

October 1, 2020

The Right Hon. Justin Trudeau

Prime Minister of Canada

The Hon. Stephen McNeil

Premier of Nova Scotia

*Via email*

Dear Prime Minister Trudeau and Premier McNeil:

**Re: Sipekne'katik Commercial Fishery**

We write as settler and Indigenous academics and legal professionals from across Canada to urge you to take immediate action to protect the safety of Sipekne'katik First Nation and to recognize and uphold Sipekne'katik's Treaty right to a moderate-livelihood fishery.

On September 17, 2020, Sipekne'katik officially opened its self-regulated commercial lobster fishery in Saulnierville, Nova Scotia. Since the opening of the fishery, Sipekne'katik members have faced harassment and vandalism by non-Indigenous commercial fishers. Rather than intervening, federal and provincial governments and law enforcement have largely stood by while Sipekne'katik members endure threats and intimidation.

We are deeply concerned by the federal and provincial governments' failure to protect the safety and rights of Sipekne'katik members. We are also troubled by statements made by representatives from Canada and the Province which indicate that fishing activities which are not authorized by one of their licenses may be subject to enforcement action, and that anyone who purchases lobster caught out of season will face prosecution. In our view, this position is inconsistent with Canadian law and with the Crown's commitments to recognition and reconciliation with Indigenous Peoples.

The recent events in Nova Scotia are directly connected to your governments' failure to honour the peace and friendship treaties and the direction of the Supreme Court of Canada. The Sipekne'katik's commercial fishery is an expression of Treaty rights as confirmed by the Supreme Court in the landmark 1999 *Marshall* decision. In *Marshall*, the Court

recognized that the Mi'kmaq have a constitutionally protected right to fish for a moderate livelihood under the peace and friendship treaties of 1760-61.

The *Marshall* decision was released 21 years ago, but your governments have yet to resolve what constitutes a 'moderate livelihood' or to provide a means for the Mi'kmaq to access a treaty-based fishery. The fact that the Crown has yet to address this issue does not negate the clear confirmation by the Supreme Court that the Mi'kmaq have a recognized Treaty right to fish commercially to sustain their families and their communities.

We also note that, contrary to recent media statements, this is not an issue of the balancing of competing interests between Indigenous versus non-Indigenous commercial fishers, nor is it a matter of conservation. It is about the Crown's failure to take the necessary steps to enable Sipekne'katik to exercise their recognized Treaty rights free of harassment and intimidation. This goes directly to the Treaty relationship between the Mi'kmaq and the Crown. If your governments continue to evade responsibility for this issue, the inevitable result will be continued confusion, tension and conflict.

Lastly, the Supreme Court has also been clear that any infringement of a recognized section 35 right must be justified in accordance with the framework established in *Sparrow*. Access to a market to sell fish is an integral aspect of Sipekne'katik's commercial fishery. Without buyers, there is no way for Sipekne'katik to meaningfully exercise their rights. Statements by your governments which appear intended to deter buyers from purchasing lobster from Sipekne'katik fishers will directly interfere with Sipekne'katik's fishery. We are not aware of any steps taken by the Crown to attempt to justify this infringement.

In light of the above, we call on Canada and the Province to take immediate action to de-escalate the current conflict and ensure the safety of Sipekne'katik fishers. Indigenous Peoples in Canada should not be subject to threats and harassment for pursuing their constitutional rights.

We further urge your governments to take all necessary steps, in collaboration with the Mi'kmaq, to recognize and implement the Supreme Court's decision in *Marshall* and to move forward in a manner which honours and upholds the spirit and intent of the peace and friendship treaties.

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