

Minister of
Fisheries and Oceans



Ministre des
Pêches et des Océans

Ottawa, Canada K1A 0E6

June 21, 2022

Mr. Ken McDonald
Chair
Standing Committee on Fisheries and Oceans
House of Commons
Ottawa ON K1A 0A6

Dear Mr. McDonald:

On behalf of the Government of Canada, I would like to thank the House of Commons Standing Committee on Fisheries and Oceans (the Committee) for its report entitled *Implementation of the Mi'kmaq and Maliseet Treaty right to Fish in Pursuit of a Moderate Livelihood* (the Report). I am pleased to receive the Committee's recommendations, and would like to thank the Committee members for dedicating their time and effort to considering this important issue.

Fisheries, oceans, aquatic habitat, and marine waterways are economically, socially, and culturally vital for Indigenous peoples. The conservation and management of oceans, the sustainable use of fishery resources, the protection of fish and fish habitat, and the safety of all those on the water are shared priorities for the Government of Canada and Indigenous peoples.

The Government of Canada is committed to working in partnership with Indigenous peoples to move these shared priorities forward, as well as to advance reconciliation by strengthening Indigenous-Crown relationships, reducing unacceptable socio-economic gaps, and recognizing and respecting Indigenous rights and self-determination. As Minister of Fisheries, Oceans and the Canadian Coast Guard, I am fully committed to further implementing the treaty right to fish in pursuit of a moderate livelihood, as it is critical to the work of reconciliation and a top priority for the Government of Canada and Fisheries and Oceans Canada (DFO).

The Committee's 40 recommendations underscore the complexity of fulfilling my department's responsibility for the conservation and management of fisheries in Canada, as well as working with Treaty Nations to further implement their rights and advancing shared priorities around reconciliation. These recommendations will help guide the Government's continued nation-to-nation work with the Mi'kmaq and Wolastoqey First Nations in Nova Scotia, New Brunswick, Prince Edward Island, and the Gaspé region of Quebec and the

Canada 

Peskotomuhkati Nation at Skutik (Treaty Nations) to further implement their treaty right to fish in pursuit of a moderate livelihood.

While the Committee's recommendations cover a range of issues, several themes emerged from the Report that reflect the nature of the recommendations as well as my department's ongoing work. As such, the Government's response is organized by the following themes: 1) recognition of rights and nation-to-nation negotiation processes; 2) taking a conservation-focused and collaborative approach to fisheries management and enforcement; 3) integrating science and Indigenous knowledge into decision making; and 4) ensuring ongoing dialogue and education.

Recognition of Rights and Nation-to-Nation Negotiation Processes (Recommendations 1-9, 19)

With respect to recognition of rights, the Committee's recommendations highlight that the right to fish in pursuit of a moderate livelihood is foundational to the nation-to-nation relationship between Treaty Nations and the Government of Canada. The Committee underscored the need to continue working in partnership, and the importance of a negotiation mandate that results in agreements that allow for collaboration and economic benefits to communities.

The Government of Canada is committed to recognizing and implementing Aboriginal and treaty rights in a manner that is consistent with section 35 of the *Constitution Act, 1982*, the United Nations Declaration on the Rights of Indigenous Peoples, and the 10 Principles Respecting the Government of Canada's Relationship with Indigenous Peoples.

As Minister of Fisheries, Oceans and the Canadian Coast Guard, I remain committed to the ongoing nation-to-nation work with Treaty Nations to further implement their right to fish in pursuit of a moderate livelihood, while ensuring that fisheries remain sustainable, productive, and safe for all harvesters.

Marshall Decisions and Implementation of Treaty rights

The Committee's Report provides a detailed overview of the 1999 *Marshall* decisions by the Supreme Court of Canada (SCC), which affirm the treaty right to hunt, fish, and gather in pursuit of a moderate livelihood for Treaty Nations, and set out that this right is subject to regulation based on conservation or other grounds of public importance. Recognizing the complexity of the right and the diverse interests that must be considered, the SCC emphasized that implementing the right may best be pursued by consulting and negotiating modern agreements, since what may be required to implement the right will vary "from resource to resource, species to species, community to community and time to time."¹ Recognizing this, the Government of Canada is committed to continue working with Treaty Nations on a nation-to-nation basis to further implement their rights.

¹ *R v. Marshall*, [1999] 3 S.C.R. 533 at p. 550 [*Marshall II*]

Federal Response to Date

Since the *Marshall* decisions, DFO has provided over \$550 million to Treaty Nations to support increased Indigenous participation in commercial fisheries to support their right to fish in pursuit of a moderate livelihood. In 2000, DFO launched the federal *Marshall* Response Initiative (MRI) to provide Treaty Nations with access to commercial fisheries through communal commercial licences. This program also provided funding for fishing vessels and gear, as well as governance, capacity building, and training initiatives, to support eligible Indigenous communities in the Maritime provinces and the Gaspé region of Quebec to implement the right to fish in pursuit of a moderate livelihood. Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) has also invested \$75 million in Treaty Nations since the *Marshall* decisions to support economic diversification. A number of negotiation tables across the Atlantic region were also established to discuss broader Indigenous interests and priorities related to section 35 Aboriginal and treaty rights and reconciliation.

In 2007, DFO launched the Atlantic Indigenous Commercial Fisheries Initiative (AICFI) to sustain its previous efforts, replacing the MRI. DFO continues to work with AICFI participants, in partnership with the Atlantic Policy Congress of First Nations Chiefs and Ulnooweg Development Group, to: increase communal commercial fisheries capacity; provide business management capacity building support; and access training resources required to build self-sustaining Treaty Nation-owned communal commercial fishing enterprises. This work helps meet the long-term objectives identified by communities, including the development of additional fisheries-related business opportunities and increased community employment.

To date, AICFI has invested over \$100 million in Treaty Nations' licence acquisitions, vessel and gear upgrades, vessel purchases, onshore facilities, and aquaculture. AICFI also supports communities in developing a comprehensive business and training plan that reflects their vision for the governance of their fisheries. Training opportunities for Treaty Nations that have been supported by AICFI have covered topics including marine safety, vessel master certification, deckhand training, vessel maintenance and repair, aquaculture, and commercial fishing enterprise management-related training.

The work done under the MRI and AICFI has contributed to meaningful economic benefits for participating Treaty Nations. For example, the annual value of participating communities' communal commercial landings has increased from \$3 million in 1999 to nearly \$170 million in 2019. In addition to landed values, these programs have helped Treaty Nations realize annual, indirect, fisheries-related income—totaling over \$100 million in 2019-20—and have enhanced cooperation between Indigenous and non-Indigenous harvesters in the context of an integrated commercial fishery.

While these programs and investments represent important strides forward to implement the treaty right and enhance Treaty Nations' capacity to participate in fisheries, we understand that the work is not done. The Government of Canada will continue to work with Treaty

Nations on a nation-to-nation basis to support moderate livelihood fishing, while fulfilling its responsibility for conservation and regeneration of the resource, as well as the stable and orderly management of the fishery.

Nation-to-Nation Negotiation Mandate

In the ongoing dialogue with Treaty Nations since the *Marshall* decisions, the discussion has evolved to focus more on increased fishing access and a greater role in fisheries management. These discussions led the Government to introduce a new type of incremental and time-limited agreement in 2017 called Rights Reconciliation Agreements/Rights Implementation Agreements (RRA/RIA). RRA/RIAs recognize Treaty Nations' right to fish in pursuit of a moderate livelihood and provide funding to obtain fishing access, vessels, and gear and to support enhanced fisheries governance.

While RRA/RIA negotiations are ongoing, DFO is also working with communities, or groups of communities, to explore additional, flexible tools to exercise fishing rights in the short term. In 2021, DFO introduced a new pathway for communities to pursue moderate livelihood fishing based on community-developed Moderate Livelihood Fishing Plans (MLFPs). Under this approach, DFO works with interested Treaty Nations to reach understandings that enable them to fish within existing fishing seasons according to an MLFP that is unique to their vision of the fishery.

Discussions around MLFPs are guided by three key principles: respect for conservation; reconciliation; and transparent and predictable fisheries management. These principles recognize that clear and predictable management of fisheries in Canada is essential for all participants in the fishery to plan and make investment decisions and to foster the conditions needed for a safe, orderly, and successful fishery for all.

After MLFPs were introduced in 2021, DFO reached two understandings with four Treaty Nations in Nova Scotia to fish for lobster for the 2021-22 fishing season. So far in 2022-23, two MLFP understandings around elver have been reached with three Treaty Nations in Nova Scotia and an aggregate representing six Treaty Nations in New Brunswick. Two MLFP understandings have also been reached with two Treaty Nations in Nova Scotia to fish for lobster this season. DFO continues to work with communities to renew or establish MLFP understandings for the 2022-23 season that will see Treaty Nations' community members fishing in pursuit of a moderate livelihood.

A Conservation-focused and Collaborative Approach to Fisheries Management and Enforcement (Recommendations 10-14, 17, 21-31)

In several of its recommendations, the Committee recognized the importance of both having fisheries regulations for conservation purposes and enabling a collaborative approach to fisheries management. I share the Committee's view that fisheries must be managed with the preeminent objective of conservation of fisheries resources in Canada and that management and governance objectives benefit from collaborative approaches with Treaty Nations. Fisheries management approaches must also respect the *Marshall II* decision, in that treaty

rights “are subject to regulation provided such regulation is shown by the Crown to be justified on conservation or other grounds of public importance.”²

As Minister, it is my role to manage and regulate the fishery for the benefit of all, in a manner that recognizes, respects, implements, and accommodates the rights of Treaty Nations. In making fisheries management decisions, a broad range of factors are considered, including scientific advice; licensing policies and socioeconomic considerations; Indigenous knowledge and input from Indigenous communities; information gathered through collaborative fisheries management arrangements; and engagement through advisory processes with Indigenous groups, non-Indigenous fishing industry representatives, provincial/territorial governments, and environmental groups.

Collaborative Approaches

DFO collaborates with Indigenous communities through a variety of tools, including in the management of fisheries through program delivery, and in roles articulated in RRA/RIAs. For example, since DFO’s Indigenous Program Review, which was completed in 2019, the Department and Indigenous groups have increased collaboration through a shared commitment to co-designing, co-developing, and co-delivering tools and structures to help Indigenous fisheries programs meet the challenge of integrated and collaborative fisheries management. This includes establishing joint program committees, expanding arms-length training and capacity development teams, supporting Indigenous-led networking and knowledge-sharing initiatives, funding short-term projects and capital acquisitions, and underpinning core operational capacity by making reliable, annual contributions of more than \$90 million. These investments will continue to provide Indigenous communities and organizations with a platform to manage their commercial fisheries interests, collaborate in technical fieldwork and knowledge-sharing, and meaningfully participate in other integrated management structures or initiatives.

RRA/RIAs are another mechanism for Treaty Nations to articulate their vision for collaborative management of fisheries. Governance terms can include provisions for science, monitoring and reporting, and other management elements such as the inclusion of Indigenous knowledge. RRA/RIAs also allow communities to identify how they wish to participate in key decision-making processes and can establish collaborative fisheries governance bodies. Ongoing engagement is needed to promote collaboration and increased understanding around the implementation of the right to fish in pursuit of a moderate livelihood.

Enforcement

The Committee also noted the importance of enforcing fisheries regulations with impartiality and consistency. This is consistent with the work that we do every day at DFO, where conservation underpins all that we do and fishery officers are there to uphold the *Fisheries Act* for all harvesters. In many areas, Indigenous communities work in collaboration with

² *R v. Marshall*, [1999] 3 S.C.R. 533 at p. 539 [*Marshall II*]

DFO fishery officers and other enforcement agencies to ensure compliance with the *Fisheries Act*.

Budget 2017 made ongoing investments in DFO's Indigenous commercial and collaborative management programs, which are key to the Department's objective of increasing the shared stewardship of aquatic resources with Indigenous communities. This includes the Aboriginal Fisheries Strategy and Aboriginal Fisheries Guardian programs, with the respective goals of providing Indigenous communities with the capacity to engage with DFO in the management of food, social, and ceremonial fisheries, and the training and knowledge to enable a joint compliance monitoring effort. These programs have been in existence for over 25 years and are currently being renewed to ensure they can continue to address Indigenous capacity objectives and reflect the current enforcement landscape.

DFO's fishery officers are peace officers who require extensive training and specialized equipment to do their jobs (e.g., aircraft, vessels, satellite data). DFO is working with its partner agencies and departments to actively monitor fishing activity throughout Eastern Canada and enforcing the *Fisheries Act* for all harvesters. DFO's fishery officers assess a wide range of situational factors, including the scale of fishing activity and gravity of potential harm to the fishery, in determining the actions that may be taken. DFO is currently developing a strategy to improve recruitment, development, and retention of Indigenous fishery officers and remains open to exploring collaborative enforcement models with Indigenous groups.

Integrating Science and Indigenous Knowledge into Decision Making **(Recommendations 15, 16, 18, 20)**

The Report made a number of recommendations that highlighted the importance of considering the best available science, as well as Netukulimk—which is the Mi'kmaq concept of conservation—and Indigenous knowledge, to inform decision-making, particularly around stock health, fishing seasons, and conservation.

I am committed to using strong scientific evidence, and considering Indigenous knowledge provided to me, when making decisions affecting the management of fish stocks. The *Fisheries Act* was modernized in 2019 to better protect fish and fish habitat, makes clear the Act is meant to uphold the rights of Indigenous Peoples of Canada, including a new provision to enable the consideration of Indigenous knowledge for fisheries management decisions. DFO continues to discuss opportunities for collaboration with Indigenous groups regarding the development of scientific advice and incorporating Indigenous knowledge, experience, and values, including conservation values such as Netukulimk, and Two-Eyed Seeing— or seeing through the lens of both science and Indigenous knowledge—into fisheries management decisions. Indigenous knowledge holders are welcome to bring forward their knowledge directly to myself, the Minister, or indirectly via departmental channels. For instance, regularly held advisory meetings provide an opportunity for fishery management officials to gain knowledge from Indigenous harvesters, Indigenous organizations, and other fishing stakeholders, and inform fisheries decisions.

DFO conducts periodic stock assessments to assess the health of lobster stocks across Atlantic Canada and considers the most up-to-date science in our management decisions, along with the views of Indigenous communities, stakeholders, provincial and territorial governments, research studies and assessments, scientific monitoring, landings, and information collected by harvesters. Discussions with Indigenous groups and stakeholders at advisory committee meetings also consider oceanographic and ecosystem changes, which are important for future planning and management of the stocks. The Department continues to regularly monitor and assess Canadian lobster stocks to support management decisions. The outcomes of these assessments are shared publicly on DFO's website.

As part of our effort to promote information sharing and dialogue, in May 2021, my department announced the Lobster Science Partnership Roundtable, which brings together DFO scientists, Indigenous representatives, provincial and territorial governments, commercial fishing representatives, and other key researchers to discuss research questions and priorities. The Roundtable participants are actively working together to identify and develop research proposals. This initiative provides an ongoing forum to build collaborations that draw on the knowledge and expertise of our partners.

Ensuring Ongoing Dialogue and Education (Recommendations 32-40)

The Committee's recommendations underscored the importance of facilitating further opportunities for constructive dialogue between Indigenous and non-Indigenous harvesters. It also recommended further treaty education for public servants and Canadians at large—including non-Indigenous harvesters—and called for action to address systemic racism. Like the Committee, my department recognizes there is more work to be done in these areas and is fully committed to creating space for dialogue and providing learning opportunities about the treaty relationship, as well as unconscious bias and systemic racism. Like all federal departments, we recognize the urgency of eliminating systemic racism from our institutions and from our culture. We are taking important steps in this regard and will continue to do so going forward.

DFO is committed to continuing a constructive dialogue with Indigenous peoples and non-Indigenous stakeholders in support of an approach that prioritizes conservation and acknowledges and implements treaty rights. Over the past several years, my department has increased its collaboration with Indigenous communities in a number of fisheries, including establishing bilateral nation-to-nation structures to promote ongoing dialogue. DFO also continues to pursue further transparency wherever possible and ensure ongoing opportunities for the involvement of non-Indigenous stakeholders, where appropriate, through regular and consistent advisory meetings. Additionally, the RCMP Division Liaison Team (DLT) remains engaged with Indigenous and non-Indigenous fishing stakeholders. Constructive dialogue will continue under the DLT and District Liaison Officer engagement model in Nova Scotia.

In late 2020 and early 2021, DFO held dozens of meetings and engagement sessions in an effort to facilitate additional dialogue. In addition to meetings with Treaty Nations, with the

support of the Department of Justice and CIRNAC, DFO engaged with commercial sector groups, in particular the Canadian Independent Fish Harvesters Federation, to host workshops aimed at building a foundational understanding among Federation membership of Aboriginal and treaty rights, the *Marshall* decisions, and the Government of Canada's reconciliation agenda, as well as providing an opportunity for harvesters to ask questions and communicate their perspectives to DFO.

Building on this work, in 2022, DFO began a new series of workshops with Federation leadership in order to maintain dialogue, develop information for harvesters on Aboriginal and treaty rights and reconciliation, determine how best to communicate information to harvesters, and consider initial steps in establishing tripartite fora for regular Indigenous-non-Indigenous industry dialogue. The Department remains committed to maintaining and developing avenues of communication to share information among DFO, Treaty Nations, and non-Indigenous stakeholder groups.

This dialogue and engagement aligns with the recommendations made by Mr. Allister Surette as a Federal Special Representative appointed to work toward facilitating dialogue between Indigenous and non-Indigenous harvesters. In his final report, released in May 2021, Mr. Surette made a number of recommendations to improve the relationship between Treaty Nations and broader commercial sector participants, many of which are echoed by the Committee in its report. The Government of Canada continues to consider Mr. Surette's report and is taking positive steps forward on a number of recommendations. This includes the above-mentioned engagement activities and maintaining a public website about moderate livelihood fishing that ensures that accurate, factual information is widely available.

Additionally, like the rest of the Government of Canada, DFO is working to transform its colonial relationship with Indigenous peoples to one that recognizes and respects Aboriginal and treaty rights and interests. One example of how the Department is working to improve this relationship is through the DFO-Canadian Coast Guard Reconciliation Strategy, publicly released in September 2019. This guidance document is intended to promote greater reconciliation literacy among public servants, hold the Department accountable for reconciliation results and actions, and enable enhanced collaboration and partnership with Indigenous peoples.

DFO continues to work internally, and with its partner agencies and departments, to promote and increase available culturally sensitive learning tools, practices, and awareness activities regarding reconciliation, Aboriginal and treaty rights, and the treaty relationship for public servants and Canadians at large. DFO has made training from the Canada School of Public Service widely available to staff, and in some cases mandatory, to ensure all staff better understand the history of First Nations, Inuit, and Métis peoples and recognize unconscious bias.

All federal departments, including DFO, are moving forward with meaningful actions in line with the Clerk of the Privy Council's 'call to action on anti-racism, equity, and inclusion in the Federal Public Service.' This call to action recognizes the urgency of removing systemic

racism from Government institutions and from Canadian culture by calling on all public servants and public service leadership to, among other things: commit to personally learning about racism, reconciliation, accessibility, equity, and inclusion; combatting all forms of racism, discrimination, and other barriers to inclusion in the workplace; and including voices from diverse backgrounds in the identification of systemic racism, discrimination, and barriers to inclusion, and the design and implementation of actions to address them.

One example of action in this regard is a two-day virtual Government of Canada interdepartmental workshop hosted by DFO in January 2022 on ‘truth and reconciliation’ within the federal public service. The workshop was intended to create an inclusive environment for Government employees across departments/agencies to come together to share learnings, spark action, and ultimately advance reconciliation with First Nations, Inuit, and Métis peoples within the federal public service. The workshop was attended by representatives from 47 departments/agencies, including many participants who self-identified as Indigenous.

DFO is committed to changing the public service culture to address systemic barriers, including reviewing internal and external legislation, policies, and programs to identify and address systemic racism.

I would like to reiterate my appreciation for the Committee’s time and attention to this important issue. The Government of Canada remains committed to recognizing and implementing Aboriginal and treaty rights, including those related to fisheries, oceans, aquatic habitat, and marine waterways, in a manner that is consistent with section 35 of the *Constitution Act, 1982*, the United Nations Declaration on the Rights of Indigenous Peoples, and the Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'J. Murray', with a long horizontal flourish extending to the right.

The Honourable Joyce Murray, P.C., M.P.
Minister of Fisheries, Oceans and the Canadian Coast Guard