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Draft for the Esgenoopotitj First Nation (EFN) Fishery Act (Fisheries Policy)

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- I. Preamble
- II. Interpretation
- III. Source of Authority
- IV. Policy Objectives
- V. Guiding Principals
- VI. Mi'kmaq Traditional Territory's and Districts
- VII. Fishery Management Crisis
- VIII. Statement of Protection of the CFS Fishery
- IX. Application
- X. Mi'kmaq, Maliseet and Passamaquoddy right to fish all species
- XI. Establishment of a Natural Resource Tribunal
- XII. Role of the Natural Resource Tribunal
- XIII. Establishment of the Natural Resource Agency
- XIV. Role of the Natural Resource Protection Agency
- XV. Establishment of the Natural Resource Council
- XVI. Role of the Natural Resource Council
- XVII. Authority to Enact regulations and Amendments
- XVIII. Powers and role of the Natural Resource Protection Officers
- XIX. Content of the Management Plan
- XX. Royalties
- XXI. Other Mi'kmaq Fishermen
- XXII. Non Native Fishermen
- XXIII. Scientific Activities
- XXIV. Restoration the Habitat
- XXV. Providing Access

I. Preamble

WHEREAS the Mi'kmaq, Maliseet and Passamaquoddy Peoples have never ceded their government, lands, natural resources or waters in any treaty. We are still inherently a sovereign people.

WHEREAS the government of Canada has illegitimately imposed their federal and provincial jurisdictions upon the Mi'kmaq, Maliseet and Passamaquoddy lands and waters, the Mi'kmaq People of Esgenoopotitj First Nation(EFN) will vigorously contest any infringement upon their sovereignty.

WHEREAS the Canadian federal and provincial governments have not been conducting any talks or negotiations in "Good Faith" and deliberately violating the concepts of co-operation, co-habitation and mutual benefit, the Mi'kmaq People of Esgenoopotitj First Nation will no longer enter into talks with the Canadian government until their nation's honor can be proven to the Mi'kmaq People.

WHEREAS the Mi'kmaq People of Esgenoopotitj First Nation have lost faith in the "Honor of the Crown", we will not allow our Inherent rights, recognized in Treaty's, to be reduced to a justiciable right to be interpreted by a biased Canadian court.

WHEREAS the Canadian Department of Fisheries and Ocean(DFO) has thoroughly mismanaged the Fisheries throughout all of Canada, the DFO has infringed upon the possible exercising of Mi'kmaq, Maliseet and Passamaquoddy Treaty rights to fish species that are now endangered.

WHEREAS the Canadian Government having violated the intent of the Covenant Chain of Treaties by deliberately and systematically denying self sufficiency to the Mi'kmaq ,Maliseet and Passamaquoddy Peoples through use of their natural resources, the Canadian government has intentionally forced a condition of impoverishment upon the Mi'kmaq, Maliseet and Passamaquoddy Peoples which has led to the relationship of welfare dependency on the Canadian state.

WHEREAS the Mi'kmaw, Maliseet and Passamaquoddy Peoples have governed and occupied their traditional Territories since time immemorial.

IN RECOGNITION OF all the political, social and economic agreements with the Canadian Government have been conducted under the conditions of coercion and/or deceit.

IN RECOGNITION OF the Covenant Chain of Treaties made between the Mi'kmaq, Maliseet Passamaquoddy People and the Crown were made with the intent of promoting self sufficiency for the Mi'kmaq, Maliseet and Passamaquoddy peoples through use of their natural resources as previously declared by Lt. Governor Belcher.

IN RECOGNITION OF the Covenant Chain of Treaties made between the Mi'kmaq, Maliseet and Passamaquoddy Peoples and the Crown, were made with the intent of peace and friendship.

THEREFORE LET IT BE RESOLVED that the Mi'kmaq People of Esgenoopitj First Nation will protect, uphold and exercise their Inherent and Treaty rights to the fullest extent of International Laws as identified by the United Nations and the Mi'kmaq Grand Council.

II. Interpretations

"Mi'kmaq, Maliseet and Passamaquoddy Traditional Territorial Lands" Means the traditional territories of the Mi'kmaq, Maliseet, and Passamaquoddy Peoples consisting of New Brunswick, Nova Scotia, Prince Edward Island, Gaspé, St. Pierre and Miquelon, Maine and the internal and Marine waters contained within.

"Mi'kmaq, Maliseet and Pass. Territorial Waters"

Means all waters of the Traditional Territories of the Mi'kmaq, Maliseet and Passamaquoddy Nations including freshwater, inshore and offshore zones.

"Mi'kmaq Territorial District of Gespe'gewa'gi"

"Natural Resources"

Includes fisheries, wildlife, minerals, sub-surface resources, trees, plants and medicines as well as lands, waters, habitat and ecosystems.

"Fish"

Includes

1. parts of fish
2. shellfish, crustaceans, marine animals and any parts of shellfish, crustaceans or marine animals, and
3. the eggs, sperm, spawn, larvae, spat, and juvenile stages of fish, shellfish, crustaceans and marine animals;

"Fishery"

Includes the area, locality, place or station in or on which a pound, seine, net, weir or other fishing appliance is used, set, placed or located, and the area, tract, or stretch of water in or from which fish may be taken by the said pound, seine, net, weir or other fishing appliance, and also the pound, seine, net, weir, or other fishing appliance used in connection therewith;

"Fishermen"

Means a duly authorized Mi'kmaq, Maliseet or Pass. Individual conducting natural resource harvesting pursuant to this Act.

"Fishing"

Means fishing for, catching, or attempting to catch fish by any method;

"Fishing Vessel"

Means any vessel used, outfitted or designed for the purpose of catching, processing or transporting fish;

"Vehicle"

Means any conveyance that may be used for transportation, including aircraft.

"EFN"

Means Esgenoopotitj First Nation

"NRPA"

Means the Natural Resource Protection Agency

"NRT"

Means the Natural Resource Tribunal;

"NRC"

Means the Natural Resource Council

"NRTRS"

Means the Natural Resource Treasury

"NRMD"

Means the Natural Resource Management Division

"NRPD"

Means the Natural Resource Protection Division

"NRPO"

Means the Natural Resource Protection Officers

"MMP"

Means Mi'kmaq, Maliseet and Passamaquoddy

III. Sources of Authority

Mi'kmaq

By virtue of being born as a citizen of the Mi'kmaq Nation,

1. It is the Mi'kmaq People's Inherent right to be able to access our Nation's natural resources as we see fit.
2. The 1760 Treaty recognized the Mi'kmaq, Maliseet and Passamaquoddy People's Inherent right to fish, hunt and harvest their Nation's own natural resources.
3. The Mi'kmaq People of Esgenoopotij First Nation rejects the subjection of Treaty Rights to domestic Canadian law. The concept of *sui generis* violates the Nation to Nation relationship of the Covenant Chain of Treaties.
4. The Mi'kmaq, Maliseet and Passamaquoddy Peoples inherent right to use their natural resources has not and could not be unilaterally extinguished by the Government of Canada.
5. It is the Mi'kmaq People's Inherent right to self government to be able to legislate upon our own matters and over our own natural resource that allows for this Fishery Act to be legislated into existence.

International

6. The International Covenant on economic, social and cultural rights. Article 1.1

"All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

7. The International Covenant on economic, social and cultural rights. Article 1.2 "All peoples may, for their own needs, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."

The Universal Declaration on Human Rights. Article 2. "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

The Universal Declaration on Human Rights. Article 15.

Everyone has the right to a nationality

No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

8. The 1969 Vienna Convention on International Treaties:

Article 26 " Every Treaty in force is binding upon the parties to it and must be performed by them in good faith"

Article 27 " A party may not invoke the provisions of it's internal law as justification for failure to perform a Treaty"

Article 31(1) " A Treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Treaty in their context and in light of it's object and purpose"

Article 60 (1) " A material breach of a bilateral Treaty by one of it's parties entitles the other to invoke the breach as a ground for terminating the Treaty, or suspending it's operation in whole or in part"

Article 62 (1) " A fundamental change of circumstance which has occurred with regard to those existing at the time of the conclusion of a Treaty, and which was not foreseen by the parties, may not be involved as a grounds for termination or withdrawing from the Treaty unless:

The existence of those circumstances constitute as essential basis of the consent of the parties to be bound by the Treaty; and

The effect of the change is radically to transform the extent of the obligation still to be performed under the Treaty."

Article 62(2) " A fundamental change of circumstance may not be invoked as a grounds for termination or withdrawing from the Treaty:

If the Treaty establishes a boundary; or

If the fundamental change is the result of a breach by the party invoking it either of obligation under the Treaty or of any other international obligation owed by the party to the Treaty."

The 1969 Vienna Convention on International Treaties being " Ratified by Canada in 1970, the Vienna Convention was prepared by the United Nations as a summary of International Law and practice on the making, interpretations, and enforcement of Treaties. According to the Vienna Convention, a party to a Treaty can not excuse itself from a Treaty obligation unilaterally, either by passing domestic laws, or by causing a change of circumstances. The International Court of Justice in "Electronica Sicula SP.A" 1989 reaffirmed that domestic laws have no effect on the validity or application of a Treaty.

IV. Policy Objectives

1. To protect and promote the exercise of Mi'kmaq, Maliseet and Passamaquoddy Treaty rights.
2. To protect the Fishery and preserve it's ecosystem.
3. To help eradicate the conditions of impoverishment on members of EFN.
4. To help break the bonds of economic dependency on the Canadian Government by achieving a degree of economic independence through the act of developing our own natural resources.
5. To provide equitable access to the natural resources for all members of EFN to exercise their Treaty rights.
6. To maximize collective benefits for all members of EFN who, by way of collective right, have an equal share in the natural resources.
7. To provide principals for a self-sustaining Natural resource driven economy.

V. Guiding Principles

The guiding principles stated below are to provide a clearer intent of the EFN Fishery Act and to provide future parameters for any discussion on Treaty Rights.

1. Conservation. The EFN will use the precautionary principle in natural resource harvesting in order to maximize conservation. EFN will strive to maintain the health and capacity of all species and their ecosystems.
2. All Mi'kmaq, Maliseet and Passamaquoddy Treaty rights must be recognized as being firmly based upon their Inherent rights.
3. Mi'kmaq Inherent and Treaty rights will not be infringed upon in anyway.
4. Equitable access for all those wishing to exercise their Treaty Right.
5. To protect the Treaty rights in their entirety.
6. To ensure that the Treaty rights fully and completely extend to the next 7 generations.
7. Any discussions, consultations or talks of any kind with any government must include the community. The community must be fully informed on any matters concerning Inherent or Treaty rights. No one Chief or Chief and Council have the legitimate authority to make decisions concerning Inherent or Treaty rights.
8. Policies made by the Mi'kmaq of EFN, exercising their Inherent right to self-determination and self government, shall not be interpreted by any one else in any forum except by members of EFN.
9. If any conservation measures are to be taken in the Mi'kmaq Territorial District of Gespe'ew'gi then it is the non natives that will be subjected to the conservation measures first.
10. Conservation concern must be confirmed by an EFN funded Aboriginal biologist before any conservation restrictions will be placed upon the Mi'kmaq of EFN.
11. Only the Mi'kmaq people of EFN can place or enforce any conservation measures on the Mi'kmaq people of EFN.

VI. Mi'kmaq Traditional District of Gespe'gewa'gi

The Mi'kmaq of EFN do not recognize the reserve system. The reserve system is an imposed, artificial boundary designed to eradicate Traditional native lands. It is a tool of colonial tyranny that unjustly forces Native people on tiny remnants of their former lands for the sake of political, social and economic control. The reserve system has allowed the Canadian government to assert illegitimate jurisdiction over the Mi'kmaq natural resources. The members of EFN firmly reject the oppressive confines the reserve borders and limited water zones associated with them. The Mi'kmaq of EFN will exercise their Inherent right to fish in the traditional Mi'kmaq Territorial District of Gespe'gewa'gi.

VII. Fishery Management Crisis

The Canadian Nation has illegitimately declared sovereignty over Mi'kmaq, Maliseet and Passamaquoddy Lands and waters thereby illegitimately applying their Federal and Provincial jurisdiction over Mi'kmaq, Maliseet and Passamaquoddy natural resources.

For 239 years the Canadian Federal government have deliberately and systematically excluded Mi'kmaq, Maliseet and Passamaquoddy people from harvesting their own natural resources. This act is in direct violation of the 1760 Treaty.

The Department of Fisheries and Oceans has incompetently managed the Mi'kmaq, Maliseet and Passamaquoddy waters and fishery. The cod has been reduced to 1% of it's original stock and can no longer be fished commercially, the salmon are in the same dire straits. In a recent CBC news broadcast, a DFO internal memo announced the inevitable collapse in the snow crab industry in just 3 years. Directly due to DFOs economically focused management plans there are now over 500 species of fish in the Atlantic /Quebec region that are at risk.

The focus of the fishery management by the DFO was not to protect and preserve the fisheries and it's supporting ecosystem. DFOs focus was to satisfy the non native fishing industry and ravish the fisheries for the sake of profit. This policy has been at the expense of the Mi'kmaq, Maliseet and Passamaquoddy fishery. The DFO have historically forced the Mi'kmaq, Maliseet and Passamaquoddy people out of their own waters and denied them their inherent rights so the DFO could selfishly take over the fishery and make non native fishermen wealthy.

This consistent record of poor management by the DFO has infringed upon the Mi'kmaq, Maliseet and Passamaquoddy people's right to fish. The fishery is supposed to be preserved for the upcoming generations in which the Treaty right would apply to. The DFOs mismanagement of the fisheries will now deny the Mi'kmaq access to specific species of fish, which have to be protected because of DFOs incompetence, that the Mi'kmaq people should have had a right to fish.

Due to the consistent mismanagement by DFO, it's biased and racist policy making, it's overpolicing of Mi'kmaq fishermen, it's adversarial nature and relationship with the Mi'kmaq, it's paternalistic and condescending attitude towards First Nations people, the Mi'kmaq of EFN will be reasserting it's control over the fisheries in it's traditional territories. EFN will reassert control particularly in its traditional district. The members of EFN do not want to actively participate in the DFO's failed policies and wanton destruction of the fishery. We do not believe it is just to force the Mi'kmaq into such an utter disgrace of management practices that the DFO policies represent. The EFN will exercise its Inherent right to self determine it's own political, social and economic future and it's inherent right to self government which will include the ability as a self governing people to legislate policy.

VIII. Statement of Protection of CFS Fishing

The Mi'kmaq, Maliseet and Passamaquoddy Treaty right to fish for ceremonial, food or social purposes will not be infringed upon in anyway. It is an Inherent right that has been exercised for millennia. The Inherent right of the Mi'kmaq, Maliseet and Passamaquoddy peoples to fish for ceremonial, food or social purposes has not been extinguished. Any attempts by the Canadian Government to limit or extinguish this right will be considered an intolerable violation of the Covenant Chain of Treaties. The EFN Fisheries Act pertains to commercial fishing and will not be interpreted in anyway to define, place any limit or infringe upon the Inherent right of the Mi'kmaq to fish for these purposes.

IX. Application

The EFN Fisheries Act applies to all Mi'kmaq members of EFN who reside in traditional Mi'kmaq Territories. The EFN Fishery Act does not recognize the difference between on/off reserve Natives. Mi'kmaq Treaty Rights do not cease at the boundaries of a reserve.

X. Mi'kmaq, Maliseet and Passamaquoddy Right to Fish all Species

The Mi'kmaq, Maliseet and Passamaquoddy peoples have fished in their traditional Territorial waters since time immemorial. The Canadian government's attempt to limit or restrict the species in which the Mi'kmaq, Maliseet and Passamaquoddy peoples could fish is a further attempt to subject them to colonial control. These infringements on the Treaty rights will not be tolerated. It is the Mi'kmaq people of EFN position that the onus of proof is to be placed on the Canadian Government not the Native peoples. The Canadian Government has to prove that they have the right to fish in Mi'kmaq, Maliseet and Passamaquoddy Territorial waters. The burden of proof also lies with the Canadian Government to prove species by species that we, the Mi'kmaq, Maliseet and Passamaquoddy peoples, gave our consent and permission to the Canadian Government

to fish these particular species. We, the Mi'kmaq people of Esgenoopotitj First Nation, reserve the Inherent right to fish all species of fish in our Territorial waters.

XI. Establishment of a Natural Resource Tribunal

The Chief and Council of EFN will establish a Natural Resource Tribunal(NRT) for the purposes of conflict resolution and administering of penalties on the issue of natural resources.

XII. Role of the Natural Resource Tribunal

The Natural Resource Tribunal will preside over all conflicts involving natural resources. The NRT will provide a community-based judiciary that will adjudicate any violations of the EFN Management Plan or EFN Fishery Regulations.

XIII. Establishment of the Natural Resource Protection Agency

The Chief and Council will establish a Natural Resource Protection Agency (NRPA) for the purposes of protecting EFN natural resources and managing EFN natural resources. The Natural Resource Protection Agency will consist of two divisions ;

1. The Natural Resource Management Division
2. The Natural Resource Protection Division

XIV. Role of the Natural Resource Protection Agency

The role of the NRPA will be;

1. Protection of the EFN natural resources
2. Implement the natural resource policies of EFN

The Natural Resource Management Division (NRMD) will be responsible for;

- A. Implementation and administration of the EFN Fishery Act, EFN Management Plan and EFN Fishery Regulations.
- B. Issuing, withdrawing, limiting or suspending fishing tags and/or permits.
- C. Conducting strategic planning for the NRPA.
- D. Identifying, acquiring, and allocating resources for the EFN fishery activities.
- E. Developing policy, regulations, and/or amendments in conjunction with the Natural Resource Council.

The Natural Resource Management Division (NRMD) will have a technical team to assist the Natural Resource Council in the development of policy, regulations, and/or

amendments. The technical team, as subject matter experts, will provide advice and translate the Natural Resource Council's recommendations into drafts for them.

The Natural Resource Protection Division (NRPD) will be responsible for;

- A. Enforcement of the EFN Fishery Regulations.
- B. Ensuring members of the EFN comply with the EFN Management Plan.
- C. Protecting EFN fishermen and their vessels and fishing gear during the fishing season from interference or molestation by any other group or individuals.

XV. Establishment of the Natural Resource Council

The members of EFN will establish community committees in order to send delegates to the Natural Resource Council, which will provide direction to the NRMD in the developing of policy, regulations and/or amendments. The community committees are a collection of special interest groups within the community and will be made up of;

- 1. Fishery Committee
- 2. Women's Committee
- 3. Youth Committee
- 4. Off Reserve Committee

Other community based committees will be encouraged to join in order to hear the concerns of the complete community as a collective.

XVI. Role of The Natural Resource Council

The role of the Natural Resource Council (NRC) is to provide the community's input into developing policies, regulations and/or amendments to the EFN Fishery Policy, EFN Management Plan, and the EFN Fishery Regulations.

The NRC will conduct annual reviews of the EFN Fishery Policy, EFN Management Plan and the EFN Fishery Regulations in order to make any necessary changes. The NRC will work on these recommendations with the NRMD's technical team. The technical team will provide advice and translate the intentions/recommendations into draft policies, regulations and/or amendments. The Drafts will then be submitted before the members of EFN for ratification.

The NRC has the power to;

- 1. Conduct a comprehensive review of the EFN Fisheries Act, EFN Management Plan and EFN Fishery Regulations.
- 2. Can develop amendments for the above mentioned documents.
- 3. Can review, endorse or reject any proposal from any other group or individual that pertains to the above mentioned documents.

XVII. Authority to Enact Regulations

The members of EFN may enact regulations for carrying out the purpose and provisions of the EFN Fishery Act, EFN Management Plan and EFN Fishery Regulations. They may enact regulations that do not contravene the guiding principles of the EFN Fishery Act. They may make regulations;

1. For the purpose of proper management of harvesting the natural resources.
2. For the purpose of ensuring conservation practices.
3. For the purpose of protecting the habitat.
4. For the purpose of protecting the natural resource harvesters (fishermen).
5. For the purpose of water safety.
6. For the purpose of determining who is eligible to conduct resource-harvesting activities.
7. For the purpose of addressing territorial and district water boundary issues.
8. For the purpose of establishing or amending the powers/duties of the NRPO.
9. For the purpose of establishing administrative guidelines for the Natural Resource Tribunal.
10. For the purpose of establishing or amending the Royalties program.

XVIII. Powers of the Natural Resource Protection Officers

To ensure compliance with the EFN Management plan and the EFN Fishery Regulations, the NRPO have the authority to;

1. Board vessels for the purpose of inspection.
2. Inspect the contents of the vehicle.
3. Require fishermen to produce permits or documentation's for examination.
4. Require any persons to produce for examination books of accounts that the officer believes , on reasonable grounds, contain information that is relevant to the administration of the EFN Fishery Act.
5. Conduct field surveys of fish populations and habitat conditions.
6. Seize gear, vessels and vehicle that the NRPO believes on reasonable grounds has been involved in a violation of the EFN Fishery Act, EFN Management Plan and EFN Fishery Regulations.

XIX. Contents of the Management Plan

The EFN Management plan will include but not be limited to the following;

1. Who will fish.
2. What they will fish.
3. Where they will fish

4. When they will fish
5. How they will fish
6. Registration of person and vessels.
7. Identification of vessels and fishing gears.
8. Provisions for protected species.
9. Provisions for Protected Areas.
10. The Management Regime.
11. Provisions for Natural Resource Protection Officers.

XX. Royalties

EFN recognizes that the 1760 Treaty right to fish is a collective right. As a collective right ALL members of the EFN have an Equal share in the natural resources. This means ALL members of the EFN not just any one group within the EFN. To properly exercise that collective right the EFN must promote collective benefit.

A royalty program will be implemented to maximize collective benefit for ALL members of EFN.

EFN and other Mi'kmaq, Maliseet and Pass. peoples fishing in the traditional waters of the Gespe'gewa'gi district will be required to pay a royalty charge of 10% percent of their catch.

The funds accumulated from the royalties will pay for the administration and operation of the NRPA and then the remainder will be equally divided up amongst every member of EFN.

Recent applications for membership to Esngenootitj First Nation by some one who was registered to another First Nation community will have to wait to the following year to be eligible for their first royalty payment.

To ensure accountability of funds a group independent of the Chief and Council, the Natural Resource Treasury (NRTRS) will be established to manage the royalty funds.

The NRTRS will post current status of the royalties on a weekly basis for all to see.

XXI. Other Mi'kmaq, Maliseet and Passamaquoddy Fishermen.

In recognition of the 1760 Treaty Rights applying to all Mi'kmaq, Maliseet and Passamaquoddy people the EFN does not wish to infringe upon their right to harvest the natural resource. However, any fishing or harvesting of natural resources on EFN lands or waters in the traditional district of Gespe'gewa'gi will be subject to royalty charges.

There will be two categories of other MMP fishermen.

Same District Fishermen

Same District Fishermen are fishermen not from Esgenoopotij First Nation but from the same traditional district of Gespe'gewa'gi. This District includes the Eel Ground, Red Bank, Eel River Bar, Pabineau, Listiguj, and Maria First Nations.

Provided that these First Nations **did not** sign a fishery agreement with DFO, Esgenoopotij First Nation will be willing to provide them with access to the fisheries in EFN waters. The fishermen from these First Nations will be required to apply for a *Guest Fishermen's Permit* and register with the NRMD. However, EFN will not ask these specified First Nations for Royalty payments since Gespe'gewa'gi is their traditional district also. Esgenoopotij First Nation strongly recommends that these First Nations do establish a royalty program to provide maximum collective benefit for their communities.

Other District MMP Fishermen

Other district MMP fishermen are MMP fishermen not from the traditional district of Gespe'gewa'gi.

Provided that these First Nations **did not** sign a fisheries agreement with the DFO, Esgenoopotij First Nation will be willing to provide them with access to the fisheries in EFN waters. Since EFN will be providing the natural resource, the management plan and an enforcement/ protection service to MMP in the area, the members of EFN feel it is fair to ask other MMP people to pay a royalty charge as they do.

Other district MMP fishermen will have to apply to the NRMD for a *Guest Fishermen Permit*. With the permit the MMP fishermen will receive a copy of the EFN Fishery Act, EFN Management Plan and EFN Fishery Regulations.

To receive the permit the MMP fishermen must consent to compliance with the EFN Management Plan and EFN Fishery Regulations.

Failure to consent to the management regime or comply with the Fishery Regulations, the NRPA will refuse to protect those fishermen and leave them to the mercy of DFO and the MFU.

To ensure proper fisheries monitoring will take place on MMP vessels, the MMP fishermen will be required to employ an EFN monitor on board their vessel to monitor the catch.

To ensure that there is no overcrowding of the Fisheries in the district of Gespe'gewa'gi that can cause conservation problems/concerns EFN will apply a priority system to the area. Studies will be conducted by an Aboriginal biologist on the fishery stocks. Based on the biologist's conclusions and recommendations a number of tags will be issued by the NRPA.

Conservation priority system will be as follows;

1. Ceremonial, Food and Social fishery.
2. EFN commercial fishers.
3. Same district Fishermen
4. Other district MMP fishermen.

XXII. Use of Non-Native Fishermen

The EFN recognizes that the 1760 Treaty does not apply to Non-native fishermen. However, in order to provide access for the Mi'kmaq people to the fishery, a support (mutually beneficial) relationship can be developed between the Non-native and Mi'kmaq fishermen in which only the Mi'kmaq fishermen will exercise their Treaty Right.

A Mi'kmaq fishermen of EFN can lease a Non-native owned fishing vessel. This Non-native owned fishing vessel could be operated by a Non-native person. The Non-native captain can not assist the Mi'kmaq crew by harvesting in any other way than "Operating" the vessel.

The only authorized non-native persons to be on the non-native owned vessel while conducting native fishing is the Captain, the Engineer and a Trainer.

XXIII. Scientific Activities

Conservation being EFN primary guiding principle the Chief and Council will hire an Aboriginal biologist to study the waters of the Gespe'gewa'gi District. The biologist will be assisting EFN in it's quest for conservation. The biologist will gather data particular to the EFN marine life and ecosystem and add it to the existing database. The conclusions and recommendations of the biologist will be the foundations upon which yearly EFN Management Plan are developed.

In order to expand on a Mi'kmaq conservation philosophy, three components will be integrated. The modern science as will be provided by the biologist, traditional Mi'kmaq environmental knowledge as provided by the Mi'kmaq fishermen, and Mi'kmaq traditional philosophy as provided by the Mi'kmaq elders and resource people.

To efficiently complete his/her tasks the biologist will be given full authority and co-operation by the NRPA to conduct research, scientific surveys and sampling of the marine life and it's ecosystem.

The NRPD will assist the biologist by being mandated to conduct scientific support missions.

As conservation is an extremely important issue to the Mi'kmaq people, the NRPA will fully support and co-operate with the biologist to perform his/her functions.

XXIV. Restoring the Habitat

EFN will in accordance with Mi'kmaq traditional philosophy seek to take care of it's environment. Active habitat restoration programs will be adopted in order to assist the ecosystem in it's recovery from the damage inflicted by DFO mismanagement. EFN wishes to create relations with other First Nations and environmental groups that share the same conservationist principles as EFN.

XXV. Providing Access

DFO management plans have allowed for the maximum amount of exploitation of the fishery. In most cases DFO has allowed for the fishery to be over fished and can not support the self-sustainment of the fishery. The DFO management plans did not voluntarily make room for the native peoples, it forced the native people out of the fishery which resulted in the monopolization of the fishery by non-natives. The current SCC Marshall decision requires the DFO to provide "access" for the native peoples. The DFO is currently trying to "play damage control" and limit the Native peoples participation in the fisheries as much as can be allowed in the Marshall decision. EFN realizes that a **JUST** and **FAIR** settlement with the DFO, that won't infringe on Mi'kmaq, Maliseet and Passamaquoddy Inherent and Treaty rights, is not possible. Conservation is a key concern to the Mi'kmaq, so EFN will make it's management plan available to DFO. The members of EFN demand that DFO can make the necessary adjustment to the non-native fishing industry for the sake of conservation. We are very concerned that the DFO will attempt to politicize the current conflict between EFN and DFO. Instead of immediately complying with SCC Marshall decision and providing "access" for members of EFN, we believe that DFO will try to use our management plan as a means of creating a "conservation scare" amongst non-native fishermen.

Since EFN did not sign an agreement with the DFO we fully expect the DFO to use the funds that were designated to "buy back" licenses to provide "access" for native in the fishery. We also demand for the sake of conservation that the DFO use the "capacity building dollars" that would have purchased boats and a wharf for EFN to be used to "buy back" additional licenses which will not be used. These additional licenses will be retired in order to take pressure off of the fishery stocks. The members of EFN are willing to forgo the "capacity building dollars" for the sake of conservation.