

## DFO Responses to Questions Raised at March 1, 2022 POFO

- 1) Senator Kutcher: “I would have thought — and it sounds like the department is doing some good work — that as part of that work you would be able to share with us the data showing us how racism has changed within the department. **Would you be able to share with this committee the data that you have.** I would assume you would have done measures before you put in these programs and then measure it again to see how effective your interventions have been.”

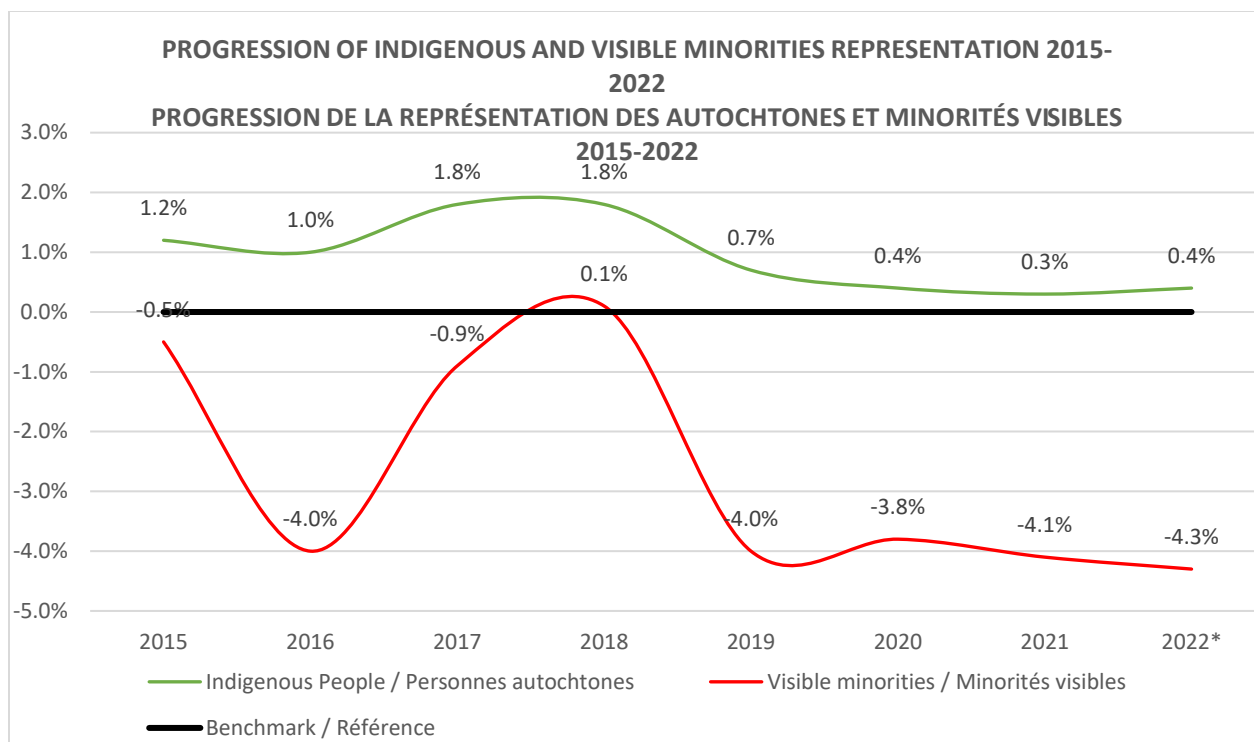
### DFO’s Response

While the Department does not have specific data on how racism has changed within the organization, going forward, the Department will be conducting an employment systems review, which will identify and address systemic and attitudinal barriers to employment opportunities for designated Employment Equity groups (i.e., women, persons with disabilities, Indigenous peoples, and visible minorities). To date, a quantitative analysis of the workforce under representation has been completed. The next step will include qualitative data collections with focus group sessions that aim to understand the nature of the barriers in DFO.

### *Workforce*

Although Fisheries and Oceans Canada (DFO) has implemented many initiatives to support the advancement of Employment Equity, diversity, and inclusion over the past years, efforts are still required to make our organization representative of the Canadian population. For Indigenous peoples and visible minorities, more specifically, additional recruitment and retention work must be done.

A chart of the DFO’s representation rate of employees who identify as either Indigenous or as a visible minority is included below for reference. This illustrates our representation against the estimated workforce availability (WFA) for Canadians that identify as members of these groups. The numbers are calculated in proportion of the total workforce and are based on the self-identification process.



**Notes on the chart:**

- The workforce data exclude students, casual workers, and terms < 3 months.
- The variance in the data from previous, similar reports is due to a recent change in the way representation gaps are calculated. The new calculation method was suggested by the Treasury Board of Canada Secretariat (TBS) to better reflect regional disparities in WFA.
- Data for 2022 are preliminary and represents the period up to December 31, 2021 only.

It is to be noted that the significant shift in the Department's representation in 2019 is primarily due to the change in the data used to calculate the WFA. Prior to 2019, the WFA included data from the 2011 National Household Survey and the 2012 Canadian Disability Survey (CDS), while the 2016 Census and the 2017 CDS data have been used as of 2019 and onwards.

The representation of Indigenous employees in DFO is above the WFA, but still remains low, while stable, since 2020.

The representation of employees who self-identify as visible minorities has also remained essentially stable over the last four years (2022 data is preliminary), but at an average of four per cent below the WFA, and with a slow but sustained decline since 2020. This said, DFO is actively undertaking advertising campaigns to support employment equity (EE) recruitment, and increase representation of all EE groups, including visible minorities.

As this representation data is dependent on the voluntary self-declaration of employees as to their EE group status, DFO is working on a departmental-wide communication that will educate employees and managers on the self-identification (self-ID) process including when self-ID is mandatory versus

voluntary, how and when to self-ID; and the important benefits to the organization and to employees personally when choosing to self-ID. Furthermore, DFO will implement TBS' modernized self-ID form when it is available.

These efforts will contribute to the Department's greater capacity to accurately assess the makeup of our workforce, and better inform efforts toward increasingly equitable representation.

### *Indigenous peoples*

DFO recognizes that in order to address racism and discrimination towards Indigenous peoples, concerted action is needed to advance the necessary institutional and cultural transformation driven by shared values and collaborative leadership. For this reason, the Department has put in place a DFO-Coast Guard Reconciliation Strategy (Strategy), a roadmap for advancing reconciliation across all four of the Department's Core Responsibilities as listed in the Departmental Results Framework. It includes concrete actions across the whole Department and was developed in order to respond to the need for DFO-Coast Guard employees to understand what reconciliation means in the context of our jobs and how our work impacts the reconciliation agenda.

The Strategy provides overarching guidance for staff as they build relationships with Indigenous partners and imbeds commitments such as enhancing the Department's internal capacity to deliver on reconciliation. Across the Department, this is translating into efforts aimed at increasing employee awareness and knowledge of Indigenous peoples and history; improving the tone of communication with Indigenous peoples; reviewing operational practices; and, ensuring Indigenous engagement becomes part of how every sector operates. Further, the Strategy has provided a framework for the creation of sector and regionally-specific action plans that identify tangible inward-facing commitments and next steps to improve the relationship with Indigenous partners, communities, and governments.

A few notable examples from the past year, include:

1. inclusion of a reconciliation commitment in Executive Performance Management Agreements;
2. establishment of the Reconciliation Champion Secretariat, with a focus on the creation of Indigenous Employee Networks, creating cultural competencies, and identifying reconciliation gaps across the Department; and,
3. a DFO-led Interdepartmental Workshop on Truth and Reconciliation which was convened on January 26-27, within the Federal Public Service. It was attended by over 200 participants across Government, with sessions and talks led by Elders, the Interim Clerk of the Privy Council, and Government leaders on diversity and inclusion. The workshop was intended to create an inclusive environment for Government of Canada employees to come together and share learnings, spark action, and ultimately advance reconciliation with First Nation, Inuit, and Métis peoples within the federal public service. A workshop report is being developed to inform how DFO and other federal departments can work to advance truth and reconciliation within the Federal Public Service, including: efforts to encourage and support Indigenous peoples to join the Federal Public Service; addressing bias, racism, discrimination, and harassment; improving cultural competence; and, addressing learning and development.

The Department is continuing to focus efforts on implementing cultural change in line with the Strategy and across the organization. Taken together, these efforts is intended help to address systemic racism and systemic barriers faced by Indigenous peoples.

- 2) Mr. Forgeron: “If the committee is interested, I would be happy to share that letter for its information. It explains the nation-to-nation relationship and why industry is not a participant in these negotiations.”

DFO’s Response

Please see letter attached in Tab 2.

- 3) Senator Francis: “To help our committee assess the validity of past and current government actions, could you please provide us with all the factual and scientific evidence used by your department to infringe on the self-determination of fisheries rights of the Mi’kmaq, Maliseet and Passamaquoddy on conservation and other purposes?”

#### DFO’s Response

##### **Regulation of the Right**

The Government of Canada is committed to reconciliation and to renewing its relationship with Indigenous peoples, based on the recognition of rights, respect, cooperation, and partnership.<sup>1</sup> As part of this commitment, DFO is working to support the ongoing implementation of Aboriginal and Treaty rights recognized and affirmed by the *Constitution Act, 1982*. These rights include the Treaty right of 35 Indigenous communities (“Treaty Nations”) in Atlantic Canada to fish in pursuit of a moderate livelihood, arising from the 1760-1761 Peace and Friendship Treaties and affirmed in the 1999 *Marshall* decisions of the Supreme Court of Canada (SCC).

The SCC *Marshall II* decision clarified that the right to participate in the “largely unregulated commercial fishery of 1760”<sup>2</sup> has since evolved to a right to participate in the largely regulated commercial fishery of today.<sup>3</sup> It is a right to fish alongside non-Indigenous harvesters in the integrated commercial fishery. The SCC *Marshall II* decision also emphasized that the treaty rights recognized in its first ruling “are subject to regulation provided such regulation is shown by the Crown to be justified on conservation or other grounds of public importance.”<sup>4</sup>

As the Department responsible for ensuring the long-term health and management of fisheries and oceans resources in Canada, DFO’s goal is to ensure that all fisheries remain safe, productive, and sustainable for all harvesters. When it comes to implementing these treaty rights, DFO is guided by three key principles: conservation and sustainability; transparent and predictable management; and, our duty to fulfill Canada’s commitment to reconciliation.

##### **Fisheries and Oceans Canada (DFO) Science**

DFO Science branch provides the science basis to support DFO’s decision-making process for the management of Canadian fisheries.

Activities range from surveying the stocks and assessing their abundance, conducting research on species and ecosystems, and ultimately providing advice to fisheries management (e.g., sustainable catch levels, impact of human activities on aquatic resources).

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<sup>1</sup> DFO and the Canadian Coast Guard (DFO-CCG)’s Reconciliation Strategy serves as a roadmap for advancing reconciliation in fisheries, oceans, aquatic habitat, and marine waterways, and is intended to guide all DFO activities.

<sup>2</sup> R v Marshall, [1999] 3 S.C.R. 533 at para. 38 [Marshall II].

<sup>3</sup> Regulations that do not take an Indigenous community’s catch below the quantities reasonably expected to produce a moderate livelihood and regulations that define the right without limiting it do not need to be justified.

<sup>4</sup> R v Marshall, [1999] 3 S.C.R. 533 at para. 6 [Marshall II].

DFO undertakes research which provides new information and knowledge to improve advice. Many research activities are conducted in collaboration with various partners and stakeholders. Advice also considers the outcomes of peer-reviewed findings in scientific journals. The main external collaborators and stakeholders of DFO's fisheries science program include the fishing industry, Indigenous groups, academia, and environmental non-governmental organizations.

Gathered data is integrated to assess the status of each stock and provide advice. This information is also used to develop precautionary approach reference points and other advice to DFO managers to support a sustainable use of the resource (i.e., key component to support eco-certification of Canadian fisheries).

Science advice is scientifically peer-reviewed through an open and transparent process that includes stakeholders and external experts. The process is coordinated by the DFO Canadian Science Advisory Secretariat (CSAS) and all advice and related documents are available to the public through the CSAS website (<https://www.dfo-mpo.gc.ca/csas-sccs/index-eng.htm>).

In June of 2021, DFO hosted a Lobster Science Partnership Roundtable with Indigenous and commercial harvesters and key researchers. The Lobster Science Partnership Roundtable brings together DFO scientists, Indigenous partners, academic and research institutions, industry organizations, and provincial government representatives from the Maritimes and Quebec to discuss important lobster science research questions and priorities, identify new areas of work, discuss how to effectively work together, and engage others in the process.

This is just one example of how DFO is striving to work more collaboratively with Indigenous partners to involve First Nations in DFO's scientific work.

### **DFO Resource Management**

DFO, through the Fisheries Resource Management branch, uses integrated fisheries management plans (IFMPs) to help guide the conservation and sustainable use of marine resources, support the management of sustainable fisheries, and combine science and Indigenous traditional knowledge on fish species with industry data to determine best practices for harvest.

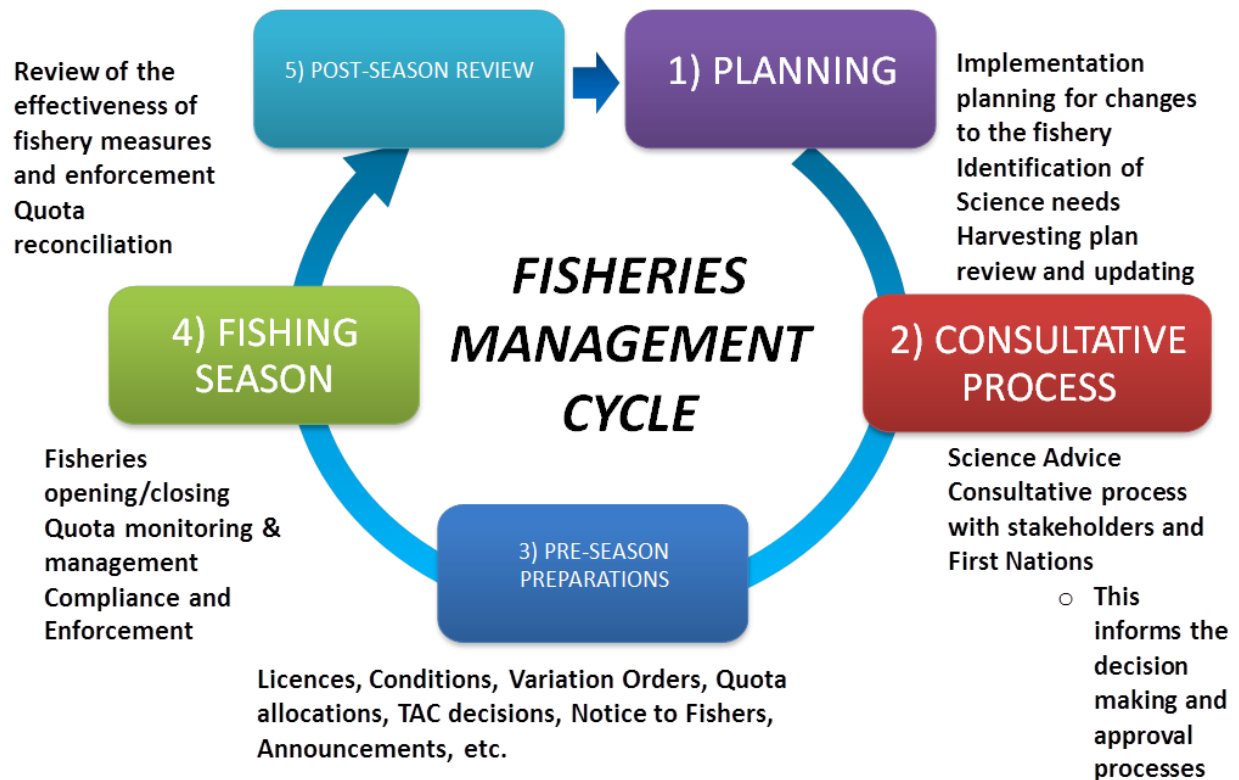
IFMPs provide detailed information on the management objectives and related measures for each fishery and can be found at the following link: <https://www.dfo-mpo.gc.ca/fisheries-peches/ifmp-gmp/index-eng.html>

### **Context: Overview of the Fisheries Management Cycle**

DFO is involved in the management of over 200 fisheries operating on three coasts, including some inland fisheries. Provincial and territorial governments may also be involved, through various aspects, in the management of some fisheries. Moreover, modern treaties have also established nation-to-nation relationships between Indigenous peoples, federal, provincial and, in some cases, territorial governments to provide for the establishment of co-management structures to exercise management, or advisory authorities, with respect to aquatic resources in defined areas. The main purposes of fishing

activities include commercial; recreational; and, food, social, and ceremonial (FSC). Some fisheries operate in a specific season, while others are year-round. Some of Canada’s fish stocks are also managed in cooperation with international counterparts.

Where DFO manages fishing activity, an annual fisheries management cycle is generally applied that consists of five key stages: planning; consultative process; pre-season preparations; fishing season; and, post-season review.



Indigenous participation can take place in each of the stages of the fisheries management cycle. The extent of Indigenous involvement in each stage varies, depending on the nature of existing modern Treaty agreements or collaborative fisheries management arrangements, capacity and interests of the Indigenous community, and potential impacts on Indigenous fishing.

Involvement by Indigenous harvesters predominantly occurs under steps two, four, and five; the “consultative process”, the “fishing season”, and the “post-season review”, respectively. In many areas, Indigenous groups also work in collaboration with DFO conservation and protection officers and other enforcement agencies to ensure compliance during step four, the “fishing season”. Increasingly, Indigenous groups and DFO are collaborating on developing science advice, and are also collaborating under step one, “planning”. Where co-governance structures and/or co-management agreements exist, Indigenous groups are also involved in step three, “pre-season preparations”, namely decision-making.



Over the years, DFO has increased its collaboration with Indigenous groups under step two (the “consultative process”). This includes the establishment of bilateral structures between Indigenous groups and DFO where matters can be discussed in a nation-to-nation setting (i.e., Indigenous pre-advisory meetings).

Decisions concerning the management of fisheries are governed by conservation, Aboriginal and treaty rights, legislative and regulatory obligations, and a variety of binding agreements. Fisheries decision-making is also informed by other considerations, including, but not limited to:

- science advice (i.e., stock assessment, fish biology);
- policies, including licensing policies (i.e., sustainable fisheries framework consists of suite of tools including the Precautionary Approach, bycatch, sensitive ecosystems, etc.);
- socioeconomic considerations (i.e., analysis of short and long-term impacts of fisheries decisions);
- input, including Indigenous knowledge, from Indigenous partners as part of established treaties and other comparable instruments, or collaborative fisheries management arrangements (which may be in the form of recommendations or decisions based on circumstances set out in those arrangements) and other established, formal, consultation, and engagement processes; and,
- stakeholder engagement (i.e., broad set of advisory processes involving fishing industry, Indigenous group delegates, provincial/territorial governments, and environmental groups).

In 2019, DFO developed a Departmental Reconciliation Strategy (as described under the response to the first question) as a whole-of-department, long-term roadmap for advancing meaningful reconciliation with Indigenous peoples. The Strategy describes the Department’s approach to how it plans to advance reconciliation in fisheries, oceans, aquatic habitat, and marine waterways. A key action area from the Strategy is: “Build decision making and collaborative management processes”. While the Department’s vision for reconciliation is long-term in nature, the Strategy provides a practical plan to achieve the vision through the delivery of concrete actions and the systematic tracking of results through the Department’s existing performance measurement structure.

- 4) Senator Francis: “Could you please provide this committee with a list of all formal consultations with the Mi’kmaq, Maliseet and Passamaquoddy led by your department since 1999, specifically focused on the implementation of the moderate livelihood fisheries?”

#### DFO’s Response

The Government of Canada is committed to reconciliation and to renewing its relationship with Indigenous peoples, based on the recognition of rights, respect, cooperation, and partnership. As part of this commitment, DFO is working to support the ongoing implementation of Aboriginal and Treaty rights recognized and affirmed by the *Constitution Act, 1982*. These rights include the Treaty right of the Mi’kmaq, Wolastoqey, and Peskotomuhkati Indigenous communities (Treaty Nations) in Atlantic Canada to fish in pursuit of a moderate livelihood, arising from the 1760-1761 Peace and Friendship Treaties and affirmed in the 1999 *Marshall* decisions of the Supreme Court of Canada (SCC).

Since the SCC’s *Marshall* decisions, the Government of Canada has continued to consult and collaborate with the Treaty Nations on the implementation of their Treaty right to fish for sale in pursuit of a moderate livelihood. Throughout the past 22 years, DFO’s approach to accommodating the evolving interests of Treaty Nations have been guided by the many formal and informal negotiations, consultations, engagements, and correspondence with the Treaty Nations; whether directly with the Minister, the federally appointed Lead Fisheries Negotiator, senior DFO officials, and/or through departmental correspondence. While it is not possible to provide a detailed record of all of the many exchanges between DFO and the 35 Treaty Nations since 1999, an overview of DFO’s programmatic response to date is provided in Annex A. The programmatic response is an important and significant piece in the Government’s efforts in accommodating the Treaty Nations’ right as it outlines some the collaborative efforts collectively pursued between DFO and the Treaty Nations throughout the past 22 years and some of the many successes these efforts have fostered.

As conveyed by the Senior Assistant Deputy Minister during his March 1 Committee appearance, a more recent account of detailed records outlining the exchanges between DFO and the Treaty Nations could be provided. As such, outlined below are four tables listing some of the various points of engagement, specifically focused on the implementation of moderate livelihood fishing, between DFO and the Treaty Nations since 2021.

**DFO: RIGHTS RECONCILIATION AGREEMENT NEGOTIATIONS 2021 to March 21, 2022**

First Nation (FN)	Meeting
<p><b>Elsipogtog and Esgenoôpetitj</b></p> <ul style="list-style-type: none"> <li>• 2 New Brunswick Mi'kmaq FNs, represented by Mawiw at the negotiation table</li> <li>• Interim Fisheries Implementation Agreement signed in August, 2019</li> </ul>	<p>Elsipogtog Main Table: December 14, 2021; February 3, 2022</p> <p>Fisheries Sub-group: June 25, 2021; October 18, 2021; February 10, 2022; March 2, 2022</p> <p>Information from Lead Federal Fisheries Negotiator on mandate amendments, mandate renewal, and guiding principles provided in February 2021. Negotiations are on-going.</p>
<p><b>Wolastoqiyik Wahsipekuk (formerly the Maliseet of Viger)</b></p> <ul style="list-style-type: none"> <li>• 1 Quebec Maliseet FN</li> <li>• RRA signed in August, 2019</li> <li>• Les négociations à cette table se déroulent en français.</li> </ul>	<p>February 2, 2021 Main Table</p> <p>Other meetings related to Agreement implementation (see Quebec list).</p> <p>Information from Lead Federal Fisheries Negotiator on mandate amendments, mandate renewal, and principles sent via email February 2021.</p>
<p><b>Mi'gmawei Mawiomi Secretariat (MMS)</b></p> <ul style="list-style-type: none"> <li>• 3 Québec Mi'gmaq FNs: Gesgapegiag, Gespeg, and Listuguj</li> <li>• Although MMS represents all three communities for the purpose of section 35 negotiations, Listuguj Mi'gmaq Government (LMG) sought to negotiate a community RRA separate from the two other communities. Gesgapegiag and Gespeg support this approach.</li> </ul>	<p><b>MMS:</b></p> <p>Main Table Meetings: February 10, 2021, April 14, 2021, June 16, 2021, January 27, 2022</p> <p>March 2, 2021 and May 18, 2021: Q&amp;A session on the mandate change document sent to them by the Lead Federal Fisheries Negotiator. (Informal discussion)</p> <p>Sub-group RRA discussions: February 3 and 15, 2022, March 1, 2022</p> <p><b>LMG:</b></p> <p>Sub-group RRA discussions: January 6, 7 and 19, 2021, March 5, 15, 2021</p> <p>Other meetings related to Agreement implementation (see Quebec list).</p> <p>Information from Lead Federal Fisheries Negotiator on mandate amendments, mandate renewal, and principles sent via email February 2021.</p>
<p><b>Mi'gmawe'l Tplu'taqnn Incorporated (MTI)</b></p> <ul style="list-style-type: none"> <li>• 7 New Brunswick Mi'kmaq FNs: Buctouche, Eel Ground, Eel River Bar, Fort Folly, Indian Island, Metepenagiag</li> </ul>	<p>Main Table: January 13, 2021; February 24, 2021; March 24, 2021; April 22, 2021; May 19, 2021, June 23, 2021; November 25, 2021; December 21, 2022; January 25, 2022; February 17, 2022</p> <p>February 16 and 23, 2021, Lead Federal Fisheries Negotiator had bi-lateral meeting with MTI Lead Fisheries Negotiator.</p>

First Nation (FN)	Meeting
<ul style="list-style-type: none"> <li>• Prefers the term Rights Implementation Agreement (RIA) over RRA</li> <li>• Pabineau FN formally withdrew from MTI in summer of 2021 to undertake own negotiations.</li> </ul>	<p>Fisheries Side Table: January 21, 2022; February 15, 2022; March 21, 2022</p> <p>Information from Lead Federal Fisheries Negotiator on mandate amendments, mandate renewal, and guiding principles provided February 2021. Negotiations are on-going.</p> <p>Pabineau RRA discussions: July 29, 2021, August 16, 2021, October 29, 2021, December 8, 2021, March 18, 2022</p>
<p><b>Wolastoqey Nation of New Brunswick (WNNB)</b></p> <ul style="list-style-type: none"> <li>• 5 New Brunswick Wolastoqey FNs: Kingsclear, Oromocto, St. Mary's, Tobique, Woodstock</li> <li>• Madawaska FN withdrew from negotiations</li> </ul>	<p>Main Table: January 28, 2021, March 29, 2021; June 1, 2021; December 7, 2021; January 20, 2022</p> <p>February 12, 2021, April 14, 2021, April 28, 2021; May 12, 2021; June 2, 2021 Lead Federal Fisheries Negotiator had bi-lateral meeting with WNNB Lead Fisheries Negotiator.</p> <p>Information from Lead Federal Fisheries Negotiator on mandate amendments, mandate renewal, and principles provided February 2021. Negotiations have been paused but main table meetings continue.</p>
<p><b>Prince Edward Island Mi'kmaq (L'nuey)</b></p> <ul style="list-style-type: none"> <li>• 2 PEI Mi'kmaq FNs: Abegweit (Chief to negotiate RRA), Lennox Island (still represented by L'nuey)</li> </ul>	<p>Main Table: January 20, 2021; February 24, 2021; April 29, 2021; June 2, 2021; November 9, 2021;</p> <p>Fisheries Side Table: January 20, 29, 2021; March 24, 2021; April 14, 2021; May 28, 2021 L'nuey (representing Lennox Island only) – February 23 and March 9, 2022</p> <p>Information from Lead Federal Fisheries Negotiator on mandate amendments, mandate renewal, and principles provided February 2021. Negotiations are on-going.</p> <p>Abegweit RRA discussions: December 6, 2021</p>
<p><b>Peskotomuhkati</b> 1 New Brunswick FN</p>	<p>Main Table meetings: January 26, 2021 and February 23, 2021, March 23, 2021, April 27, 2021, May 25, 2021, June 22, 2021, July 20, 2021, November 30, 2021, January 19, 2022, February 23, 2022, April 5, 2022.</p> <p>Jan 22, 2021, Lead Federal Fisheries Negotiator had bi-lateral meeting with Peskotomuhkati lead Fisheries Negotiator</p>

First Nation (FN)	Meeting
	<p>Feb 9, 2021, RDG and Lead Federal Fisheries Negotiator meeting to discuss MOU on Hybrid fishery approach.</p> <p>Information from Lead Federal Fisheries Negotiator on mandate amendments, mandate renewal, and principles sent via email mid-February.</p>
<p><b>Kwilmu'kw Maw-klusuaqn (KMK)</b></p> <ul style="list-style-type: none"> <li>• 13 Nova Scotia Mi'kmaq FNs: Acadia, Annapolis Valley, Bear River, Chapel Island, Eskasoni, Glooscap, Pictou Landing, Wagmatcook, Paq'tnkek</li> <li>• Outliers: Sipekne'katik, Millbrook, Membertou, Waycobah</li> </ul>	<p>Main Table: January 14, 2021, February 17, 2021, October 2021, February 16, 2022, April 29, 2022</p> <p>Fish Steering Committee: January 11, 19, Feb 12 2021</p> <p>Technical WG: Jan 25, 27, Feb 2 2021</p> <p>In March 2021, negotiations shifted to discussion on Moderate Livelihood Fishing Plans - see Maritimes Region list.</p> <p>Information from Lead Federal Fisheries Negotiator on mandate amendments, mandate renewal, and access sent via email February 2021.</p>

**Moderate Livelihood Consultation:** In July 2021, the Minister undertook an engagement process on Moderate Livelihood by sending a questionnaire to the 35 Mi'kmaq, Wolastoqey, and Peskotomuhkati communities impacted by the *Marshall* decisions. A total of seven responses, primarily from aggregate bodies, representing 27 of the Treaty Nations were received. The feedback from this exercise will help inform the Government's current approach to the further implementation of the Treaty right to fish in pursuit of a moderate livelihood and will also be essential in the development of future implementation approaches.

**Maritimes Region's List of Moderate Livelihood Meetings in 2021-22**  
(revised on March 21, 2022)

First Nation (FN)	Meeting
Meeting: Mi'kmaw Fish Steering Committee	<b>January 12, 2021</b>
Meeting: Mi'kmaw Fish Steering Committee	<b>January 19, 2021</b>
Meeting: Discussion with Peskotomuhkati	<b>January 20, 2021</b>
Meeting: Regional Director General (RDG) call with Chief Terrance Paul, Membertou First Nations	<b>February 5, 2021</b>
Meeting: Discussion with Peskotomuhkati	<b>February 9, 2021</b>
Meeting: Mi'kmaw Fish Steering Committee	<b>February 12, 2021</b>
Meeting: Discussion with Annapolis Valley First Nation (AVFN) (Chief Gerry Toney) regarding the Saulnierville wharf and discussions on Moderate Livelihood (ML)	<b>February 18, 2021</b>
Meeting: Engagement session on summer fisheries <u>Invitations:</u> Acadia First Nation, invited but no response Bear River First Nation, invited but no response AVFN, invited but no response Glooscap First Nation, invited but no response Sipekne'katik First Nation, invited and responded they were not interested in any discussions with Fisheries and Oceans Canada (DFO) Millbrook First Nation, invited but no response *Note: none of the above First Nations attended the meeting	<b>February 18, 2021</b>
Meeting: Potential establishment of Eastern Nova Scotia (NS) Area Engagement table with Five Cape Breton First Nations	<b>February 19, 2021</b>
Meeting: Discussion with Chief Wilbert Marshall, Potolotek First Nation (next steps to support the community's ML fishing plan)	<b>February 26, 2021</b>
Meeting: On the Record Consultation on AVFN Fish Agreement and Plan	<b>March 2, 2021</b>
Meeting: RDG Call with Janice Maloney, Kwilmu'kw Maw-klusuaqn. Negotiations Office (KMKNO)	<b>March 3, 2021</b>

First Nation (FN)	Meeting
Meeting: Engagement regarding moderate livelihood fishery <u>Invitations:</u> Acadia First Nation, invited but no response Bear River First Nation, invited but no response Annapolis First Nation, invited but no response Glooscap First Nation, invited and Fisheries Manager attended Millbrook First Nation, invited but no response *Note: Only one (1) of the above First Nations attended the meeting	<b>March 4, 2021</b>
Meeting: RDG call with Hubert Nicolas, Fisheries Director Membertou First Nation	<b>March 5, 2021</b>
Meeting: On the Record Consultation on AVFN Fish Agreement and Plan	<b>March 5, 2021</b>
RDG/Chief Meeting with Peskotomuhkati Nation at Skutik	<b>March 9, 2021</b>
Meeting: Engagement with Millbrook First Nation on Rights Reconciliation Agreement (RRA)	<b>March 16, 2021</b>
Meeting: On the Record Consultation with KMKNO on implementing Fish Plans	<b>March 16, 2021</b>
Wolastoqey Chiefs and RDG Meeting	<b>March 23, 2021</b>
Wolastoqey Nation in New Brunswick (WNNB)/DFO Fisheries Working Group Discussions	<b>April 12, 2021</b>
RDG/Chief Meeting with Peskotomuhkati Nation at Skutik	<b>April 15, 2021</b>
Meeting: Consultation on Kesputwitk Elver Fish Plan	<b>April 27, 2021</b>
Meeting: Consultation on Netukulimk Livelihood Fisheries Plan	<b>April 30, 2021</b>
Meeting: Kwilmu'kw Maw-klusuaqn (KMK)/DFO Negotiation Session	<b>May 10, 2021</b>
Meeting: Potlotek Netukulimk Livelihood Fisheries Collaborative Enforcement Protocol	<b>May 11, 2021</b>
Meeting: Draft Conservation & Protection (C&P) Enforcement Protocol for Potlotek Livelihood Fisheries	<b>May 18, 2021</b>
Meeting: Consultation on the Unama'ki Approach	<b>May 25, 2021</b>
Meeting: KMK/DFO Negotiation Session on Potlotek lobster fishery	<b>May 26, 2021</b>

<b>First Nation (FN)</b>	<b>Meeting</b>
RDG/Chief Meeting with Peskotomuhkati Nation at Skutik	<b>May 27, 2021</b>
Meeting: KMK/DFO Negotiation Session on Potlotek lobster fishery	<b>June 2, 2021</b>
Meeting: KMK/DFO/Province of NS Negotiation Session on Potlotek lobster fishery	<b>June 4, 2021</b>
Meeting: Check-in re: Progress on implementing Potlotek lobster fishery	<b>June 4, 2021</b>
Meeting: KMK/DFO Negotiation Session on Kesputwitk lobster plan	<b>June 15, 2021</b>
Meeting: Consultation on Enforcement Protocol for Potlotek Livelihood Fisheries	<b>June 16, 2021</b>
WNNB/DFO Fisheries Working Group Discussions	<b>June 22, 2021</b>
RDG/Chief Meeting with Peskotomuhkati Nation at Skutik	<b>June 24, 2021</b>
Meeting: Consultation on Potlotek Livelihood Fishery	<b>June 24, 2021</b>
Meeting: Consultation on Livelihood Fisheries Collaborative Enforcement Protocol	<b>June 25, 2021</b>
WNNB Main Table	<b>July 13, 2021</b>
WNNB/DFO Fisheries Working Group Discussions	<b>July 15, 2021</b>
Meeting: Consultation on C&P Protocol	<b>July 20, 2021</b>
Meeting: Consultation on Potlotek Livelihood Fishery	<b>July 20, 2021</b>
Meeting in Oromocto First Nation with Oromocto First Nation (OFN) Fisheries Director and IFM Senior Advisor to discuss the review of OFN's Moderate Livelihood Fishing Plan.	<b>August 11, 2021</b>
Meeting: St. Mary's First Nation – Moderate Livelihood Fishing	<b>August 20, 2021</b>
WNNB/DFO Fisheries Working Group Discussions	<b>August 31, 2021</b>
Meeting: KMK/DFO Negotiation Session on Kesputwitk lobster plan	<b>September 22, 2021</b>
Meeting: KMK/DFO Negotiation Session on Kesputwitk lobster plan	<b>October 6, 2021</b>
WNNB/DFO Fisheries Working Group Discussions	<b>October 6, 2021</b>



<b>First Nation (FN)</b>	<b>Meeting</b>
Meeting: KMK/DFO Negotiation Session on Kesputwitk lobster plan	<b>October 8, 2021</b>
Teams Meeting: Oromocto First Nation Fisheries Director and IFM Acting Senior Advisor to discuss the review of OFN's Moderate Livelihood Fishing Plan.	<b>October 19, 2021</b>
Teams Meeting: KMKNO Main Table Meeting with KMKNO and DFO Staff.	<b>October 21, 2021</b>
Meeting: Commercial Fisheries Liaison Coordinator (CFLC) Meeting	<b>October 28, 2021</b>
Teams Meeting: Oromocto First Nation Fisheries Director and IFM Acting Senior Advisor to discuss the review of OFN's Moderate Livelihood Fishing Plan.	<b>November 3, 2021</b>
WNNB and DFO consultation discussion meeting	<b>November 17, 2021</b>
Teams Meeting: Oromocto First Nation Fisheries Director and IFM Acting Senior Advisor to discuss the review of OFN's Moderate Livelihood Fishing Plan.	<b>November 22, 2021</b>
RDG/Chief Meeting with Peskotomuhkati Nation at Skutik	<b>November 26, 2021</b>
Peskotomuhkati Nation at Skutik Main Table	<b>November 30, 2021</b>
WNNB Main Table	<b>December 7, 2021</b>
Peskotomuhkati Nation at Skutik discussion, science vessel	<b>December 8, 2021</b>
American Eel Working Group Meeting with KMKNO, Unama'ki Institute of Natural Resources, Confederation of Mainland Mi'kmaq, and Mi'kmaq Conservation Group.	<b>December 13, 2021</b>
Peskotomuhkati Nation at Skutik, Proposed Hybrid Vessel and Hybrid Fishery discussion	<b>December 14, 2021</b>
WNNB/DFO Fisheries Working Group Discussions	<b>December 15, 2021</b>
RDG/Chief Meeting with Peskotomuhkati Nation at Skutik	<b>January 6, 2021</b>
WNNB/DFO Fisheries Working Group Discussions	<b>January 12, 2021</b>
Peskotomuhkati Nation at Skutik Main Table	<b>January 19, 2022</b>
WNNB Main Table	<b>January 20, 2022</b>
KMKNO Meeting on Elver Access in Kespukwitk (elver plan) District	<b>January 20, 2022</b>

<b>First Nation (FN)</b>	<b>Meeting</b>
RDG/Chief Meeting with Peskotomuhkati Nation at Skutik	<b>January 27, 2022</b>
KMKNO Potlotek Spring Fishery Discussions	<b>February 9, 2022</b>
WNNB/DFO Fisheries Working Group Discussions	<b>February 15, 2022</b>
WNNB Main Table	<b>February 16, 2022</b>
KMKNO Maintable	<b>February 16, 2022</b>
RDG/Chief Meeting with Peskotomuhkati Nation at Skutik	<b>February 17, 2022</b>
WNNB and DFO consultation discussion meeting	<b>February 22, 2022</b>
Peskotomuhkati Nation at Skutik Main Table	<b>February 23, 2022</b>
Teams Meeting: Oromocto First Nation Fisheries Director and IFM Acting Senior Advisor to discuss the review of OFN's Moderate Livelihood Fishing Plan.	<b>March 1, 2022</b>
Teams Meeting: KMKNO Consultation Meeting on elver, gaspereau, and lobster access.	<b>March 2, 2022</b>
Teams Meeting: KMKNO Consultation Meeting on elver, gaspereau, and lobster access.	<b>March 9, 2022</b>
Teams Meeting: KMKNO Consultation Meeting on elver	<b>March 14, 2022</b>
Teams Meeting: KMKNO Consultation Meeting on elver and lobster access.	<b>March 14, 2022</b>
Meeting: KMKNO-DFO Consultation meeting on Elver and Lobster access	<b>March 16, 2022</b>

**Gulf Region List of Moderate Livelihood Meetings in 2021 – March 2022**

First Nation (FN)	Meeting
Pictou Landing First Nation	<ul style="list-style-type: none"> <li>- Netukulimk Livelihood fisheries consultation - September 10, 2021</li> <li>- Netukulimk Livelihood fisheries management plan – September 28, 2021</li> <li>- Netukulimk Livelihood fisheries trap return – November 29, 2021</li> <li>- Preparation/Coordination: consultation on PLFN MLF – January 17, 2022</li> <li>- Consultation re: Pictou Landing FN Netukulimk MLF – February 7, 2022</li> <li>- Consultation meeting: PLFN MFLP – February 22, 2022</li> </ul>
Pabineau First Nation	<ul style="list-style-type: none"> <li>- Moderate Livelihood discussion - August 16, 2021</li> </ul>
MTI	<ul style="list-style-type: none"> <li>- MTI Seasonality Consultation - September 24, 2021</li> <li>- DFO-MTI discussion on MLF – March 8, 2022</li> </ul>
Lennox Island/L'nuey	<ul style="list-style-type: none"> <li>- Lennox Island Treaty Fishery – February 15, 2022.</li> <li>- Lennox Island Treaty Fishery – March 3, 2022</li> <li>- Lennox Island Treaty protected fishery meeting – March 21, 2022</li> </ul>

**Quebec Region's List of Moderate Livelihood Meetings 2021 – March 2022**

<b>Date</b>	<b>Indigenous groups or First Nations participating</b>	<b>Purpose of the meeting</b>
2022-03-18	Première Nation Wolastoqiyik (Malecite) Wahsipekuk	Co-Governance committee meeting to discuss the 2022-2023 strategic work plan in the context of the implementation of the RRA
2022-03-16	Listuguj Mi'gmaq government	As part of the implementation of the RRA, Enforcement Protocol Negotiation meeting
2022-03-09	Première Nation Wolastoqiyik (Malecite) Wahsipekuk	Executive Oversight committee meeting in the context of the implementation of the RRA
2022-02-15	Mi'gmawei Mawio'mi Secretariat (MMS) representing Gespeg and Gesgapegiag	RRA negotiation session.
2022-02-10	Listuguj Mi'gmaq government	As part of the implementation of the RRA, Enforcement Protocol Negotiation meeting
2022-02-03	Mi'gmawei Mawio'mi Secretariat (MMS) representing Gespeg and Gesgapegiag	RRA negotiation session.
2022-01-27	Mi'gmawei Mawio'mi Secretariat (MMS) representing Gespeg and Gesgapegiag	RRA negotiation table with CIRNAC.
2022-01-25	Listuguj Mi'gmaq government	Meeting of LMG-Canada Co-Governance Fisheries Committee.
2022-01-20	Listuguj Mi'gmaq government	As part of the implementation of the RRA, Enforcement Protocol Negotiation meeting
2022-01-11	Première Nation Wolastoqiyik (Malecite) Wahsipekuk	Executive Oversight committee meeting in the context of the implementation of the RRA
2021-12-15	Gespeg Gesgapegiag Première Nation Wolastoqiyik (Malecite) Wahsipekuk	Workshop on fishing management cycle, aboriginal contribution programs and negotiation and implementations of RRAs
2021-12-14	Listuguj Mi'gmaq Government	Meeting with DFO Deputy Minister to discuss the implementation of the Rights Reconciliation Agreement on Fisheries (RRA) signed in April 2021 and a range of priority issues for the First Nation.
2021-12-14	Première Nation Wolastoqiyik (Malecite) Wahsipekuk	Co-Governance committee meeting in the context of the implementation of the RRA
2021-12-06	Gespeg Gesgapegiag	Get First Nation representatives to describe the main issues they encounter in their relations with non-Indigenous people and the messages to be conveyed

Date	Indigenous groups or First Nations participating	Purpose of the meeting
	Première Nation Wolastoqiyik (Malecite) Wahsipekuk	to further non-Indigenous people's understanding and proper interpretation of their fishing rights.
2021-11-18	Listuguj Mi'gmaq government	As part of the implementation of the RRA, Enforcement Protocol Negotiation Kick-off meeting
2021-10-27	Listuguj Mi'gmaq government	Meeting of LMG-Canada Co-Governance Fisheries Committee. Post Mortem of the 2021 Fall lobster fishing season
2021-10-04	Mi'gmawei Mawio'mi Secretariat (MMS) representing Gespeg and Gesgapegiag	Meeting to discuss the negotiation of a TRM agreement.
2021-09-21	Première Nation Wolastoqiyik (Malecite) Wahsipekuk	Meeting of the Co-Governance committee under the RRA.
2021-08-18	Listuguj Mi'gmaq government	Meeting of LMG-Canada Co-Governance Fisheries Committee to discuss fall lobster Moderate Livelihood Fishery
2021-06-30	Listuguj Mi'gmaq Government	Following the signature of the RRA, Kick-Off Meeting of LMG-Canada Executive Oversight Body. The main topic of discussion was the 2021 Fall lobster Moderate Livelihood Fishery
2021-06-28	Listuguj Mi'gmaq government	Meeting of LMG-Canada Co-Governance Fisheries Committee to discuss fall lobster Moderate Livelihood Fishery
2021-06-16	Mi'gmawei Mawio'mi Secretariat (MMS) representing Gespeg and Gesgapegiag	Main negotiation Table with CIRNAC. Tripartite discussions on the Framework agreement
2021-06-15 (Afternoon)	Listuguj Mi'gmaq government	Meeting to discuss RRA contribution agreements
2021-06-15 (Morning)	Listuguj Mi'gmaq government	Meeting of LMG-Canada Co-Governance Fisheries Committee to discuss fall lobster Moderate Livelihood Fishery and access acquisition
2021-06-10	Listuguj Mi'gmaq government	Following the signature of the RRA, Kick-Off Meeting of LMG-Canada Co-Governance Fisheries Committee
2021-06-03	Première Nation Wolastoqiyik (Malecite) Wahsipekuk	Meeting of the Co-Governance committee.
2021-05-18	Mi'gmawei Mawio'mi Secretariat (MMS) representing Gespeg and Gesgapegiag	Virtual meeting to discuss about changes made to the mandate and renewal of the mandate.
2021-04-29	Listuguj Mi'gmaq government	Call with Fred Metallic and Denny Isaac to discuss about contribution agreements set out in the RRA.
2021-04-26	Mi'gmawei Mawio'mi Secretariat (MMS) representing Gespeg and Gesgapegiag	Meeting to answer MMS concerns about RRA funding.

Date	Indigenous groups or First Nations participating	Purpose of the meeting
2021-04-20	Uashat Mak Mani Utenam	Consultation with Uashat First Nation on LMG RRA signature since they had expressed some concerns on potential impacts on their rights.
2021-04-18	Listuguj Mi'gmaq government	Briefing with Chief Gray on RRA's signature.
2021-04-16	Première Nation Wolastoqiyik (Malecite) Wahsipekuk	Discussion with Fisheries director Guy-Pascal about the annual implementation funding agreement.
2021-04-15	Première Nation Wolastoqiyik (Malecite) Wahsipekuk	CIRNAC main table. Feedback from the Virtual Liaison Committee on march 12, mandate, and brief discussion on the signing of LMG RRA.
2021-04-14	Mi'gmawei Mawio'mi Secretariat (MMS) representing Gespeg and Gesgapegiag	CIRNAC main table.
2021-04-07	Listuguj Mi'gmaq government	Discussion about TRM agreement and implementation funding agreements.
2021-03-19	Première Nation Wolastoqiyik (Malecite) Wahsipekuk	Discussion with Fisheries director Guy-Pascal about the TRM agreement.
2021-03-18	Première Nation Wolastoqiyik (Malecite) Wahsipekuk	Co-Governance committee meeting in the context of the implementation of the RRA
2021-03-15	Listuguj Mi'gmaq government	RRA negotiation call with Zachary and Fred Metallic.
2021-03-12	Essipit Pessamit Unamen Shipu Shipek Nutashquan Uashat Gespeg Gesgapegiag, Listuguj Mi'gmaq government Première Nation Wolastoqiyik (Malecite) Wahsipekuk	Virtual Liaison Committee - Special Information Session on Reconciliation with Indigenous Peoples and the right to fish in pursuant of a moderate livelihood.
2021-03-11	Essipit Pessamit Unamen Shipu Shipek	Virtual pre-meeting of the special information session of the Liaison Committee on march 12.

Date	Indigenous groups or First Nations participating	Purpose of the meeting
	Nutashquan Gespeg Gesgapegiag Uashat Listuguj Mi'gmaq government Première Nation Wolastoqiyik (Malecite) Wahsipekuk	
2021-03-11	Mi'gmawei Mawio'mi Secretariat (MMS) representing Gespeg and Gesgapegiag DECLINED	Virtual meeting to answer some questions about the letter sent from R. Lamirande on mandate changes and potential questions on the Minister's announcement on ML.
2021-03-10	Listuguj Mi'gmaq Government	Virtual meeting with Chief Gray to discuss on the RRA changes requested following the Minister statement.
2021-03-08	Gespeg Gesgapegiag, Listuguj Mi'gmaq Government Première Nation Wolastoqiyik (Malecite) Wahsipekuk	Call to discuss about reconciliation with indigenous people, the Minister's announcement and the new interim approach to provide the opportunity for communities or aggregates to implement their own moderate livelihood fishing plans in collaboration with DFO.
2021-03-05	Listuguj Mi'gmaq Government	Call with Legal Counsel: informal meeting to discuss the repercussions of the Ministerial statement on the RRA approval process by the LMG
2021-03-05	Essipit Pessamit Unamen Shipu Uashat Shipek (Invited but didn't attend) Nutashquan (Invited but didn't attend)	Call to discuss about the Minister's announcement on ML and the perception or concerns of Innu communities.
2021-03-05	Première Nation Wolastoqiyik (Malecite) Wahsipekuk	Communication from the Fisheries director in order to ask some questions about the Minister's announcement and the Moderate livelihood fishing plans.
2021-03-02	Mi'gmawei Mawio'mi Secretariat (MMS) representing Gespeg and Gesgapegiag	Virtual meeting to answer questions following the letter sent from R. Lamirande to inform them about mandate changes.
2021-02-26	All DG's from First Nations in the Quebec Region were invited. However we are not sure who	Virtual forum held by Indigenous Services Canada where DFO did a virtual presentation about Reconciliation and DFO's interim approach in order to

Date	Indigenous groups or First Nations participating	Purpose of the meeting
	participate, other than Première Nation Wolastoqiyik (Malecite) Wahsipekuk	accommodate the right of Marshall First Nations to fish in pursuant of a moderate livelihood.
2021-02-10	Mi'gmawei Mawio'mi Secretariat (MMS) representing Gespeg and Gesgapegiag	MMS main Negotiation table held by CIRNAC. R. Lamirande informed them about the mandate changes and the interim approach to provide the opportunity for communities or aggregates to implement their own moderate livelihood fishing plans in collaboration with DFO.
2021-02-02	Première Nation Wolastoqiyik (Malecite) Wahsipekuk	Viger main Negotiation table held by CIRNAC. Martine Roy informed them about the mandate changes and the interim approach to provide the opportunity for communities or aggregates to implement their own moderate livelihood fishing plans in collaboration with DFO.
2021-01-07	Listuguj Mi'gmaq Government	LMG-Canada Fisheries Negotiation Table. Other than negotiations on the RRA, Jim Jones informed them about the mandate changes and the letter they will receive soon.



# Annex A

## **Annex A**

### **Programmatic Response**

Following the 1999 SCC *Marshall* decisions, DFO began engaging with the Treaty Nations in order to develop a robust programmatic response to implementing their right to fish and sell that catch in pursuit of a moderate livelihood. As the Treaty right is a communal right exercised by the individual under the authority of a rights-holding collective, DFO relied upon the pre-existing communal approach to providing access to Indigenous communities: communal commercial licences. This approach was developed in response to the 1990 SCC's *Sparrow* decision, which affirms the Aboriginal communal right to fish for food, social, and ceremonial (FSC) purposes. These licences are issued pursuant to the *Aboriginal Communal Fishing Licence Regulations*, which notably offer flexibility to the communities to designate who will be harvesting under the authority of their licence.

#### ***Marshall Response Initiative (MRI): 2000 to 2007***

In 2000, DFO launched the MRI to provide the Treaty Nations with access to commercial fisheries through communal commercial licences. Through extensive negotiations, agreements were reached with 32 of the eligible First Nation communities, for assets and training to help increase and expand their participation in commercial fisheries. Through the initiative, investments made between 2000 and 2007 provided the First Nations with commercial fishing licences, fishing vessels, gear, and training, all in support of increasing Indigenous participation in commercial fishing. A total of \$323 million was provided for licences, vessels, and gear and another \$131 million for fisheries governance, capacity building, and training.

#### ***At-Sea Mentoring Initiative (ASMI) and Fisheries Operations Management Initiative (FOMI): 2004 to 2008***

Through ongoing engagement and consultations with the Treaty Nations, in 2004, two new initiatives were approved to complement the funding provided under MRI: ASMI and FOMI. Each initiative was announced as a four-year program, with the purpose to improve the likelihood that the Mi'kmaq and Wolastoqey First Nations would be successful in the commercial fishery, by continuing to provide fisheries training and mentoring and helping the Mi'kmaq and Wolastoqey First Nations develop better fisheries management structures at the community level. The ASMI specifically assisted First Nations to further develop skills required to fish safely and effectively, and to maintain their vessels. The FOMI was designed to support First Nations in their efforts to strengthen fisheries management practices at the community level. Following numerous engagements, a total of 23 commercial fisheries training plans were created that helped in delivering 9,189 at-sea mentoring days and the co-development of the Fisheries Management System software.

#### ***Atlantic Integrated Commercial Fisheries Initiative (AICFI): 2007 to Present***

In 2007, following further collaboration and consultations with the Treaty Nations, DFO launched the AICFI to sustain its previous efforts to further implementing the Treaty Nations' right to fish in pursuit of a moderate livelihood. Like the MRI, the AICFI provides increased communal commercial fisheries access through communal commercial licences but has focused its supports on capacity-building in business

management and provides training resources, delivered largely by local, non-Indigenous harvesters, needed for developing self-sustaining Indigenous-owned communal commercial fishing enterprises (CFEs). In turn, these CFEs allow communities to meet their long-term objectives, such as horizontal expansion, the development of additional fisheries-related business opportunities, and increased community employment for participating communities. In fact, training and business planning type activities have begun to overshadow the access provision functions of AICFI, and in doing so, its programming now serves as an economic development foundation for various coastal First Nation communities.

Today, as a result of extensive engagements and collaboration between DFO and the Treaty Nations since the program began in 2007, 34 of 35 eligible First Nations participate in the AICFI program. The AICFI program has supported over \$42.2 million in licence acquisition; \$29.8 million to vessel and gear upgrades; \$22.4 million to vessel purchases; \$16 million to onshore facilities; and, \$7 million in aquaculture investments. Further, over 11,201 training days have also been delivered (89,600+ hrs) covering marine safety, vessel master certification, deckhand training, vessel maintenance and repair, aquaculture, and commercial fishing enterprise management-related training. Capacity building and diversification support has also led to 2,224 Indigenous harvesters and land-based employees, operating 317 vessels.

As a result of the significant investments, both financial and in productive and consistent engagements and consultations between the Treaty Nations and DFO since 2007, landed values amongst the Treaty Nations has increased from \$50 million in 2007 to over \$170 million today with a further \$80 million in annual fisheries-related income.

#### ***Atlantic Commercial Fisheries Diversification Initiative (ACFDI): 2010 to 2013***

In 2010, following ongoing consultations and engagements, Crown-Indigenous Relations Northern Affairs Canada (CIRNAC) and DFO launched a unique partnership with the Atlantic Policy Congress of First Nations Chiefs Secretariat to help Mi'kmaq and Wolastoqey First Nations in Atlantic Canada to diversify their commercial fisheries enterprises and pursue economic opportunities in new areas of the fisheries sector (e.g., aquaculture, seafood processing, marketing, and fisheries-related goods and services). Funding for ACFDI was provided by CIRNAC under the Strategic Partnerships Initiative (SPI). The SPI investment was managed in accordance with, and built upon, the existing and proven governance, reporting and performance management systems that were established by DFO under the AICFI program.

#### ***Rights Reconciliation Agreements: 2015 to present***

In parallel to DFO's programmatic responses to the *Marshall* decisions, CIRNAC was negotiating broad comprehensive land claims on Aboriginal and treaty rights and self-government, also known as modern treaties, with the six provincial aggregates of Mi'kmaq and Wolastoqey First Nations. However, in establishing negotiation mandates, the assumption was made that fisheries matters could be addressed through DFO's programmatic response. This assumption became an impediment to making progress at the treaty negotiation tables, because communities objected to what they viewed as an inefficient approach to negotiations.

Responding to the interest of Indigenous communities, Canada's negotiation mandate approach shifted in 2013 towards short-term treaty related measures agreements, which supported the development and testing of fisheries governance approaches.

In 2015, DFO and the Nova Scotia Mi'kmaq continued to explore new approaches to addressing moderate livelihood. This led to the introduction of incremental and time-limited agreements called Rights Reconciliation Agreements (RRAs). RRAs recognize the Treaty community's right to fish for moderate livelihood, and in some cases, their Aboriginal right to fish for food, social, and ceremonial (FSC) purposes, and provide funding for enhanced fisheries governance and obtaining fishing access, vessels, and gear. While agreements address and recognize these rights, RRAs do not seek to define these rights. Instead, they aim to provide greater clarity, stability, and predictability in the short- and medium-terms, as it relates to how the right will be exercised. For example, RRAs can articulate participation in decision-making processes and fisheries management activities, which may include establishing oversight and/or technical committees tasked with providing recommendations to the Minister for consideration as part of the decision-making process. This added flexibility and clarity was a key attribute in the initial co-development of the RRA with the Nova Scotia Mi'kmaq.

In 2017, based on discussions with communities, Canada sought and obtained a mandate to negotiate RRAs with the Mi'kmaq and Wolastoqey in Nova Scotia, New Brunswick, Prince Edward Island, the Gaspé region of Quebec, and the Peskotomuhkati Nation at Skutik. This mandate was later refined in 2020 to incorporate greater flexibility.

To date, a total of three RRAs have been signed with four Treaty Nations: (Elsipogtog and Esgeñoôpetitj, Wolastoqiyik Wahsipekuk (formerly known as the Maliseet of Viger) and Listuguj). This represents approximately 25 per cent of the 35 Treaty Nations' population

### ***Moderate Livelihood Fishing Plans (MLFPs)***

As a result of developments in Atlantic Canada and following further dialogue with Treaty Nations, DFO took steps to explore additional tools to implement the right to fish in pursuit of a moderate livelihood. In the spring of 2021, a new flexible fishing approach was announced to enable interested Treaty Nations to fish under MLFPs. This new approach enables Treaty Nations' designated harvesters to be authorized to fish in pursuit of a moderate livelihood within established commercial fishing seasons.

Over the course of 2021, DFO worked with interested Mi'kmaq communities in Nova Scotia and was successful in reaching two understandings on these MLFPs. The first was reached in June 2021 and recognized harvesters designated under the Potlotek Moderate Livelihood Fishing Plan to be authorized to fish lobster, under a DFO-issued licence, during the commercial season. The second similar agreement resulted in the Kespukwitk District Netukulimk Livelihood Fisheries Management Plan, which enables harvesters from Acadia, Bear River and Annapolis Valley First Nations to participate in the established lobster fishery in Southwest Nova Scotia. Engagement continues with interested communities for 2022 fishing seasons.

***Current State of Treaty Nations' Commercial Fisheries Access***

Taken together, DFO's collaborative efforts to consult and engage with the Treaty Nations on the ongoing implementation of their right to fish in pursuit of a moderate livelihood have culminated in over \$550 million provided, through various programs and negotiations, to the Treaty Nations to help increase their participation in commercial fisheries. In turn, this has contributed to an increase in the value of Indigenous communal commercial annual landings in the Maritimes and Gaspé region from an estimated \$3 million in 1999, representing 0.3 per cent of total commercial landed value, to over \$170 million in 2019, representing 6.4 per cent of the total commercial landed value in the Maritimes and the Gaspé region of Quebec. Through these ongoing and collective efforts, Indigenous employment in the sector has also grown, with Mi'kmaq and Wolastoqey First Nations' communal commercial fishing enterprises currently employing approximately 1,310 fish harvesters and 358 land-based employees. This increase in capacity has had a cumulative impact on the abilities of the Treaty Nations to meaningfully participate in commercial fisheries in Atlantic Canada. This was in evidence recently by the commercial acquisition of 50 per cent of Clearwater Seafoods by a coalition of Mi'kmaq communities from across Nova Scotia and Newfoundland and Labrador.

In addition, Treaty Nations continue to actively participate in fisheries management activities such as advisory committee meetings, wherein there is often a day set aside for First Nation discussion, with respect to Science and other management processes.

Tab 2



Fisheries and Oceans  
Canada

Pêches et Océans  
Canada

Fisheries and Harbour  
Management

Gestions des pêches  
et des ports

Senior Assistant  
Deputy Minister

Sous-ministre  
adjoit principal

November 30, 2021

Fishing industry stakeholders:

At various meetings with fishing industry, there have been recurring questions about industry awareness of and participation in negotiation processes between the Crown and Indigenous groups. I am writing to clarify the nature of the nation-to-nation relationship between the Government of Canada, including Fisheries and Oceans Canada (DFO), and Indigenous peoples, particularly as it relates to negotiations on matters involving Aboriginal and treaty rights.

The courts have made it clear over a number of decisions that the relationship between the federal government and Indigenous peoples is unique and gives rise to considerations and obligations that are distinct from those owed to others. In any interaction with Indigenous peoples, the Crown is required to act honourably, with the broad goal of promoting the reconciliation of the pre-existence of Aboriginal societies with the sovereignty of the Crown.

In the negotiation context, the honour of the Crown requires DFO to negotiate fisheries agreements that define and implement Aboriginal and treaty rights guaranteed by section 35 of the *Constitution Act, 1982*. This includes, among other rights, food, social, and ceremonial rights, as well as the rights from the 18<sup>th</sup> century Peace and Friendship Treaties that were recognized in the *Marshall* decisions<sup>1</sup>.

Given this special nature of the Crown-Indigenous relationship and the mutual goal of reconciliation, negotiations on the recognition and implementation of Aboriginal and treaty rights, including fishing rights, properly take place on a nation-to-nation basis—between the Crown (the federal and/or provincial governments) and Indigenous groups. This approach is consistent across the federal government.

Most negotiation tables are led by Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) with implicated departments, including DFO, participating when necessary. It is important to understand that fisheries, although incredibly important to Indigenous groups, are only one of many priorities that the Government of Canada is trying to advance.

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<sup>1</sup> *R v Marshall*, [1999] 3 S.C.R. 456 [*Marshall I*] and *R v Marshall*, [1999] 3 S.C.R. 533.

For these reasons, nation-to-nation negotiations have not and will not include any parties other than the Crown (federal and/or provincial governments) and Indigenous groups. This extends to the development of negotiation mandates.

The Department is responsible, in these negotiations as in all aspects of fisheries management, for conserving and developing the fishery on behalf of all Canadians in the public interest. Promoting the continued prosperity of commercial fisheries and all coastal communities is an important part of this responsibility.

Stakeholder and broader public views and interests related to fisheries management are sought through numerous processes, such as regular dialogue with DFO officials, consultation processes, and involvement in parliamentary processes; these perspectives are taken into account in all aspects of DFO's work.

Indeed, DFO's continued engagement with the fishing industry is critical to help the Department understand industry's concerns with respect to the implementation of Aboriginal and treaty rights, which in turn help to inform the development of negotiation mandates and DFO's position in nation-to-nation negotiations with Indigenous groups.

DFO is committed to continuing to engage with the fishing industry through regular and frequent meetings at the officials and senior management levels. This includes standing meetings I have with a number of industry organizations, which provide an important opportunity for ongoing information sharing and dialogue and for fishing industry leaders to express their views.

I will also note that, where there is willingness from all parties, DFO encourages dialogue outside of the negotiation table between Indigenous groups and the fishing industry, with or without DFO participation, to discuss issues of mutual interest.

I hope this letter has provided useful information.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J.-G. Forgeron', followed by a horizontal line extending to the right.

J.-G. Forgeron

c.c.: Joe Wild, Senior Assistant Deputy Minister, CIRNAC