

**Speaking Notes
for
The Honourable Herb Dhaliwal, P.C., M.P.
Minister of Fisheries and Oceans**

at the

**Standing Committee on Fisheries and Oceans (SCOFO)
Marshall Update
House of Commons**

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CHECK AGAINST DELIVERY

Good afternoon, honourable members. It's a pleasure to be here today to update you on my department's work to respond to the Marshall decision, passed down by the Supreme Court more than one year ago.

As you know, this issue has continued to be a concern for everyone involved — for the government, of course, but also for others, especially our Atlantic communities, both Aboriginal and non-Aboriginal.

I'm sure you recall a few clashes that took place between Aboriginal and non-Aboriginal fishers, particularly around Miramichi Bay, shortly after the decision. And I'm sure you recall confrontations between Aboriginal fishers and federal Fishery Officers last summer and fall.

But while these events were well-publicized in the media, they are by no means the whole story on Marshall. Indeed, following the issue through the headlines makes it harder to trace what has actually happened — and is still happening — on this file.

That said, I'm not going to waste our time here today by going over, ad nauseum, what brought us to this point. This committee has been well-aware of this issue since day one.

Rather, today I'd like to talk about what's been going on since those times of controversy, and clarify some persistent misconceptions that have arisen. Indeed,

we're moving forward, and finding ways to build on our successes last year.

BUILDING ON OUR SUCCESS

In February, as you know, I joined Minister Nault in announcing the Government of Canada's longer-term approach to addressing the Marshall decision.

Our goal is to build on our successes last year — and despite reports to the contrary, we did enjoy a high level of success last year.

In total, 30 of the 34 affected communities signed fishing agreements. These agreements included access, of course, but also the tools they needed to make that access work — capacity-building opportunities, vessels and gear.

As a direct result, we've seen a higher degree of Aboriginal participation in the commercial fishery than ever before, with an improvement in the economic and social conditions for First Nations communities.

The process Minister Nault and I announced in February builds on this success.

I've re-appointed Jim MacKenzie as Federal Fisheries Negotiator to negotiate agreements of up to three years, depending on the specific needs of each community. Once again, the agreements will include not only access, but also capacity-building assistance and co-management opportunities so that First Nations participate successfully in the commercial fishery.

But we also recognize that the views of non-Aboriginal communities need to be taken into account.

That's why I re-appointed Gilles Thériault as Associate Federal Fisheries Negotiator, to ensure that the views of the non-Aboriginal fishing community continue to be taken into account in the negotiation process. The fishery is, after all, central to them as well.

In fact, the non-Aboriginal fishing community was an important factor in shaping our approach to Marshall. They were among the first to tell us that the best way to make room for Aboriginal fishers without damaging fish stocks would be through voluntary licence retirement. As you know, that's exactly what we've done — and are continuing to do.

We also understand the concerns expressed about crew members being displaced when licence holders retire their licences under the Marshall program. To date, 248 licence packages have been retired under the Marshall program. This represents about three per cent of the nearly 8,000 core enterprises in the Maritimes and Quebec.

While this is a relatively small percentage, unemployment is still an issue. Indeed, unemployment is not just an economic issue — it also has very real emotional implications for people and their communities.

The federal and provincial governments in Canada understand those implications, and offer a range of programs and services to help unemployed people to learn new skills, upgrade existing skills, and find places in the workforce.

While my department doesn't have a mandate to run such programs, I can assure you that we're doing everything we can to ease this time of transition. For instance, we're involving non-Native commercial fishers in mentoring and training programs, which offers them employment while providing new entrants to the fishery with access to their skills and experience. We're also participating with our federal and provincial partners in a "crabbers adjustment group," to find creative ways to ease the transition.

Clearly, the needs of non-Aboriginal commercial fishermen will continue to play a role in our work.

But from the beginning, the Government of Canada has also said clearly that a broader negotiation process is needed, too — one that looks beyond fishery access and considers more fundamental questions about Aboriginal and treaty rights.

That's why the Department of Indian Affairs and Northern Development is leading a parallel process to do exactly that. They've appointed Tom Molloy as Chief Federal Negotiator to lead discussions on those important issues. I understand that Mr. Molloy is currently meeting with First Nations Chiefs in the Maritimes and Quebec and beginning a constructive dialogue on Treaty rights.

I want to make clear that while this is a parallel and complementary process, it is distinct from the process DFO is engaged in. To put it simply, DIAND is looking at long-term solutions to Aboriginal and treaty rights issues, while DFO is implementing immediate fisheries measures over the next three years. This "parallel but distinct" approach is also consistent with what both industry and First Nations have asked us to do.

And while we do this, I want to assure you, once again, that wherever enforcement measures are warranted, we will act. Of course, there are limits to enforcement, and I would rather focus our resources on other things — like helping First Nations gain access and training.

But while I am an optimist, I am also a realist. And I intend to continue doing my job, in order to conserve the resource for all Canadians.

AGREEMENTS

The next point I'd like to discuss today involves the agreements themselves.

I've heard concerns expressed by some First Nations that the template agreements we're using are inflexible, and that they will somehow prevent them from going to the broader, DIAND-led negotiating table and arguing that the access they've received doesn't address their treaty rights.

This is not the case.

First of all, we recognize that each band has different needs. There can be no "one-size-fits-all" approach to the agreements we want to negotiate.

We want First Nations to bring their individual capacity-building and co-management needs and desires forward, to the negotiation table, so we can tailor each agreement to those needs.

The template agreements we're offering are exactly that — templates. Jim MacKenzie has a mandate to discuss requested changes or additions to these templates to suit the different needs of each band. His door is always open to First Nation Chiefs to discuss these changes — and, of course, the unique needs of each community.

We've also responded to First Nations' concerns about their positions in future negotiations. We've made it clear that our goal is not to extinguish any rights or to prevent them from taking different positions in future negotiations.

That's why we fully support the inclusion of strong "without prejudice" clauses in each agreement, to protect each party's interests in any future discussions between DIAND and First Nations on Aboriginal or treaty rights more broadly.

In response to First Nations' concerns, we've added a further clause confirming that agreements will not be interpreted as an extinguishment of any treaty or aboriginal rights.

We see advantage for First Nations communities from these agreements — both economic and social. But we recognize that our choices are not necessarily the choices of First Nations. If Chiefs and their communities decide they don't want to negotiate with Mr. MacKenzie, but would rather wait to sit at the broader, DIAND-led negotiating table, that is their decision. But we will still provide them with access to the commercial fishery — consistent with the Marshall decision — by issuing communal licences.

NO TIME PRESSURE

Which brings me to the last point I want to make today.

With the opening of some fishing seasons upon us, concerns have been expressed about the negotiations with First Nations. Some are anxious about how the fishery will be managed if agreements aren't signed, and about whether time is running out.

It's important to understand that we don't need signed agreements in order to have a peaceful, orderly fishery this summer. The opening of the spring fisheries does not mean that the negotiating window is closed, nor does it mean that Mi'kmaq and Maliseet communities will be shut out of the commercial fishery.

In fact, we've written to each First Nation advising that they will be provided with fishery access — consistent with the Marshall decision — whether they sign agreements before the fishery opens or not. Last year, in cases where communities did not reach agreements before the opening of the fishery, we issued communal licences and tags to them anyway, to ensure they had the opportunity to participate in the commercial fishery with the appropriate authorization.

While we would prefer negotiated agreements, communal licences will be issued to First Nations without their being asked to sign for them.

Without agreements in place, Aboriginal communities will still have access to the commercial fishery. But they will not receive start-up assistance like vessels, gear, and funding for important infrastructure like wharves — benefits that provide a real opportunity for them to prosper. That assistance is only available through agreements negotiated through James MacKenzie.

It's important that we give Mr. MacKenzie's process time to work. After all, he's working with First Nations on one-to-three-year agreements — it's only natural that this will take time.

Through this process, we're effectively offering a table where Mi'kmaq and Maliseet communities can express their needs and aspirations in the fishery, and where we can negotiate ways to address them.

CONCLUSION

Honourable members, from the very beginning, the government has said that we are committed to dialogue and negotiation as the key to addressing the Marshall decision. We want workable arrangements, and are sincere in wanting to accommodate the needs and desires of First Nations.

But these arrangements can only be developed through dialogue and mutual trust.

We don't expect to reach these arrangements overnight. Our discussions must be careful and measured, to ensure that the individual needs of each band are properly reflected in the agreements.

Once again, we are not operating under any deadline. As we did last year, we will provide access to First Nations whether there is an agreement in place or not.

Our objective remains the same — to accommodate First Nations' interest in the commercial fishery and to ensure their success in that fishery, while providing for conservation and the orderly and peaceful management of the fishery for all users.

Honourable members, the Marshall decision holds great promise for the future of First Nations in the Maritimes and the Gaspé region of Quebec. We want to see Aboriginal communities reach their potential, and be successful in their endeavours. This can only be achieved through dialogue, discussion, and sound, measured planning.

And that remains our preferred approach.

Thank you for the opportunity to speak to you today. I'd be happy to answer any questions you may have.