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MINISTER OF FISHERIES AND OCEANS
Update on fisheries affected by the
Supreme Court's Marshall decision

April 3, 2001

CHECK AGAINST DELIVERY

Within the past few days, fishing seasons have opened in parts of Atlantic Canada. As the spring progresses, more and more fishers will be taking to the water for the season's work. I think it is an appropriate time to provide an update on the federal government's process to address the Marshall decision. I understand that some people are concerned that "time is running out" to negotiate new fisheries agreements and avoid conflict this fishing season. This is not the case.

We are not starting from "ground zero." Last year, the many people with an interest in the Supreme Court's decision showed good will, and worked with us to continue developing positive relationships, channels of communication, and basic agreement on fishing arrangements for last season. Through cooperation, a solid groundwork has been laid, and we are now building on that strong foundation.

It is important to understand that signed agreements are not necessary to have a peaceful, orderly fishery this summer.

We are ready to provide Mi'kmaq and Maliseet communities with fishery access, consistent with the Marshall decision, whether or not they sign agreements before the fishery in their area opens.

Last year, in cases where communities did not reach agreements before the opening of the fishery, we issued licences and tags to ensure they had the opportunity to participate in the commercial fishery with the appropriate authorization.

This year, we are doing the same. Already, several Aboriginal communities are participating in the commercial fisheries that are presently open, although they have not signed new agreements with the Federal Fisheries Negotiator, Mr. James MacKenzie.

All of the increased commercial access provided last year will be available to Mi'kmaq and Maliseet communities this year, with or without an agreement. That is a commitment we have made to the First Nations we are negotiating with. Of course, we hope that

start-up assistance and additional access can be provided through negotiated arrangements that are tailored to the unique needs and wishes of the individual

First Nations. Agreements will bring real, immediate economic and social benefits to Mi'kmaq and Maliseet communities by providing for capacity building, vessels, gear, funding for infrastructure, and opportunities for fisheries co-management arrangements.

It is also important to understand the nature of the agreements Mr. MacKenzie and Aboriginal leaders are discussing. The one-to-three-year agreements provide for valuable start-up assistance to help Aboriginal communities see immediate benefits from their access to the fishery. Without agreements, we will provide Aboriginal communities with access, which will allow them to participate in the commercial fishery. But start-up assistance – like vessels, gear, and funding for important infrastructure like wharves – will help these communities to prosper. That assistance is only available through negotiated agreements. Reaching agreements will take time, and we need to give the MacKenzie process time to work again this year.

It has always been my Department's position that we are providing Mi'kmaq and Maliseet communities with increased access to the commercial fishery in response to the Marshall decision. I appreciate that some First Nations may have a different position. The "without prejudice" provisions in the agreements mean that the federal government and First Nations can sign agreements and still have the opportunity to advance their positions in future negotiations. In fact, the 'without prejudice' clauses have been strengthened in the proposed agreement,

in response to concerns
expressed by

First Nations. A new clause was added that states, "(f)or greater certainty, the parties agree that this Agreement is not and shall not be interpreted to be an extinguishment of a treaty or Aboriginal right." There is an additional clause that states, "For greater certainty, nothing in this Agreement precludes a party from taking positions in future negotiations which differ from the terms of this Agreement." It is very clear that DFO is not defining treaty rights in these negotiations. That is a point that I have made repeatedly in my communications to Aboriginal leaders in the Atlantic region.

That point is particularly significant this year, because of the government's two-track approach to addressing the Marshall decision and addressing Aboriginal and treaty rights issues. While my Department continues to provide Mi'kmaq and Maliseet communities with immediate benefits from the fishery, the Department of Indian Affairs and Northern Development is leading broader discussions on unresolved questions about Aboriginal and treaty rights. DIAND's Chief Federal Negotiator, Tom Molloy has met with

First Nations representatives in Nova Scotia, Prince Edward Island and Quebec on how they can proceed to address Aboriginal and treaty rights issues. He has also offered to meet with the leadership of Aboriginal communities in New Brunswick to begin considering how they can best work together on these issues.

With the DIAND negotiating table in place, First Nations can go to that broader table, having signed fisheries agreements with Mr. MacKenzie, and still advance their positions on Aboriginal and treaty rights issues.

In my view, there are real and immediate advantages for Mi'kmaq and Maliseet communities in these fisheries agreements. At the same time, of course, I would not presume to dictate the decisions that these communities and their leaders must make. If Chiefs and their communities decide not to negotiate with Mr. MacKenzie, but would rather wait to sit at the broader negotiating table, I will respect their decision. As we did last year, and consistent with the Supreme Court decision, we will continue to provide them with access to the commercial fishery by issuing communal

licences.

The opening of 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. We are providing access to the commercial fishery, consistent with the Marshall decision. But we are also offering a table at which Mi'kmaq and Maliseet communities can express their needs and aspirations in the fishery, and we can negotiate ways to help them meet those needs and aspirations.

- 30 -

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For additional information on the Marshall decision, including the text of the Minister's remarks to the Standing Committee on Fisheries and Oceans:

See the DFO home page - www.dfo-mpo.gc.ca – under "Supreme Court of Canada decision in the Marshall Case."