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*STATEMENT BY HERB DHALIWAL,
MINISTER OF FISHERIES AND OCEANS*

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Update on fisheries affected by the Supreme Court's Marshall decision

With the fishing season now well under way, Aboriginal and non-Aboriginal fishermen are fishing side-by-side in lobster, crab, herring, and other commercial fisheries in the Maritimes and Quebec. I congratulate the First Nations, traditional commercial fishermen, and others who have helped this peaceful transition.

But much remains to be done. For a successful Aboriginal fishery in the longer term, Aboriginal groups, non-Aboriginal fishermen, and governments must address such matters as training, capacity-building, and roles in the consultative process.

In the meantime, although most fisheries have begun without incident, two issues continue to attract attention: the fishery at Burnt Church First Nation in New Brunswick, and the Aboriginal fishery for food, social, and ceremonial purposes.

The fishery at Burnt Church

The Supreme Court of Canada's decisions related to the Marshall case made two points clear:

The affected First Nations can take part in the commercial fishery; I as Minister have the authority and the responsibility to regulate the Aboriginal commercial fishery. To quote the Court, "The treaty right is a regulated right and can be contained by regulation within its proper limits."

On the first point, Burnt Church First Nation has been granted more access to the fishery than it is currently using. My department has authorized the equivalent of 17 commercial licences; the community is using only 13. We have authorized harvesting of crab quotas worth more than \$300,000, as well as access to the herring fishery. I regret that to date, Burnt Church First Nation is letting these latter opportunities lapse.

On the second point, it appears that some, though not all, parties at Burnt Church want to regulate and control the fishery, independently of the Government of Canada.

One cannot assert only the part of a Supreme Court decision that one agrees with, and reject the rest. The fish resources are the common property of Canada; and the Supreme Court affirmed my authority and responsibility to regulate for conservation and other purposes.

That being said, we encourage fisheries co-management with First Nations, just as we do with non-Native fishermen. Various arrangements can provide a high degree of self-management.

As I have suggested before, Burnt Church First Nation could use its own trap tags, provided that we work out a protocol beforehand to ensure appropriate controls are in place.

Trap tags are critical to controlling the fishery and conserving the stock. Each trap needs to be linked to a licensed fisherman. Without that link, we can't tell how many traps are in the water, or if poachers are engaged in overfishing.

For the government to accept First Nations' trap tags, there have to be clear agreements and tight controls. We are open to working out these and other issues, through negotiation and good will. The Chief Federal Representative, Mr. James MacKenzie, has recently reaffirmed his willingness to sit down with Burnt Church First Nation.

I have visited in the Burnt Church area and met with members of the Burnt Church community. I support the legitimate aspirations of First Nations. I continue to encourage Burnt Church First Nation towards further discussions, not only on fishing arrangements, but on other assistance towards a successful fishery. This could include vessels, gear, and community wharf facilities.

Meanwhile, some at Burnt Church continue to set unauthorized lobster traps, which we continue to seize. While working towards reasonable and constructive arrangements, we will take enforcement action against unauthorized fishing at Burnt Church and wherever else it occurs.

The Aboriginal food fishery

Long before last year's Marshall decision relating to the commercial fishery, the Supreme Court of Canada's Sparrow decision affirmed that a constitutionally protected Aboriginal right to fish for food, social, and ceremonial purposes has priority over other uses of the resource, after conservation.

My department issues communal licences for this purpose. But commercial fishermen, especially in southwest Nova Scotia, have alleged that in some cases, the food fishery was being used as a disguised commercial fishery. We have taken action in these circumstances.

First Nations are now gaining additional access to commercial fisheries and are adjusting their food fisheries, which will be reduced and well-controlled.

For example, Lennox Island First Nation in PEI was issued 12 additional lobster licences in Lobster Fishing Area 24; this is a four-fold increase. At the same time, the lobster food

fish allocation has been reduced from 80,000 pounds to 20,000 pounds, a 75 per cent reduction. At Big Cove in New Brunswick, the food fishery is dropping from 120,000 pounds to 50,000 pounds, almost a 60 per cent reduction.

In Nova Scotia, the Indian Brook lobster food fishery is dropping from 475 traps to 35 traps, with a maximum harvest of 40,000 pounds. This is a reduction by more than 90 per cent. We cannot give details on groups with whom we're still discussing arrangements, but we expect them to reflect the pattern elsewhere.

Strict enforcement will prevail in all fisheries. Fishing must be authorized by licence and authorized tags must be affixed to traps. Unauthorized or untagged traps will be seized.

We will also be working closely with the RCMP to ensure that the legitimate fishing activities of First Nations are protected. We will take action against anyone interfering with those legitimate activities.

In other words, I intend to protect the integrity of the food fishery as a genuine food fishery.

I hope this information helps put both the Burnt Church situation and the Aboriginal food fishery into perspective. With continued good will, we can conduct these and all fisheries in an orderly, constructive, and co-operative way.

- 30 -

For further information, please contact:

Heather Bala
Director of Communications
Office of the Minister
Fisheries and Oceans Canada

(613) 996-0076

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