

NEWS RELEASE COMMUNIQUE

94B Riverside East
Listuguj, QC G0C 2R0
www.migmaqresource.org
T 418 788 3017 F 418 788 3192

For immediate release:

MI'GMAQ AND MALISEET CANNOT BE FORGOTTEN DURING LOBSTER CRISIS

May 22, 2009 (Listuguj, QC) - Owing to negotiated agreements with the Federal Department of Fisheries and Oceans following the Supreme Court of Canada's 1999 *R. v. Marshall* decision, the thirty-two Mi'gmaq and Maliseet communities of Atlantic Canada hold between themselves approximately 200 commercial lobster licences. Our communities' access to the commercial lobster fishery was a result of a hard fought battle for recognition of our Treaty rights. For over a century and a half Mi'gmaq and Maliseet were virtually excluded from the commercial fishery by colonial laws and policies. It took a ruling from Canada's highest court for the Canadian Government to recognize our rightful place within Canada's commercial fishing industry.

Within the past ten years during which the Mi'gmaq and Maliseet peoples' rightful place in the commercial fishery has been recognized, many of our communities have come to rely on the commercial lobster fishery as a crucial component of their economic and social well-being. Because our licences are communal, our communities depend on the profits from lobster sales to provide quality programs and services to community members and allow for new job opportunities for our people. As well, the profits generated from our communities' participation in the commercial lobster fishery, as well as in other commercial fisheries, moves us a step closer economic self-sufficiency and away from economic dependence on government.

It should be obvious, therefore, that a decline in the market value of lobster adversely impacts not only those who have traditionally participated in the fishery, but Mi'gmaq and Maliseet fishers and communities as well, if not more so.

Despite this, during the last two weeks of media reports and public statements by government officials on the current problems facing the commercial fishing industry, there has been no mention of how the Department of Fisheries and Oceans or other federal departments intend to address the adverse impacts of the current lobster crisis on Mi'gmaq and Maliseet communities. The focus has rested exclusively on the needs of traditional fishers in the industry. This cannot continue; the rights and needs of our communities must also be considered and addressed by government in any attempt to solve the current lobster crisis.

Our communities' reliance on the commercial lobster fishery demonstrates that our needs are just as worthy of consideration in this time of crisis as the needs of the traditional participants in the fishery. Above and beyond this, we have constitutionally protected rights that cannot be overlooked simply because the commercial lobster industry is facing difficult times.

Owing to the *Marshall* decision, we have a constitutionally protected right to engage in the commercial fishery in order to gain a moderate livelihood. This not only gives us the right to

participate in the commercial lobster fishery but also the right to have a say in the management of our collective right.

As well, the Supreme Court of Canada in *Haida* clearly established that our communities have a constitutionally protected right to be consulted and accommodated whenever Crown conduct threatens to adversely impact on our Aboriginal and Treaty rights, whether established or based on a credible assertion. The Court's decision in *Taku River* is equally clear that the duty to consult and accommodate Aboriginal and Treaty rights is an on-going obligation.

Mi'gmaq and Maliseet people assert that the long-term agreements negotiated with our communities post-*Marshall* are the manifestation of a Treaty rights-based fishery. This assertion is sufficient in itself to trigger the Crown's on-going duty to consult and accommodate whenever it contemplates conduct that may adversely impact our rights-based fishery.

Therefore, if the Crown is going to be involved in designing relief packages to address the current lobster crisis, it has a constitutional obligation to ensure that Mi'gmaq and Maliseet Treaty rights will not be adversely impacted by proposed relief measures. This can only be achieved by the Crown engaging in meaningful consultation with the Mi'gmaq and Maliseet communities currently holding commercial lobster licences.

It is imperative that the Mi'gmaq and Maliseet be involved in discussions over possible relief packages in order to design relief packages specific to the particular needs of our communities. While the Mi'gmaq and Maliseet are generally not opposed to such proposed relief as licence buy-backs and other rationing measures, as these are consistent with our strong belief in conservation and responsible management of the resource for future generations, applying such relief in a one-size-fits-all manner is singularly inappropriate when it comes to our communities. Mi'gmaq and Maliseet communal licenses should be the last to be considered for such measures, given our historic exclusion from the commercial fishery, the economic and social importance of the fishery to our communities, and our Treaty-protected right to participate in the fishery.

Finally, a one-size-fits-all relief package for all fishers within the industry, unilaterally imposed on our communities, would be in breach of the Crown's duty to meaningful consult and accommodate. In *Mikisew*, the Supreme Court of Canada admonished that unilateral Crown action in the face of a duty to consult and accommodate is "the antithesis of reconciliation and mutual respect".

The Gesp'gewa'q Mi'gmaq Resource Council is a First Nation organization engaged in aquatic and natural resource management within the traditional district of Gespe'gewa'gi. Our mission is to coordinate, initiate and build capacity for activities to support sustainable resource management in Gespe'gewa'gi. We formally represent the Mi'gmaq First Nations communities of Listuguj, Eel River Bar and Pabineau, however, the concerns we raise here are common to all First Nations in Atlantic Canada.

Contact:

**John M. Vicaire, 418 788 3017, jmurvin@migmaqresource.org
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