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2022

# Study on the Implementation of Indigenous Rights Based Fisheries

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### Recommended Citation

Invited Written Submission from Constance MacIntosh to the Senate Standing Committee on Fisheries and Oceans (23 March 2022), online (pdf): *Senate of Canada* < <https://sencanada.ca/en/committees/POFO/briefs/44-1> > [perma.cc/P2HU-CZ23].

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March 23, 2022

Senate Standing Committee on Fisheries and Oceans:  
C/O Francois Michaud, Clerk of the Committee  
Sent by email: pof@sen.parl.gc.ca

**Re: Study on the implementation of Indigenous Rights Based Fisheries.**

Dear Senate Committee Members,

Thank you once again for inviting me to speak with you on March 22, 2022. It was an honour. I really appreciated the questions that members posed, and the dialogue.

As per your request, I am providing my core recommendations for you to consider as you develop your report on implementing the Indigenous rights-based fishery.

1. Revise federal fisheries legislation and regulations to expressly exempt Mi'kmaq people who are engaging in a treaty fishery. This is necessary due to the racist and continuing application of the legal regime against Mi'kmaq people, despite the regime being declared unconstitutional vis-à-vis Mi'kmaq treaty fishers in 1999. Should the federal government wish to enact a lawful regime that intersects with the Mi'kmaq fishery, they must ensure compliance with the Constitution and the political and legal rights of Mi'kmaq people as recognized by UNDRIP which is now law in Canada through Bill C-15.
2. The federal government must openly commit to respecting its obligations under the Peace and Friendship treaties. Under the treaties, the only role the federal government must play in the treaty fishery is protecting Mi'kmaq people as they exercise their treaty rights of governing, fishing, and selling their harvest. The federal government has repeatedly failed to honour these obligations, resulting in outrageous acts of violence and vandalism against Mi'kmaq people.
3. Enact a declaration, legislation or formal policy that recognizes the following principles for honourably respecting the treaty rights of the Mi'kmaq
  - a. The federal government recognizes that the treaty fishery includes governance rights. This measure is necessary because the federal government has avoided recognizing governance rights over fisheries for over 250 years, with 20 of those years taking place since the Supreme Court of Canada Marshall decisions in 1999.

- b. The federal government recognizes that while Mi'kmaq people may chose to partner and co-manage the fishery resource with other governments, the Mi'kmaq rights to govern their fishery, fish and trade, is not dependent on such partnerships or agreements already being in place or coming into being.
4. Provide funding and support to Mi'kmaq communities as they further develop their capacity, where that funding is not dependant on conditions such as the community agreeing to only fish with DFO commercial licenses under DFO regulations. This funding must not be contingent on such unilaterally imposed conditions which undermine Indigenous governance rights. As this is a monetary commitment, it should be legislated, as without legislated funding commitments it is extraordinarily hard to develop long term plans and also to have accountability.
5. Negotiations and discussions between the federal government and Mi'kmaq people must take place with Mi'kmaq communities themselves – their recognized chiefs and councils and elders.
6. Canada must submit its long over-due reply to Committee on the Elimination of Racial Discrimination, and must reverse their stated intention to keep their reply confidential. This reply was asked to include information on (1) measures taken to investigate the racist acts of violence against Mi'kmaw peoples and destruction of their property, (2) to investigate the alleged lack of adequate response to prevent the violence and protect Mi'kmaw people, and (3) measures taken to guarantee the rights of Mi'kmaw people including repealing regulations that unduly limit such rights. Canada's refusal to make its response public serves to further undermine federal accountability and the possibility of a trusting relationship.

Please feel free to contact me directly should you have any questions or concerns.



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