

*Urgent Action Request from the
Native Issues Committee of the Montreal and Ottawa Conference,
United Church of Canada*

September 22, 2000

Again we appeal for your speedy and full support of this request.

This evening the Aboriginal Rights Coalition - Atlantic Observers in the the community of Esgenoopetitj/Burnt Church have requested an **urgent action to hopefully prevent the Department of Fisheries and Oceans (DFO) from seizing traps in Esgenoopetitj/Burnt Church, NB.** At this time there is a real fear that the military will be used. The military has been on stand-by for 3 days and 18 military personnel carriers have been seen in near-by Miramichi. The fear is that the manoeuvre will take place on land and sea, possibly under the cover of darkness. In light of this information, we are appealing for email, faxes and phone calls to the Liberal Government and opposition parties. Numbers and addresses are below. Also we request that you call the DFO command centre in Ottawa and ask for the person who is dealing with the Burnt Church Fisheries issue. That number is 613-993-4970.

Please urge DFO to:

- * Cease from using excessive force in the seizure of traps.
- * Abandon any plans to use the military in this situation. Their presence will only escalate the already very tense situation.
- * Allow the trap count that was to proceed under the arrangement with Bob Rae.
- * Return to dialogue with the people of Esgenoopetitj and the Maritime Fishermen's Union.

Together in peace,

ARC-A Observer Project
Margaret Tusz-King, Communication Contact
Phone-506-536-0597

Hon. Herb Dhaliwal
Minister of Fisheries and Oceans
House of Commons
Ottawa ON K1A 0A6
Tel. 613-995-7052
Fax 613-995-2962
email: dhali@parl.gc.ca

The Right Honourable Jean Chretien
Prime Minister of Canada
House of Commons
Ottawa, Ontario K1A 0A6
By fax: 613-941-6900
By Phone: 613-992-4211
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John Duncan, Alliance Party Fisheries Critic, Fax 613-996-3306
Peter Stoffer, NDP Fisheries Critic, Fax 613-996-9655
Charlie Power, PC Fisheries Critic, Fax 613-995-0945

And your local MP

Russ Daye <rdaye@granby.net>

Date: September 18, 2000

Subject: Urgent Action Burnt Church

Fiona and I recently spent a week in Burnt Church. It was our second stint as participants in an observer/witness project.

After learning the background to the fishery dispute there, and after witnessing some of the conflict from land and while riding on native boats, I drafted the following Urgent Action request. I hope you can find time to respond.

Take care, Russ

A call for letters re: Burnt Church - Esgenoopetitj

**First Nation efforts to implement a community managed fishery.
Background Information and links**

Background:

Almost 250 years ago the First Nations on what is now Canada's Atlantic coast signed treaties with the British guaranteeing their rights to hunt, fish, and harvest natural resources. These treaties were discounted by the Canadian government and Canadian courts until very recent decades. More than one judge brushed off the treaties by saying that they didn't hold because the First Nations that signed them were not "civilized nations". Over the

last couple of decades these rights have been given greater recognition in the courts, culminating in the "Marshall Decision" of 1999 (see [www links](#)). The Marshall decision recognized the right to fish, among other things. In the fall of 1999 a modest number of native fishers took to the waters on Canada's East Coast to place lobster traps. Some, especially those of the Esgenoopetitj First Nation at Burnt Church, New Brunswick were met with resistance from non-aboriginal fishers. A flotilla of non-native boats seized hundreds of traps placed by the Burnt Church First Nation. There were also several violent episodes on land. A "clarification" of the Marshall Decision, an unprecedented move made by the Supreme Court under pressure from the government and non-aboriginal fishers, gave Canada's Department of Fisheries and Oceans (DFO) the authority to regulate the native fishery. The Liberal government and the Mi'kmaq First Nation have different interpretations of this "clarification". The government asserts that the clarification gives the DFO the authority to step in and regulate the native fishery from the start, determining where and when Mi'kmaq fishers can fish, and how many native people can hold licenses to catch lobster. A careful reading of the Marshall Decision and Clarification clearly shows that this assertion goes too far. The burden of proof lies on the DFO. The Supreme Court clearly stated that the treaty rights are subject to federal regulation only if the government can justify limiting those rights for a "compelling and substantial public objective" such as conservation or public safety. Even then, the government must act in the least intrusive way possible – after engaging in good faith negotiations with the affected First Nation(s).

Herein lies the heart of the conflict: the DFO and the Esgenoopetitj First Nation are quarreling over the extent to which the Mi'kmaq people are free to implement their own Fishery Management Plan and to regulate their own fishery. Herb Dhaliwal, the Minister of Fisheries and Oceans argues that the government cannot let individual communities have unfettered access to natural resources because unchecked use of those resources will cause them to disappear. The Esgenoopetitj First Nation argues that their Fishery Management Plan is a good one and poses no threat to conservation, and that they can do a better job at conservation than the Department of Fisheries and Oceans, which has overseen the destruction of so many fish stocks on Canada's east coast. They are backed up by the New Brunswick Conservation Council, who assert that the Esgenoopetitj Fishery Management Plan is sound and does not present a threat to lobster stocks.

A key point is that the DFO was offering the Esgenoopetitj community only 17 lobster licenses - to be held by INDIVIDUALS. The Esgenoopetitj community

not only feels that this is an insufficient number of licenses, it also asserts that it wants to use a community-based model for its fishery. Instead of creating a situation where a limited number of commercial fishers are enabled to make a profit, it wants to allocate four lobster traps to each man, woman and child in the reserve (1300 people, 5200 traps). Families would be able to choose how to use the lobster available to them. The wealth generated by the lobster fishery would be shared throughout the community. It is estimated that there are more than 240,000 lobster traps placed in the Miramichi Bay each year, so the Esgenoopetitj traps would represent roughly 2% - hardly a threat to conservation. So why is the DFO feeling so threatened by Esgenoopetitj First Nation's Fishery Management Plan? We can only speculate. One possible reason is that it is a move toward a community managed fishery – something being called for by many natives and non-natives alike. Such a move challenges the corporation-oriented management system that the DFO has been employing for decades (see attached article from the Globe and Mail).

Since the fall lobster fishery opened at Burnt Church on August 10 there have been several violent episodes on water. Native Boats have been rammed repeatedly by DFO vessels, some have sunk, others have had their hulls broken. A number of native fishers have been severely beaten by DFO officers using clubs. The Esgenoopetitj First Nation has called for charges of attempted murder against DFO officers, and 5 are under investigation by the RCMP. At least one DFO officer has been injured by rocks hurled by native fishers. Several native fishers have been charged with "illegal fishing" and resisting arrest. On Sunday, September 3 a flotilla of more than 25 non-aboriginal boats appeared in the waters off Esgenoopetitj First Nation. They were met by about 12 native boats. There was a stand off for about 45 minutes, which was especially tense for about 15 minutes while the two groups of boats were in close proximity. Only one RCMP boat, a large catamaran, intervened. Fortunately there was no physical violence.

Requested Action:

You are asked to write the government of Canada (Addresses below) and to call for:

- 1) A non-violent resolution to the dispute at Burnt Church. This will require that the DFO refrain from the aggressive tactics it used throughout August.

2) An acknowledgment from the DFO that the Esgenoopetitj First Nation has treaty rights to implement its own Fishery Management Plan and fishery regulation system. The implementation of such a plan may well involve negotiations with non-native fishers and does not preclude a monitoring role for the DFO.

3) The government of Canada to adhere to the "people to people, nation to nation" principles outlined by the Royal Commission on Aboriginal Peoples.

The Native Issues Committee encourages you to learn more about the situation at Burnt Church. To that end, please find a list of web sites at the bottom of this message. At the very end of this message you will find a sample letter. Please write to the Minister of Fisheries and Oceans, with copies to the Prime Minister and your Member of Parliament. Please also send a copy to Miigm'agan at the Esgenoopetitj First Nation. It is easier to send copies by E-mail, and you can also forward one to us at rdaye@granby.net . Regular correspondence to the Native Issues Committee can be sent to Conference Office.

If you feel that you cannot write a letter supporting Mi'kmaq treaty rights, please send one calling for a non-violent resolution to the dispute at Burn Church.

Addresses:

The Hon. Herb Dhaliwal

HOUSE OF COMMONS

Minister, Fisheries and Oceans Canada
Parliament Buildings, Wellington Street
Ottawa, Ontario,
Canada, K1A 0A6
Telephone: (613) 995-7052
Fax: (613) 995-2962
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The Right Hon. Jean Chrétien
House of Commons
Parliament Buildings
Ottawa, Ontario

K1A 0A6
Telephone: (613) 992-4211
Fax: (613) 941-6900
Email: pm@pm.gc.ca

Please send a copy of your letter to:
Miig'm'agan
Esgenoôpetitj First Nation
PO Box 2051
Burnt Church, NB
E9G 4J9
Fax: 506 776-5137
E-mail: miigkis@nbnet.nb.ca

Try these web sites for more information (follow the links):

CBC's site on this: <http://cbc.ca/news/indepth/fishing/index.html>

CBC's site on aboriginal peoples: <http://cbc.ca/news/indepth/aboriginals/>

The web site of Parker Barss Donham, Halifax Daily News Columnist:
<http://mix.twistedpair.ca/pipermail/parker-l/2000-August/000145.html>

The site for the Atlantic Policy Congress of First Nations Chiefs:
<http://www.apcfn.ca>

Mikmaq Net News: <http://www.mikmaq.net/english/news/index.html>

News from Esgenoôpetitj: <http://members.linkopp.com/tjitop/news/fast.html>

The DFO's site on Marshall related stuff:
http://www.ncr.dfo.ca/COMMUNIC/Marshall/marshall_e.htm

The Royal Commission on Aboriginal Peoples:
http://www.inac.gc.ca/ch/rcap/index_e.html

To contact members of cabinet and parliament:
<http://www.parl.gc.ca/36/senmemb/house/membcon-e.htm>

Sample Letter:

Dear Minister Dhaliwal,

I am writing to inform you of my support for a peaceful and timely resolution of the dispute over the native fishery at Burnt Church, New Brunswick. In my opinion, such a resolution will be possible only when the Department of Fisheries and Oceans recognizes the treaty rights of the Mi'kmaq people to manage and regulate their own fishery. The Marshall Decision clearly stated that those rights exist. The attempt by the DFO to curtail the fall fishery at Burnt Church has been wrongheaded and based upon a flawed and selective reading of the Supreme Court's Clarification of the Marshall Decision. Your characterization of the fall fishery as an illegal threat to conservation is misleading and has fostered tensions between Esgenoopetitj and surrounding non-native communities.

I also wish to inform you of my deep concern for the heavy handed and violent actions of your DFO officers on the waters off Burnt Church. The ramming of boats and beating of native fishers was illegal and immoral. Images of these actions have been shown in the media across the country and around the world and are a black mark upon the honour of our country.

Your resistance to a community-managed fishery at Burnt Church is perplexing. The New Brunswick Conservation Council says that the Esgenoopetitj First Nation's Fishery Management Plan is both sound and impressive. The community wants to place only four traps for each man, woman, and child. There is no way this can be construed as a threat to conservation. On the other hand, your department's sanctioning of an offshore lobster fishery does represent a real threat to lobster stocks. It can only be concluded that your department is more attentive to the interests of large fishing companies than those of fishing communities, whether native or non-native.

I call upon you to accept the "people to people, nation to nation" principles outlined by Canada's Royal Commission on Aboriginal Peoples, to acknowledge Esgenoopetitj First Nation's treaty rights to manage its own fishery, to enter negotiations with no preconditions, and to instruct your officers not to seize any traps during the negotiating period. I also call for full cooperation with the RCMP as it investigates the illegal actions of your officers. Your "tough guy" approach to the situation at Burnt Church has not only hindered attempts at resolution, but also contributed to the

volatility of the conflict. A new approach by you and the Liberal Government is overdue, as is negotiation in good faith.