



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Fisheries and Harbour
Management

Gestions des pêches
et des ports

Senior Assistant
Deputy Minister

Sous-ministre
adjoit principal

November 30, 2021

Fishing industry stakeholders:

At various meetings with fishing industry, there have been recurring questions about industry awareness of and participation in negotiation processes between the Crown and Indigenous groups. I am writing to clarify the nature of the nation-to-nation relationship between the Government of Canada, including Fisheries and Oceans Canada (DFO), and Indigenous peoples, particularly as it relates to negotiations on matters involving Aboriginal and treaty rights.

The courts have made it clear over a number of decisions that the relationship between the federal government and Indigenous peoples is unique and gives rise to considerations and obligations that are distinct from those owed to others. In any interaction with Indigenous peoples, the Crown is required to act honourably, with the broad goal of promoting the reconciliation of the pre-existence of Aboriginal societies with the sovereignty of the Crown.

In the negotiation context, the honour of the Crown requires DFO to negotiate fisheries agreements that define and implement Aboriginal and treaty rights guaranteed by section 35 of the *Constitution Act, 1982*. This includes, among other rights, food, social, and ceremonial rights, as well as the rights from the 18th century Peace and Friendship Treaties that were recognized in the *Marshall* decisions¹.

Given this special nature of the Crown-Indigenous relationship and the mutual goal of reconciliation, negotiations on the recognition and implementation of Aboriginal and treaty rights, including fishing rights, properly take place on a nation-to-nation basis—between the Crown (the federal and/or provincial governments) and Indigenous groups. This approach is consistent across the federal government.

Most negotiation tables are led by Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) with implicated departments, including DFO, participating when necessary. It is important to understand that fisheries, although incredibly important to Indigenous groups, are only one of many priorities that the Government of Canada is trying to advance.

.../2

¹ *R v Marshall*, [1999] 3 S.C.R. 456 [*Marshall I*] and *R v Marshall*, [1999] 3 S.C.R. 533.

For these reasons, nation-to-nation negotiations have not and will not include any parties other than the Crown (federal and/or provincial governments) and Indigenous groups. This extends to the development of negotiation mandates.

The Department is responsible, in these negotiations as in all aspects of fisheries management, for conserving and developing the fishery on behalf of all Canadians in the public interest. Promoting the continued prosperity of commercial fisheries and all coastal communities is an important part of this responsibility.

Stakeholder and broader public views and interests related to fisheries management are sought through numerous processes, such as regular dialogue with DFO officials, consultation processes, and involvement in parliamentary processes; these perspectives are taken into account in all aspects of DFO's work.

Indeed, DFO's continued engagement with the fishing industry is critical to help the Department understand industry's concerns with respect to the implementation of Aboriginal and treaty rights, which in turn help to inform the development of negotiation mandates and DFO's position in nation-to-nation negotiations with Indigenous groups.

DFO is committed to continuing to engage with the fishing industry through regular and frequent meetings at the officials and senior management levels. This includes standing meetings I have with a number of industry organizations, which provide an important opportunity for ongoing information sharing and dialogue and for fishing industry leaders to express their views.

I will also note that, where there is willingness from all parties, DFO encourages dialogue outside of the negotiation table between Indigenous groups and the fishing industry, with or without DFO participation, to discuss issues of mutual interest.

I hope this letter has provided useful information.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J.-G. Forgeron', followed by a horizontal line extending to the right.

J.-G. Forgeron

c.c.: Joe Wild, Senior Assistant Deputy Minister, CIRNAC