Moderate Livelihood Fishery Update

August 2020

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Moderate Livelihood Fishery Update



What has been developed?

For years, discussions have been ongoing within Mi'kmaq communities on how the rights of the Mi'kmaq, as recognized and affirmed in *R. v. Marshall*, [1999] 3 SCR 456, will be implemented.

According to the Supreme Court of Canada, the Mi'kmaq have the right, pursuant to treaties made with the Crown in 1760-61 and Section 35 of the *Constitution Act, 1982*, to harvest and to sell fish to obtain a moderate livelihood for themselves and their families.

While we are all frustrated at the lack of movement by the Federal Government's Department of Fisheries and Oceans, that does not mean that work has been a standstill on the Mi'kmag side.

The members of the Assembly of Nova Scotia Mi'kmaw Chiefs who are part of the *Made-In-Nova Scotia Process'* discussions on fish, have drafted documents for community engagement and input. The Fisheries Team is now meeting with Chiefs and Councils to review these documents and is looking forward to also bringing these documents to the communities for the input of our Mi'kmaw harvesters.

Our work is based upon the long-held Mi'kmaw philosophy of netukulimk. Netukulimk is defined as the use of the natural bounty provided by the Creator for the self-support and well-being of the individual and the community by achieving adequate standards of community nutrition and economic and spiritual well-being without jeopardizing the integrity, diversity or productivity of the "natural bounty".

Throughout this information sheet, you will learn a bit about the documents and how they can help to support the Mi'kmaq of Nova Scotia to finally implement their right to a Moderate Livelihood.

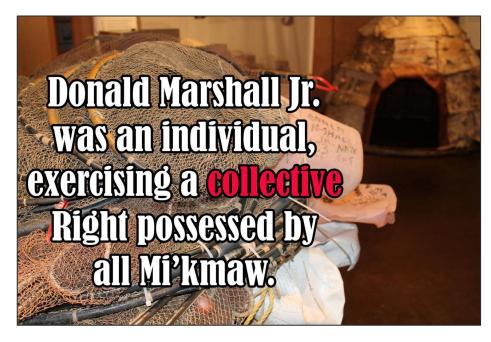






Netukulimk

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What is Mi'kmaq Netukulimk Fishing?

Mi'kmaq Netukulimk Livelihood fishing is a small scale, artisanal fishery with commercial attributes, for any viable aquatic species, fished within and surrounding the traditional territory of Mi'kma'ki, using traditional and modern methods and techniques, non industrial vessels (under 49 feet), practiced under the management and protection of Mi'kmaw Community Livelihood Fishery Plans, following the expectations of the Assembly of Nova Scotia Mi'kmaw Chiefs' Guiding Principles and the Mi'kmaq concept of Netukulimk, with the goal of improving the well-being of many Mi'kmaq individuals and their families.

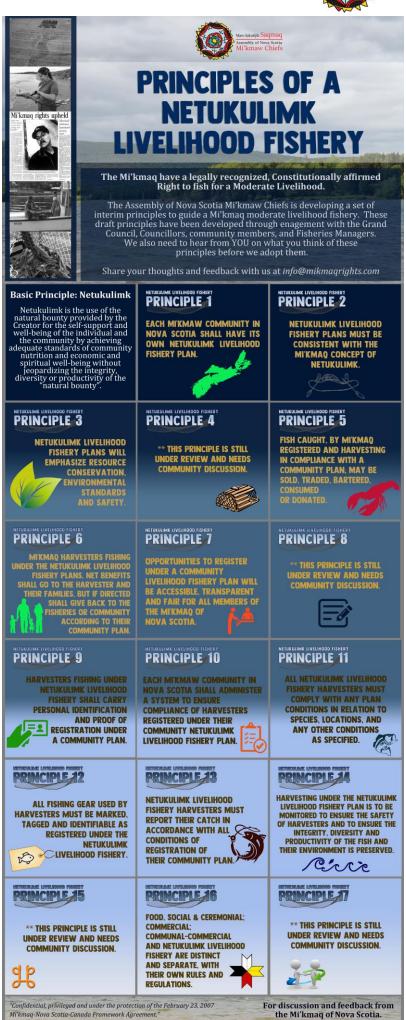
Statement of Interim Principles of the Netukulimk Livelihood Fishery

The Assembly, with the support of the Grand Council and Band Councils, have established overarching governance expectations for the Mi'kmaq Netukulimk livelihood fishery. These expectations are called the *Statement of Interim Principles of the Netukulimk Livelihood Fishery.* This draft working document are intended to provide a common set of minimum expectations for Mi'kmaq fishing for a moderate livelihood in the province of Nova Scotia. These principles are meant to act as a guide for communities when they set their community standards, expectations, regulations and compliance measures for a Netukulimk Livelihood Fishery Plan (LFP).





PRINCIPLES OF A NETUKULIMK LIVELIHOOD FISHERY





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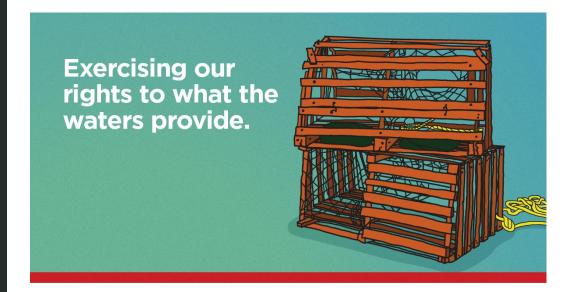
Harvesting Interim Authorization by Band Council Resolution

We all know that building this process will take time. We want to ensure that it's done right. The Assembly also respects and understands that there needs to be a plan in place for those Mi'kmaw harvesters who want to be out on the water today. We all know that despite the *Marshall* decision, Mi'kmaw harvesters are still being harassed on the water, having their gear and equipment seized as DFO still considers Moderate Livelihood Fishery outside their regulated fishery. We're fighting to address that.

In the meantime, we have drafted a Band Council Resolutions for our member bands to consider, that provided interim livelihood authorization to individual members to harvest and sell fish to provide a moderate livelihood for themselves and their families, pending our adoption of a Netukulimk Livelihood Fisheries Plan.

Netukulimk Livelihood Fisheries Management Plans

This plan is to provide clarity on the roles and responsibilities of the Band Councils (or their delegate) and community members with respect to implementing our inherent right to manage fisheries. We have written a working document to assist Mi'kmaq communities, Band Councils (or delegate) and community Fisheries Departments in their development and implementation of livelihood fishing activities for their community members.





Distinct Fishing Activities in NS, in order of protected and affirmed access

Food, Social and Ceremonial (FSC)

FSC fishing is an Aboriginal Right. The Supreme Court of Canada (SCC) in the 1990 *R. v. Sparrow* case affirmed that Aboriginals have an ancestral right to fish — one that had not been extinguished by the Canadian Constitution. The Court found that when Sparrow was arrested, he was exercising legitimate "existing" rights to fish.

This fishery is to provide food for family and for social and ceremonial engagements.

As an Aboriginal Right, this fishery is priority over all other fishery access.

Moderate Livelihood - Netukulimk

Moderate Livelihood is a Treaty Right. The Supreme Court of Canada (SCC) in the 1999 *R. v. Marshall* case affirmed that Mi'kmaq, Wolastoqiyik and Peskotomuhkati people of Atlantic Canada have the Treaty Right to sell, trade or barter items that are hunted, fished or gathered to obtain necessities, with respect to conservation, safety and other justifiable public purposes, and Moderate Livelihood is not for the accumulation of wealth.

The Assembly of Nova Scotia Mi'kmaw Chiefs further describe this Treaty Right as "an individual exercising a collective right".

The Mi'kmaq, Wolastoqiyik and Peskotomuhkati have a right to "an equitable share" of the resource.

While the Department of Fisheries and Oceans (DFO) insists that all fisheries be licensed, the Minister has not made provision for a livelihood license, and so DFO does not license this legitimate, constitutionally protected fishery.

Commercial & Communal Commercial

Commercial Fishing, which includes Communal Commercial, is for profit, or for-profit maximization. This fishery is for the creation and accumulation of wealth by the individual or the community (communal), in the most efficient way possible. This fishery is a privilege, whereas owners are provided a licence from the Federal Government (through DFO) yearly and are always at the complete discretion of the Minister of Fisheries.

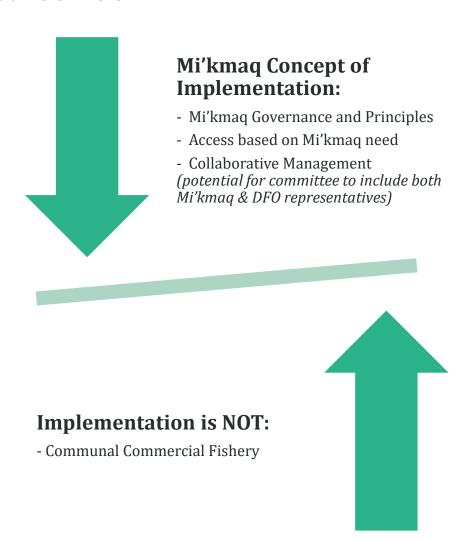
Recreational & Sport

Recreational & Sport Fishing is fishing solely for pleasure of catching fish for personal use. This fishery is a privilege, whereas owners are required to purchase a licence from the Provincial Government annually.



We need to have extensive engagement with our communities and their members as we know that we need to build consensus on how individuals implement the collective Mi'kmaq **Treaty Right** to a **Moderate** Livelihood.

What we envision:



What now?

We need to have extensive engagement with our communities and their members as we know that we need to build consensus on how individuals implement the collective Mi'kmaq Treaty Right to a Moderate Livelihood.

We have been successful over the past few months in engaging our Chiefs and Councils, via video meetings, and it is equally as important that we talk to harvesters.

As the COVID-19 pandemic restrictions are lifted, we will begin to host community engagement meetings. Online surveys, Facebook groups, mail outs and other options are being utilized and explored during these pandemic restricted times to increase engagement events and opportunities. Education communication materials are also in development and are currently being deployed.