

# Mi'kmaw Treaty Rights and Fishery

The following are a few key issues regarding the Mi'kmaw fishery and treaty rights.

## PEACE AND FRIENDSHIP TREATIES

The Mi'kmaq signed Peace and Friendship Treaties in the 1700s to establish respectful relationships with European settlers. However, they did not hand over control of the territory or their rights to continue their traditional livelihoods through practices like fishing and hunting. These treaties were not honoured by European settlers, who imposed colonial structures and policies, including forced relocation and later residential schools.

## THE MARSHALL DECISION

In 1993, Donald Marshall, Jr. of Membertou First Nation was arrested and charged with illegal fishing. He initiated a long legal battle to assert the treaty rights of Mi'kmaq to fish outside of federal regulation. The 1999 Marshall decision by the Supreme Court of Canada recognized that the Mi'kmaq have a constitutionally protected right to fish for a moderate livelihood and for food, social, or ceremonial purposes.

## MODERATE LIVELIHOOD FISHERY

The 1999 Supreme Court decision left it up to the federal government to work with Mi'kmaw communities to determine the meaning of a "moderate livelihood fishery" which would set the self-regulation of the Mi'kmaw fishery in terms of conservation practice, selling, etc. The federal government has failed to work with communities to define moderate livelihood, leading to over 20 years of uncertainty and building tension with commercial fishers.

## UNDRIP & BILL C-15

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the UN in 2007. Canada officially signed on to UNDRIP in 2016, following a key call from the Truth and Reconciliation Commission (TRC) in 2015 for the federal government to do so. UNDRIP recognizes the importance of Indigenous rights, cultures, languages, and highlights the need for honouring of treaties and self-determination. While UNDRIP is not legally binding for signatory countries, the federal government has recently passed Bill C-15, which legislates UNDRIP in Canada.

## CONSERVATION

Conservation is at the heart of the nation-to-nation talks between the federal government and the Mi'kmaq. As treaty rights, the Supreme Court decision, and UNDRIP show, the Mi'kmaq are not subject to the regulations of the federal government when it comes to a moderate livelihood fishery. So, it is not illegal for them to fish outside of those regulations. In fact, it is a violation of these rights if the federal government imposes restrictions without providing evidence for the need to do so. The Mi'kmaw fishery is so small, compared to the non-Indigenous commercial fishery, that at this point their fishery would have little impact on stocks. Certainly, as discussions and planning around the moderate livelihood fishery continue and grow, conservation would continue to be an issue of concern for Mi'kmaw fishers, non-Indigenous fishers, and the federal government.

## SOURCES

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- Meghan Baily, "Nova Scotia lobster dispute: Mi'kmaw fishery isn't a threat to conservation, say scientists." The Conversation (Oct 2020): <https://theconversation.com/nova-scotia-lobster-dispute-mikmaw-fishery-isnt-a-threat-to-conservation-say-scientists-148396>
- "Mi'kmaw lobster fishery 'doesn't pose any conservation risk', says prof." CBC As It Happens (October 20, 2020): <https://www.cbc.ca/radio/asithappens/as-it-happens-tuesday-edition-1.5769434/mi-kmaw-lobster-fishery-doesn-t-pose-any-conservation-risk-says-prof-1.5769836>

