

Assembly of Nova Scotia Mi'kmaw Chiefs
Senate Brief
Vision for the Implementation of the Netukulimk Livelihood Fishery

Prepared for the Senate Standing Committee on Fisheries and Oceans
Study on the Implementation of R. v. Marshall
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Mandate of the Assembly of Nova Scotia Mi'kmaw Chiefs

The Assembly of Nova Scotia Mi'kmaw Chiefs (Assembly) is a collaborative governing body representing eleven of the thirteen Mi'kmaw communities in Nova Scotia, with membership of the Chief of each of the member communities. We are the highest level of decision making for the Mi'kmaw of Nova Scotia and represent the common interests of all member Bands.

Introduction

Since 2007, the Assembly has been represented by the Kwilmu'kw Maw-klusuaqn Negotiation Office in rights implementation discussions and negotiations on the implementation of the *Marshall* decision with Canada and the Province of Nova Scotia. It took over thirteen years of these discussions, and twenty years from the *Marshall* decision for any progress to be made at these tables. We are still fighting for our Supreme Court affirmed Right to fish and sell fish for a moderate livelihood to be implemented according to the Mi'kmaw vision of implementation.

Facts and Opinions

The Mi'kmaq of Nova Scotia envision a moderate livelihood fishery that is self-governed and based in Netukulimk (our core principle of conservation and respect for resources) and Msit No'kmaq (All My Relations) (principles of how we respect all things, including people, animals, and resources). The Mi'kmaq of Nova Scotia want access to their fishery that is based in a two-eyed seeing approach to conservation, safety, and enforcement, encompassing both western best practices and traditional Mi'kmaq knowledge and culture. Additionally, the Mi'kmaq of Nova Scotia do not wish to access their Right to fish and sell fish for a moderate livelihood under the existing restrictions and regulations of the *Fisheries Act*, which was legislated to oversee a wealth-based commercial fishery; not a Mi'kmaq Rights-based one. The Mi'kmaq right to fish and sell fish for a moderate livelihood is constitutionally protected and need to be respected as a priority over privilege-based commercial fisheries.

The Mi'kmaq of Nova Scotia will self-govern their fisheries in collaboration with DFO to ensure all fisheries are aligned in aspects of enforcement, safety, and conservation. Nova Scotia Mi'kmaq will oversee the implementation and authorization of their fisheries, and will share data, reporting, science, and other important aspects with DFO to ensure fish stocks are healthy and the waters are safe. Nova Scotia Mi'kmaq harvesters do not wish to continue harvesting for a moderate livelihood under DFO authority, regulation, and restriction. Additionally, communities will exercise self-determination in the implementation of their Right and will lead the development of fisheries management plans that meet the distinct needs of their members, while adhering to the overall guiding principles of the Assembly.

The exercise of the constitutional and Treaty Right to fish and sell fish for a moderate livelihood encompasses more than solely harvesting activities. Opportunities and access to all species-based fisheries with economic viability, in addition to a Nova Scotia Mi'kmaq-centred and driven supply

chain from boat-to-plate are necessary. Access to fisheries, including total allowable catches, wharfage, production and trade-based business development are important to creating opportunities for individual participation in the implementation of our collective right.

The existing barriers to implementation of our Right are largely systemic and on the part of the Crown. The full realization and implementation of the Right to fish and sell fish for a moderate livelihood is limited by the *Indian Act* and the *Fisheries Act*, which both require assessment and amendment to align with the United Nations Declaration on the Rights of Indigenous Peoples (*UNDRIP*). Additionally, this is no longer the time for “how we have always done things”. DFO and CIRNA’s continued dependence on the status quo of colonial policies is no longer an acceptable limitation for the implementation of Rights we have held for millennia. Further, these colonial policies bring with them institutional and systemic discrimination, as well as structural violence against Mi’kmaq wishing to exercise their inherent and Treaty Rights. While Canada has imposed regulations on our Rights and resources for 150 years, our communities have governed them under our own mechanisms, structures, knowledge and traditions for the 14,000 years leading up to confederation. We never ceded our Rights or our land. The way the Crown has always done things is not the way we have – we have known many structures and worked within them; it is time ours are respected equally to yours. Without deconstructing the systemic barriers surrounding the limitation of our Rights, they will never be fully implemented.

Recommended Approaches to Implementation to Achieve the Mi’kmaq Vision

Given the already delayed timeline in implementing our Right since *R v. Marshall (1999)*, a phased and incremental approach to implementation is necessary. Our community members wish to exercise their Right and should not be prohibited from doing such any longer. This means a phased approach which gets our harvesters in the water as soon as possible followed by additional implementation measures including the development of governance structures, data, science and reporting measures, collaborative management measures, and opportunities off the water is necessary.

Additionally, as the industry adapts over time with new best practices and knowledge/science, and as more community members express interest in joining the livelihood fisheries, agreements will need to be revisited to ensure our community members have access to exercise their Rights, while also ensuring conservation, safety, and economic benefit. A one-time agreement with no room for growth would be detrimental to the full implementation of our Right.

Self-Governance

Self-government is an inherent Indigenous Right and as such, self-governance of our own fisheries and resources is central to the path forward in rights implementation. Our community developed and authorized, and Assembly accepted Netukulimk harvesting plans are the key and sole document required for our harvesters to fish and sell fish for a moderate livelihood. Our harvesters

do not need to have a delegated commercial license in hand from a colonial government entity to fish under their Treaty Rights – they are authorized by their self-governing communities through our own management and governance structures.

Canada needs to formally recognize and affirm that Mi'kmaq First Nations have the power to make laws respecting the governance of their members, including those who are rights holders, and respecting their exercise of Aboriginal and treaty rights both on and off reserve. Mi'kma'ki is unceded territory – it is all Mi'kmaq land regardless of the reserves created by the *Indian Act*. We have a Right and responsibility to govern our resources and our access to them.

To manage a non-quantified moderate livelihood fishery, governance funding is essential. Nova Scotia Mi'kmaq need to be able to self-govern their own Mi'kmaq rights-based fisheries in a manner that separates day to day operations and management from community and Assembly oversight. This will allow for a more centralized, regional approach without political interference or strain on our leadership capacity. This will also create additional capacity and career opportunities for Nova Scotia Mi'kmaq community members while ensuring a separate, self-governing Mi'kmaq body is responsible for the full implementation of the constitutionally protected Right with the support of existing Nova Scotia Mi'kmaq organizations such as the Kwilmu'kw maw-klusuaqn Negotiation Office (KMKNO), Unima'ki Institute of Natural Resources (UINR) and Confederacy of Mainland Mi'kmaq (CMM). Mi'kmaq Rights must be Mi'kmaq governed – with full transparency and accountability to our leadership, community members, and intergovernmental partners. Funding for a Mi'kmaq governing body is essential for the implementation of the Right.

Collaborative Management

Nova Scotia Mi'kmaq leadership is interested in collaborative approaches to management which are based in a two-eyed seeing approach encompassing western best practices as well as our own traditional Mi'kmaq knowledge and culture. Therefore, the full adoption of existing DFO safety, conservation, compliance and science regulations and management as they currently stand may not be applicable to our fishery. However, we acknowledge the value in western knowledge and wish to integrate it with our traditional Indigenous knowledge, customs, and culture to ensure a holistic approach to regulating and managing our fishery. Therefore, we are interested in collaborating on the development and implementation of safety, conservation, compliance, and science to support full implementation of our livelihood fishery in accordance with our Mi'kmaq right, with a Right to self-governance.

Central to effective collaborative management is the need for thorough, unbiased science around the term “conservation”. Particularly, investigation and understanding conservation in relation to a low-impact, culturally based livelihood fishery. This process of collaborative management is not solely for the benefit of the Nova Scotia Mi'kmaq – our knowledge, especially when understood through collaborative management, should be used to support and integrate other fisheries as well. Our traditional conservation knowledge and practices ensure a safe and viable harvest, protecting species for years to come. For centuries, our ways of knowing and being have been ignored. Two-eyed seeing must be applied to all fisheries, and especially to the definition of “conservation”.

Two-Eyed Seeing

Mi'kmaq traditional knowledge must be respected equally to western science in terms of conservation, reporting, and data collection. Conservation measures must be developed collaboratively with the Mi'kmaq governing body and must integrate not only DFO's scientific data analysis, but also Mi'kmaq knowledge. The inclusion of two-eyed seeing in a new collaborative management system for the livelihood fisheries is essential to its success. DFO's mandate must accommodate for the integration of this Indigenous knowledge as an equally valued and legitimate science and data measure. DFO management measures, including regulations, must accommodate for Indigenous knowledge. Conservation measures unilaterally decided and dictated by DFO solely based on western scientific data will be unacceptable for the governance of our Mi'kmaq Rights-based fishery.

Access

Commercial regulations, including seasonality and licensing cannot be applied to our Mi'kmaq Rights-based fisheries. These regulations were built without consultation of the Mi'kmaq of Nova Scotia and for the sole governance of a maximum-effort, wealth-accumulation-based industry. The development of seasons and licensing regimes were also developed and closed without inclusion of Mi'kmaq knowledge or consideration of cultural or traditional needs of our communities.

Commercial licenses were developed for purposes of wealth accumulation and maximum exploitation, with additional consideration of conservation. This is contrary to how the Mi'kmaq of Nova Scotia traditionally harvested and wish to continue harvesting for a moderate livelihood. Opportunities for harvesting must be equally shared among those community members wishing to exercise their communal Right and must also ensure protection of the species being harvested. There are several measures which could be discussed to best allocate access to communities through a Mi'kmaq governing body without requiring the reallocation of existing commercial access.

Our fishery is a priority over commercial access. As understood by UNDRIP, Indigenous Rights are paramount to any other privilege afforded to Canadian citizens. Our access must not only be a priority for DFO, but our harvesting access needs must be met before providing access to privilege-based commercial fisheries. Limiting the Mi'kmaq of Nova Scotia's access to fisheries through reallocated commercial licenses as a conservation measure is unacceptable – we cannot be forced into the gaps and limitations of an existing fisheries, privilege-based fisheries must fit in around of Mi'kmaq Rights-based fishery. Access must be provided first to the Mi'kmaq of Nova Scotia through a Mi'kmaq-specific management mechanism (not commercial licensing), then the remainder of access available to ensure conservation of species can be allocated to commercial harvesters. The Mi'kmaq of Nova Scotia need to have room to identify where, when, and what they want to fish – not take the scraps of leftover commercial licenses and be forced to fish only what DFO has decided is available.

Seasonality

As DFO has indicated, the current commercial fishing seasons were developed not only with concern for conservation, but also for maximum economic benefit and shared economic benefit across fishing areas. A Netukulimk livelihood fishery will not make decisions based on economic benefit as a driving factor, but rather, based on the safety of our harvesters and species conservation. Fishing under the principle of Netukulimk, over exploitation of resources is impossible, regardless of season. The Mi'kmaq of Nova Scotia want to fish when it is safe and when stocks are healthy – not when an exploitative industry has indicated as best. While time-based restrictions to livelihood harvesting may be developed to guide our fishery, they may not align with existing commercial seasons.

Quantifying “Moderate Livelihood”

As social and economic factors adapt over years and socio-political drivers, placing a limit or quantification on catch or economic benefit would be not only unfair, but limiting. “Moderate” can be understood through traditional Mi'kmaq teachings, or our Indigenous Knowledge, including culture and concepts such as Netukulimk and Msit No'kmaq, rather than through a financial cap. The existing commercial fishing industry is based in wealth accumulation with maximum exploitation. Our Netukulimk fisheries will be managed based foremost on sustainable conservation and preservation practices of fisheries resources. As an additional measure, exploitation of species is and will continue to be the most severe infringement of our harvesting plans and their management and therefore, will have severe consequences. Quantification of “moderate livelihood” in terms of maximum economic revenue is unnecessary given the core principles of Mi'kmaq culture and in turn, our harvesting management.

Quantifying or Estimating Future Community Participation

As the Right to fish and sell fish for a moderate livelihood is a collective right with individual exercise, the number of community members who may wish to participate in a fully implemented fishery cannot be assumed or estimated. There are many factors currently impeding many community members' ability to or consideration of entering the fisheries, including but not limited to financial constraints, existing regulatory barriers, knowledge gaps, concerns for safety, and caregiving responsibilities. Some community members have not yet considered moderate livelihood harvesting as a career opportunity, however, cannot be discounted for lack of current interest in a fishery not yet fully established and implemented. Every Mi'kmaq community member in Nova Scotia has the Right to fish and sell fish for a moderate livelihood, and therefore opportunities must be available for every one of them to participate.

Summary of Fact

- The Mi'kmaw of Nova Scotia never ceded our land, territory, or Rights.
- The Mi'kmaw of Nova Scotia were not consulted on the development of the *Fisheries Act* nor its regulations, and they were not developed with consideration of the implementation of Rights-based fisheries in mind.
- Licensing regulations were developed for the management of privilege-based commercial fisheries. These regulations cannot be applied to Mi'kmaw Rights-based fishers.
- Colonial policies bring with them institutional and systemic discrimination, as well as structural violence against Mi'kmaq wishing to exercise their inherent and Treaty Rights.
- While Canada has imposed regulations on our Rights and resources for 150 years, our communities have governed them under our own mechanisms, structures, knowledge and traditions for the 14,000 years leading up to confederation
- The Mi'kmaw of Nova Scotia have an inherent and constitutionally protected right to self-governance. That Right must be exercised through the implementation of the Right to fish and sell fish for a moderate livelihood.
- The Assembly considers species conservation as the utmost priority of livelihood fisheries. For this reason, the Assembly recognizes the importance of collaborative management and data sharing with DFO.
- Traditional knowledge provides strong indication of when to fish. Rights-based fisheries cannot be bound to DFO-decided seasons which are based on not only conservation, but also consideration of economic value. Mi'kmaw seasonality must be decided based on safety and traditional knowledge.
- Quantification of “moderate livelihood” in terms of maximum economic revenue is unnecessary given the core principles of Mi'kmaq culture and in turn, our harvesting management.

Summary of Recommendations

- The *Fisheries Act* and the *Indian Act* must be assessed and amended to align with UNDIRP.
- The Moderate Livelihood fisheries cannot be implemented under the *Fisheries Act* nor its regulations, as they were not developed for the recognition or implementation of Rights-based fisheries.

- The implementation of the Right to fish and sell fish for a moderate livelihood must include opportunities not only to the harvest itself, but the production line attached to it.
- An incremental approach to implementation must take place to allow harvesters access to their Right, while building a robust governance system, harvester and science capacity, and opportunities along the production line.
- Funding must be made available for the testing and implementation of governance systems for the management of the livelihood fishery.
- Collaborative management approaches are of interest for the implementation of Livelihood fisheries, however, management measures must be based in two-eyed seeking and Neutukulimk.
- “Moderate Livelihood” cannot be feasibly defined in terms of economic gain.
- Rights-based fisheries must maintain priority access over commercial fisheries.