

NORTHUMBERLAND FISHERMEN'S ASSOCIATION



9 November 2020

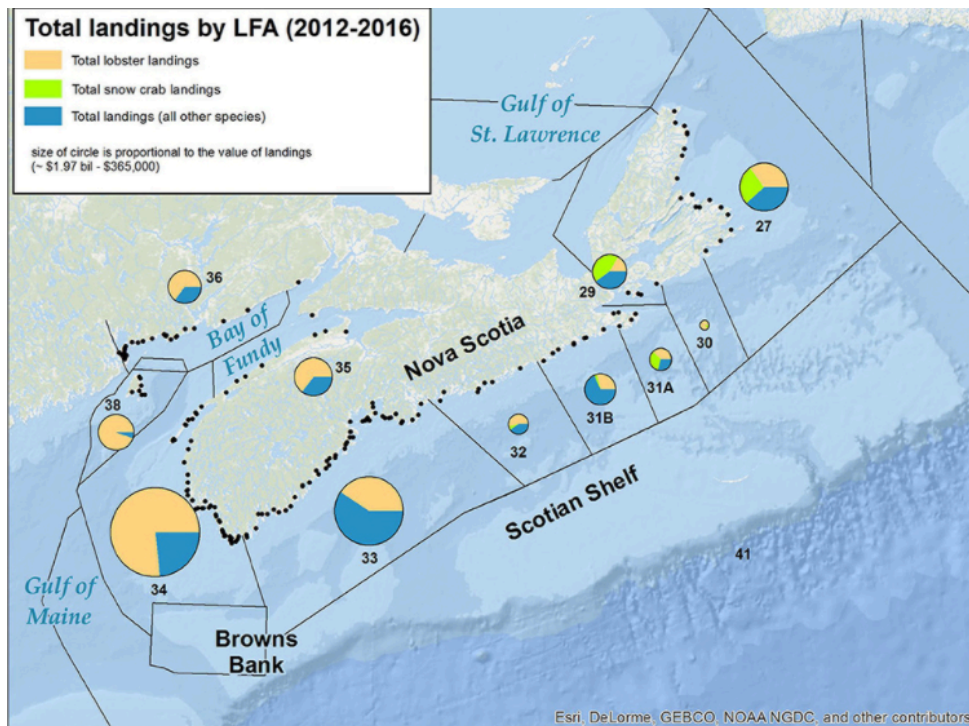
Dear Minister Jordan and Members of the Standing Committee on Fisheries and Oceans:

I am writing on behalf of the Northumberland Fisherman's Association, representing fishermen from the North Shore of Nova Scotia. We want you and the First Nations communities to know we understand that fishing for a moderate livelihood (ML) is a First Nation treaty right, as clarified by the 1999 Marshall decision. We respect First Nations treaty rights and we hope that integration of moderate livelihood fishing with the existing inshore commercial fishery can be transitioned smoothly, as happened with previous changes in the fishery following the Marshall decision. We hope that this discussion will lead to a path forward that protects and strengthens the inshore fishery for all users.

With Bill C-68, this government restored lost environmental protections and strengthened measures to rebuild fish populations and ensure that fish and fish habitat are protected for future generations. We commend you for this. All fishers, present and future, will benefit from these measures. You also passed into law the owner-operator policy for the inshore fishery. These are important protections for the future of the inshore fishery and the rural communities, native and non-native, that depend on this fishery.

Recognize variations in lobster fishing areas (LFAs)

Much of the attention over the past month has focused on the impact of a First Nations' moderate livelihood fishery as it played out in Sou'west Nova, in lobster fishing area 34. The Northumberland Fishermen's Association represents inshore fishers in LFA 26A, along Nova Scotia's North Shore. We want to emphasize that assumptions, discussions and decisions about moderate livelihood fishing cannot not be based on the realities of SW Nova alone. It is important to understand that there is great variation between LFAs across the province; variations in geographic size, in length of season, in number of licenses, in catch amounts. In some areas, fishing takes place within a few miles of shore, in other areas, like LFA 34, lobster boats may set their traps 50 miles out. Even catch prices vary between LFAs in a single year.



Note: Only shows LFAs 27-38. LFA's 23-26 in the Southern Gulf are not shown.

LFA 34 is the largest LFA in geographic area (8,500 square miles), with the largest catch. LFAs 33 and 34 have a lobster season of 6 months. Except for Clearwater's LFA 41, with its 12 month season, this is by far the longest season in the region. The season for LFAs in the Southern Gulf area, including LFA 26A where we fish, is 9 weeks. Few of us are able to rely on lobster alone to make our living. Speaking for fishers in LFA 26A, we want to emphasize the importance of understanding the differing realities in different LFAs and considering the potential impacts of a ML fishery in all LFAs. If this is not recognized, there could be serious impacts in many of the smaller LFAs of the region.

As commercial inshore fishermen, we are presently in a difficult situation, as we do not have a clear definition of moderate livelihood or the terms of reference for how that livelihood will be carried out. Without this information, we have no basis to know what this will mean for the lobster stocks or for the inshore fishing industry on which our livelihoods depend. It is difficult for us to fully support an initiative where so much is unknown, and which could, without meaning to, harm the inshore lobster fishery in Nova Scotia and other Atlantic Provinces. As small, independent owner-operators, it is difficult for us to make any business decisions without the information that could affect our future.

In the current situation, the silence from the Minister and from Department of Fisheries and Oceans on moderate livelihood is fueling uncertainty and controversy and jeopardizing the good relations our members and other fishers have built with First Nation inshore commercial fishers. Our members have justifiable concerns that moderate livelihood changes may be accomplished in a manner which puts the viable future of the commercial inshore lobster fishery at risk, even if that is no one's intention. Putting the commercial inshore lobster fishery at risk would hurt holders of individual licenses as well as holders of communal licenses and could seriously impact both non-native and First Nation communities. In the longer run, it could also harm moderate livelihood fishing.

Limiting fishing effort is a tried and true conservation measure

Conservation is not just a word we are using to deny First Nation rights, as some people believe. Conservation has real meaning for us. Most of us come from generations of fishing families. We have sons and daughters who hope to fish after us. We have a connection to the waters we fish. Many of us are fishing the same bottoms that our great-grandfathers did. We have seen ups and downs in the fisheries. We know how long it can take to recover from overfishing.

We apply our concerns about protecting stocks and limiting the amount of fishing effort to ourselves as an essential conservation measure. For decades we have not allowed the number of inshore lobster licenses to increase, in order to protect the stocks. The rule has been “one out, one in” – someone had to give up their license in order for a new fisher to gain one. We have also supported reducing numbers of traps for conservation purposes. Over the last 50 years, inshore lobster fishermen in LFA 26A-1 have reduced their trap numbers from over 500 per person down to 280 traps as one important measure to help rebuild lobster stocks.

Most recently (around 2008) commercial lobster fishers in LFA 26A&B agreed to reduce their trap numbers from 300 to 280 for conservation reasons. The Federal government matched this reduction by buying out and retiring 20 licences (at 300 traps per license.) This reduced the fishing effort in our zone alone by 12,000 traps. Similar measures were repeated in other LFAs in the Southern Gulf region. Fishermen have also initiated increases in minimum legal carapace size for lobster as another measure to improve stocks.

It is important to recognize that lobster stocks have not rebounded on their own. They have rebounded because of conservation measures often initiated by inshore fishermen.

A moderate livelihood fishery – Many questions

Our following concerns are not anti-First Nations. We are looking for a win-win solution where we can fish together sustainably for generations to come. Our concerns relate to conservation of lobster stocks in order to protect a prosperous fishery for all fishers in the inshore. Bearing in mind that the life-cycle of a lobster is 7 years, the impacts of harm done in one or two years might not be seen until a number of years later.

The most fundamental and largest concern is the definition of a moderate livelihood. In addition to the question of how much a moderate livelihood is considered to be in dollar amount, or however it will be measured, we have other questions.

- Will there be a right to an individual moderate livelihood from each species separately, from all ML fishing cumulatively, or considering moderate livelihood income from other sources as well? Who would track and oversee this?
- Would First Nations individuals who make their livelihood from the commercial fishery also have a right to fish in a moderate livelihood fishery?
- Would individuals have a right to fish for a moderate livelihood in any geographic area they desire?
- Would individuals have a right to fish for a moderate livelihood in more than one geographic area for the same species?

- Would there be designated seasons? How long would they be? Would they be the same seasons as the commercial fishery?
- Could a band decide to issue tags for more than one season in a year for the same fish species?
- If an individual has a moderate livelihood tag issued by their own band, can they also request a moderate livelihood tag for the same species from another band?

We are also concerned about whether the right to fish for a moderate livelihood will be transferable. Will a First Nation individual have to fish for their moderate livelihood themselves, or could an individual transfer that right to someone else. If the right to fish for a moderate livelihood is considered transferable, it could mean that an individual could, for a fee, allow someone else to exercise that right for them. The implications of this could be very significant, and the issue needs to be fully considered and clarified. We feel there is something to be learned from the unexpected results that have arisen from the practice of some bands leasing their communal commercial licenses to non-native fishermen. Because these licenses do not carry the same owner-operator restrictions as commercial licenses, in some cases this has led to concentration of lobster licenses in the hands of a small group of non-natives. This is inconsistent with the objectives of the owner-operator policy, and undermines that policy, which was put in place to protect the inshore fishery.

Transparency, reporting and tracking

The first step of conservation is reporting. Gathering accurate information about catches is essential to making decisions that protect stocks. Without accurate and co-ordinated reporting and tracking of catches from all fisheries, conservation of stocks is impossible. Without the input of accurate information, a solid basis for conservation measures does not exist.

The commercial inshore fishery requires each fisherman to fill out a daily logbook reporting catch amount before entering port. DFO conducts random inspections of catches. Regulations require buyers to submit purchase slips weekly. Commercial fishermen face high penalties for misreporting catches, as do buyers.

- We would like to know how a moderate livelihood fishery would track all catches, given that fish may be traded or bartered or sold in small amounts to individuals or businesses. If there is no consistent, arm's length reporting mechanism to track catches, there would be a large gap in conservation measures.
- Given that there may be multiple ML fisheries, each administered separately by a different band, how will the overall impact on fish stocks be determined?
- How will the overall impacts of ML fisheries, communal commercial licences, commercial non-native licenses, and to a lesser extent Food, Social and Ceremonial (FSC) tags be tracked and evaluated to ensure overfishing is not taking place in any geographic area (LFA?)
- How will tracking and recording of all the fisheries be co-ordinated in a timely way to ensure that there is real time knowledge of catches? Catches in the commercial inshore fishery are presently strictly recorded and tracked.

- Who, if anyone, would have control with regards to conservation in relation to the individual right to fish for a moderate livelihood? Currently each First Nation is developing fishing plans for a ML fishery. But has it been determined that a band has the legal right to develop a plan that limits an individual right? Could future litigation from an individual challenge a band's right to define what constitutes a moderate livelihood?

Effective conservation measures need to be put in place before problems arise, as we know all too well. The importance of having an independent, arm's length body tracking and accurately reporting all fishery catches should be clear. We see problems if there are two, or multiple, separate fisheries plans and fisheries authorities that are not linked, co-ordinated and operating consistently in order to accurately track catches and limit the cumulative impact on stocks.

We are concerned with information reported in a 2014 forensic audit of Sipekne'katik First Nation (SFN) noting "discrepancies between DFO catch weights and those reported to SFN." (Summary, S 17.24) Appendix #10 of the same report states (S. 8.24):

"To confirm the accuracy of reports from the licensees, we compared catch weights in the DFO Landing Summaries to those found in the payroll records. We compared the records for October 2010, December 2010 and January 2011. The comparison showed that the DFO records had much higher landed weights than those reported to SFN. However, in a number of cases the licensee reported landed weights to SFN which do not appear in the DFO records. Absent any further information, it appears that not all licensees are reporting catch weights to the DFO and not all licensees are reporting the correct catch weight to SFN."

This indicates the type of problem that might arise if there is not one co-ordinated and consistent system for tracking catches from all fisheries.

A need for consistent regulation and enforcement

We have a number of questions relating to regulation and enforcement. Several First Nations communities have stated that their ML plans will use the same standards as the inshore commercial fisheries. Regulations are important, but they are only one part of conservation. Enforcement is equally important.

- Would there be any mechanism to ensure that minimum standards were consistent in all inshore fisheries, including moderate livelihood fishery?
- Who would be responsible to enforce regulations in a moderate livelihood fishery?
- Will the same enforcement system and set of penalties apply to all fisheries? Or could there be different punishments for the same offense in different systems?

Present penalties for fishing violations for commercial inshore fishers are strongly deterrent. They include both fines and suspensions of licenses. We believe it would be very controversial and a source of great conflict to have different penalties for the same offense in different fisheries. Consistency of standards and effective enforcement including deterrent penalties across all fisheries would promote conservation and reduce conflict between groups.

Conservation by geographic LFAs

Our current lobster fishing areas are one of our main conservation tools. Each LFA, and sub-LFA, can support a limited number of licenses and traps per license. LFAs and sub-LFAs (e.g. LFA 26 A and B) may have different characteristics and may operate differently. Fishing seasons differ between LFAs due to a number of factors, including differences in the times when lobster moult and reproduce. (See Michael Dadswell: [Listen to the Science - Lobster Seasons Fine Tuned to Match Local Eco-systems](#)) There are different season lengths in different areas, but no LFA has more than one lobster season per year. Another difference we are aware of is in how an area is fished. In the large areas of LFA 33 and 34, fishers drop their traps anywhere in the area. In LFA 26A and other areas, each person traditionally fishes a section of that area that overlaps with a few other fishers. This method has been in place for decades, and is done by mutual agreement, not law. It spreads the fishing effort over the whole area and aids in conservation.

- With multiple, separately managed moderate livelihood fisheries added to existing commercial fisheries, we would like to know how the amount of fishing in a particular LFA, or in a sub-section of that LFA, can be managed? Any increase in pressure (amount of fishing) could have serious impacts on conservation. Those effect would not necessarily be seen right away.

Good years and bad years in a multi-species fishery

We cannot think of any fisher in LFA 26A who makes their living from lobster alone. Many of us fish multiple species - lobster, rock crab, snow crab, herring, scallops, tuna, or groundfish - although many of these fisheries are much weaker now than they have been in the past. Many of us have jobs on shore in the off season. Older fishers have pensions that supplement their fishing income.

There are good years and bad years in the fishery. Less than ten years ago, lobster fishers experienced what they now refer to as the years of the \$3 lobster. Fishermen almost refused to fish those seasons because the price being offered was so low it would not have covered costs. With the growth of new markets, especially lobster sales to China, prices for lobster have increased. But in 2020, the impact of Covid reduced prices significantly in the spring fishery in LFA 26. Not all LFAs were impacted the same way. LFA 34, whose season ended in late March 2020 was mostly untouched by Covid-related price reductions.

Although some people have an image that lobster fishermen are all wealthy, most of us along the North Shore have pieced together a moderate livelihood from multiple sources, on both land and sea, for many years. The last few years have been good, but as fishers we know that things can change greatly from year to year. When we hear that a significant number of additional fishers hope to make a moderate livelihood from lobster alone we worry, because our experience tells us how difficult it is to do that and still conserve the stocks for future years and generations. It was only a few years ago that we reduced traps in our LFA by 12,000, resulting in the improved stocks we have now. Future fisheries are going to be increasingly stressed by climate change. Fishing areas in the Atlantic region, both the Gulf of St. Lawrence and the Scotian Shelf, are becoming warmer and losing oxygen faster than almost anywhere else in the global oceans. This impact will also vary between LFAs.

Lack of clear direction from DFO means business uncertainty

In the absence of any clear direction from Department of Fisheries and Oceans, the business end of inshore commercial fishing is currently on hold. We are risktakers by nature and we live with our decisions, but decisions, and even information, are now out of our hands. Our businesses require large capital investments. Lending institutions, including banks and loan boards, are very nervous and concerned with how government actions on this issue will affect what the future of the commercial inshore fishery looks like. Lending decisions are based on expected catches.

Commercial inshore fishers work in partnership with buyers, processors and shippers who depend on receiving an orderly supply of high quality lobster. Could a moderate livelihood fishery saturate the market at certain times and reduce the price of lobster in the future? Reduced prices put pressure on both native and non-native fishers to catch more, which can upset either the conservation regime that is currently in place or the economic viability of commercial licenses.

How to determine impact?

The First Nation ML fishery is being presented to the public as small and having little impact on stocks, but in just two weeks ML trap numbers from the Sipekne'katik ML fishery in Sou'west Nova increased from 250 to 350 to 550. The initial five boats increased to eleven. Those traps are fished daily. The announced season length also increased, from two weeks to at least two months. We are unclear how a ML plan can be decided on and put forward, and then changed so significantly in such a short time. It now appears that three large commercial boats from Sipekne'katik have left LFA 33, for which they are licensed and where the lobster season is open, and have joined the band's ML fishing fleet in LFA 34, where the season has not yet opened. If this is the case, that would increase fishing pressure even more.

It is also clear now that four First Nation bands plan to hold ML fisheries in the St. Mary's Bay area. This would be in addition to commercial communal and commercial owner-operator licenses and FSC fisheries. Clearly, it was premature for anyone to determine whether a ML fishery would have an impact on lobster stocks by looking only at the initial numbers put forward by Sipekne'katik.

Comparing trap numbers in ML and commercial fisheries does not give an accurate picture of impact

It is also important to recognize that the impact of a small number of traps fished out of season can be larger than it looks. There are a number of reasons for this. Each out-of-season trap does not have the competition from many other traps that exists in-season. If fishing takes place in a lobster nursery in the off season, this also has a disproportional impact, as lobster gather in the shallow waters at that time and are easier to catch, while later in the season they retreat farther offshore. We have been informed by a fisheries scientist that one ML trap set in the off season could have the same catch rate as 7 to 12 traps in the established season. The greater impact of each trap used in an off-season ML fishery has to be considered in this

context. It is incorrect to assume that because there are fewer traps the impact will be insignificant.

Fishery changes in respect of treaty rights should not come from the inshore fishery alone

To date, all measures to implement the Marshall decision since 1999 have come from the inshore fishery part of the fisheries pie. The inshore fishery pie is necessarily limited by the need for conservation. We suggest that as part of the discussion about implementing a ML fishery for First Nations, that the Federal government look at where it might be possible to increase the fishery resources available to the inshore sector. There does not seem to be any good reason that the impacts of treaty rights in relation to fishing should not be shared by all sectors of the fishery, inshore and offshore.

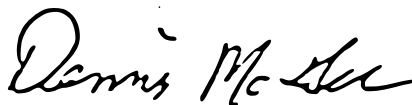
Inshore fishers need to be part of the discussion; Our voice and knowledge is important

We understand that the Federal government's discussions with First Nations take place on a nation to nation basis. This has been the reason given for not allowing commercial fishers a voice at the table. But if a government wants the advice and input of experts on a subject under negotiation, there are ways to arrange it. When you refuse to allow the inshore fishing industry any place in discussions where we have valuable expertise to add, you are more likely to overlook important information. The best way to avoid unexpected outcomes is to make sure that all the relevant knowledge comes to the table. As well, when you keep inshore fishers out of the flow of information on discussions that affect our future, you increase tensions and the potential for conflict.

We ask you to recognize that our knowledge and interests must be a valued part of any discussion that impacts the future of the inshore fishery.

Please find time in your schedule to meet with representatives of the inshore lobster fishing industry to discuss our concerns in more detail. We look forward to a collaborative working relationship on this issue with all of the stakeholders and decision makers.

Sincerely,



Dennis McGee
Interim President
Northumberland Fishermen's Association

Cc: Prime Minister Justin Trudeau
Sean Fraser, MP, Central Nova
Allister Surette, Special Mediator
Ronald Pumphrey, DFO
Serge Doucet, RDG DFO