

*To: "Aboriginal Rights Coalition (E-mail)" <arc@istar.ca>
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Subject: Fw: Fw: Mi'kmaq Fishery
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INDIAN BROOK, NOVA SCOTIA:*

Politics and fear drive feds on Mi'kmaq lobster fishing DFO response driven by terror of white backlash despite small size of native lobster haul

As the Christmas season bore down upon us, Mi'kmaq fishermen here wrapped up five weeks of karate training to prepare for "hand to hand combat" with fisheries officers, while DFO's main spokesman on the lobster wars voiced imprudent comments about officers shooting "literally to kill."

It was a sign of how little progress has been made in implementing the Supreme Court of Canada's 1999 decision in the Marshall case, validating 18th Century treaties guaranteeing Mi'kmaq the right to fish for a living.

The white fishermen who resist conservation sound like Greenpeacers as soon as a few Mi'kmaq want to fish

Terrified of a white backlash, DFO wants Mi'kmaq to fish under existing rules, using licenses the feds have bought for them; The Indian Brook band wants to manage its own fishery, consistent with conservation principles.

By any objective standard, concern over conservation looks like a red herring. The proposed Mi'kmaq fishery is tiny, and comes at a time when commercial lobster harvests have been smashing records for a decade. The same white fishermen who resist conservation measures aimed at their own efforts suddenly sound like Greenpeacers as soon as a few Mi'kmaq want to fish.

Although DFO sometimes portrays them as obdurate and unreasonable, the Indian Brook band believes it is standing on principle. When DFO sent the band half a dozen licenses for the fall and winter fishery in Districts 33 and 34, it mailed them back.

"I want them to recognize that we have a treaty," said Chief Reg Maloney. "It means more than having the same set of privileges as anyone else in the province. They are trivializing it by saying, 'Here, you can have a few licenses.'

"We want to have some say over our fishery," Maloney said.

"That's what our treaty allows us to do. All we want is for them to honour our treaty. It's a sacred document signed by their king. It was signed between two nations. We didn't say, 'When we fish, we will follow your rules; When you fish, you follow our rules.'"

I asked Andre-Marc Lanteigne, who speaks for DFO on the lobster wars, when his department would get around to negotiating management agreements based on the Marshall decision. I expected the answer he and Fisheries Minister Herb Dhaliwal have given on many occasions: DFO has negotiated agreements with 30 of 34 Mi'kmaq bands, but Indian Brook, Burnt Church, and the other holdout bands are simply incorrigible.

"We would have hoped by now that the federal government as a whole would have made progress" on implementing Marshall decision - DFO official.

Instead, Lanteigne surprised me.

"We would have hoped by now that the federal government as a whole would have made progress toward a response to the complex issues raised by the Marshall decision," he said. "Why don't you put your question to the Department of Indian Affairs and Northern Development?"

Absent such policy direction, Lanteigne said DFO has to live with the Fisheries Act.

"We're stuck without such a long term strategy for negotiations," he said. "Once Indian Affairs has made progress in defining all this, we can definitely enter into the kind of negotiations Chief Maloney wants. But it's way beyond DFO."

To Maloney, the Indian Brook plan seems such a slight variation on the white fishery, he can't understand DFO's resistance.

"We have a management plan," he said. "It's an ordinary fishery. We use the same supplier of tags, the same equipment, in most cases the same rules and the same season as white fishermen. Let us have the responsibility to administer our own fishery."

Well, not quite the same season. The band wants a summer fishery of 800 traps, equivalent to just under three licenses. DFO has refused to consider any proposal that involved native fishing outside the white season.

For the first time in my earshot, Lanteigne acknowledged that Indian Brook's refusal to accept the offer of conventional fishing licenses, "must be based on strong principle."

"They've lost revenue," he said. "They've lost equipment. They could have had millions of dollars."

Chief Maloney describes the proposed tiny summer fishery as a way for native fishermen to find their way in an industry new to them.

"We want to use it to train people, to let our guys get used to the fishery, see if they like it, get some income to buy some equipment suitable for a winter fishery," he said. "When they feel confident that they can go out in a winter fishery, which is a harsh fishery, then some new fellows could try the summer fishery."

The Supreme Court has ruled that the federal government cannot unilaterally impose restrictions on the Mi'kmaq right to fish for a living, unless native plans offend some overriding public policy goal. The Indian Brook proposal is modest and cannot realistically be thought to pose any threat to conservation.

Bureaucratic or political paralysis is no excuse for flouting the rule of law. If Indian Affairs doesn't come up with a policy framework, DFO will have to abandon its rigid response to the principled proposals put forth by Indian Brook.

Then we could put talk of hand to hand combat and shooting to kill behind us.

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