

BLOC QUÉBÉCOIS DISSENTING REPORT

NATION-TO-NATION CONSULTATION FOR MODERATE LIVELIHOOD FISHING

INTRODUCTION

The Bloc Québécois commends the committee members and Library of Parliament employees for their hard work and dedication over the course of this study and thanks all witnesses who contributed to the public debate by submitting briefs and appearing before the committee. Their testimony will go down in parliamentary history and without a doubt be tremendously useful to those who will one day undertake the difficult task of understanding the intricacies of moderate livelihood fishing. We can only hope that their contribution will help resolve this issue for good and in a manner that satisfies everyone involved.

However, we are bound to acknowledge that the report that was submitted today is a failure. Given that the findings barely scratch the surface of the issues raised in the motion, we believe that the whole study itself was a waste of time. The report's deluge of words, complemented by a torrent of recommendations that were expressly designed to leave readers simultaneously content and confused, make it essentially cosmetic. Parts of it are riddled with truisms, others are inconsistent, and some have absolutely nothing to do with the topic of the study. The fact that the committee produced a report with thousands of empty words is appalling for First Nations and non-Indigenous fishers who live off the sea, for coastal communities seeking to build up their economies and for the overall situation vis-à-vis land use and development. Suffice to say that the report is not in the public interest.

In the next few pages, we will voice our criticism in three sections that discuss four main themes: first, the failure to address the topic of the study; second, the lack of consistency of the report's recommendations; third, the over-politicization of the study; and fourth, the failure, whether intentional or not, to propose any kind of concrete solution.

FAILURE TO ADDRESS THE TOPIC

The motion of October 19, 2020, set out the committee's mandate for this study:

That the Standing Committee on Fisheries and Oceans undertake a study to examine the implementation of the Mi'kmaq constitutionally protected treaty right to fish in pursuit of a moderate livelihood, in order to evaluate the current Rights and Reconciliation Agreement process, identify better ways to engage interested parties in order to improve

communication, reduce tensions, prioritize conservation and identify issues that need to be addressed and a recommended path forward;

Did the committee examine the implementation of the Mi'kmaq right to fish for a moderate livelihood? No. Did it evaluate the current rights and reconciliation agreement process? No. Did it identify better ways to reduce tensions and prioritize conservation? No. Did it recommend a path forward at the end of the study? No. The final report provides no response to the four points raised by the motion. Below we will talk about the failure of the report and its recommendations point by point.

For the first point, the report correctly notes that there is no definition to date of what constitutes a “moderate livelihood” fishery. However, while giving itself the mandate to examine the application of the right to fish for this purpose, it has refrained from even attempting to set the limits of this right, even for operational purposes. As a result, the very premise of the study is contradictory. How can the committee study a topic that remains undefined? This question deserves to be asked.

Voltaire often said, “If you wish to converse with me, define your terms.” Without a definition, the notion of a moderate livelihood remains a non-identified concept, which complicates its observation in reality. However, the committee recommended clarifying this notion more than 20 years ago.¹ This has yet to be done, and it has clearly hindered the committee’s ability to conduct an intelligible study of the application of the rights confirmed by the *Marshall* decisions. Yet, in 1999, parliamentarians proposed ideas for a working definition. The former MP for Saint-Jean, Claude Bachand, said that the “definition of the suitable subsistence level must be negotiated.”² His colleague, Yvan Bernier, MP for Bonaventure-Gaspé-Îles-de-la-Madeleine-Pabok, suggested that a moderate livelihood should be interpreted as including a certain threshold of profitability and a concern for viability and sustainability, in keeping with the UN fishing agreement that Canada had just signed.³ Even today, the lack of leadership that caused this inaction prevents the committee from producing a study and recommendations that clearly, credibly and relevantly assess the application of the rights that were confirmed by the *Marshall* decisions.

For the second point, we must ask ourselves how the committee could have evaluated the process for reaching agreements if those agreements were never made public and the process is still ongoing? If a lack of transparency significantly impeded the committee’s study, this poses an even greater problem in our opinion for the population at large, to whom the government is ultimately accountable, as transparency is

¹ House of Commons, Standing Committee on Fisheries and Oceans, 36th Parliament, 2nd Session, *The Marshall Decision and Beyond: Implications for Management of the Atlantic Fisheries*, Thursday, 16 December 1999.

² House of Commons, Debates of the House of Commons, 36th Parliament, 2nd Session, vol. 136, no. 2, Wednesday, 13 October 1999, p. 75.

³ *Ibid.*, pp. 79 and 98.

intrinsically linked to ethics. And while the committee did not have the audacity to compel the government to make the documents relevant to these agreements available to the committee, the government did not have the decency or initiative to provide them.

For the third point, with all due respect, the committee's recommendations to reduce tensions and prioritize conservation seem to be nothing more than wishful thinking, two perfect examples of which are recommendations 32 and 33, which lack the measures needed to ensure that they are implemented. The only approach that came up over the course of the study that could lead to tangible, beneficial results was completely left out of the committee's recommendations. We are referring to co-management; more on that later.

Lastly, for the fourth point, it is clear to us that the report contains no path forward. While clarity, soundness and pragmatism should be the hallmarks of any report's recommendations, these recommendations speak volumes but say little. The committee could have taken this opportunity to not follow in the footsteps of every federal government since 1999. However, it chose the very same approach: wait and see.

WHEN IDEOLOGY PREVAILS OVER PUBLIC INTEREST

At several points in their interventions, the committee members gave us the impression of acting, *mutatis mutandis*, like two of the three wise monkeys: Mizaru, who sees nothing, and Kikazaru, who hears nothing. The manner in which they asked their questions and gave their comments seemed to us to stem more from a desire to justify their parties' positions on the issue after the fact and win or maintain seats in the Atlantic provinces than from a real intention to find solutions to the problems that Gaspésie and Maritimes residents are experiencing because of the inaction of one government after the next. Overall, it really felt like the committee members were talking past each other over the course of the study, which is reflected in the redundant, inconsistent and banal recommendations that we are criticizing.

Recommendations 1 to 12 (excluding recommendation 10), which make up more than one quarter of the recommendations, are good examples of redundancy, since they could have been summarized into one recommendation: "That the federal government implement the *Marshall* decisions and that the Minister of Fisheries and Oceans fulfill her mandate." Recommendation 17, which calls for the conservation of fisheries resources, (an objective that is already outlined in the Act) is equally verbose and rife with self-evident truths.⁴

Next, recommendations 16 and 18 are contradictory. On the one hand, the committee recommends that DFO take scientific data into account when making its decisions, while,

⁴ *Fisheries Act*, R.S.C., 1985, c. F-14, paragraph 2.1 (b).

on the other, it is telling DFO which findings to take into account from the data. This infringes on basic logic and scientific ethics alike.

Lastly, we turn our attention to recommendation 27, “That ... Fisheries and Oceans Canada must rigorously enforce fisheries regulations with impartiality and consistency.” Does anyone think it should be any different?

We could continue with a comprehensive analysis of the various recommendations, but the result would invariably be the same: we would have an Iwazaru-like report—one that speaks nothing .

In essence, the ruling parties preferred to defend the status quo and exploit the socio-political context to their advantage, rather than work to help Indigenous and non-Indigenous people.

POSSIBLE SOLUTIONS: REVISIT THE PAST AND RECONSIDER CO-MANAGEMENT

In 1999, the Bloc Québécois issued a supplementary opinion to the Fisheries and Oceans Committee report *The Marshall Decision and Beyond: Implications for Management of the Atlantic Fisheries*. It is worth quoting part of it:

The concept of “moderate livelihood” is the key element in the Marshall decision with respect to the future scope of the Aboriginal role in the fishing industry. It must be borne in mind that until this point has been clarified all solutions will necessarily be of a tentative nature. To better define the concept, the Government should:

- name an official at Indian and Northern Affairs Canada to coordinate efforts to clarify the concept of “moderate livelihood”;
- determine the working method and the parameters to be considered;
- set a timetable for the process.

We must now admit that had the government drawn more from the Bloc Québécois proposals of 1999, many of the later troubles could have been avoided.

Throughout this study, both commercial and Indigenous fishers condemned the government’s approach as fuelling tensions. “The current violence is a symptom of a flawed negotiation process followed by the government and the constant exclusion of commercial fishers from fisheries management discussions,”⁵ said O’Neil Cloutier, while at the same time regretting that commercial fishers have been denigrated by “right-thinking” attitudes within the *de facto* coalition government, while Chief George Ginnish was critical of the fact that “DFO has again sought to undermine and divide [his nation]

⁵ House of Commons, Standing Committee on Fisheries and Oceans, 43rd Parliament, 2nd Session, *Evidence*, Number 003, Wednesday, 21 October 2020, p. 11.

as a collective and to negotiate agreements with individual bands.”⁶ As well, Chief Darlene Bernard had sharp but frank words for the federal government: “This whole thing about the ... rights and reconciliation agreements, those are nothing but a slap in the face to first nations.”⁷

Seen from this perspective, the Minister of Fisheries and Oceans’ approach does not seem to be that much different from the one under British colonialism, whose motto was “divide and conquer.” We believe that such an approach, when combined with secret negotiations and agreements, only serves to inflame tensions. There needs to be transparency, not only in the interests of the non-Indigenous population—since it is on their behalf that the government negotiates nation-to-nation and since accountability is a matter of democracy—but also in the interests of the First Nations. The government has a duty to ensure fairness and foster peace between the different communities. Unfortunately, the secrecy surrounding the negotiation process and the exclusion of certain groups simply serves to sow mistrust and, as a result, envy, inequity and even racism. Let’s just say that these are not the basic conditions for successful reconciliation.

Commercial fisheries are vitally important to Indigenous communities, given how much of a tremendous economic development tool these fisheries are to them. There has been outstanding progress in this area in Quebec since 2001.⁸ The Maliseet of Viger provide a glowing example of this.⁹ However, the reappropriation of resources has not come without tension in the Atlantic provinces. How can these tensions be overcome? As mentioned earlier, we believe that co-management, the only way that could have helped quickly ease tensions, has been totally ignored by the committee.

The outright refusal of governments to consider this solution is nothing new. The current *Fisheries Act*, despite recent amendments, does not allow for true co-management,¹⁰ and yet the Royal Commission on Aboriginal Peoples, in Volume 2 of its report, dealt extensively with co-management of resources, including fisheries, and recommended that the federal government create joint co-management arrangements with Indigenous and provincial governments in anticipation of treaty-making.¹¹

⁶ House of Commons, Standing Committee on Fisheries and Oceans, 43rd Parliament, 2nd Session, *Evidence*, Number 007, Monday, 16 November 2020, p. 9.

⁷ Op. cit., p. 15.

⁸ Paul Charest, “L’accès des autochtones à la pêche commerciale et leur participation à sa gestion,” Paul Charest, Camil Girard and Thierry Rodon (eds.), *Les Pêches des Premières Nations. Innus, Malécites et Micmacs*, coll. “Mondes Autochtones,” Quebec City: Presses de l’Université Laval, 2012, p. 239.

⁹ See Emmanuel Machaud, “Les pêches commerciales des Malécites de Viger: l’exploitation et la gestion du crabe des neiges et de la crevette nordique,” Paul Charest, Camil Girard and Thierry Rodon (eds.), *Les Pêches des Premières Nations. Innus, Malécites et Micmacs*, coll. “Mondes Autochtones,” Quebec City: Presses de l’Université Laval, 2012, pp. 305-332.

¹⁰ Ibid., p. 237.

¹¹ Recommendation 2.4.78.

During this study, the committee had the opportunity to hear from a number of witnesses who demonstrated the value of this co-management approach. Since the testimony on co-management was left out of the committee's report recommendations, we believe that for everyone's benefit, it is worth quoting Professor Thierry Rodon:

The Mi'kmaq from the Sipekne'katik community decided to create their own fishing season and to issue their own permits, which is clearly recognized by Canada's 1995 inherent right policy. This policy clearly states that self-government is an aboriginal right and that natural resources management is a right that they can negotiate as a priority or exclusively. One of the most important rights is access to the resource, and that is what is at stake in the case we are studying. This type of situation is going to occur more and more often in Canada. One must have experienced the salmon fishing crisis on the Moisie River to know how to arrive at a solution. In the end, this type of crisis, where access to a resource and competition between sport fishers and commercial fishers are at issue, can be resolved through co-management. The co-management of natural resources allows for the recognition of a dual authority: that of the federal government over the commercial fisheries and that of the indigenous communities over the management of their resources. This makes it possible to collaborate and to harmonize fishing practices, and also to alleviate the concerns of some fishers who are protesting against this fishery, which they consider to be illegal. It is actually not illegal because it stems from the aboriginal rights of indigenous peoples.¹²(Emphasis ours)

Professor Rodon later expanded on his thoughts about this solution by pointing out to the committee that co-management arrangements often emerge during periods of tension. He said that "[p]eople need to have places where they can talk to each other and show that there is responsible management on both sides. In fact, it's not just the Mi'kmaq who need to demonstrate this, it's the commercial fishers as well. Together, they need to define what can and cannot be fished."¹³ This is something that the Bloc Québécois fully supports, and we believe that it is now up to the Minister of Fisheries and Oceans to adopt such an approach.

CONCLUSION

Basically, at the end of this study, we have ended up with a report that has completely missed the mark and will likely not contribute in any way to solving a problem that has been arising over and over again for twenty years now. In 2001, *Le Devoir* described the tensions surrounding the implementation of the *Marshall* decisions as a "lobster war," writing that we were still awaiting a long-term solution.¹⁴ In "Penser la politique spectrale," a series of two articles published in *L'Action Nationale*, philosopher Dominic

¹² House of Commons, Standing Committee on Fisheries and Oceans, 43rd Parliament, 2nd session, *Evidence*, Number 006, Monday, 2 November 2020, p. 2.

¹³ House of Commons, Standing Committee on Fisheries and Oceans, 43rd Parliament, 2nd session, *Evidence*, Number 007, Monday, 16 November 2020, p. 4.

¹⁴ H  l  ne Buzzetti, "Le mandat des autochtones," *Le Devoir*, Friday, 5 January 2001, p. A2.

Desroches encourages the reader to view political problems from the perspective of “spectropolitics.” He writes that the embodiment of the “political ghost” is the return of unresolved problems that come back to haunt us. This perfectly describes the situation surrounding the implementation of the *Marshall* decision and could be applied to any number of unresolved political problems constantly haunting the news. As long as there is no real political will to implement the decision, no clear definition of moderate livelihood or no attention paid to co-management, it is quite likely that new conflicts between Indigenous and non-Indigenous fishers will arise in the not too distant future. This means that the government is responsible for feeding mistrust, misunderstanding and racism, and for jeopardizing reconciliation. How many crises will Indigenous and non-Indigenous populations have to go through—and how serious will they have to be?—before politics is forced to come up with lasting solutions to a dramatic situation?

Beyond the measures we propose in our recommendations, we believe that in order to overcome inertia and have a lasting impact on our relationship with Indigenous peoples, we first need to reform the constitutional system we are under. The constant paralysis to which Canada has condemned itself by refusing change of any kind simply reinforces our conviction that only Quebec independence could accomplish such an evolution.

RECOMMENDATIONS OF THE BLOC QUÉBÉCOIS

The Bloc Québécois does not claim to have infallible or definitive proposals for resolving the complex problem raised. However, it would be presumptuous to harshly criticize the committee’s report without making recommendations of our own. Here, then, are four cornerstones, four necessary, essential steps that the government should carry out if it really wishes to bring about a lasting, respectful and satisfactory settlement for all parties.

Recommendation 1

That the government clarify the concept of moderate livelihood through negotiations with the First Nations concerned by the *Marshall* decisions.

Recommendation 2

That, out of a sense of duty to be transparent with the population at large and for the sake of equity among the First Nations involved, the Department of Fisheries and Oceans make public the rights and reconciliation agreements, and that the agreements reached be released once they are signed.

Recommendation 3

That the Department of Fisheries and Oceans shift toward co-management of fisheries resources when implementing the First Nations rights confirmed by the *Marshall* decisions.

Recommendation 4

That as a first step in this shift to co-management, the Department of Fisheries and Oceans implement co-management pilot projects for communities affected by the *Marshall* decisions.