

ORIGINAL ARTICLE

# Properties of Empire: Contests over the Commons on Newfoundland's French Shore, 1763–83

Arianne Sedef Urus<sup>1,2</sup> 

<sup>1</sup>Faculty of History, University of Cambridge, Cambridge, UK and <sup>2</sup>Christ's College, University of Cambridge, Cambridge, UK  
Email: [asu26@cam.ac.uk](mailto:asu26@cam.ac.uk)

## Abstract

France ceded territorial claims to Newfoundland to Britain in the 1713 Treaty of Utrecht, but French fishermen retained rights to operate seasonal cod fisheries along a stretch of coastline known as the French Shore. The treaty was one of several laws formalizing the property regime based on the commons that emerged among European fishermen in the sixteenth and seventeenth centuries. Several demographic and geopolitical changes converged after the Seven Years' War (1756–63) to raise the question of whether French fishing rights on the French Shore were exclusive or concurrent with British fishing rights on that coast. Treaty and customary law seemed at odds on this question, forcing fishermen, merchants, naval officers, and ministers to articulate what constituted property and how property should be conceived if an interimperial commons were to work. The conflicts that transpired highlighted how they answered these questions differently. Agents of the state tended to promote the commons while some British subjects tried to create a real property regime from below. Disputes over real property formation on the French Shore show another dimension of the early modern enclosure process, demonstrating both the role of the commons in empire and the challenges of resource management in an interimperial space.

In October 1763 French fishing crews loaded heaps of dried cod into the hulls of ships in harbors along the northern coast of Newfoundland. The air was thick with humidity and winds carried the first snow flurries in from the north. The stench of fish swirled with brine and frost, filling the fishermen's nostrils as they gathered their playing cards, clay pipes, and other belongings before

pulling up anchor and setting sail for France.<sup>1</sup> As the shoreline receded behind their backs and they pulled the collars of their sealskin jackets closer around their necks, some likely reflected on how much things had changed on the Newfoundland coast since they last ventured there in 1755, before a British naval blockade during the Seven Years' War (1756–63) obstructed their entry. Indeed, the 1763 fishing season was the first time French crews encountered British subjects operating cod fisheries on the segment of coast known as the French Shore and claiming particular coves as property. As some fishermen gulped down their ration of wine, they might, too, have wondered, if the appearance of British fishing crews would be a lasting development. Back in France, the great cod merchants of Granville and St. Malo declared that British subjects had no right to process cod on Newfoundland's northern coast. The French ambassador echoed these claims in London.<sup>2</sup> But in truth, the exact meaning of the law was difficult to pin down. Newfoundland was home to what this article calls an interimperial commons, and after the Seven Years War, the terms under which that commons operated were in flux.

This article examines two regions of the French Shore—the Petit Nord and the Central Coast—and the divergent legal approaches to property formation British subjects took in them after the Seven Years' War. On the Petit Nord British subjects claimed segments of the shore as real property by invoking dubious titles, while on the Central Coast they made real property claims by squatting. Titles and squatting threatened the peace the interimperial commons was intended to protect wider Franco-British peace in different ways. In Newfoundland, real property formation did not generate heated contestations over questions of ownership, but rather over the limits of sovereignty in an interimperial space.

The example of the Newfoundland fisheries complicates the notion that European imperialism in the Americas was made material reality with, in William Cronon's apt phrase, "fields and fences," or, in other words, the enclosure process.<sup>3</sup> A full understanding of the contests over the French Shore in

<sup>1</sup> On a 1766 expedition to Newfoundland, the English botanist Joseph Banks remarked in his diary that "Every thing here smells of fish so You cannot get any thing that does not Taste of it." See A. M. Lysaght, *Joseph Banks in Newfoundland and Labrador, 1766: His Diary, Manuscripts and Collections* (Berkeley: University of California Press, 1971), 147.

<sup>2</sup> Merchants of Granville, "Mémoire à M. le duc de Choiseul par les négociants de Granville sur la pêche de Terre-Neuve," November 15, 1763, Archives des Affaires Étrangères (AAE) MD Amérique 23, f. 185–88; "Projet de convention remis à Milord Halifax le 20 février 1764 par son excellence M. le comte de Guerchy," 1764, Archives Municipales St. Malo, 64S, n°6.

<sup>3</sup> William Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (New York: Hill and Wang, 1983). Many early American historians have reiterated Cronon. See Patricia Seed, *American Pentimento: The Invention of Indians and the Pursuit of Riches* (Minneapolis: University of Minnesota Press, 2001), 32–34; Nancy Shoemaker, *A Strange Likeness: Becoming Red and White in Eighteenth-Century North America* (New York: Oxford University Press, 2006), 20–22; Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, MA: Harvard University Press, 2007), 37–39, 258–59; Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic* (Boston: Beacon Press, 2000), 44. E. P. Thompson, too, observed the connection between the enclosure movement in England and imposition of private property regimes throughout the British empire in the eighteenth

eighteenth-century Newfoundland requires a flexible and capacious conceptualization of property as a bundle of rights. To play on Allan Greer's theorization of property in the early modern Atlantic World, Newfoundland was a space where those rights often included multiple claims on the resources of a given region which were imprecise, not readily salable, and deeply embedded in particular social contexts.<sup>4</sup> In eighteenth-century Newfoundland the particular social context was a migratory fishery in a space where British sovereignty was limited, where British administrative infrastructure was minimal to say the least, and where French subjects also had rights to process codfish. In this particular social context, some British fishermen—who were essentially seasonal wage workers—began making claims to real property on behalf of their absentee employers in the English West Country and New England who owned the means of production and wished to expand their commercial operations in Newfoundland.<sup>5</sup> In the process, these fishermen, as proxies for their employers, fundamentally altered the nature of the interimperial commons, and the question of whose law and whose property became especially tangled.

The challenges that emerged in the interimperial commons after the Seven Years' War forced fishermen, merchants, naval officers, and ministers to articulate what constituted property and how property ought to be conceived. The conflicts that transpired highlighted how merchants, fishermen, and ministers answered these questions differently. In general, agents of the state sought to promote the commons, while some British subjects tried to create a real property regime from below. Sometimes they did this by creating property titles of questionable legality and sometimes they simply engaged in squatting. In

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century, and even John Locke justified European colonization in the Americas because, to his mind, it introduced property rights to the land. See E. P. Thompson, "Custom, Law and Common Right," in *Customs in Common* (New York: New Press, 1991), 164–75. A newer body of scholarship explores the role of the commons in European imperialism in North America. See Vera Candiani, "Reframing Knowledge in Colonization: Plebians and Municipalities in the Environmental Expertise of the Spanish Atlantic," *History of Science* 55, no. 2 (2017): 234–52; Allan Greer, *Property and Dispossession: Natives, Empires, and Land in Early Modern North America* (New York: Cambridge University Press, 2017), chap. 7; Michael Jarvis, *In the Eye of All Trade: Bermuda, Bermudians, and the Maritime Atlantic World, 168–1783* (Chapel Hill: University of North Carolina Press, 2010), chap. 4; Gabriel de Avilez Rocha, *The Atlantic Acceleration: Making Empire from the Global Commons in the Long Fifteenth Century* (Philadelphia: University of Pennsylvania Press, forthcoming).

<sup>4</sup> Greer, *Property and Dispossession*, 12–14, 18, 20.

<sup>5</sup> The cod fishery did not become primarily Newfoundland-based until after the Napoleonic Wars. Most, but not all, West Country merchants opposed settlement in Newfoundland. These merchants worked on short-term credit and had considerable influence in Parliament because the flexible economic organization of the migratory fishery aligned with state demand for specie and preference for liquidity. The second half of the eighteenth century was a moment of economic transition in which long-term credit became more popular, liquidity preference dwindled, and the power of finance increased. West Country merchants who experimented with property claims were likely early adapters to long-term credit usage. See Harold Innis, "Imperfect Regional Competition and Political Institutions on the North Atlantic Seaboard," in *Political Economy in the Modern State*, eds. Robert Babe and Edward Comor (Toronto: University of Toronto Press, 2018), 299–35, here 230, 234. On the wage labor structure of the British fisheries, see Jerry Bannister, *The Rule of the Admirals: Law, Custom, and Naval Government in Newfoundland, 1699–1832* (Toronto: University of Toronto Press, 2003), 7–10.

response, France sent naval ships north from St. Pierre and Miquelon to patrol the French Shore and take note of the transgressions by British fishermen, whose property claims threatened the Franco-British accommodation reached in the Treaty of Paris and created endless challenges for ministers seeking to avoid broader conflict.<sup>6</sup> What united all of these actors was a reliance on a hybrid of customary, state, and international law. Together, they generated the legal underpinnings that initially allowed the interimperial commons to function and eventually led to its wholesale revisioning.

### The Interimperial Commons

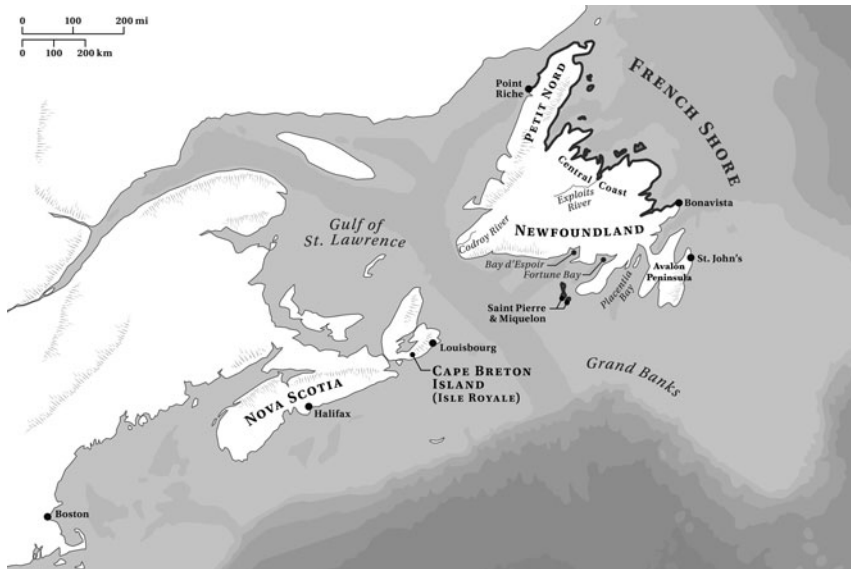
There was a long history of the commons in Newfoundland. European fishermen operated seasonal cod fisheries on the Newfoundland coast since Basque sailors set off towards the island in the sixteenth century. By the seventeenth century, French and British ventures came to dominate the coasts on a seasonal basis, with European-based merchants sending fishing vessels to Newfoundland for the spring and summer months to extract cod from in-shore fisheries and process the catch on the beaches. French fishermen operated mainly on the northern peninsula known as Petit Nord and along the western and southern coasts, while English fishermen tended to work on the Avalon Peninsula.<sup>7</sup> Early on, fishing crews came to treat the shores as a commons and developed customs to regulate the seasonal occupation of fishing coves. Towards the end of the seventeenth century, the French and British governments codified these customs into statutory law with the *marine ordonnance* of 1681 and King William's Act of 1699.<sup>8</sup>

A turning point transpired in 1713, when French and British diplomats made the Newfoundland commons an object of international law with the Treaty of Utrecht, and the question of the right to process cod on the Newfoundland coast became bound up in the question of sovereignty. The vicissitudes of war and imperatives of empire combined with the material realities of the cod fisheries at the turn of the eighteenth century to give shape to an unlikely jurisdictional arrangement. At the end of the War of Spanish Succession

<sup>6</sup> On the importance of accommodation in eighteenth-century Franco-British relations, see John Shovlin, *Trading with the Enemy: Britain, France, and the 18<sup>th</sup>-Century World Order* (New Haven: Yale University Press, 2021); Renaud Morieux, *Une mer pour deux royaumes: La Manche, frontière franco-anglaise, XVII<sup>e</sup>-XVIII<sup>e</sup> siècles* (Rennes: Presses universitaires de Rennes, 2008). Diplomats constantly fretted that if war were to break out between France and Britain again it would most definitely be over the fisheries. See Guerchy to Halifax, April 18, 1764, AAE MD Amérique 23, f. 265.

<sup>7</sup> C. Grant Head, *Eighteenth-Century Newfoundland: A Geographer's Perspective* (Toronto: McClelland and Stewart, 1976), 6–16; Charles de la Morandière, *Histoire de la pêche française de la morue dans l'Amérique Septentrionale* (Paris: G.P. Maisonneuve et Larose, 1962), I: 273.

<sup>8</sup> The *marine ordonnance* outlined a system by which captains would register their fishing cove selection in a roll book at the harbors of Croc or Petit Maître. King William's Act codified the custom by which captains could select fishing rooms to occupy in order of their arrival and forbade settlement within six miles of the coast. See Jean-François Brière, *La pêche française en Amérique du Nord au XVIII<sup>e</sup> siècle* (Quebec: Éditions Fides, 1990), 44; Bannister, *The Rule of the Admirals*, 26–32; Peter Pope, *Fish into Wine: The Newfoundland Plantation in the Seventeenth Century* (Chapel Hill: University of North Carolina Press, 2004), 206.



**Figure 1.** Following the Treaty of Utrecht (1713), French fishermen had rights to operate fisheries between Bonavista in the east and Pointe Riche in the west, a coastline historians refer to as the French Shore. Map by Meredith Sadler.

(1701–13), France ceded its territorial claims to Newfoundland to Britain while French subjects retained seasonal fishing rights on a stretch of northern coastline historians refer to as the French Shore (Figure 1). French fishermen could process cod for market between Bonavista in the east and Pointe Riche in the west during the summer months, provided they did not build any structures other than the simple stages and sheds necessary for processing dry salt cod for market. Neither, though, could British fishermen. Though they were subjects of the same crown that claimed the island of Newfoundland as its possession, King William's Act technically forbade anyone British from making property claims within six miles of the shore as well. The Newfoundland commons might have started out as a popular organic arrangement in the sixteenth century of the sort that E.P. Thompson described, but with the Treaties of Utrecht and Paris, this commons fell under the co-regulation of two rival imperial states.<sup>9</sup>

Geopolitical considerations and the requirements of processing cod for market made this arrangement in which Newfoundland would function as an inter-imperial space appealing.<sup>10</sup> French and British ministers valued Newfoundland

<sup>9</sup> E. P. Thompson, *Customs in Common* (New York: New Press, 1991), chap. 3.

<sup>10</sup> This sort of formal creation of an interimperial space for joint commercial exploitation was in fact not unique to Newfoundland. Similar arrangements, codified in the law of international treaty, existed between the English and Spanish empires in the Bay of Honduras according to the Treaty of Madrid (1670) and between the British and French in Bengal according to the Treaty of Paris (1763). See Jennifer Anderson, *Mahogany: The Costs of Luxury in Early America* (Cambridge, MA: Harvard

not only for profits and cod or as a source of employment, but also because conventional wisdom associated fisheries with naval power. They saw the fishery as a source of potential naval recruits, and often referred to Newfoundland as a “nursery for seamen” (*une pépinière de marins*).<sup>11</sup> This prompted many in power to favor a migratory fishery, in which fishermen sailed back and forth across the Atlantic each year, following the fishing season. Moreover, the territory offered little economic value of its own, with its rocky infertile soil and its timber unsuitable for commerce.<sup>12</sup> Preparing cod for market involved salting and drying the fish on the shore, but this labor did not require any fixed settlement by fishermen who slept in tents or in bunks on their ships.<sup>13</sup> This appeased many cod merchants based in Europe because it kept their operating costs low. Low operating costs allowed merchants to operate on short-term credit, a mode of economic organization that complimented state demand for specie and preference for liquidity in the first half of the eighteenth century.<sup>14</sup>

Each fishing season European fishermen established themselves in different harbors, limited only by the habit of captains from metropolitan ports to frequent particular regions. Crews from St. Malo and Granville frequented the Petit Nord, Basques worked along the western coast, and British fishermen congregated on the Avalon Peninsula.<sup>15</sup> Crews often left their salt, fishing boats, and tools each October and transported their belongings the next spring to the location they would occupy for the coming season. The arrangement worked because in Newfoundland the ground itself was not a resource, but instead an instrument that enabled the exploitation of the region’s most coveted commodity: codfish.<sup>16</sup>

Newfoundland’s status as an interimperial space initially generated few challenges. Between 1713 and 1756 conflicts between French and British fishermen on the French Shore were rare, as British crews largely restricted their operations to the Avalon Peninsula. This is not of course to say that

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University Press, 2012), chap. 3; Lucy Sutherland, “The East India Company and the peace of Paris,” in *Politics and Finance in the Eighteenth Century*, ed. Aubrey Newman (London: Hambledon Press, 1984).

<sup>11</sup> J. K. Hiller, “The Newfoundland Fisheries Issue in Anglo-French Treaties, 1713–1904,” *Journal of Imperial and Commonwealth History* 24, no. 1 (1996): 1–23, here 4–5; Morandière, *Histoire de la pêche française*, 1: 109–11. See also Sally Fisher, *Britain’s Golden Mines Discover’d: Or, the Fishery Trade Considered* (London: J. Morphew, 1720).

<sup>12</sup> Jean-François Brière, “Géographie historique de la pêche Terre-Neuvrière française dans la première moitié du XVIII<sup>e</sup> siècle,” *Proceedings of the Meeting of the French Colonial Historical Society* 10 (1985): 95–118, here, 113.

<sup>13</sup> The shore fishery, practiced on the French Shore and Avalon Peninsula, constituted 60% of French operations and 95% of British operations. The remainder was comprised of the less lucrative “green” fishery, where fishermen pickled fish on board ships on the Grand Banks, never touching land. See Jacqueline Hersart de la Villemarqué, *La pêche morutière française de 1500 à 1950: statistiques, climat et société* (Brest: Éditions IFREMER, 1995), 21; Morandière, *Histoire de la pêche française*, 1: 148–50; Brière, *La pêche française*, 190.

<sup>14</sup> Innis, “Imperfect Regional Competition and Political Institutions on the North Atlantic Seaboard,” 234.

<sup>15</sup> Brière, *La pêche française*, 43;

<sup>16</sup> Brière, “Géographie historique de la pêche,” 96–97.

there were no conflicts between British fishing crews—some of which were English and others Irish—or French crews from different home ports.<sup>17</sup> Neither is it to say that relations between European fishermen and the Beothuk and Inuit peoples whose territories included the French Shore were amicable. While the Beothuk and Inuit peoples did not have their own pre-existing cod fisheries nor did they work in European fisheries, French crews clashed violently with the Inuit on the Petit Nord and staggering British violence against the Beothuk on the Avalon Peninsula prompted them to abandon their traditional grounds and migrate north toward the French Shore.<sup>18</sup> Nevertheless, decades of peaceful relations between the French and British subjects in Newfoundland with whom the Treaty of Utrecht was concerned is a testament to the notion that environmental and political economic realities aligned in the fisheries to make an interimperial commons workable.

Nearly fifty years after the creation of the French Shore, wrangling over the fate of the fisheries led the Seven Years' War to continue for some two years after peace negotiations began in 1761. French naval minister le duc de Choiseul refused to sign any treaty that did not reaffirm French fishing rights. Meanwhile, William Pitt resigned from his post in the British cabinet where he was the informal leader, declaring he would rather see France take possession of the Tower of London than recognize French fishing rights in Newfoundland. Eventually Lord Bute, as prime minister, devised a compromise. Aside from a circle of Pittites, there was little appetite in Britain to continue fighting until the French could be pushed out of the Newfoundland definitively.<sup>19</sup> It was generally understood that upholding the regime of shared fishing rights in an interimperial space established Utrecht was the only way to bring about peace.

But several geopolitical and demographic shifts converged in the aftermath of the Seven Years' War to generate uncertain conditions on the ground once French fishermen returned. Since the seventeenth century there was conflict between British fishing interests over whether the fishery should be run by residents settled on the Avalon Peninsula in Newfoundland or the West Country merchants.<sup>20</sup> When a naval blockade prevented French fishermen from reaching Newfoundland during the Seven Years' War, many British fishermen—including residents whose numbers had grown to 16,000 by 1764—began operating

<sup>17</sup> On the Irish presence in Newfoundland, see John Mannion, "Irish Migration and Settlement in Newfoundland: The Formative Phase, 1697–1732," *Newfoundland Studies* 17, no. 2 (2001): 257–93.

<sup>18</sup> On relations between European fishermen and the Beothuk and Inuit peoples, see Rainer Baehre, "Newfoundland's West Coast and the Gulf of St. Lawrence Fishery, ca. 1755–83: A Case Study of War, Fish, and Empire," in *The Greater Gulf: Essays on the Environmental History of the Gulf of St. Lawrence*, eds. Clare Campbell, Edward MacDonald, and Brian Payne (Montreal: McGill-Queen's University Press, 2019), 69–113, here 81–84; Ineborg Marshall, *A History and Ethnography of the Beothuk* (Montreal: McGill-Queen's University Press, 1996), 61–62, 294. The eastern branch of the Mi'kmaq nation also had a considerable presence in Newfoundland, though the Mi'kmaq inhabited the southern and western coasts, not the French Shore. See Charles Martijn, "Early Mi'kmaq Presence in Southern Newfoundland: An Ethnohistorical Perspective, c. 1500–1763," *Newfoundland Studies* 9, no. 1 (2003): 44–102.

<sup>19</sup> See Basil Williams, *The Life of William Pitt, Earl of Chatham* (London: Longmans, Green & Co, 1913), 95, 223; Hiller, "The Newfoundland Fisheries Issue," 5–7.

<sup>20</sup> See Pope, *Fish into Wine*, chaps. 2–4.



fisheries on the stretch of coast where French subjects had rights.<sup>21</sup> When the eight thousand fishermen who previously operated fisheries at Isle Royale had nowhere to resort but the French Shore—which was already the resort of some four thousand St. Malo fishermen—and the impractical islands of St. Pierre and Miquelon after the cessions France made in the Treaty of Paris, competition over seasonally allocated shore space to process cod intensified.<sup>22</sup> Because the British had the upper hand in Newfoundland, some British subjects had greater leeway to subvert the commons and create something to better suit their needs. The existence of an interimperial commons was formalized to create and preserve peace between the two empires, but it may well have lost its utility to the working lives of fishermen and cod merchants.

Thus, after the Seven Years' War the interimperial commons in Newfoundland operated with support from above and was challenged from below. These challenges did not just pit French fishermen against their British counterparts but pitted migratory and resident British fishermen against each other too. At other times, challenges to the interimperial commons from below united the interests of British merchants operating migratory fisheries and French *négociants* or those of French and Irish fishermen. When the rival governments coopted the interimperial commons under international treaty their aim was to use legal regulation to preserve peace, but on the ground incoherent understandings of the law and inconsistent implementations of it prevailed, generating conflict.

## The Fishing Room and the Law

The Newfoundland cod fisheries depended just as much on shore space as on the sea. In early June, cod swam toward Newfoundland where the temperature hovered near 2°C and they thrived, providing the stocks for the inshore cod fishery. Most disputes in the fisheries were not about access to these cod, which were relatively plentiful in the eighteenth century, but rather over the allocation of coastal space where pebbly beaches along the shore were the site of dried salt cod production.<sup>23</sup> Conflict was less about catching fish than the ability to process the catch.

The object of greatest contestation was something called a fishing room, or a *grave* (Figure 2). Fishing rooms were smaller coves within harbors where the rocky beaches had been cleared of trees and fishermen processed cod for market. Desirable fishing rooms offered shelter from storms and wind, were big

<sup>21</sup> Bannister, *The Rule of the Admirals*, 8; Harold Innis, *The Cod Fisheries: The History of an International Economy* (Toronto: Ryerson Press, 1940), 148.

<sup>22</sup> Hiller, "The Newfoundland Fisheries Issue," 4; Brière, *La pêche française*, 185–87. On the challenges of operating a fishery at St. Pierre and Miquelon, see Arianne Sedef Urus, "A Spirit of Encroachment': Trees, Cod, and the Political Ecology of Empire in the Newfoundland Fisheries, 1763–1783," *Environmental History* 28, no. 1 (2023): 85–108.

<sup>23</sup> While cod depletion is typically associated with the industrial fishing methods introduced in the nineteenth century, Jeffery Bolster observes that evidence of overexploitation appeared, though was not always felt, by the early eighteenth century. See *The Mortal Sea: Fishing the Atlantic in the Age of Sail* (Cambridge, MA: Harvard University Press, 2012), 80.





**Figure 2.** A fishing room at work. Henri-Louis Duhamel du Monceau, *Traité générale des pesches* (Paris, 1768).

enough to accommodate the crew and their fishing boats, had easily available timber, and were close to inshore fishing grounds.<sup>24</sup> Fishing rooms undergirded the Newfoundland commons. In the French and British fisheries alike, fishing rooms were allotted according to what was referred to as the “first arrivals custom.” The captain of the first ship to arrive in a harbor from Europe could claim whichever fishing room he liked and became the fishing admiral for the year. Each harbor had its own fishing admiral. He was responsible for overseeing the subsequent selection of fishing rooms within the harbor and resolving any disputes that arose during the season. The fishing admiral changed every year according to arrival order, as did the occupiers of each fishing room, though generally speaking captains tended to favor similar areas each year.<sup>25</sup>

When a ship arrived in Newfoundland from Europe, where the cod merchants of the English West Country and the Atlantic coast of France outfitted ships each spring, the crew made of men from villages surrounding the European ports, began work preparing the fishery. Their primary task was to build or repair the structures necessary to prepare cod for market. The fundamental structure was the stage, a wharf built out from the shoreline, where fishing boats delivered the day’s catch. This was where the work of processing began, as fishermen heaved the slippery cod onto tables in a shed where they

<sup>24</sup> Peter Pope, “Transformation of the Maritime Cultural Landscape of Atlantic Canada by Migratory European Fishers, 1500–1800” in *Beyond the Catch: Fisheries of the North Atlantic, the North Sea, and the Baltic, 900–1850*, eds. Louis Sicking and Darlene Abreu-Ferrira (The Hague: Brill, 2009), 123–54, here 141.

<sup>25</sup> Bannister, *The Rule of the Admirals*, chap. 2; Morandière, *Histoire de la pêche française*, 1: 390–97.

split and salted the fish. Flakes were open frame constructions about five feet wide and three feet high, where air circulated to dry hanging fish. The men set out early each morning in small fishing boats, destined for the rocks just off the coast, where, with baited lines, they searched for the day's catch. They headed back to the shore once the boat was filled to begin processing their haul.<sup>26</sup>

Between 1713, when the Treaty of Utrecht created the French Shore, and 1763, when the Treaty of Paris reaffirmed the arrangement, French and British fishermen abided by a set of spatial, temporal, and usufruct regulations, some of which were enumerated in the treaty and some that were part of established customs. The Treaty of Utrecht recognized British claims to possess Newfoundland, but it did not specify where the limits of sovereignty in an interimperial space lay in relation to the French Shore. French fishermen were limited to the coastline between Bonavista and Pointe Riche and could only be present during the spring and summer cod season, when they could temporarily occupy fishing rooms provided they build no permanent structures. A different set of regulations applied to British fishermen, who were permitted to occupy anyplace along the Newfoundland coasts—including the French Shore—during the winter for sealing and hunting, though they, too, were prohibited from establishing permanent settlements according to British statutes. Though the Treaty of Utrecht offered no explicit stipulations regarding the right of British subjects to operate cod fisheries on the French Shore, they traditionally abandoned the coves they occupied there in the winter to make way for the French summer cod fishery.<sup>27</sup>

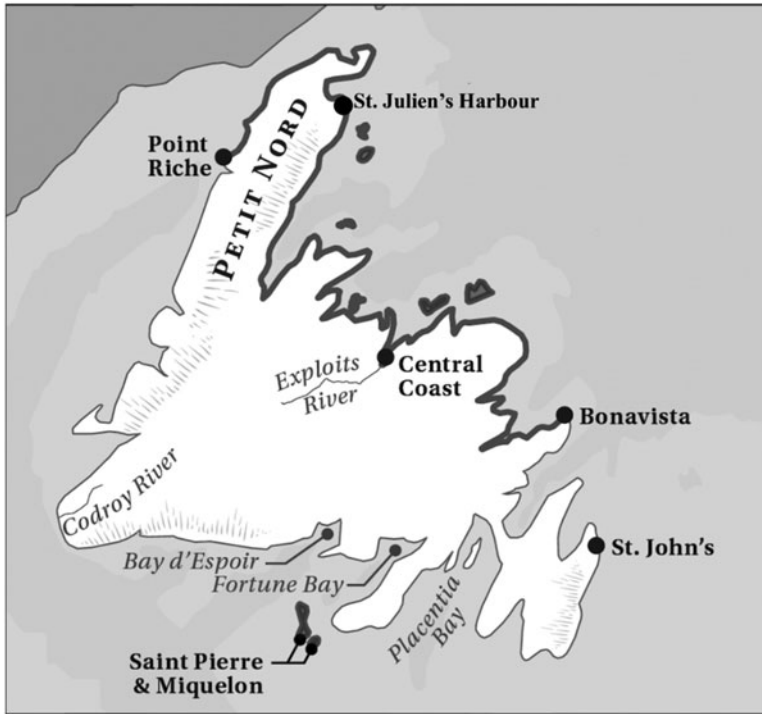
From 1764, foreign minister le duc de Praslin insisted that France's exclusive right to operate fisheries on the French Shore was "incontestably valid" since France enjoyed an "uninterrupted possession" (*une possession non interrompue*) of exclusive fishing rights from 1713 to 1756. The French ambassador to London echoed this sense that the custom of the previous fifty years ought to have guaranteed fishing rights as they existed before the war.<sup>28</sup> But in the face of demographic changes on the French Shore, British officials began dismissing custom. While many still opposed British settlement in Newfoundland, they insisted that since the treaties did not explicitly say that the French fishing rights were exclusive, British fishermen could in fact operate fisheries on the French Shore too.<sup>29</sup> Determining the boundaries of British sovereignty in Newfoundland would be essential to make the interimperial space the treaties created workable after the Seven Years' War.

<sup>26</sup> Morandière, *Histoire de la pêche française*, 1: 163–72; Head, *Eighteenth-Century Newfoundland*, chap. 1; Brière, *La pêche française*, 46–53.

<sup>27</sup> "Mémoire concernant la pêche de la morue réservée à la France par les traités sur une partie de Terre Neuve," March 1763, AAE MD Angleterre 48, f. 76v. This practice is reminiscent of the distinction between high law and low law discussed in Paul Craven, *Petty Justice: Low Law and the Sessions System in Charlotte County, New Brunswick, 1785–1867* (Toronto: University of Toronto Press, 2014).

<sup>28</sup> "Sur la présentation des anglais de partager avec les français la pêche et la sècherie sur la partie des côtes de l'isle de Terre Neuve que le traité d'Utrecht a réservée à la France," March 1763, AAE MD Amérique 23, f. 170v.

<sup>29</sup> Halifax to Guerchy, April 30, 1764, British National Archives (TNA) SP 78/261/39, f. 108–9.



**Figure 3.** Map of Newfoundland featuring the Petit Nord and St. Julien's Harbour. Map by Meredith Sadler.

### A Title to Property on the Petit Nord

When a British naval blockade excluded French fishermen from Newfoundland waters during the Seven Years' War, the fate of the French fishery hung in the balance.<sup>30</sup> Whether in anticipation of an all-British fishery after the war, or because there was great pressure on traditional British fishing rooms as the (technically illegal) resident population increased by half in those years, British subjects began establishing themselves on the French Shore. In a new development, those who started operating fisheries on the Petit Nord declared they possessed fishing rooms as real property and cited titles to support those claims.

One such British subject was Matthew Glover, a West Country cod merchant from Poole. His fishing crew began working in St. Julien Harbour around 1760, where they built stages and initiated other improvements (Figure 3). The wartime governor of Newfoundland, James Webb, gave Glover a property

<sup>30</sup> Jonathan R. Dull, *The French Navy and the Seven Years' War* (Lincoln: University of Nebraska Press, 2005), 194–96.

title to a number of fishing rooms which could be passed down to “his heirs, executors, demonstrators, & assigns for ever.”<sup>31</sup> In fact, in 1760, the governor granted similar titles to other British subjects along the Petit Nord. Webb died the following winter of a “nervous gouty disorder of the head,” and was never made to explain his rationale for issuing coastal property titles in direct contravention of British statutory law.<sup>32</sup> It is possible he did so to encourage permanent British occupation and the rise of the resident fishery to obstruct the return of French fishermen. The sparse administrative regime operative on the island left governors and naval officers with considerable discretion. In this context, both Webb and Glover might have considered legal innovations like property titles justified. When Glover died in 1761 his property titles passed to his grandson, George Milner, also of Poole.<sup>33</sup>

Milner’s claims that he possessed the St. Julien fishing rooms as his property with a title to prove it led to several well-documented legal disputes which illuminate the contest between demands for real property rights emanating from those with a commercial interest in the fisheries and the insistence of some European officials that the Newfoundland fishery remain a commons. A set of British officials struggled against the growing tide of permanent residency in Newfoundland to preserve what was left of the migratory fishery. They also worried that the property claims of British subjects to fishing rooms on the French Shore would poison relations with France. In 1764 Governor Hugh Palliser wrote something to this effect to the Board of Trade, warning, “These exclusive possessions and pretended grants by governors of old fishing places are productive of many quarrels amongst our own people, as well as between them and the French, all which in my humble opinion [...] are also of dangerous consequences.”<sup>34</sup>

It was not only British officials who resisted claims like Milner’s to possess fishing rooms as their property. So, too, did West Country merchants who lacked similar titles and stood to lose most among their fellow subjects from the abrogation of the traditional first arrivals custom in Newfoundland. Indeed, Milner’s property title first came under attack in 1763 when Bristol merchant Nicholas Darby submitted a complaint against the Poole merchant’s property claims, pitting a British merchant invested in the migratory fishery against another invested in the sedentary fishery. Darby’s ship, the *Antigua*

<sup>31</sup> James Webb, “A copy of a letter proclaiming the granting of certain lands to a Mr. Matthew Glover of Poole,” October 28, 1760, TNA CO 194/16/Part 1, f. 44.

<sup>32</sup> William Whitely, “Webb, James,” in *Dictionary of Canadian Biography*, vol. 3 (Toronto: University of Toronto/Université Laval, 1974). As Jerry Bannister has noted, statutory law restricting claims to real property in Newfoundland was often ignored. *The Rule of the Admirals*, 46.

<sup>33</sup> James Webb, “A copy of a letter proclaiming the granting of certain lands to a Mr. Matthew Glover of Poole,” October 28, 1760, TNA CO 194/16/Part 1, f. 44. For George Milner’s ancestry, see “Will of George Milner of Comberton, Cambridgeshire, proved in the Prerogative Court of Canterbury,” November 14, 1795, TNA PROB 11/1267/167. Milner’s sister, Hannah, married into the Webb family. See *The Gentleman’s Magazine* 85, no. 2 (1815): 563.

<sup>34</sup> “Remarks &c. Made in Obedience to the Several Articles of His Majesty’s Instructions to Governor Palliser Relative to the Trade Fishery &c of Newfoundland in the Year 1764,” TNA CO 194/17, f. 14.

*Factor*, set sail from Bristol in April 1763 and arrived in Newfoundland on June 22. The ship's captain, William Stook, landed at St. Julien and found that his ship was the first to arrive in the harbor for the season, which made him fishing admiral that year. Along with the position came the privilege to choose whichever fishing room he wished. He took possession of a room large enough to accommodate four fishing boats and already equipped with a stage. Stook's crew quickly began to build additional stages and sheds for processing fish at what Darby said constituted "a great expense."<sup>35</sup>

Milner, however, found support among certain agents of the British crown in Newfoundland who shared Governor Webb's agenda to encourage the more permanent establishment of British fishermen on the French Shore. One month after Stook's arrival, on July 23, the naval frigate *Terpsichore* arrived at St. Julien's Bay. The commanding officer, John Ruthven, informed Stook that it was his "absolute command" to force Stook to evacuate the fishing room.<sup>36</sup> Ruthven further instructed Stook that his crew should leave behind anything else that "Milner, his heirs, executors, and assigns" might find useful. Stook presented Ruthven with proof of his fishing certificate and clearance from Bristol to no avail. In his petition, Darby dismissed Ruthven's pretense that he intervened in the dispute between Milner and Stook to carry out his duty to protect the Newfoundland fishery as a "charade."<sup>37</sup>

Ruthven accepted Milner's title as valid and took a punitive attitude toward Stook's assertion of his right to occupy the fishing room based on the first arrivals custom. Arguing from the position that Darby's ship was trespassing on Milner's property, Ruthven told Stook that Milner's ship had an "unquestionable right" to St. Julien Harbour and threatened to put the captain in irons if he did not comply. Stook consequently abandoned the fishing room as Ruthven ordered, even though it was the height of the fishing season. As he watched the crew of the *Antigua Factor* load their fish, oil, and tools on to the ship, Ruthven demanded that they leave the stage behind for Milner's men to use. Ruthven also ordered Stook to give 180 quintals of "sound, merchantable, dried and cured codfish" over to Milner as compensation for what he could have produced in that fishing room had Stook not trespassed. Darby had to refinance his business to comply.<sup>38</sup> Milner was involved in similar conflicts in the following years, and each time he cited the 1760 title from Governor Webb to support his property claims. Meanwhile, Milner's men joined the ranks of British subjects on the Petit Nord who became involved

<sup>35</sup> "Petition of Nicholas Darby to the Lords Commissioners for Trade and Plantations," January 27, 1764, TNA CO 194/15/Part 1, f. 138.

<sup>36</sup> In 1729 the Privy Council appointed the commodore of the Newfoundland squadron governor. The commodore/governor was to be based at St. John's during the fishing season. Junior naval officers carried delegated legal authority as they patrolled the coasts. The commodore/governor and the rest of the squadron left each year at the end of the fishing season. Whether the small French naval fleet based at St. Pierre and Miquelon had legal authority on the French Shore was contested after the Seven Years' War. See Bannister, *The Rule of the Admirals*, chap. 4; Morandière, *Histoire de la pêche française*, 2: 756–68.

<sup>37</sup> "Petition of Nicholas Darby," f. 138–38v.

<sup>38</sup> "Petition of Nicholas Darby," f. 138–40.

in violent encounters with the Inuit, who had made a truce with French fishermen in the 1750s that did not extend to their British counterparts.<sup>39</sup>

Some of Milner's conflicts in St. Julien Harbour involved French fishing crews, which had the potential to elevate contests over real property formation in the fishing rooms into diplomatic contests as well. With the stakes raised in this fashion, things worked out less favorably for the Poole merchant. In 1764 Milner's agent, the fisherman William Waldron, prevented the French captain Jean Le Cerclé from establishing a fishery on Isle St. Julien for the season on the grounds that the island was Milner's property. Waldron insisted he "had a right" to obstruct the French captain. In the exercise of this alleged right, Le Cerclé testified that Waldron threatened that "as long as he and his men had blood in their veins they would fight to oppose his [Le Cercle's] fishery there."<sup>40</sup> Le Cerclé eventually abandoned Isle St. Julien, set up a fishery at Little Goose Cove, and dropped the complaint he had brought before Samuel Thompson, commander of the royal frigate the *Lark*. But when news of the conflict reached Commodore Hugh Palliser in St. John's some months later, the new British governor decided to punish Milner anyway.<sup>41</sup> If Pittite desires to expel French subjects from the Newfoundland fisheries once and for all prompted Ruthven to act in defense of property, a desire to maintain peace and accommodation with France led Palliser to act in defense of treaty law to preserve the island as an interimperial space.

Palliser's actions were grounded in concerns for the future of the migratory fishery and the desire to prevent fishing disputes from becoming diplomatic matters. Frustrated by the trouble Milner was causing, in September 1764 Palliser rounded out his first season as Newfoundland governor with a decree that not only rendered the 1760 title from Webb null and void, but also promised to enforce the prohibition of property formation with renewed vigor. Palliser understood Newfoundland's value as a fishing station rather than a colony of settlement. Moreover, he argued that if real property formation took hold, disputes over competing claims would inevitably rise, interrupting fishermen's work and leaving the contested fishing rooms out of use during the cod season, as was the case in some of Milner's debacles. He warned that if Milner's title remained valid, it would leave room for the same disputes to transpire the following year. But

<sup>39</sup> Many Inuit people seasonally descended from Labrador in search of hooded seals, white spruce, and European goods in the eighteenth century. See Charles A. Martijn, "Historic Inuit Presence in Northern Newfoundland, circa 1550–1800 CE," in *Painting the Past with a Broad Brush*, eds. David L. Keenlyside, and Jean-Luc Pilon (Ottawa: University of Ottawa Press, 2009), 65–99, here 66–67, 79, 82. On the Franco-Inuit truce, see Capitaine Galiot, "Deposition," November 21, 1757, Archives Départementales (AD) Ile-et-Vilaine, 9B/507; Morandière, *L'histoire de la pêche française*, 1: 19, 21. In response to conflict between British fishermen and the Inuit on the Petit Nord, Palliser took steps to forcibly relocate the Inuit to Labrador in 1765. See Palliser to John Pownall, March 31, 1766, TNA CO 194/16, f. 273–74v; Baehre, "Newfoundland's West Coast and the Gulf of St. Lawrence Fishery, ca. 1755–83," 81–82.

<sup>40</sup> Jean Le Cerclé, "Testimony against William Waldron made before Samuel Thompson on HMS *Lark*," May 27, 1764, TNA CO 194/16/Part 1, f. 42.

<sup>41</sup> Palliser, "Decree regarding Le Cerclé vs. William Waldron, agent of George Milner in St. Julien Harbour," September 10, 1764, TNA CO 194/16/Part 1, f. 45–45v; Palliser, "An account of complaints from the French in the North Part of Newfoundland in 1764," n.d., TNA CO 194/16/Part 1, f. 38.



Palliser's greatest justification for decreeing Milner's title null and void was that an official recognition of property titles dispensed by former governor Webb would be "a foundation for remonstrances from the court of France."<sup>42</sup> Simply put, according to officials in line with the more accommodationist Bute rather than the hawkish Pitt, there could be no peace on the French Shore if the British state allowed title claims to property there. British property claims threatened Newfoundland's continued existence as an intemporal space. To ensure French fishing rights and preserve the Franco-British accommodations established in the Treaty of Paris, there needed to be limits on the expression of British sovereignty when it came to property formation.

Perhaps for these reasons to do with preserving peace with France on the diplomatic stage and with the Inuit on the ground, the British government supported Palliser's decision to declare Milner's title null and void. Milner pled his case all the way up to the Privy Council, which, in 1772, backed up Palliser's ruling against British property formation on the French Shore.<sup>43</sup> Waiving a title, it seemed, was not an effective way for British subjects to create and defend property claims on the French Shore, as the closing of the commons was at odds with the British geopolitical agenda. Palliser's efforts to nullify British property claims in the fishing rooms based on titles appears to have been effective. Indeed, in 1767 French fishing captains from Granville submitted reports to Antoine Deshayes, the *commissaire aux classes* at that port, attesting that they did not encounter a single British fisherman on Isle St. Julien, and that in St. Julien Harbour they met only William Waldron, Milner's old agent, who operated a small seal fishery and was not equipped to fish for or process cod. Elsewhere on the Petit Nord, the French captains stated that they did not see a single British subject in Croc harbor, and while they came across a few British fishermen in Aiguillettes, there were no conflicts between them.<sup>44</sup> In effect, British property claims diminished on the Petit Nord, as did the presence of British fishermen generally. Palliser's legacy ensured that British encroachment into this traditionally French region would slow because he set a precedent that property claims based on titles were not valid. Titles to property were too obvious a challenge to Franco-British accommodation in Newfoundland, but crafty British fishing interests would find other ways claim the French Shore as their own.

## Squatting on the Central Coast

Indeed, things transpired differently on the eastern segment of the French Shore known as the Central Coast, which extended from Cap St. Jean to

<sup>42</sup> Palliser, "Decree regarding Le Cerclé vs. William Waldron, agent of George Milner in St. Julien Harbour," September 10, 1764, TNA CO 194/16/Part 1, f. 45–45v; Palliser, "Report to the Board of Trade and Plantations," October 9, 1764, TNA CO 194/16/Part 1, f. 34–37.

<sup>43</sup> "The Petition of George Milner, merchant of the town and county of Poole, to the King's Most Excellent Majesty in Council," 1771, TNA CO 194/18, f. 90–90v; "Order of the King in Court dismissing the petition of George Milner," June 19, 1772, TNA CO 194/18 f. 157–57v.

<sup>44</sup> Deshayes, "Déclarations de quatre capitaines de Granville arrivant de l'isle de Terre-Neuve, où ils ont fait pêche dans les havres ci-après nommés," 1767, Archives Nationales (AN) Marine C<sup>5</sup>/40.





**Figure 4.** Map of the Central Coast featuring Twillingate, Greenspond, and Bonavista harbors. Map by Meredith Sadler.

Bonavista (Figure 4). Following the loss of Isle Royale in the Treaty of Paris, French fishermen began venturing to the Central Coast for the first time after the Seven Years War. In 1765 Capitaine Girard de la Barcerie went to reconnoiter Twillingate harbor at the behest of the prominent Granville cod merchant Louis Bretel, who advised the French government on matters relating to the fisheries. Barcerie reported that the Central Coast could accommodate more than one thousand fishing boats, which was far more than the three hundred boats the *marine* had previously estimated. But Barcerie was disconcerted to find that a great many British fishermen had formed permanent habitations on this eastern portion of the French Shore.<sup>45</sup> Foreign minister le duc de Praslin recognized that the settlements posed an even greater challenge to French fishing rights on the French Shore than the seasonal presence of

<sup>45</sup> "Mémoire sur la campagne de Girard de la Barcerie aux havres de Bonaviste et de Toulinguet," 1765, AN Marine C<sup>5</sup>/38.

British fishermen there would. Indeed, he remarked, the settlements were “contrary to the arrangement that made all of the coast a commons.”<sup>46</sup>

What made the problem of British property formation in the commons on the Central Coast different than on the Petit Nord was that while British subjects like Milner used titles of dubious legality to support their property claims, on the Central Coast they made property claims by squatting. The number of fishing rooms these British subjects claimed as real property (or, more precisely, the real property of the West Country merchants who employed them) through squatting only increased throughout the 1760s. This generated a sense of scarcity among French fishing captains searching for fishing rooms to occupy each season and increasing conflict on the French Shore.

When Captain Jacques Hamon of Granville arrived in Greenspond harbor in May 1768 aboard Bretel's ship *la Marianne* he found that while many of the fishing rooms were unoccupied, squatters were reserving them for British ships that had not yet arrived from Europe. Hamon eventually only secured access to half a fishing room that season thanks to the intervention of the British fishing admiral in Greenspond. This was only possible, however, because Hamon agreed to pay a sum of 500 *livres* to the so-called proprietor of the fishing room.<sup>47</sup> His fellow *granvillais* captain, Lebreton of *le Comte de Lillebonne*, fared no better in Greenspond later that month. The squatters reserving the fishing room for a ship due from England did not object when Lebreton set up his fishery, but when the British ship arrived four days later, the captain forced Lebreton out.<sup>48</sup>

Officials in the Royal Navy opposed the squatters and their property claims, as did Palliser, yet their efforts were not terribly effective, even after Palliser issued a proclamation the previous year intended for expel British subjects from Newfoundland for the winter.<sup>49</sup> When the British naval officer Lieutenant William Parker arrived in Greenspond the week after Lebreton's eviction, he commanded that the *granvillais* captain be allowed to occupy the fishing room he had initially claimed. Parker's intervention demonstrated that he viewed the squatters' property claims as contrary to British policy and to fostering good relations with France. While Parker did ensure that Lebreton could occupy the fishing room in question, British fishermen harassed French crews in Greenspond and vandalized their fishing boats in retaliation for the rest of the season.<sup>50</sup>

Elsewhere on the Central Coast, squatters twisted the orders Palliser issued against them to support the very property claims he vehemently opposed. The half of a fishing room Hamon was able to occupy in Greenspond during the 1768 season after being extorted for illegal rent was not sufficient to accommodate all *la Marianne's* fishing boats. Bretel was, after all, the most prominent cod

<sup>46</sup> Praslin to Guerchy, “Sur les quatre objets à régler pour fixer la conciliation des différences sur l'exercice de la pêche française à Terre-Neuve et celle des côtes de St. Pierre et Miquelon. Voyage du Cap Bonaviste au Cap St. Jean,” 1765, AAE MD Amérique 23, f. 402.

<sup>47</sup> Deshayes, “Déclaration du Jacques Hamon, capitaine du navire *la Marianne*, armateur les Srs. Bretel frères, au havre de Greenspond,” 1768, AN Marine C<sup>5</sup>/41.

<sup>48</sup> Deshayes.

<sup>49</sup> Palliser, “Decree,” June 1767, TNA CO 194/18, f. 11–12v.

<sup>50</sup> Deshayes, “Déclaration du Jacques Hamon,” 1768.

merchant in Granville, one of the most prominent cities involved in the business. So Hamon and part of the crew ventured north to the Fogo Islands. In Hamon's recounting, the British fishing admiral at Fogo, a certain Captain Crockland, threatened to "stick a sword through [his] body" if the French captain dared show up in Greenspond again.<sup>51</sup> In response, Hamon wrote to Crockland declaring that there was "not enough rope in Britain and France combined" to avenge the injustice Crockland and his men had done unto Hamon's crew.<sup>52</sup> Eventually Hamon and his men decamped to Bonavista, where the British fishing admiral forbade him from laying anchor on the grounds that Governor Palliser had ordered him to block any French attempt to establish a fishery at that harbor.<sup>53</sup> Later, a group of recalcitrant British naval officers led by rear admiral Charles Sanders allied with the squatters—or, as they put it, "the inhabitants and possessors of different fishing rooms in the harbour"—to inform the French *marine* that they had a "mandate" from Governor Palliser to hold fishing rooms in their possession. Sanders and his allies wished to make it known to all French subjects who believed they had a right to choose any fishing room on Fogo that they were determined to prevent the French from using a fishing room where British subjects had built structures and which they claimed as their property through continual occupation. Indeed, Sanders stated, French fishermen had no rights to any stage or fishing room that they had not occupied since 1713. Sanders based his argument on an alleged letter that Palliser sent to Hamon in August 1768 (and which cannot seem to be located in the archives).<sup>54</sup> The brazen invocation of Palliser's name by the very sorts of people he called "a disgrace to human nature" and "a scandal to the country" to support their illegal property formation to which he was most definitely opposed points to the ways that fishermen appropriated any legal language they could to support their claims.<sup>55</sup>

Soon French officials began to remark that once British subjects built stages or sheds in a fishing room, "they regard it as their property."<sup>56</sup> While British subjects like Captain Crockland might have used squatting as a means by which to claim a fishing room as their employer's property and thereby exclude French fishermen from the coast, other British subjects who made property claims in fishing rooms based on squatting took a more generous view toward their French counterparts. When British fishermen drove Pierre Jean Delarue, captain of Lamarié des Landelle's ship *l'Empereur* away from Fogo, one British subject

<sup>51</sup> Jean-Louis Roche Mistral to Deshayes, 1769, AN Marine B<sup>3</sup>/582, f. 24–26.

<sup>52</sup> Jacques Hamon to Captain Crockland, 1768, AN Marine C<sup>5</sup>/41.

<sup>53</sup> Deshayes, "Déclaration du Jacques Hamon," 1768.

<sup>54</sup> Charles Sanders, "Une note des navires de la Grande Bretagne arrives à Fougue, &c.," June 5, 1769, AN Marine C<sup>5</sup>/42.

<sup>55</sup> Palliser to John Pownall, March 31, 1766, TNA CO 194/16/Part 2, f. 274v. On the scattershot approach to imperial claimsmaking, see Lauren Benton and Benjamin Straumann, "Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice," *Law and History Review* 28, no. 1 (2010): 1–38, here 3.

<sup>56</sup> Deshayes, "Observations sur ce qui est passé entre les habitants anglaise et les pêcheurs français aux havres de Greenspond, Fougue, et Bonaviste sur la partie des côtes où les français ont droit de pêcher à l'isle de Terre-Neuve," 1769, AN Marine C<sup>5</sup>/42.

gave the *granvillais* captain some telling advice. “Build upon a fishing room,” he said, “and it will belong to you just like ours belong to us and nobody will contest you.”<sup>57</sup> It was as if this kindly British fisherman had read John Locke when he essentially told Delarue that if the French captain made improvements on a fishing room, it would become his property.<sup>58</sup>

But the advice also revealed the tangle of legal jurisdictions at work on the French Shore, the incoherence of how colonial actors understood the law, and the inconsistent nature of British enforcement of it. On the French Shore different laws stipulated the same restrictions for French and British subjects: real property formation was prohibited. But only certain subjects—French fishermen—faced consequences for violating those laws. When the well-meaning British fishermen built a stage in a fishing room and thereby claimed it as his property, he was violating British statutory law that British officials had struggled to enforce (if they tried to enforce it at all) since the seventeenth century. But if the French Delarue were to do the same, he would be in violation of the Treaties of Utrecht and Paris. Disregard for British statutes like King William’s Act would frustrate those British officials who favored a migratory fishery and wished to keep administrative costs low; French disregard for treaty law would come with geopolitical consequences that threatened the peace between the two empires, not just in Newfoundland, but globally. Perhaps the difference that explains the inconsistent British enforcement of the laws against property formation in which British imperial agents rejected their subjects’ property claims on the Petit Nord and tacitly allowed them on the Central Coast is that on the Petit Nord men like George Milner based their property claims on titles, but there was no paper trail among the squatters on the Central Coast. With plausible deniability, British imperial agents could simultaneously allow property claims on the French Shore to go unchecked and support the politics of accommodation with France.

### Squatting and Sovereignty

Eventually the upper echelons of the British foreign ministry intervened against the squatters, though the impact was minimal. In 1772 Lord Dartmouth, Secretary of State for the Colonies, declared that “it was the unanimous opinion of all His Majesty’s servants” that French subjects had the right to operate fisheries in Bonavista. “It is His Majesty’s pleasure,” Dartmouth told then-Newfoundland governor Molyneux Shuldham, “that you do not dispute that point.”<sup>59</sup> This was met pleasantly by the newly appointed *secrétaire de la marine*, le marquis de Boynes, who was concerned that if British squatters continued to make it difficult

<sup>57</sup> Deshayes.

<sup>58</sup> This was not the first time British subjects in Newfoundland appealed to Locke. In 1723 a group in St. John’s entered a Lockean social contract. See John Jago, John Gerard, and forty-nine others, “Proceedings of the Harbour of St. Johns,” November 16, 1723, TNA CO 194/7, f. 247–52v; Jeff A. Webb, “Leaving the State of Nature: A Locke-Inspired Political Community in St. John’s, Newfoundland, 1723,” *Acadiensis* 21, no. 1 (1991): 156–65.

<sup>59</sup> Dartmouth to Shuldham, September 2, 1772, TNA CO 194/30, f. 105.

for French fishermen to operate fisheries on the Central Coast, it would be “detrimental to the rights reserved for France in the Treaty of Utrecht.”<sup>60</sup>

Nevertheless, British squatters continued to make property claims on the Central Coast that, by the mid-1770s, gave rise to questions about legal jurisdiction and sovereignty in this interimperial space. Two French fishing ships under the command of Capitaine Jacques Renaudeau arrived in Greenspond in the spring of 1776 and attempted to engage a set of fishing rooms that appeared unoccupied.<sup>61</sup> But a British captain called Joseph Pimer interfered. Pimer claimed to be guarding the fishing rooms on behalf of two British ships that had passed through Greenspond before moving elsewhere. Renaudeau protested, arguing that according to “the laws of France” he could be entitled to occupy the abandoned fishing rooms.<sup>62</sup> Renaudeau’s invocation of “the laws of France” to support his seasonal claim to the fishing rooms reflects how fishermen understood sovereignty and jurisdiction to work on the French Shore and how they in fact had often incomplete or partial understanding of the law. In reality, in the multilayered jurisdictional space of the French Shore, French law only took precedence when French subjects committed acts of theft or violence against each other. When it came to occupying fishing rooms, it was treaty law that most directly applied. Unfortunately for Renaudeau, the murkiness of jurisdiction and ambiguities of sovereignty in an interimperial space tended to work in favor of British subjects more often than French, likely because of the greater number of British naval ships patrolling the area.<sup>63</sup> And so while members of Renaudeau’s crew brandished clubs at Pimer in an effort to take possession of the fishing room in question, the French captain ultimately acquiesced and agreed to occupy another set of fishing rooms that, though inferior to the rooms he initially desired, had no claims on them yet for the season.<sup>64</sup>

Deeper investigation into Pimer’s claim to the fishing room in question reveals the extent of the erosion of the first arrivals custom by the 1770s and the multiple, often convoluted, logics that British subjects used to undermine the commons. According to British law, all British ships present in Newfoundland for the cod season were required to have cleared out from their home port with a new fishing certificate that spring. The certificate was proof that the ship’s crew was engaged in a migratory fishery. But when justice of the peace William Keen examined Captain Pimer’s paperwork in 1776 under Renaudeau’s urging, he found that one of Pimer’s ships—the

<sup>60</sup> Boynes, “Dépêches de la cour adressées à l’intendant,” September 11, 1772, Service Historique de la Défense (Marine), Rochefort, 1E/195, n° 1; Boynes to Doynard, September 11, 1772, AD Loire-Atlantique, C/744, n° 23.

<sup>61</sup> Jacques Renaudeau to Antoine de Sartine, November 16, 1776, AN Marine C<sup>4</sup>/177.

<sup>62</sup> William Keen, “Examination of Thomas Wait,” June 20, 1776, AN Marine C<sup>4</sup>/177.

<sup>63</sup> This is in part why French ministers repeatedly insisted that their naval vessels be permitted to patrol the French Shore to protect the French fishery. See Choiseul, “Mémoire du roy pour servir d’instruction au Sr. Tronjoly Lieutenant de vaisseau, commandant de vaisseau de Sa Majesté M.te l’Amphyon, et pour le Sr. chevalier de Dampierre Lieutenant de vaisseau commandant sous les ordres du Sr. Tronjoly, la frégate la *Licorne*,” May 1764, AAE 4MD/23, f. 289–90v.

<sup>64</sup> Keen, “Examination of Thomas Barnes,” June 20, 1776, AN Marine C<sup>4</sup>/177.

*Triton*—had last received a fishing certificate three years prior, in 1773.<sup>65</sup> The other ship, meanwhile, seemed to have no certificate at all. In the face of these findings, Pimer replied that having an up-to-date fishing certificate had no bearing on whether he could occupy a fishing room on behalf of his ship. The fact that he had obtained a fishing certificate for the *Triton* in 1773 meant, Pimer explained, “I am entitled to occupy a room, in preference to a subject of France who should arrive after me.”<sup>66</sup> Captain Pimer seemed, in effect, to be claiming the fishing room as his property (or, more realistically, the property of the merchant who owned the *Triton* and its catch, Samuel White of Poole) due to some combination of continuous occupation and the first arrivals custom, even if his arrival had been several fishing seasons previously and those two justifications seem at odds in a sort of partially understood legal pluralism. In the end, Keen saw no problem with Pimer’s arguments and dismissed Renaudeau’s complaint.<sup>67</sup> Perhaps this was because Keen himself was a merchant, in addition to his position of justice of the peace, and Greenspond was the base of his Newfoundland commerce. He would be shrewd to subvert the strength of the West Country merchants. Still, the dispute between Pimer and Renaudeau ultimately demonstrates the extent to which British officials acquiesced to the actions of local actors in Newfoundland and their interpretations of the law, particularly as tensions with the Thirteen Colonies came to occupy more of the Colonial Secretary’s attention. A rival legal order, it seems, was taking shape on the ground.

While officials like Governor Palliser railed against exclusive property claims and naval officers occasionally intervened to reject property claims in the fishing rooms, in practice they were unable to reverse the tide of real property formation. Differences in priorities among local officials made property claims difficult to check. One thing was especially clear: so long as they protected their property claims themselves rather than seek the support of British officials, resident fishermen could generally make good on them. They enjoyed the privileges of being British, foremost of which was choosing which laws they would obey.

## Making a New French Shore

By the time Jacques Renaudeau and Joseph Pimer were squabbling over fishing rooms in Greenspond in 1776, British ministers were distracted by another conflict erupting some one thousand miles south: the American Revolutionary War. When France entered the war in 1778, the Franco-American alliance was rooted in no small part in protecting French fishing rights in Newfoundland.<sup>68</sup> Indeed, the Franco-American Treaty of Amity and Commerce (1778) included two articles specifically devoted to Newfoundland

<sup>65</sup> Beginning in 1729, the Privy Council approved the appointment justices of the peace to administer law during the winters, when fishing admirals were absent. See Bannister *Rule of the Admirals*, 46.

<sup>66</sup> William Clement Finch, “Further Examination of Joseph Pimer,” August 2, 1776, AN Marine C<sup>4</sup>/177.

<sup>67</sup> Finch to John Montagu, August 7, 1776, AN Marine C<sup>4</sup>/177.

<sup>68</sup> Orville T. Murphy, *Charles Gravier, Comte de Vergennes: French Diplomacy in the Age of Revolution, 1719–1787* (Albany: The State University of New York Press, 1982), 369.

fishing rights, and foreign minister le comte de Vergennes saw entry into the war as an opportunity “to recover a part of the possessions which England took away from [France] in America, such as the shore fishery.”<sup>69</sup> So keen was Vergennes to use the war to benefit in Newfoundland, that when he first entered negotiations at Versailles in 1781, the minister allegedly said that he would not discuss anything else until the Newfoundland question was settled.<sup>70</sup>

Vergennes’s primary goal was to solve the problem of British property formation on the French Shore through a wholesale revision of the terms agreed to at Paris and Utrecht. If the challenges of the 1760s and 70s emerged because the Treaty of Paris reaffirmed the arrangement devised at Utrecht without taking into account the demographic changes of the war years, Vergennes wanted to forestall future conflict by reconstituting Newfoundland’s status as an inter-imperial space to address contemporary conditions. The French ministry realized that with some three thousand British subjects making property claims on the Central Coast, it would be increasingly more difficult for French subjects to operate fisheries on those shores.<sup>71</sup> In response, Vergennes pushed to relocate the French Shore to a different part of the coast where French fishermen would not have to contend with British squatters and for Britain to explicitly recognize French fishing rights there as exclusive.<sup>72</sup>

While Vergennes’s British counterpart, the Earl of Shelburne, was open to shifting the boundaries of the French Shore, he was reluctant to explicitly describe French fishing rights as exclusive.<sup>73</sup> Instead, Shelburne vowed to give governors instructions to prevent British subjects from disturbing French fishermen.<sup>74</sup> The trouble was that some governors, like Palliser, had been committed to preventing British property formation on the French Shore, but the tenacity of the resident fishermen paired with the ambivalence of other British officials in the 1760s and 70s made Palliser’s decrees difficult to enforce. With this in mind, when the Treaty of Versailles was ratified in February 1783 the word *exclusive* did not appear in the text pertaining to French fishing rights in Newfoundland, but Vergennes succeeded in getting

<sup>69</sup> “Treaty of Amity and Commerce Between the United States and France, February 6, 1778,” in *Treaties and Other International Acts of the United States of America*, ed. Hunter Miller (Washington, DC: Government Printing Office, 1931), 2: 9–10; Vergennes cited in Murphy, 369.

<sup>70</sup> Alleyne FitzHerbert to Lord Grantham, August 21, 1782, TNA FO 27/2, f. 78; Andrew Stockley, *Britain and France at the Birth of America: The European Powers and the Peace Negotiations of 1782–1783* (Exeter, UK: University of Exeter Press, 2001), 76–77, 109.

<sup>71</sup> Louis Bretel, “L’Isle de Terre Neuve,” November 1782, AAE MD Angleterre 13, f. 273v.

<sup>72</sup> Brière, *La pêche française*, 239–41; D. D. Irvine, “The Newfoundland Fishery: A French Objective in the War of American Independence,” *Canadian Historical Review*, 12 (1932): 268–84, here 278–79. The idea of changing the boundaries of the French Shore did not originate during the peace negotiations in 1782 or even with Vergennes, but rather had circulated through the French ministry since 1764 when the problem of British property claims on the French Shore first emerged. See “M. le comte de Guerchy vient d’adresser à M. le duc de Praslin le projet de mémoire qu’il doit présenter au ministre anglaise pour l’amener à une convention qui puisse procurer la sûreté de la pêche française dans l’Isle de Terre Neuve suivant l’usage observe jusqu’à la dernière guerre,” February 1764, AAE MD Amérique 23, f. 217v.

<sup>73</sup> Stockley, *Britain and France at the Birth of America*, 106.

<sup>74</sup> Shelburne to Rayneval, November 13, 1782 in Stockley.





**Figure 5.** The boundaries of French Shore shifted with the Treaty of Versailles (1783) and remained in place until 1904. Map by Tanya Saunders, Newfoundland and Labrador Heritage Website.

the British to commit in writing to ensuring that French subjects would be able to exercise their fishing rights “without interruption”—or, to use another word, exclusively—in the ministerial declaration that accompanied the treaty.<sup>75</sup> A thrilled Vergennes remarked, “Their concessions with respect to the [...] fisheries [...] exceeded anything I would have believed possible.”<sup>76</sup> The new French Shore would stretch from Cape St. Jean to Cape Raye—that is, from the eastern foot of the Petit Nord down through the entire western coast, forgoing the Central Coast altogether (Figure 5). Yet it is unclear whether British officials agreed to this concession out of a commitment to maintain the island’s status as an interimperial space or because Newfoundland’s position amongst their priorities was shifting. In the decades that followed, the commercial power of the English West Country declined as the money behind the British fisheries came to be based in Newfoundland itself and the island started to look more like

<sup>75</sup> Vergennes to Rayneval, December 22, 1782, AAE CP Angleterre 539, f. 287; FitzHerbert to Grantham, January 19, 1783, TNA FO 27/5, f. 210.

<sup>76</sup> Vergennes to Rayneval, November 1782 in Henri Doniol, *Histoire de la participation de la France dans l’établissement des États-Unis d’Amérique: correspondance diplomatique et documents* (Paris: Imprimerie Nationale, 1886), 5: 188.

a colony of settlement.<sup>77</sup> Newfoundland remained an interimperial space, but questions of sovereignty and jurisdiction became less knotted and contested.

There is a ready association between European imperialism in the Atlantic World and real property formation. Yet in eighteenth-century Newfoundland, French and British statutory law and the law of international treaty struggled to effectively regulate the shore space necessary to process dry salt cod for market an interimperial commons. On the French Shore, it was not members of the same community, but rather subjects of different states—themselves seasonal migrants subject to different laws—who had to work out issues of who could use which stretches of coast and who defined the terms of access. Since the second half of the seventeenth century, the British government issued statutory laws that subverted its subjects' rights to real property in favor of preserving Newfoundland as a seasonal fishing station rather than a colony. But in the decades after the Seven Years' War, statutory restrictions on real property claims also offered, in theory, a way to preserve French fishing rights in this interimperial space. But an alternative legal order emerged on the ground in which British subjects claimed segments of the Newfoundland coast as real property and a set of British officials supported them. Some supported British property formation in Newfoundland to surreptitiously render the fishing rights promised to French subjects in the Treaties of Utrecht and Paris meaningless, while others simply found claiming fishing rooms as real property more commercially convenient. Yet at no point before the nineteenth century did the British government formally recognize the legal right to settle and own property in Newfoundland.<sup>78</sup>

The laws around property formation were a critical modality of Franco-British relations in an interimperial space. The treaties that structured how the Newfoundland fisheries were to function as an interimperial space left silences about the extent of sovereignty when it came to everyday problems like resource extraction and property rights. The gulf left abundant scope for creative legal claims-making. On Newfoundland's French Shore, subjects high and low of the French and British empires worked through conceptions of sovereignty—and its limits—in an interimperial space.

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**Arianne Sedef Urus** is an assistant professor of Early American history at the University of Cambridge, where she is a fellow of Christ's College.

<sup>77</sup> Hiller, "The Newfoundland Fisheries Issue," 15; Bannister, *The Rule of the Admirals*, 31–32.

<sup>78</sup> Patrick O'Flaherty, "King William's Act (1699): Some Thoughts 300 Years Later," *Newfoundland Quarterly* 93, no. 2 (2000): 21–28.

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