon any principle of reason or justice in making such a requisition, and if a principle of that kind were to be upheld, involving as it would, a complete negation of our legislative independence, then responsible government is so only in name, and would be little better than a delusion or a snare.⁹⁵

Similar sentiments were held by Executive Council member J.S. Winter who visited England during the summer of 1882. He reported to Colonial Office officials that the colony was "very sore" about the whole problem.⁹⁶ However, despite the many assertions respecting colonial disgruntlement, there was no widespread press clamor. By this time the Fortune Bay Dispute as a topic of interest had been virtually exhausted. The American presence had become a fact of life and the problems stemming from it were commonplace. Yet, these problems were a major concern for the Newfoundland government and

⁹³Carter to Derby, June 2, 1882, in Correspondence Relating to the Settlement of Claims, p. 21.

⁹⁴Enclosure in Ibid.

⁹⁵Ibid.

⁹⁶Colonial Office minutes on Secretary to Treasury to Colonial Office, October 5, 1882, in C.O. 194/205, p. 19.

the Colonial Office. While the indemnity question remained unsettled, the colony could not be certain of its place within Imperial treaty relations.

During the interval between prorogation of the Newfoundland assembly in 1882 and the commencement of a new session in 1883, the problem of repayment was discussed by the Colonial Office and the Treasury. The latter continued to urge that steps be taken to recover the money.⁹⁷ When the Newfoundland legislature reopened, the Colonial Office repeated its request for repayment. In response Carter arranged a special meeting of the Executive Council. He found a "unanimous opinion" that any measure introduced would be defeated by both houses.⁹⁸ It was also predicted that the government which had a large following on most questions would be deserted by its supporters. In another minute the Executive Council stated the grounds on which it was willing to consider a settlement.⁹⁹ The colonial viewpoint as distinct from that of the Imperial government was expounded; the minute asserted:

No question is raised as to the sufficiency, from an Imperial point of view, of the grounds on which the decision of Her Majesty's Government was based. But the council respectfully submit that the circumstances of this decision being peculiar and exceptional the colony cannot

⁹⁷ Secretary to Treasury to Colonial Office, October 5, 1882, in C.O. 194/205, p. 19.

⁹⁸ Carter to Derby, April 2, 1883, in C.O. 194/206, pp. 45-48.

⁹⁹ Newfoundland Executive Council, Minute Book, entry for April 2, 1883, pp. 52-53, enclosure in Ibid., pp. 45-48.

be considered accountable for a procedure to which it had not acceded, and that any possible equities would be satisfied by a repayment from the funds of the colony of the amount shown by Judge Bennett's statement to be the maximum to which the Americans could lay claim.¹⁰⁰

The Newfoundland government in opting to pay the amount assessed by Bennett sought a more distinct definition of the grounds on which the settlement had been reached. Bennett's assessment had been based entirely on damages caused by excessive force; there had been no question as to the amenability of American fishermen to local laws. In offering to abide by Bennett's interpretation and his estimate of American losses, the colony sought to enshrine its stand in an established precedent.

In Great Britain the Newfoundland offer was viewed as the best settlement possible under the circumstances. When British acceptance was signified, the Newfoundland government immediately forwarded a Bill on the Union Bank of London for the amount of \$17,300.¹⁰¹ Colonial Office Officials were pleasantly surprised at the promptness with which the colony had provided the money. Undersecretary E. Ashley remarked "What a comfort to have such a long standing question settled".¹⁰² His sentiments were echoed by E.B. Pennell who termed it "a satisfactory conclusion to an awkward

¹⁰⁰Ibid.

¹⁰¹Maxse to Derby, July 3, 1883, in C.O. 194/206, pp. 109-110.

¹⁰²Minute of Colonial Office Undersecretary E. Ashley on Ibid., p. 108

business".¹⁰³ Evidently, all parties concerned, the United States, Great Britain, and Newfoundland had derived some measure of satisfaction from the settlement reached.

Newfoundland's satisfaction was perhaps best indicated by its speed in handing over the money. The Imperial government's acquiescence had meant success for the colony's efforts to clarify its position. It had resolutely refused to recognize the British settlement; instead, it had held out for one which it believed left little doubt about the intactness of its fishery legislation. In addition, the colony had received recognition of its right to be consulted. It had refused to pay Great Britain for money paid on its behalf but without its consent; in holding out for its own version of a settlement, it had obtained a form of retroactive consultation. As the Evening Mercury, a Whiteway supporter, observed, the government was to be congratulated on its good work.¹⁰⁴ The silence of the opposition papers was an indication of tacit consent.

The resolution of the Fortune Bay indemnity issue concluded the last of the residual problems stemming from the Anglo-American settlement. In the indeterminate area where colonial interests and foreign treaty rights came into conflict, Newfoundland had seen its fisheries legislation put to a test. Its laws had not been relegated into subordination to treaty rights. Although an attempt to establish comprehensive control over the bait fishery had met with

¹⁰³Minute of E.B. Pennell on Ibid., p. 108.

¹⁰⁴Evening Mercury, August 31, 1883.

failure in 1878, the colony's existing laws had been maintained. Newfoundland's legal position had been consolidated by the reaffirmation of such precedents as the Marcy Circular, the Crown Law Officers' opinion of 1863, and the Labouchere Convention. It had been furthered by the establishment of several new precedents. These included the September 6 decision of the Halifax Commission, the Crown Law Officers' opinion of 1873, and the Lord Chancellor's opinion of 1880. The latter two had affirmed that American fishermen were obliged to respect reasonable police regulations. This consolidation of its position would enable the colony to approach the task of establishing control over the bait fishery with new confidence in the eighteen-eighties. The process of colonial self-assertion had been kept alive, and indeed, furthered.

At the same time Newfoundland had developed a new sense of self-awareness from its involvement in Anglo-American relations. An acute recognition of the divergence of colonial and Imperial interests had taken place. This had been evident in the colony's denunciation of Imperial tactics in 1881. In addition, a distinct colonial viewpoint had been put forward in several other matters: the issuance of notices respecting the rights of American fishermen, the fisheries legislation of 1879, and the final settlement of the Fortune Bay indemnity question. In each different instance, the Colonial Office whether dealing with the Foreign Office or with the Treasury had acknowledged the existence of such a viewpoint.

It was on these two cornerstones, the authority to regulate its fishery and the right to be consulted in matters affecting

its interests, that Newfoundland had more clearly defined its place within the Empire. In both cases considerable gains had been made. This definition of the colonial position had been the unifying theme of Newfoundland's experience under the Washington Treaty.

EPILOGUE

Even as Anglo-Newfoundland negotiations attempted to settle the indemnity issue, moves were underway in the United States to bring an end to the Washington Treaty. The American fishing interests, never fond of reciprocity agreements with British North America, had become less so with the decline of the mackerel fishery in British waters. In addition, there were several other factors promoting dissatisfaction with the arrangement; these included the free influx of British fish into American markets, the generally considered exorbitant Halifax Award, and the many disputes which had occurred in Newfoundland waters. The latter especially had maintained a considerable level of irritation.¹ On April 3, 1883, Congress adopted a resolution which directed the President to give notice to the British government of the termination of the Fisheries Articles to take effect on July 1, 1885.² The resolution had been pressed by Senator E. Hale of Maine and Representative E. Rice of Massachusetts. Once again, the New England fishing interests had demonstrated their influence.³

¹Cape Ann Advertiser, in Evening Telegram, February 22, 1883.

²Charles G. Tansill, The Foreign Policy of Thomas F. Bayard 1885-1897. (New York: Fordham University Press, 1940), p. 194.

³Congressional Record, 47 Congress, 2 Session, pp. 3055-3056.

In Newfoundland where problems arising from the treaty had concerned the government for years, the news of its termination was welcomed by Administrator F.B.T. Carter. In his opinion 'the colony had no apparent reason to regret the termination of the treaty'.⁴ Yet predictably there was no consensus. Newfoundland/United States trade since 1878 had shown signs of improvement; moreover, the growth of the colonial bank fishery increased the prospects of an improved American market for large fish. Thus it was, that in 1888, the St. John's Chamber of Commerce was to send of all people, Amrose Shea, to the United States in an effort to work out a new agreement.⁵ This though was another story.

Throughout the remaining twenty-five years before the Hague Arbitration of 1911, Newfoundland was continually involved in fishery relations with the United States. The gains it had made under the Washington Treaty were to serve it well.

⁴Quarterly Review, Vol. 3, 1881, pp. 111, 114, 120, 121, 122.

⁵Dr. L. Mackay, Newfoundland, p. 155.

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⁴Carter to Derby, May 5, 1883, in C.O. 194/206, p. 76.

⁵R.A. Mackay, Newfoundland, p. 355.

APPENDICES

APPENDIX A

THE FISHERY ARTICLES OF THE TREATY OF
WASHINGTON, 1871; XVIII-XXV, XXXII-XXXIII.¹Article XVIII

It is agreed by the high contracting parties that, in addition to the liberty secured to the United States fishermen by the convention between the United States and Great Britain, signed at London on the 20th day of October, 1818, of taking, curing, and drying fish on certain coasts of the British North American colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty, for the term of years mentioned in Article XXXIII of this treaty, to take fish of every kind, except shellfish, on the seacoasts and shores, and in the bays, harbours, and creeks, of the provinces of Quebec, Nova Scotia, and New Brunswick, and the colony of Prince Edward's Island, and of the several islands thereunto adjacent without being restricted to any distance from its shore, with permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

¹U.S., Department of State, Papers Relating to the Foreign Relations of the United States, 1871 (Washington, D.C.: Government Printing Office, 1871), pp. 523-28.

It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers, are hereby reserved, exclusively for British fishermen.

Article XIX

It is agreed by the high contracting parties that British subjects shall have, in common with the citizens of the United States, the liberty, for the term of years mentioned in Article XXXIII of this treaty, to take fish of every kind, except shell-fish, on the eastern sea-coasts and shores of the United States north of the thirty-ninth parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbours, and creeks of the said sea-coasts and shores of the United States and of the said islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the islands aforesaid, for the purpose of drying their nets and curing their fish, provided that, in so doing, they do not interfere with the rights of private property, or with the fishermen of the United States in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea fishery, and that salmon and shad fisheries, and all other fisheries in rivers and mouths of rivers, are hereby reserved exclusively for fishermen of the United States.

Article XX

It is agreed that the places designated by the commissioners appointed under the first article of the treaty between the United States and Great Britain, concluded at Washington on the 5th day of June, 1854, upon the coasts of Her Britannic Majesty's dominions and the United States, as places reserved from the common right of fishing under that treaty, shall be regarded as in like manner reserved from the common right of fishing under the preceding articles. In case any question should arise between the governments of the United States and of Her Britannic Majesty as to the common right of fishing in places not thus designated as reserved, it is agreed that a commission shall be appointed to designate such places, and shall be constituted in the same manner, and have the same powers, duties, and authority as the commission appointed under the said first article of the treaty of the 5th of June, 1854.

Article XXI

It is agreed that, for the term of years mentioned in Article XXXIII of this treaty, fish-oil and fish of all kinds, (except fish of the inland lakes, and of the rivers falling into them, and except fish preserved in oil,) being the produce of the fisheries of the United States, or of the Dominion of Canada, or of Prince Edward's Island, shall be admitted into each country, respectively, free of duty.

Article XXII

Inasmuch as it is asserted by the government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under Article XVIII of this treaty are of greater value than those accorded by Articles XIX and XXI of this treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of this treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII of this treaty; and that any sum of money which the

said commissioners may so award shall be paid by the United States Government, in a gross sum, within twelve months after such award shall have been given.

Article XXIII

The commissioners referred to in the preceding article shall be appointed in the following manner, that is to say: One commissioner shall be named by the President of the United States and Her Britannic Majesty conjointly, and in case the third commissioner shall not have been so named within a period of three months from the date when this article shall take effect, then the third commissioner shall be named by the representative at London of His Majesty the Emperor of Austria and King of Hungary. In case of the death, absence or incapacity of any commissioner, or in the event of any commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment, in the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

The commissioners so named shall meet in the city of Halifax, in the province of Nova Scotia, at the earliest convenient period after they have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide the

matter referred to them to the best of their judgement, and according to justice and equity; and such declarations shall be entered on the record of their proceedings.

Each of the high contracting parties shall also name one person to attend the commission as its agent, to represent it generally in all matters connected with the commission.

Article XXIV

The proceedings shall be conducted in such order as the commissioners appointed under Articles XXII and XXIII of this treaty shall determine. They shall be bound to receive such oral or written testimony as either government may present. If either party shall offer oral testimony, the other party shall have the right of cross-examination, under such rules as the commissioners shall prescribe.

If in the case submitted to the commissioners either party shall have specified or alluded to any report or document in its own exclusive possession, without annexing a copy, such party shall be bound, if the other party thinks proper to apply for it, to furnish that party with a copy thereof; and either party may call upon the other, through the commissioners, to produce the originals of certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the commissioners may require.

The case on either side shall be closed within a period of six months from the date of the organization of the commission, and the commissioners shall be requested to give their award as soon as possible thereafter. The aforesaid period of six months may be extended for three months in case of a vacancy occurring among the commissioners under the circumstances contemplated in Article XXIII of this treaty.

Article XXV

The commissioners shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a secretary and other necessary officer or officers to assist them in the transaction of the business which may come before them.

Each of the high contracting parties shall pay its own commissioner and agent or counsel; all other expenses shall be defrayed by the two governments in equal moieties.

Article XXXII

It is further agreed that the provisions and stipulations of Articles XVIII to XXV of this treaty, inclusive, shall extend to the colony of Newfoundland, so far as they are applicable. But if the imperial parliament, the legislature of

Newfoundland, or the Congress of the United States, shall not embrace the colony of Newfoundland in their laws enacted for carrying the foregoing articles into effect, then this article shall be of no effect; but the omission to make provision by law to give it effect, by either of the legislative bodies aforesaid, shall not in any way impair any other articles of this treaty.

Article XXXIII

The foregoing Articles XVIII to XXV, inclusive, and Article XXX of this treaty, shall take effect as soon as the laws required to carry them into operation shall have been passed by the imperial Parliament of Great Britain, by the Parliament of Canada, and by the legislature of Prince Edward's Island on the one hand, and by the Congress of the United States on the other. Such assent having been given, the said articles shall remain in force for the period of ten years from the date at which they may come into operation; and further until the expiration of two years after either of the high contracting parties shall have given notice to the other of its wish to terminate the same; each of the high contracting parties being at liberty to give such notice to the other at the end of the said period of ten years or at any time afterward.

APPENDIX B

ARTICLE A OF THE TREATY OF 1818²

Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbors, and creeks of His Britannic Majesty's dominions in America:

It is agreed between the high contracting parties that the inhabitants of the said United States shall have, forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Ramea Islands; on the western and northern coasts of Newfoundland, from the said Cape Ray to the Quirpon Islands; on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks from Mount Joli, on the southern coast of Labrador, to and through the straits of Belleisle; and thence, northwardly, indefinitely, along the coast, without prejudice, however, to any of the exclusive rights of the Hudson Bay Company; and that the American fishermen shall also have liberty, forever, to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, here above described, and of the coast of Labrador;

²U.S., Department of State, Papers Relating to the Foreign Relations of the United States, Vol. III, 1873. "Papers Relating to the Treaty of Washington" (Washington, D.C.: Government Printing Office, 1874), p. 282.

but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish as such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground.

And the United States hereby renounce, forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays creeks or harbors or His Britannic Majesty's dominions in America not included within the above-mentioned limits: Provided, however, that the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter, and of repairing damages therein, of purchasing wood and obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

APPENDIX C

ARTICLE III OF THE RECIPROCITY TREATY³

It is agreed that the articles enumerated in the schedule hereunto annexed, being the growth and produce of the aforesaid British colonies, or of the United States, shall be admitted into each country respectively free of duty.

Schedule

Grain, flour, and breadstuffs of all kinds.

Animals of all kinds.

Fresh, smoked, and salter meats.

Cotton-wool, seeds, and vegetables.

Undried fruits, dried fruits.

Fish of all kinds.

Produce of fish and other creatures living in the water.

Poultry, eggs.

Hides, furs, skins, or tails undressed.

Stone or marble, in the crude or unwrought state.

Slate.

Butter, cheese, tallow.

Lard, horns, manure.

Ores of metals of all kinds.

Coal.

³Ibid., pp. 299-300.

Pitch, tar, turpentine, askes.

Timber and lumber of all kinds, round, hewed,
and tarred, unmanufactured in whole or in part.

Firewood.

Plants, shrubs, and trees.

Pelts, wood.

Fish-oil.

Rice, broom-corn, and bark.

Gypsum, ground or unground.

Hewn, or wrought, or unwrought buhr or grindstones.

Dye-stuffs.

Flax, hemp, and tow, unmanufactured.

Unmanufactured tobacco.

Rags.

APPENDIX D

THE MARCY CIRCULAR

Department of State

Washington, March 28, 1856

To Charles H. Peasey, Esq.,
Collector of Customs, Boston.

SIR,—

It is understood that there are certain Acts of the British North American Colonial Legislatures, and also, perhaps, Executive regulations, intended to prevent the wanton destruction of the fish which frequent the Coasts of the Colonies, and injuries to the fishing thereon. It is deemed reasonable and desirable that both United States and British fishermen should pay a like respect to such laws and regulations which are designed to preserve and increase the productiveness of the fisheries on those Coasts. Such being the object of these laws and regulations, the observance of them is enjoined upon the Citizens of the United States, in like manner as they are observed by British subjects. By granting the mutual use of the inshore fisheries, neither party had yielded its right to civic jurisdiction over a marine league along its Coasts. Its laws are as obligatory upon the citizens or subjects of the

³Enclosure in Labouchere to Darling, August 15, 1856. Journal of the Assembly, 1857, Appendix, pp. 411-12.

other as upon its own. The laws of the British Provinces, not in conflict with the provisions of the Reciprocity Treaty, would be as binding upon the citizens of the United States within that jurisdiction, as upon British subjects. Should they be so framed or executed as to make any discrimination in favor of British fishermen, or to impair the rights secured to American fishermen by that Treaty, those injuriously affected by them will appeal to this Government for redress. In presenting complaints of this kind, should there be cause for doing so, they are requested to furnish the Department of State with a copy of the law or regulation which is alleged injuriously to affect their rights or to make an unfair discrimination between the fishermen of the respective Countries, or with a statement of any supposed grievance in the execution of such law or regulation, in order that the matter may be arranged by the two Governments. You will make this direction known to the Masters of such fishing vessels as belong to your port, in such manner as you may deem most advisable.

I am, & c.,
[Signed]

W.L. MARCY

APPENDIX E

RELEVANT NEWFOUNDLAND FISHERIES LEGISLATION
(CONSOLIDATES STATUTES, 1872)⁵Title XXVIIChapter 102Of The Coast Fisheries

1. No person shall haul, catch, or take herrings by or in a seine or other such contrivance on or near any part of the coast of this colony or of its dependencies, or in any of the bays, harbors, or other places therein, at any time between the twentieth day of October and the twelfth day of April in any year, or at any time use a seine or other contrivance for the catching and taking of herrings, except by way of shooting and forthwith hauling the same: Provided that nothing herein contained shall prevent the taking of herrings by nets set in the usual and customary manner, and not used for inbarring or enclosing herrings in a cove, inlet or other place.
2. No person shall, at any time between the twentieth day of December and the first day of April in any year, use any net to haul, catch or take herrings on or near the coasts of this colony or of its dependencies, or in any bays, harbors, or other places therein, having the mokes, meshes or scales of

⁵Newfoundland, Consolidated Statutes of Newfoundland, 1972 (St. John's, Newfoundland: Francis Winston, Publisher, 1874), pp. 490-92.

such net less than two inches and three-eighths of an inch at least, or having any false or double bottom of any description; nor shall any person put any net, though of legal size mesh, upon or behind any other net not of such size mesh, for the purpose of catching or taking such herring or herring fry passing a single net of legal size mesh.

3. No person shall wilfully remove, destroy, or injure any lawful net or seine, the property of another, set or floating on or near the coasts of this colony or its dependencies, or any of the bays, harbors, or other places therein, or remove, let loose, or take any fish from such seine or net.
4. No person shall, between the twentieth day of April and the twentieth day of October in any year haul, catch or take herrings or other bait for exportation, within one mile measured by the shore or across the water of any settlement situated between Cape Chapeau Rouge and Point Enragee, near Cape Ray; and any person so hauling, catching or taking within the said limits, may be examined on oath by a Justice, officers of Customs or person commissioned for the purpose as to whether the herrings or other bait are intended for exportation or otherwise, and on refusal to answer or answering untruly, such person, shall on conviction be subject to the provisions of the twelfth section of this chapter.

5-11. These articles deal mainly with the salmon fisheries.

12. Any person who shall violate any of the provisions of this chapter shall be subject to a penalty, not exceeding fifty dollars, and all seines, nets, and other contrivances used contrary to the provisions of this chapter shall be forfeited, and may be seized and detained until the trial of the offender by any Justice, sub-Collector of Customs, Preventive Officer, fishery warden, or constable, on view, or by virtue of a warrant issued by such Justice, sub-Collector or Preventive Officer, upon complaint made on oath to be administered by either of them, and, upon conviction, the same may be declared forfeited and ordered to be sold at public auction.
13. Any Justice, sub-Collector, Preventive Officer, fishery warden, or constable, may, on view, destroy any weir, rack, frame, train-gate or other erection or barrier, used or erected contrary to the provisions of this chapter, or the same may be destroyed by virtue of a warrant issued by any Justice, sub-Collector, or Preventive Officer, upon complaint made on oath to be administered by either of them.
14. All forfeitures and penalties imposed by this chapter shall be recovered with costs in a summary manner before any Justice, for which purpose such Justice may summon or arrest the offender, and compel witnesses, by summons or warrant, to appear before him; and, upon conviction of the offender, such Justice shall cause all seines, nets, and other contrivances

illegally used to be sold by public auction, or where permitted under the provisions of the preceding sections of this chapter, destroyed; and in default of the payment of any penalty imposed, and costs, such Justice shall issue his warrant and cause such offender to be arrested and imprisoned for any period not exceeding twenty days.

15. All penalties and forfeitures imposed by this chapter, and the proceeds thereof, shall be paid to the party informing against and prosecuting the offender or conviction.
16. No proceeding or conviction by any Justice or other officer under this chapter shall be quashed or set aside on any informality, provided the same shall be substantially in accordance with the intent and meaning of this chapter.
17. The Governor in Council may appoint the Collector of Revenue for Labrador, or other person, to be superintendent of the fisheries on the coast of this island and its dependencies, and may also appoint fishery wardens and prescribe their duties for the purpose of this chapter. The compensation for the services of such officers to be provided by the legislature.
18. Nothing in this chapter shall affect the rights and privileges granted by treaty to the subjects of any state or power in amity with her Majesty.

APPENDIX F

NEWFOUNDLAND FISHERIES LEGISLATION (1876)⁶Cap. VIAn Act to amend the Law Relating to the Coast Fisheries

Be it enacted by the Governor, Legislative Council and Assembly, in Legislative Session convened, as follows:

- I. The First Section of Chapter One Hundred and Two of the Consolidated Statutes is hereby amended, by substituting the words "Twenty-fifth day of April" for the "Twelfth day of April".
- II. The Fourth Section of the said Chapter is hereby amended, by substituting the words "Tenth day of May" for "Twentieth day of April".
- III. No person shall, at any time, haul, catch, or take Squids, with, in, or by means of any seine, bunt, or other such contrivance.
- IV. No person shall, between the hours of Twelve o'clock on Saturday night and Twelve o'clock on Sunday night, haul or take any Herring, Caplin or Squids, with nets, seines, bunts, or any other such contrivance, or set or put out any such net, seine, bunt, or contrivance, for the purpose of such hauling or taking.

⁶"An Act to amend the Law Relating to the Coast Fisheries," in Newfoundland, Statutes of Newfoundland, 1873-79 (J.C. Withers, Printer to the Queen's Most Excellency Majesty, n.d.).

- V. Any person violating the provisions of this Act shall be subject to the same penalties as are provided by Section Twelve of the said Chapter.

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