

2023

NSARB-2023-001

**Nova Scotia Aquaculture Review Board**

IN THE MATTER OF:     *Fisheries and Coastal Resources Act, SNS 1996, c 25*  
  
                                  - and -

IN THE MATTER OF:     An Application by KELLY COVE SALMON LTD. for a boundary amendment and  
                                  two new finfish aquaculture licenses and leases for the cultivation of Atlantic  
                                  salmon (*Salmo salar*) - AQ#1205x, AQ#1432, AQ#1433, in Liverpool Bay,  
                                  Queens County (the “Application”)

BETWEEN:

Kelly Cove Salmon Ltd.

APPLICANT

and

Minister of Nova Scotia Department of Fisheries and Aquaculture

PARTY

and

Kwilmu’kw Maw-klusuaqn Negotiation Office (KMKNO)

Queens Recreational Boating Association (Brooklyn Marina)

22 Fishermen of Liverpool Bay

Region of Queens Municipality (RQM)

Protect Liverpool Bay Association (PLBA)

INTERVENORS

**Affidavit of Justin P. Martin**

I, Justin Paul Martin, of Millbrook First Nation in the Province of Nova Scotia, affirm as follows:

1. I am the Lead of Fisheries for Kwilmu’kw Maw-klusuaqn- Mi’kmaq Rights Initiative.

2. As the Lead of Fisheries, I am entrusted with the responsibility to support and lead Rights-based fisheries consultation, negotiation, community engagement, and implementation for First Nations represented by the Assembly of Nova Scotia Mi'kmaw Chiefs. I have held this position since June 2019. I have been involved in Mi'kmaq fisheries for over 2 decades, including Treaty Rights based harvesting, communal commercial fishing including Lobster, Tuna, Snow Crab and Atlantic Herring. Further, I have FSC fished for 35 years, with 15 years of specific employment experience in Mi'kmaq FSC and Rights based fisheries management and consultation.
3. I possess personal, professional, and Indigenous Knowledge of the evidence affirmed in this Affidavit, except where otherwise stated to be based on information and belief.
4. I state, in this Affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
5. My affidavit concerns an overview of the impacts of the Kelly Cove applications on Mi'kmaq FSC fishing, moderate livelihood fishing, and communal commercial fishing, which relate to both Aboriginal and treaty rights under s. 35 of the *Constitution Act, 1982* as well as subsections 3(c) and 3(e) of the *Aquaculture Licence and Lease Regulations*.
6. "FSC fishing", as per my understanding, refers to Food, Social, and Ceremonial fishing. FSC fishing represents a specific category of fishing rights enabling Indigenous communities to engage in fishing for sustenance (food), social and communal gatherings (social), and traditional and cultural ceremonies (ceremonial). These rights are vital for the cultural and economic well-being of Indigenous communities, rooted in historical practices and treaties.
7. The concept of "Moderate Livelihood" fishing in the context of Indigenous fishing rights in Canada refers to the ability of Indigenous community members to participate in commercial fishing for the purpose of sustaining a moderate livelihood.
8. The Mi'kmaq interpret "Moderate Livelihood" as "Netukulimk" fishing, described as a small-scale, artisanal fishery with sale, trade, and barter attributes, conducted within and surrounding the traditional territory of Mi'kma'ki. This practice utilizes traditional and modern methods and techniques, managed and protected by First Nation Netukulimk livelihood fishery Plans, following the expectations of the Assembly of Nova Scotia Mi'kmaw Chiefs' as described in the "Kespukwitk District Netukulimk Livelihood Fisheries Protocol". The Protocol is attached to this affidavit as **Exhibit A**.
9. "Communal commercial fishing" refers to the practice of Indigenous communities collectively engaging in commercial fishing activities to generate income and support the economic well-being of the community as a whole.

10. Public data from the DFO Atlantic Atlas (found at: <https://gisp.dfo-mpo.gc.ca/apps/Atlantic-Atlas/?locale=en>) indicates significant commercial fishing landings data, which represent fish removals and fishing efforts, highlighting commercial fishing activities in the area of the Kelly Cove applications, including for species such as Atlantic Herring, Blue Fin Tuna, Flounder, Halibut, Lobster, and Mackerel, emphasizing the importance of this area to commercial fisheries.
11. I understand based on my extensive experience in First Nation community and working with Mi'kmaq leadership that additional accommodations are required for species of interest, including Atlantic Herring, Blue Fin Tuna, Flounder, Halibut, Lobster, and Mackerel, and are being requested in the area of the Kelly Cove applications, for Rights based fishing activities for the Mi'kmaq in 2024.
12. In the March 2, 2022 Record of Meeting, included within the May 1, 2023 letter from the Department of Fisheries and Aquaculture to KMKNO, it noted "Acadia First Nation added that NCNS gives out a lot of food fishing tags in area as well." I can concur with this statement, due to my personal harvesting experience and professional knowledge, including my previous professional experience as the Netukulimk Prefect, or FSC manager, for the Native Council of Nova Scotia (NCNS).
13. Attached to this Affidavit as **Exhibit B** is the "Kespukwitk District Lobster Report October 2021- July 2022", which includes lobster landing data by Netukulimk Treaty Right Protected (TRP) Moderate Livelihood Mi'kmaq fishers, including harvesters from Acadia in the area of the Kelly Cove applications. Currently 9 Mi'kmaq individuals fish Netukulimk TRP (Moderate Livelihood) for lobster in DFO Lobster Fishing Area (LFA) 33, which is the area of the Kelly Cove applications. These numbers only capture those fishing lobster under "Moderate Livelihood", and do not include those carrying out FSC fishing or communal commercial fishing.
  - a. Netukulimk TRP Lobster Landing Data for LFA 33:  
October 2021- July 2022- 1129 lbs  
October 2022- July 2023- 9765 lbs

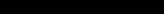
During the period October 2023 – January 16<sup>th</sup>, 2024, I understand there to be a four-fold increase in landings from the previous period, in the area of the Kelly Cove applications, based on the Netukulimk TRP Lobster Landing Data received from the 9 Kespukwitk TRP Mi'kmaq.,

14. Inshore fishing areas are critical for all fishing activities and more importantly for the Rights-based activities of the Mi'kmaw, which include both FSC and Netukulimk TRP harvesting. Our livelihood fleet is known to have substantially smaller vessel sizes due to the inaccessibility of funding to purchase or secure loans for large commercial size vessels. A smaller vessel size

dictates the areas which are accessible for harvesting due to safety concerns from inclement weather, ocean swell and the oceans unpredictability. Inshore fishing areas, such as the area of the Kelly Cove applications, are critical for smaller vessels.

15. The 2024 Elver Treaty Rights-Protected (TRP) Proposal, sent to The Honourable Diane Lebouthillier, Minister of Fisheries, Oceans and the Canadian Coast Guard dated December 7th, 2023, and attached to this Affidavit as **Exhibit C**, proposes an accommodation of Mi'kmaq First Nations' elver harvest rights through increased access and allocations, including for Wasoqopa'q (formerly Acadia) First Nation in Queens County. This proposal is to more adequately accommodate the Right to fish elvers for a moderate livelihood, specifically 600kg, up from 450kg, which would be harvested by up to 780 Mi'kmaq, valued at \$3,120,000 (at \$5200/kg).
16. From my understandings and experience, the Mersey River watershed and river mouth, which include the area of the Kelly Cove applications, is recognized as significant for American Eel fishing, including Elver, and is a recognized River of importance by the Mi'kmaw. This is demonstrated by its inclusion as an identified area required for Netukulimk TRP harvesting in the document "Kespukwtk District Netukulimk Livelihood Fisheries Species-Specific Katew Fisheries Management Plan" attached as **Exhibit D** to this affidavit.
17. The Kespukwtk-Netukulimk Elver Livelihood Fishing Plan and the 2024 Elver Treaty Right Protected (TRP) Proposal further emphasize the importance of the Mersey River watersheds, including the mouth of the river where the Kelly Cove applications are located, for treaty rights-protected harvest of elver.
18. The Kelly Cove applications, if approved, could have significant implications for Mi'kmaq FSC fishing, Netukulimk TRP (moderate livelihood) fishing, and communal commercial fishing.
19. The proposed aquaculture activities may impact the inshore fishing areas critical for smaller vessels used in Rights-based activities. The decrease of inshore harvesting areas may impact current and future Right based activities, affecting high value harvesting areas for Mi'kmaq fishing, potentially impacting lobster, Atlantic Herring, Blue Fin Tuna, Flounder, Halibut, and Mackerel. Each of these species is currently being harvested by Mi'kmaq and/or rights-based harvest is under development. Additionally, the applications may influence the American Eel fishing, including Elver, which are recognized as significant in the Mersey River watershed and which are harvested by the Mi'kmaq, impacting the livelihood and cultural practices of the Mi'kmaq.
20. The potential impacts on current and future TRP harvesting, including the proposed increase in rights-based elver harvest, further highlight the need for careful consideration and accommodation in any decision regarding the Kelly Cove applications.


22. I was not physically present before Garnet Brooks when I affirmed this affidavit. I was linked with Garnet Brooks using video conferencing technology.

  
A Commissioner of Oaths in and for the  
Province of Nova Scotia

Justin Martin

**GARNET E. BROOKS**  
A Barrister and Solicitor of  
the Supreme Court of Nova Scotia

This is **Exhibit "A"** mentioned and referred to in the affidavit of Justin Martin affirmed before me on this 19<sup>th</sup> day of January, 2024

  
A Commissioner of Oaths in and for the  
Province of Nova Scotia

GARNET E. BROOKS  
A Barrister and Solicitor of  
the Supreme Court of Nova Scotia

# KESPUKWITK DISTRICT NETUKULIMK LIVELIHOOD FISHERIES PROTOCOL

As declared by

Acadia First Nation

Annapolis Valley First Nation

Bear River First Nation

Glooscap First Nation

OCTOBER 2022

## 1 PREAMBLE

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The Members of Mi'kmaq First Nations in Nova Scotia are beneficiaries of the Covenant Chain of Treaties made with the Crown between 1725 and 1761, including the Treaties of 1760-61, that were the subject of the 1999 Supreme Court of Canada decision in the case of Donald Marshall, Jr.

In accordance with these Treaties, Mi'kmaq in Nova Scotia have the right to harvest and sell fish for the purpose of earning a moderate livelihood (MLF harvest). Accordingly, Mi'kmaq Band Councils in Nova Scotia recognize the obligation to manage fisheries activities of the Mi'kmaq communities' members in Nova Scotia.

The First Nations of the Kespukwitk District intend to explore a Nmitiknen among their First Nations through a coordination of a Kespukwitk collective Fisheries MEMORANDUM OF UNDERSTANDING (MOU). The goals and purpose of exploring the development of a Nmitiknen, include to:

- 1) Take responsibility for the stewardship of our territory through a collaborative collective approach.
- 2) Recognize and implement our inherent right to fish as Mi'kmaw.
- 3) Govern according to Mi'kmaw customs.
- 4) Demonstrate respect for all within the territory. It is not to exclude.
- 5) Exercise self-determination and self-government, along with our right to self-regulate as a Nation, as protected under section 35 of the Constitution.
- 6) Strengthen relationships and further Mi'kmaq self-determination through fulfilling ancient responsibilities, to all of our relations, through the support and assistance of various kinds and levels of Mi'kmaw governments – Band Councils, the Grand Council and the Assembly.

That work on the Nmitiknen may result in further refinement of this District Protocol.

This Kespukwitk Netukulimk Livelihood Fisheries Protocol provides the policies and protocols for the management of the Mi'kmaq Netukulimk livelihood fishery in our District.

The Kespukwitk communities believe that it is in keeping with traditional Mi'kmaw law that every community or district of communities in Mi'kma'ki has a responsibility to be protectors and stewards of the resources around them for their families, their community and for the Mi'kmaq Nation as a whole. The purpose of this Protocol is not to claim exclusivity of access to these resources by our communities, but to ensure that all Mi'kmaw communities respect Netukulimk values and the part that our communities play as stewards of Kespukwitk lands and waters, as we need to respect the same values in lands and waters under their stewardship.



Our Band Councils will seek to ensure that this Kespukwitk Netukulimk Livelihood Fisheries Protocol is properly and fully communicated amongst our Band members and to other First Nations in the effort to promote a Netukulimk MLF harvest and collaboration with other Mi'kmaq communities and Districts for the sustainable management of Mi'kmaq fisheries in our District of Kespukwitk.

This Kespukwitk Netukulimk Livelihood Fisheries Protocol has been prepared, adopted, and implemented without prejudice to the Mi'kmaq Aboriginal and Treaty Rights and the inherent Rights and interests of Bands and all members of the Mi'kmaq Nation.

This Kespukwitk Netukulimk Livelihood Fisheries Protocol should be read and interpreted in its entirety.

This Kespukwitk Netukulimk Livelihood Fisheries Protocol is a living document and may be amended from time to time based on experience, dialogue and communication with our members.

## 2 MANAGEMENT VALUES

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### 2.1 Management values applied to the implementation of the Kespukwitk Netukulimk Livelihood Fisheries Protocol will be:

#### 2.1.1 Netukulimk

Netukulimk is defined as the use of the natural bounty provided by the Creator for the self-support and well-being of the individual and the community by achieving adequate standards of community nutrition and economic and spiritual well-being without jeopardizing the integrity, diversity or productivity of the "natural bounty".

The principle of Netukulimk has been the foundation of sustaining Mi'kmaw families, communities and society since time immemorial.

#### 2.1.2 Protection of Treaty and Aboriginal Rights

The implementation of this Kespukwitk Fisheries Management Plan including all harvesting and marketing activity will be undertaken in a manner that does not compromise, abrogate, or diminish the inherent and Treaty Rights of the Mi'kmaq Nation. Accordingly, harvesting shall not compromise the viability of individual species for harvesting by future generations.

#### 2.1.3 Sustainability

Sustainability refers to the capacity of natural systems and Mi'kmaw society to coexist through ecological and societal balance. Sustainability involves five distinct factors: environmental, social, economic, cultural, and spiritual. Each of these are principal factors for the sustainability of a Mi'kmaq fishery livelihoods.

#### 2.1.4 Economic

Economic sustainability is the long-term success of the structure and function of the Mi'kmaw economy through efficient and responsible use of natural resources in a sustainable manner through focus on the other components of sustainability (environmental, social, cultural, and spiritual).

#### 2.1.5 Social

Social sustainability involves maintaining and improving Mi'kmaw social well-being across varying levels of social systems, including family, community, district or organization. Social indicators include equality, equity, poverty, education, and importantly, health and wellness.

#### 2.1.6 Environmental

Environmental sustainability refers to the ability of the biophysical environment of each District of Mi'kmaki to support long-term environmental quality through protection of natural capital (i.e. land, air, water, minerals, etc.). This involves human interaction with the environment in a manner to avoid depletion or degradation of natural resources and systems.

#### 2.1.7 Cultural

Cultural sustainability is the long-term maintenance of Mi'kmaw cultural beliefs, practices, heritage, and rights through future generations. Cultural sustainability involves initiatives and actions taken to prevent the extinction of Mi'kmaq culture within Mi'kmaki where other components of sustainability threaten Mi'kmaq existence.

#### 2.1.8 Spiritual

Spiritual sustainability is situated at the intersection of traditional spiritual and sustainable principles through an understanding of how the natural environment contributes to Mi'kmaw spiritual wellness. This component of sustainability focuses on maintaining connections between Mi'kmaq people and our environment.

#### 2.1.9 Fairness

This Kespukwitk Netukulimk Livelihood Fishery Plan will apply impartially to all Members of our First Nations and will be implemented without favoritism or discrimination.

#### 2.1.10 Gender Equity

This Kespukwitk Netukulimk Livelihood Fishery Plan is based on the principles of gender equity in the fishery. Accordingly, efforts will be undertaken to remove any gender barriers in the implementation of all fishery related activities.

#### 2.1.11 Transparency

The implementation of this Kespukwitk Netukulimk Livelihood Fisheries Protocol and the decisions made under it will be recorded and communicated to all Band members, regardless of their involvement in fisheries activities.

#### 2.1.12 Conservation

This Kespukwitk Netukulimk Livelihood Fisheries Protocol will be implemented in a manner consistent with the Mi'kmaq standard of Netukulimk, supported by internationally accepted principles of conservation which emphasizes the integrity, diversity, and productivity of the natural resource.

#### 2.1.13 Safety

This Kespukwitk Netukulimk Livelihood Fisheries Protocol aims to ensure and promote the safety of harvesters, other fisheries workers, and community members through prevention, education, monitoring and enforcement.

#### 2.1.14 Community Benefit

Fisheries management activities are designed and implemented with the aim of enhancing and maximizing community benefit over the benefit of any one individual or enterprise.

#### 2.1.15 Accountability

Without limiting or infringing on the Rights of our members, fisheries management activities will be conducted in a manner that demonstrates good governance, procedural principles and the sharing of information in a respectful manner, honoring the treaty relationship of collaborative co-existence.

#### 2.1.16 Cooperation and Respect

If our First Nations wish to seek MLF fishing opportunities for our Band members in other Districts outside of the traditional area of Kespukwitk, or when MLF fishing opportunities or activities directly or indirectly effect other First Nations, we will seek to develop a formal protocol, policy, group or process with the other First Nation(s) that may be affected and seek to accommodate any concerns they may have.

Similarly, when Band members of other First Nations wish to MLF harvest within our District of Kespukwitk, they will be expected to abide by the principles and rules of this Kespukwitk Netukulimk Livelihood Fishery Plan, as may be modified by discussion and agreement with us.

#### 2.1.17 Peace

Without limiting or infringing on the Rights of the Mi'kmaq Nation, communities and Band members, fisheries management activities will be conducted in a manner to promote and protect peaceful relations with adjacent communities.

### 3 PURPOSE AND INTERPRETATION

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- 3.1 Mi'kmaq Netukulimk Livelihood fishing is a small scale, artisanal fishery with sale, trade and barter attributes, for any viable aquatic species, fished within and surrounding the traditional territory of Mi'kma'ki, using traditional and modern methods and techniques, practiced under the management and protection of First Nation Netukulimk livelihood fishery Plans, following the expectations of the Assembly of Nova Scotia Mi'kmaw Chiefs' Statement of Standards and the Mi'kmaq concept of Netukulimk, with the goal of improving the well-being of many Mi'kmaq individuals and their families.

Mi'kma'ki is comprised of seven Districts, of which we are principally involved in the District of Kespukwtk. We do not claim exclusive right to regulate the MLF activities of members of other First Nations when they are within our District. Our worldview principles are based on honour, cooperation, respect and traditional Mi'kmaw law.

When our Band members MLF harvest outside of our District, we expect to communicate with and develop protocols, policies, groups or processes with other First Nations that may be affected and seek to accommodate concerns they may have.

Similarly, we expect that members of other First Nations will abide by the principles and rules of this Kespukwtk Netukulimk Livelihood Fishery Plan when MLF harvesting in our District. If other First Nations wish their members to be able to MLF harvest in our District in a manner not contemplated by this Kespukwtk Netukulimk Livelihood Fishery Plan, their Chiefs and Councils will consult with us to develop protocols, policies, groups or processes as may be required to reflect changes accepted by discussion and agreement with us.

#### *Purpose*

- 3.2 This Kespukwtk Livelihood Fisheries Protocol provides clarity on the roles and responsibilities of the Band Councils and community members with respect to implementing our inherent right to manage fisheries.
- 3.3 This Kespukwtk Livelihood Fisheries Protocol is a living document prepared to assist Mi'kmaq communities, Band Councils and Fisheries Departments in the development and implementation of livelihood fishing activities in our District by Mi'kmaq community members.

#### *Interpretation*

- 3.4 Our respective Chiefs and Councils remain solely responsible for the implementation of this Kespukwitk Livelihood Fisheries Protocol and associated Species-Specific Conditions and Harvest Plans for the respective members of each of our First Nations.
- 3.5 This Kespukwitk Livelihood Fisheries Protocol comes into force on the date of the Band Councils' Resolution adopting the Plan. Subsequent Harvest Plans and Conditions for access and use of individual species will be adopted on an annual basis or as needed from time to time.
- 3.6 This Kespukwitk Livelihood Fisheries Management Plan intends to create limits that could reasonably be expected to produce a moderate livelihood for individual Mi'kmaq families at present day standards who wish to harvest and sell fish for the livelihood of themselves and their families.
- 3.7 Members of our First Nations wishing to engage in a MLF harvest may only do so in compliance with the Kespukwitk Netukulimk Livelihood Fisheries Species Specific Fisheries Management Plan.
- 3.8 Mi'kmaq Band Members registered to fish under this Kespukwitk Netukulimk Livelihood Fisheries Protocol are expected to conduct harvesting activities in accordance with this Protocol and the related Species-Specific Fisheries Management Plan as such, shall demonstrate their commitment through formal acceptance of the terms and conditions of access.
- 3.9 This Kespukwitk Netukulimk Livelihood Fisheries Protocol is without prejudice to the rights of Mi'kmaq Band Members.

#### *Region of Application*

- 3.10 This Kespukwitk Netukulimk Livelihood Fisheries Protocol shall apply in and throughout the watersheds within the District of Kespukwitk, including all rivers, streams, brooks, lakes, bays, and estuaries in the District and its adjacent nearshore banks, offshore banks and other adjacent ocean space.
- 3.11 This region of applicability is a shared jurisdiction amongst our First Nations and with the federal and provincial governments and will involve effective communication and the development of collaborative arrangements to ensure the effective implementation of this Kespukwitk Netukulimk Livelihood Fisheries Protocol.

## 4 DEFINITIONS

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- 4.1 **Aboriginal Rights:** Aboriginal Rights refer to the practices, traditions and customs that distinguish Mi'kmaq culture and result from our ancestor's longstanding use and occupancy of the land and waters. Aboriginal Rights are protected under s.35 of the *Constitution Act*, 1982.
- 4.2 **Access:** Access refers to the authorization of Band harvesters to harvest within the traditional Mi'kmaq territory in accordance with Band Management Plans.
- 4.3 **Allocation:** Allocation refers to the distribution of opportunity for individuals to participate in livelihood fishing through the provisioning of fishery quotas according to species-specific harvest limits and total allowable catches.
- 4.4 **Chief and Council:** The Chief and Council of each First Nation is responsible for the governance and administration of the First Nation, including in the exercise by its members of Aboriginal Rights and Treaty Rights, and may, upon direction from the Band Council, include an authorized delegate/agent of the Band Council.
- 4.5 **Kespukwitk Bands or First Nations:** any of Acadia First Nation, Annapolis Valley First Nation, Bear River First Nation or Glooscap First Nation or them acting together, as applicable.
- 4.6 **Communal use:** Communal use includes the shared use of harvest for food, social and ceremonial purposes as set out by the Band Council.
- 4.7 **District Collective Fisheries Committee (DCFC):** comprised of a representative from each Kespukwitk District Mi'kmaw Community, may include designate representation from organizations, agencies or private members.
- 4.8 **Community Fishers Committee (CFC):** A band member established, Community endorsed, committee of harvesters, fishers, knowledge keepers, elders and youth.
- 4.9 **Conservation:** Conservation means protection and preservation of the integrity of the resource and its ecosystem. Conservation of fisheries resources is important for the protection of Aboriginal Rights and Treaty Rights in perpetuity.
- 4.10 **Designated Captain:** The person who is responsible for the day to day operations of a vessel during fishing activities, under the general supervision of the Band Council or their designate.

- 4.11 **Kespukwitk (district)** is one of the Districts of the Mi'kmaq Nation.
- 4.12 **Livelihood:** Livelihood refers to any and all means of securing the necessities of life, including food, water, shelter, clothing, and other desirables. A livelihood is more than employment and income which are terms that are often used to limit a livelihood. A livelihood is made up of the capabilities, activities, and assets, including material and social resources that contribute to a means of living in a comfortable, secure, socially, and culturally relevant way.
- 4.13 **Management:** Management is the application of specific rules and regulations designed to meet the goals and objectives set by communities for our fisheries.
- 4.14 **Member or harvester:** a member of a First Nation.
- 4.15 **Mentor:** Mentor means any person (Band member only) who is hired to provide training and advisory support to fisheries staff, harvesters, seafood buyers, or seafood processors from the Bands.
- 4.16 **Personal Use:** Personal use includes use of harvest for food, social and ceremonial purposes.
- 4.17 **Treaty Rights:** Treaty Rights arise from constitutionally recognized and negotiated agreements between the Crown, Indigenous peoples, and provinces or territories that define ongoing rights and obligations of all parties (also known as treaties). Mi'kmaq Treaty Rights emerge from those set out in the Covenant Chain of Treaties (1725-61). These include the right to harvest and sell all those resources harvested and sold by Mi'kmaq at the time the treaties were signed.
- 4.18 **UNDRIP:** The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a non-legally binding resolution passed by the UN General Assembly in September 2007 that outlines protection of the rights of Indigenous peoples. Canada has committed to the principles of UNDRIP, further referenced in the September 23, 2020 throne speech, delivered by Gov. Gen. Julie Payette.



## 5 OBJECTIVES

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5.1 The Fishery Management Objectives are established to ensure the effective sustainable management of the MLF fishery. These objectives are consistent with the principles of Netukulimk, traditional Mi'kmaw law and advance those defined in the United Nations Declaration on the Rights of Indigenous Peoples, the terms outlined in the 1999 Supreme Court of Canada Marshall decision and form the basis for fishery decision-making within Mi'kmaq First Nations.

5.2 The Objectives for the Kespukwilt Netukulimk Livelihood Fishery are as follows:

- To ensure conservation of the resource and to protect and exercise Mi'kmaq Treaty and Aboriginal Rights to harvest natural resources for the benefit of the community and its members.
- To conduct the MLF fishery in a manner consistent with the parameters outlined in the Marshall II clarification decision (SCC, [1999] 3 SCR 533), in particular,
  - Fishing of species of historical importance and evidence (para 19-20)
  - Consideration of the conservation of the resource (para 42)
  - Consideration of first access of Aboriginal rights to the resources (para 38)
  - Respecting traditional fishing grounds (para 38)
  - Using catch limits needed to acquire necessities (para 37).
- To conduct the MLF fishery in a manner consistent with the opportunities outlined in the Marshall decision, in particular,
  - Recognition of the authority of the Mi'kmaq community (para 17), while at the same time respecting DFO's important role in the fisheries to protect them while honoring the intent of a treaty relationship; and
  - Incorporation of Mi'kmaw conservation and management techniques (para 44(e)).
- To alleviate family poverty and advance the size and security of the grassroots within the Mi'kmaq communities.
- To promote community adherence to traditional Mi'kmaq law and the principles of Netukulimk.
- To contribute to the social and economic well being of the community.
- To develop and promote livelihood fishing activities that will provide stable and effective employment and income for community members.
- To contribute to the spiritual well-being of members through the exercise of traditional activities and Rights.
- To ensure the community and harvester safety are protected.
- To have economically self-sufficient fishing operations, including management and administration.
- To reasonably contribute to, at minimum, part of a sustainable livelihood for the harvester to support themselves and their household.

## 6 ROLES AND RESPONSIBILITIES

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- 6.1 Pursuant to the Kespukwtk collective Fisheries MEMORANDUM OF UNDERSTANDING (MOU) the Kespukwtk District Mi'kmaw Communities will establish a Kespukwtk District Collective Fisheries Committee (DCFC) to administer the Kespukwtk District Netukulimk Livelihood Fisheries Protocol and any approved Species-Specific Livelihood Fisheries Management Plans.
- 6.2 Kespukwtk Bands will designate a representative to the DCFC, with additional designate representation from organizations, agencies, or private members at the discretion of the Kespukwtk Chief and Councils.
- 6.3 Kespukwtk Bands will establish District-specific governance rules and regulations that will promote fisheries and other resource-based businesses within the District.
- 6.4 Kespukwtk Bands or its designate will be responsible for the determination of species-specific harvest limits and total allowable catches which could reasonably be expected to produce a moderate livelihood. These limits may be determined through:
  - 2 eyed ways of knowing, which respects Mi'kmaq knowledge
  - Negotiation amongst and between First Nations
  - Negotiation with the Government of Canada
- 6.5 Kespukwtk Bands or its designate will be responsible for developing and adopting access and harvesting conditions and harvest plans for each individual fisheries species that may be harvested by Band members for their consumption and sharing or livelihood use.
- 6.6 Kespukwtk Bands or its designate may establish criteria for the sharing of catches from species-specific harvesting activities to ensure sustainability and acquisition of family necessities in accordance with the principles of this Plan.
- 6.7 Kespukwtk Bands or its designate may enter into co-management arrangements with Crown in Right of Canada and the Crown in Right of Nova Scotia in the interest of conservation and management of fisheries resources.
- 6.8 Kespukwtk Bands or its designate may enter into business arrangements within commercial enterprises in accordance with the principles of this Kespukwtk District Netukulimk Livelihood Fisheries Protocol.

- 6.9 Kespukwitk Bands or its designate may establish criteria for species-specific harvesting activity that will promote intergenerational traditional knowledge transfer amongst Band members.
- 6.10 Kespukwitk Bands or its designate will monitor the harvesting activities of the Band members conducting activities under this Plan. Kespukwitk Bands may hire personnel, expand the capacity of Aboriginal Guardians, or enter co-management monitoring arrangements to conduct monitoring activities.
- 6.11 Kespukwitk Bands or its designate will have the responsibility to promote and encourage compliance with this Management Plan. Accordingly, Kespukwitk Bands, appointed personal or Aboriginal Guardians, may conduct patrols, surveillance, and enforcement activities.
- 6.12 Kespukwitk Bands or its designate may enter into a formal arrangement with appropriate private sector companies or federal/provincial government departments to provide compliance control (enforcement) services related to this Plan.
- 6.13 Kespukwitk Bands or its designate may employ the necessary professional fisheries management personnel to oversee and implement the community management plan.
- 6.14 Kespukwitk Bands or its designate may employ the necessary personnel to coordinate scientific activities and to coordinate initiatives with agencies outside of the Band.
- 6.15 Kespukwitk Bands or its designate may for conservation or safety concerns alter the time, duration or areas in which fisheries harvesting can occur.
- 6.16 Kespukwitk Bands or its designate will provide public notice of any changes to the KESPUKWITK LIVELIHOOD FISHERIES PLAN including, but not limited to changes to fishing times, duration, or areas. Notice will be provided to registered fishers in writing and a notice will be posted on the community bulletin board at the respective Band Offices, or another acceptable space for member access.
- 6.17 In the fulfillment of its mandate, Kespukwitk Bands may also:
- Promote traditional values and practices (Netukulimk) that protect the fishery and the environment.
  - Conduct resource assessments and inventories.
  - Support the establishment of a Community Fisheries Committee (CFC)
  - Engage in scientific activities for the purpose of establishing harvesting limits;
  - Identify special protection zones;
  - Conduct restoration and enhancement activities as required;

- Examine alternative harvesting techniques;
- Encourage the development of pre-and post-harvest commercial components to the Kespukwitk Bands fishery; and,

*Species-specific Harvest Plans and Conditions*

- 6.18 Kespukwitk Bands or its designate will provide limits defined within Species-specific Harvest Management Plans that apply to fisheries harvesting by Band members for any given year.
- 6.19 Kespukwitk Bands or its designate may prepare resource materials and hold public meetings or meet with a organized group of Band fisher representatives, or established Community Fishers Committee, for the purpose of establishing, where appropriate, common procedures, criteria, and objectives for individual species harvesting activities, which will be set out in the form of Species-specific Harvest Management Plans.
- 6.20 Species-specific Harvest Management Plans will be developed in consultation with members and the Community Fishers Committee if established and will be provided to members in advance of the applicable season.
- 6.21 Species-specific Harvest Management Plans may include:
- Statement of the Community's Fisheries Objectives
  - Rules and regulations concerning eligibility to access the Band fishery
  - Harvest regulations and procedures for the Netukulimk livelihood fishery
  - Marketing guidelines/procedures
  - Allocation rules and procedures
  - Safety requirements and procedures
  - Community support activities (contributions for development support)
  - Food fishery rules and regulations
  - Conflict resolution procedures
  - A list of fishers designated for the current year, including details of the individual allocations
- 6.22 Kespukwitk Bands may, due to extenuating circumstances, alter the Species-specific Harvest Management Plans during the season. Except in cases of urgency, all amendments will be made through the Community Fishers Committee, or an open public meeting and drafting of an Amendment to the Harvest Management Plan. Kespukwitk Bands will provide public notice of any changes to the Harvest Plan by posting the Amendment in a conspicuous place at the respective Band Offices, and through the issuance of a special community newsletter.

## 7 ACCESS AND ALLOCATION

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### *Registration*

- 7.1 Band members who desire to conduct livelihood fishing activity under this Plan must register with and be approved by their Kespukwitk Band or its designate.
- 7.2 Kespukwitk Bands will communicate to the Community Fishers Committee and post a public notice for applications for access to Species-specific livelihood fisheries. Public notice will include explanation of application procedures.
- 7.3 All applications shall contain, as a minimum, the names of all persons who will be involved with the access allocation (captain and crew), intended location of the fishing activity, start and end date of fishing, name and specifications of the vessel, number of traps and/or fishing gear, and name and role of any mentor/trainers who will be involved with the fishing activity.
- 7.4 Complete applications will be reviewed, and written notice of acceptance will be provided to the applicant. Authorizations, registrations, licenses or approvals issued to MLF harvesters are not transferable.

### *Guidelines for access:*

- 7.5 All harvesters must pay any administration fees or sharing arrangements set by their Kespukwitk Band for MLF tags or replacement tags, logbooks or other reporting requirements, or to contribute towards the expense of monitoring, enforcement or defence activities.
- 7.6 Kespukwitk Bands may establish minimum ages for individuals to access the Netukulimk livelihood fishery. Minimum ages for access will be set out in the LIVELIHOOD FISHERIES PLAN Specific-species Conditions.
- 7.7 Harvesters are not and shall not be deemed to be employees or agents of the Kespukwitk First Nation nor Band Council and shall save harmless the Band Council and the Kespukwitk First Nation.
- 7.8 All harvesters must possess fishing gear or demonstrate the capacity to obtain required fishing gear or equipment prior to the granting of access by their Kespukwitk Band.

- 7.9 All harvesters must meet the following criteria:
- Be a member of a Kespukwitk Band.
  - Possess a valid MED certificate.
  - Have demonstrated fishing experience, or willingness to fish with a mentor.
  - Have demonstrated capacity to use and operate vessels and/or gear to be used in the fishery.
  - Any other criteria that may be established by their Chief and Council from time to time.
- 7.10 Kespukwitk Bands may waive the requirement of valid MED certificates for an individual harvester depending on the size of vessel used by the harvester and the time or location of fishing activity. Waiver of the requirement will be provided to the harvester in writing by the Kespukwitk Bands.
- 7.11 Designated captains shall oversee all vessel operations during harvesting activities. Designated Captains are not employees or agents of their Band or Band Council.
- 7.12 Unless otherwise agreed upon in writing by Kespukwitk Bands, traps can not be fished unless the harvester to whom the tags were allocated is on the vessel.
- 7.13 All harvesters must have their Band card and fishery registration papers with them during harvesting activities.

*Safety Considerations:*

- 7.14 For Fisheries that require the use of a fishing vessel, harvesters must follow recommended safety requirements, including as a minimum Transport Canada Life Saving Equipment Requirements based on vessel size and classification.
- 7.15 Harvesters are to demonstrate Certification that shows that a crew has at least the minimum level of training required that is mandatory for all non-pleasure vessel crews in three areas:
- A. *First aid* – At least one crew member must hold a valid certificate in marine basic first aid while a vessel is engaged on a Near Coastal Voyage, Class 2, or Sheltered Waters Voyage. A valid marine advanced first aid course is required for vessels engaged on a Near Coastal Voyage, Class 1. In some cases, a first aid training course (2 days as a minimum) recognized by a province or territory is acceptable.
  - B. *Operator competency* – The operator of the vessel must be certified at the appropriate level, or higher, for the size and type of vessel and the voyage that is being undertaken.

C. *Basic safety training* – The owner and operator must make sure that all crew members receive on board familiarization and safety training before they start to perform any assigned function.

- 7.16 Unless the level of operator competency required is a Pleasure Craft Operator Card (PCOC), each crew member must also obtain a certificate in basic safety training, also known as MED or Marine Emergency Duties, before completing six months of sea service.

*Guidelines for allocation in a Quota Fishery*

- 7.17 Fisheries where the harvesting activities by Kespukwitk Band Members may be responsible for endangering fish stocks or wildlife populations may be managed as quota fisheries.
- 7.18 In quota fisheries, the total allocation of harvest limits will not exceed the total amount set by the Kespukwitk Bands with recommendations from the Community Fishers Committee, if appointed, through research and negotiation.
- 7.19 In quota fisheries, the individual allocation will be subject to the Kespukwitk District Objectives set out in section 5. As such, quota allocations may be subject to the discretion of the Collective Fisheries Committee.
- 7.20 In quota fisheries, registered harvesters with designated access must request an allocation from the Kespukwitk Bands. That request for allocation must include:
- The name and number of vessel and/or gear to be used for the access,
  - The amount and type of fishing gear that will be used,
  - A list of all Band members who will be involved in the harvesting activity,
  - The port or location from which fishing activity will be conducted, and
  - The names of any Band trainers to be employed through the access as mentors, along with detailed mentorship training plan.

*Loss of access:*

- 7.21 Specific criteria (indicators) will be determined by the Kespukwitk Bands, DCFC and the CFC, to determine whether fishers are fishing in an acceptable manner. In the interim period, until such a time that a graduated sanctions policy is developed, access may be removed or suspended for fishing in a manner contrary to the Kespukwitk Livelihood Fisheries Protocol.
- 7.22 In the event that a Band or Band Council become aware of or have reasonable cause to believe by their harvesters or Designated Captains are using or under the influence of drugs, alcohol or other intoxicants, then for safety purposes, Kespukwitk Bands may suspend, remove or deny access to the MLF harvest.

- 7.23 Harvesters who do not conduct fishing activities in a manner that is consistent with the principles and objectives of this Plan, as determined by the Kespukwitk Bands, may have their access to the Netukulimk livelihood fishery temporarily restricted or suspended.
- 7.24 In the instance of repeated instances of improper fishing based on First Nation community standards and understandings or serious conservation or safety issues, the affected Kespukwitk Bands may suspend or permanently remove a Band member's access to the Kespukwitk Netukulimk livelihood fishery.

## 8 HARVEST UTILIZATION

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- 8.1 The use of all fishery harvests will be for the benefit of the harvesters and their families in accordance with the principles and objectives of this Plan and Species-specific Harvest Plans.
- 8.2 Harvesters may freely share their catch within the community.



## 9 MONITORING

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- 9.1 All fisheries will be monitored to determine fishery performance (economic, social), state of the fishery (biological, economic), contribution to the family and community spiritual and cultural well-being, and identification of new opportunities for the community.
- 9.2 Harvesters will be required to provide reports on the location of harvesting activity and catches to the Band Council or authorized delegate/agent of the Band Council.
- 9.3 Monitoring may be conducted through the collection of log sheets or logbooks that are provided by the Kespukwitk Bands or their designate or such other methods determined by the Kespukwitk Bands.
- 9.4 No person or agency other than personnel duly appointed by the respective Kespukwitk Bands or its designate shall monitor or enforce activities pursuant to this Plan, unless requested in writing by the Kespukwitk Bands.
- 9.5 In some instances, all catches may be logged by designated personnel at the point of landing as set out in the Species-specific Harvest Plans.
- 9.6 In some instances, electronic monitoring procedures may be required including, but not limited to video logs of harvesting activities or dockside monitoring of unloading catch as set out in the Species-specific Harvest Plans.
- 9.7 All harvesters must provide access to their vessels and activities to Band-hired Monitors for the purposes of observing and monitoring.
- 9.8 All data and information compiled by monitoring activities will be reviewed and stored by the Kespukwitk Bands or their designate.
- 9.9 Information regarding individual harvesters or individual harvesting activities will be treated as confidential and will not be released to the public, including necessary data for stock assessments that align with DFO science collection/reporting deadlines. Only aggregated data from monitoring will be released to any third party.

## 10 COMPLIANCE

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10.1 In order to promote and encourage compliance, the Kespukwitk Bands:

- may hire personnel or expand the capacity of Aboriginal Guardians
- may enter into a formal arrangement with appropriate private sector companies or federal/provincial government departments to provide compliance control (enforcement) services related to this Plan
- Conduct monitoring activities in areas in which Band members conduct harvesting activities.
- Conduct patrols, surveillance, investigations; and
- Develop and promote fisheries education programs.

10.2 The Kespukwitk Bands, through the community management structure, may establish rules concerning monitoring and other measures that duly appointed personnel hired by the Kespukwitk Bands shall apply in situations of non-compliance with any provision of this Management Plan.

10.3 The Kespukwitk Bands, through consultation with their Community Fishers Committee, will develop a set of graduated sanctions as repercussions for violations of the Kespukwitk Netukulimk Livelihood Fisheries Plan.

10.4 Violations of any provision of this Plan recorded by duly appointed personnel may be placed before the affected Kespukwitk Band for resolution through a community justice process.

This is Exhibit "B" mentioned and referred to in the affidavit of Justin Martin affirmed before me on this 19<sup>th</sup> day of January, 2024



A Commissioner of Oaths in and for the  
Province of Nova Scotia

GARNET E. BROOKS  
A Barrister and Solicitor of  
the Supreme Court of Nova Scotia

## Kespukwik District Lobster Report October 2021- July 2022

LFA 35 REMOVALS LBS	15,890.00	
LFA 34 REMOVALS LBS	29,084.00	
LFA 33 REMOVALS LBS	1,129.00	
Estimated Unreported LFA 34 Removals LBS (Average per trap * #unreported)	16,788.20	
<b>Total Removals (including estimation) LBS</b>	<b>62,891.20</b>	
# of Reporting Vessels	13.00	
Total Livelihood Reported Hauls (total traps/70)	236.80	
Average Reported Landings per Harvester LBS	1,526.20	
Average Reported Gross Income Estimate \$ @ 11.21/LB	17,218.00	
<b>Estimated Landings Unreported LBS</b>	<b>11*1526.2</b>	<b>16,788.20</b>
Unreporting Harvesters	11.00	
Area Of Potential Unreported Harvest	LFA 34	
<b>Estimated Hauls/harvester</b>	<b>8.42*11</b>	<b>92.62</b>
<b>Available (potential) Trap Days</b>		
LFA 35	232*1000	232,000.00
LFA 34	174*3500	609,000.00
LFA 33	174*3500	609,000.00
Actual Trap Days	232*1000	232,000.00
	174*2500	435,000.00
<b>Actual Available Trap Days</b>		<b>667,000.00</b>
<b>Livelihood Hauls Available=Trap Days / Livelihood (70)</b>		<b>9,528.57</b>
# of Reported Hauls		<b>236.80</b>
# of Estimate Unreported Hauls		92.62
<b>Total Estimated Livelihood Hauls</b>		<b>329.42</b>
<b>Inefficiency Ratio= Available Hauls/ Estimated Livelihood Hauls</b>		<b>28.93</b>
<b>Efficiency % (Total Estimated Hauls/Available Hauls)</b>		<b>3.46</b>
<b>KESPUKWIK CPUE- AVERAGE of 3 LFAs= LBS/Average Trap Hauls LBS</b>		
Expected AVE CPUE LBS (LFA 33, 34 & 35 ave daily landings per trap- DFO) LBS		3.30
<b>CPUE Efficiency %</b>		<b>66.50</b>

This is **Exhibit "C"** mentioned and referred to in the affidavit of Justin Martin affirmed before me on this 19<sup>th</sup> day of January, 2024

A black rectangular box redacting the signature of the Commissioner of Oaths.

A Commissioner of Oaths in and for the  
Province of Nova Scotia

GARNET E. BROOKS  
A Barrister and Solicitor of  
the Supreme Court of Nova Scotia



Maw-lukutijik **Saqmaq**  
Assembly of Nova Scotia  
**Mi'kmaw Chiefs**

Kwilmu'kw Maw-klusuaqn  
Negotiation Office  
75 Treaty Trail  
Millbrook, NS B6L 1W3

**Tel:** 902.843.3880  
**Fax:** 902.843.3882  
**Toll Free:** 1.888.803.3880

December 7, 2023

The Honourable Diane LeBouthillier  
Minister of the Department of Fisheries and Oceans Canada  
200 Kent St, Station 15N100  
Ottawa ON K1A 0E6  
Via Email: [DFO.Minister-Ministre.MPO@dfo-mpo.gc.ca](mailto:DFO.Minister-Ministre.MPO@dfo-mpo.gc.ca)

Dear Minister LeBouthillier,

**Re: 2024 Elver Season in Nova Scotia**

We know that you are aware of our Nation-based approach to Treaty harvest and sale of fish in Nova Scotia. Many of our Nova Scotia Mi'kmaw First Nations have adopted, either individually or as part of District governance, Netukulimk Treaty Rights-Protected (TRP) Harvest Plans. It is through these Harvest Plans that we engage in self-governance of this communal activity.

Through the TRP Harvest Plan processes, we engage with our harvesters and communities to recognize and continue to implement Mi'kmaw Laws, jurisdictions, systems and processes. These are section 35 governance rights of our constitutionally protected Treaty Rights of harvest and sale. We continue to collect Mi'kmaw ecological knowledge about fish species and their habitat and input that information into community management plans based on Mi'kmaw cultural and legal principles.

In 2023, various of our communities had Elver Harvest Plans in effect. DFO did not recognize those Community Plans and issued only a minor accommodation through a harvest authorization to the Kespukwilt District First Nations. That partial accommodation was not sufficient for those District Nations. That authorization did nothing to accommodate the elver harvest rights of other Nova Scotia First Nations. From this lack of accommodation, damage claims can flow.

Last year, we were in regular communication with your regional officials to try to bring a sense of order to the 2023 elver fishery. Disappointingly, the decision made by DFO for the 2023 elver season was communicated to us only days before the opening of the fishery and did not seem to take into account much of what we had told your officials about Mi'kmaw community needs for elver TRP harvest.

The purpose of this letter is to communicate early and clearly what our expectations are for the 2024 elver season. Attached you will find a description of our elver harvester participation rates, together with a detailed proposal setting out the minimum needs and reasonable expectations of the Annapolis Valley, Bear River, Eskasoni, Glooscap, Pictou Landing, Potlotek, Wasoqopa'q (formerly Acadia) and We'koqma'q First Nations.


We are aware of Canada's recent commitments in the UDRIPA Action Plan, now in effect. In addition, our communities have a Treaty Right to harvest and trade in natural resources, including elver. We know that DFO can accommodate our proposed elver fishery in 2024.


The attached proposal provides for improved science and data collection, protection of Mi'kmaw elver harvesters who will have exclusive river designations, enhanced traceability, and improved conservation measures. The exclusive river designation will also help your Conservation and Protection branch to identify illegal non-Indigenous harvesters more easily.

Our communities intend to exercise their Treaty rights, in accordance with Netukulimk principles and our Community Harvest Plans. These are constitutional rights, with a constitutional standing higher than that of non-Indigenous licensed fisheries.


DFO has done little in the many years since Marshall (1999) to recognize those rights. We take seriously Canada's commitments in its UNDRIPA Action plan to recognize and implement Treaty rights. We intend to hold your department to the honorable attainment of those commitments. We also require accommodation of the rights asserted in this letter.


Yours in Recognition of Mi'kmaw Rights and Title,


  
Chief Gerald Toney  
Annapolis Valley First Nation


  
Chief Carol Potter  
Bear River First Nation


  
Chief Leroy Denny  
Eskasoni First Nation

  
Chief Sidney Peters  
Glooscap First Nation

  
Chief Tamara Young  
Pictou Landing First Nation

  
Chief Wilbert Marshall  
Potlotek First Nation

  
Chief Deborah Robinson  
Wasoqopa'q First Nation

  
Chief Annie Bernard-Daisley  
We'koqma'q First Nation

c.c.:

Jacinta Berthier, Regional Director, Fisheries Management Maritimes Region

Doug Wentzell, Associate Regional Director General, DFO

Michael Leonard, Director, DFO

Encl.



## 2024 Elver Treaty Right Protected (TRP) Proposal

### 1. Summary of Elver Harvest Participation Analysis

- a. 527 - 780 expected participation levels for TRP Elver harvesting among eight NS Mi'kmaq First Nations

### 2. Proposal: Elver Access for NS Mi'kmaq Participants

- a. 3600 kg TAC
  - i. 1200kg- Yarmouth County
  - ii. 600kg- Shelburne, Queens, Digby, Annapolis Counties
  - iii. 1800kg- Lunenburg, Halifax, Guysborough, Richmond Counties
- b. Creation of a new index river and a monitoring program run by the Mi'kmaq
- c. Designated access to over 45 rivers
- d. Enhanced Traceability and Conservation Measures
- e. Decreasing Mortality of Large Eel

### Summary of Elver Harvest Participation Analysis

The analysis of Elver harvest participation encompasses survey results, population metrics, historical participation levels, and additional insights:

#### Survey Results:

The Fisheries Implementation Team (FIT) was able to have 600 surveys completed, representing approximately **5.71%** of the population of the 8 First Nations represented in this data set. Of the 600 completed surveys elver harvest participation was indicated on 308 responses for 2024 or **51.33%** of surveys participants.

#### Population/Harvester Metrics:

Population analysis of the four Kespukwtk First Nations, an approx. total population of 3109 members, with 331 members registered to participate in the spring 2023 elver fishery, reflected an interest level of **10.69%** of the population.

#### Historical Participation Levels:

Historical data reveals a participation rate of approximately **69.79%** of registered interest, with 231 out of 331 registered Kespukwtk members recording effort in the spring 2023 elver harvest.

#### Population-based expected participation level:

Adapting the data sets suggests an expected population-based participation level of **780 participants** (at approx. 10505 members, 69.79% of 1118 estimated interested) based on the historical participation rate, covering all 8 ANSMC First Nations populations surveyed.

#### Survey Participation combined with Historical Participation Levels.

The survey participation rate is **58.44%**, based on analysis from the Kespukwtk Elver harvest effort figures in 2023. A significant portion of the elver harvester population, 135 out of 231 Kespukwtk harvesters who recorded effort in the spring elver harvest, participated in the November 2023 survey.

**Expected Participation Level:**

Considering the survey participation, the expected participation level for the following surveys communities: Annapolis Valley, Bear River, Eskasoni, Glooscap, Pictou Landing, Potlotek, Wasoqopa'q (formerly Acadia) and We'koma'q First Nation(s) surveys is **approximately 527 elver harvesters**. Utilizing the Expected Population-based Participation Level, this figure could reach as high as 780 participants in 2024. The mean between the two figures would be **654 participants**.

In conclusion, the analysis provides a comprehensive overview of Elver harvest participation, considering historical data, survey responses, and population metrics. The insights gained underscore the importance of community engagement and capture a significant representation of the harvest community's perspectives.

### **Proposal: Elver Access for NS Mi'kmaq Participants**

Elver Access for NS Mi'kmaq Participants with Enhanced Traceability and Conservation Measures

#### **Objective:**

This proposal outlines a structured and equitable allocation of elver access for 600 NS Mi'kmaq participants, emphasizing enhanced traceability, harvester monitoring, and conservation efforts throughout the elver harvest and value chain. Additionally, it includes measures to decrease mortality of large eel, promoting responsible resource management.

#### **1. Allocation in Yarmouth County (1200 kg):**

To facilitate a controlled and monitored introduction, we propose the implementation of a 1200 kg allocation in Yarmouth County. This allows for a systematic assessment of the impact on elver populations while providing valuable insights for future management.

This includes the creation of a new index river and a monitoring program run by the NS Mi'kmaq, emphasizing traceability.

#### **2. Regional Allocations:**

To ensure a fair distribution of elver access, we suggest the following additional regional TRP allocations:

- a. Shelburne, Queens, Digby, Annapolis (600 kg)
- b. Lunenburg, Halifax, Guysborough, Richmond (1800 kg)

This allocation aims to extend elver access to Mi'kmaq participants in key counties, promoting inclusivity and acknowledging the historical connection to these regions.

Recognizing diverse territories and interests, this allocation provides a larger share for Mi'kmaq participants in these counties, fostering economic and cultural benefits.

#### **3. River Access Designation:**

To guarantee safe and rights-based participation, the proposal includes designated access to over 45 rivers and streams across the allocated counties. This measure ensures that Mi'kmaq participants have exclusive access to specific watercourses, emphasizing the importance of cultural practices and sustainable resource management.

#### **4. Enhanced Traceability and Conservation Measures**

To strengthen traceability and conservation efforts, the proposal includes:

- Integration of traditional knowledge and ecological assessments to inform decision-making.
- Establishment of a monitoring and reporting system to evaluate the success of the TRP allocation and adjust future allocations accordingly.
- Implementation of a comprehensive traceability plan for NS Mi'kmaq participants, incorporating modern technology for real-time monitoring.

## **5. Decreasing Mortality of Large Eel:**

To address the mortality of large eel, the proposal recommends the following measures:

1. **Immediate Cease in Recreational Tidal and Freshwater Large Eel Retention:** Cease all recreational large eel retention activities immediately.
2. **Shutting Down of Hydroelectric Dams during Elver and Large Eel Migration periods:** Implement the temporary closure of all hydroelectric dams during elver and large eel migration periods.
3. **Mandatory Assisted Migration Strategy:** Enforce a mandatory assisted migration strategy for all elver-licensed commercial harvesters, ensuring the safe passage of large eel.
4. **Immediate Closure of Large Eel Commercial Fishery in Yarmouth county:** Cease all large eel commercial fishing activities, permitting harvesting only for FSC or TRP-based fishing activities.

### **Conclusion:**

This comprehensive proposal strikes a balance between conservation efforts, traceability, and the recognition of Indigenous rights, fostering a sustainable and inclusive approach to elver fisheries. The suggested allocations, river access designation, and enhanced conservation measures are integral components of a responsible and equitable management plan for elver resources for NS Mi'kmaq participants.

This is **Exhibit "D"** mentioned and referred to in the affidavit of Justin Martin affirmed before me on this 19<sup>th</sup> day of January, 2024

A black rectangular box redacting the signature of the Commissioner of Oaths.

A Commissioner of Oaths in and for the  
Province of Nova Scotia

GARNET E. BROOKS  
A Barrister and Solicitor of  
the Supreme Court of Nova Scotia

**KESPUKWITK DISTRICT  
NETUKULIMK LIVELIHOOD FISHERIES  
SPECIES-SPECIFIC INTERIM KATEW (ELVERS, AMERICAN EEL, ANGUILLA ROSTRATA)  
FISHERIES MANAGEMENT PLAN**

As declared by  
Annapolis Valley First Nation  
Bear River First Nation  
Acadia First Nation

MARCH 2022

## 1 PREAMBLE

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The Members of Mi'kmaq First Nations in Nova Scotia are beneficiaries of the Covenant Chain of Treaties made with the Crown between 1725 and 1761, including the Treaties of 1760-61 that were the subject of the 1999 Supreme Court of Canada decision in the case of Donald Marshall, Jr.

In accordance with these Treaties, Mi'kmaq in Nova Scotia have the right to harvest and sell natural resources, including fish, for the purpose of earning a moderate livelihood. Accordingly, Mi'kmaq Band Councils in Nova Scotia recognize the obligation to manage fisheries activities of the Mi'kmaq communities' members in Nova Scotia.

The Kespukwiti District Netukulimk Livelihood Fisheries Protocol (the "Protocol") is now in effect. That Protocol does not apply to Food, Social and Ceremonial ("FSC") Harvest in the exercise of Aboriginal Rights.

The Protocol provides for the development of Species-specific Harvest Plans and Conditions.

This Species-specific Interim Fisheries Management Plan deals with the harvest of **Katew** - Elvers

This Interim Fisheries Management Plan is a living document and may be amended from time to time based on experience, dialogue, and communication with our members.

This Interim Fisheries Management Plan must be read in conjunction with the Protocol. Certain terms used in this document are defined in the Protocol.

## 2 SPECIES CONDITIONS – KATEW (ELVERS, AMERICAN EEL, ANGUILLA ROSTRATA) LESS THAN 10 CM

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- 2.1 All Moderate Livelihood Fishing (“MLF”) activity for Katew - Elver, American Eel (*Anguilla Rostrata*) less than 10 cm under this exploratory interim management plan must comply with all the following conditions. This is an interim exploratory management plan. The results of this plan will be evaluated and re-considered in discussion with our members and harvesters.

This plan does not apply to the MLF harvest of Eels. The potential for a future MLF harvest of Eels may be considered in the future in a separate process.

### DEFINITIONS:

- 2.2 **Authorization**- A document issued to the harvester by the Band Council or designate clearly indicating that they are fishing under the authority of the Band in accordance with the Kespukwitk District Netukulimk Livelihood Fisheries Management Plan.
- 2.3 **Designated Holding Facilities** means one of the pre-approved holding facilities designated by the Band Council or designate.
- 2.4 **Harvester** – A Band member who is registered and authorized to fish for a livelihood under the Kespukwitk District Netukulimk Livelihood Fisheries Management Plan.
- 2.5 **Maritimes Region** – The region of Eastern Canada consisting of the waters adjacent to the coastal areas of New Brunswick, Nova Scotia, and Prince Edward Island.
- 2.6 **Cod end** – the eel capture section of the net.
- 2.7 **Daily Report** – will consist of the information required daily by the harvester to support proper management, oversight, and conservation. For this Species Specific Elver plan, the information required will consist of the Date of harvest, harvest location (River), landing/removal estimate at time of landing (prior to leaving location), actual weight landed (at time of transfer to holding or sale)
- 2.8 **Dip Net** – a single person, hand held net
- 2.9 **Wet Weight** – weight is taken of elver placed in a mesh bottomed container, until water no longer drips from that container, for a period not exceeding 2 minutes.



#### *COMPLIANCE*

- 2.10 Harvester authorization will be subject to fulfilment of harvesting duties, responsibilities and obligations from all authorized livelihood harvesting activities to date.
- 2.11 Any violation to any provision of this Plan recorded by duly appointed personnel shall be placed before the applicable Band Council for resolution through a community justice process.

#### *REGISTRATION & IDENTIFICATION:*

- 2.12 All harvesters must register with and be approved by their Band Council to harvest Elvers under the terms and conditions of this Fisheries Management Plan. This registry will include
  - a) Band members name
  - b) Band number
  - c) Tag numbers issued
  - d) Fishing area/ Watershed/ River system
  - e) Gear Type
  - f) The vehicle or vehicles which the Harvester intends to use to transport the Elvers to the Designated Holding facility

The Band Council designate will issue to the harvester a certificate of registry with the harvester's name, tag numbers issued, and gear type used for fishing and will provide the Harvester with a list of the Designated Holding Facilities. The Harvester will confirm to the designate which of the Designated Holding Facilities he or she intends to use and may amend that by notice in writing from time to time.

- 2.13 The Band Councils may require a registration fee or another form of compensation to cover cost of administration or to ensure responsible management practices are maintained.
- 2.14 Harvesters may be subject to criteria, as established by the Band Councils, including reduction in access or locations, during registration that supports fair and equitable access for all harvesters.
- 2.15 Elver fishing will be by hand dip net and or fyke net, unless otherwise permitted in writing by the harvester's Band Council or Band designate. That written authorization will specify the harvester's name and Band number, an individual authorized total allowable catch, description of the permitted gear type, amount of said gear that is permitted, and specific fishing period that said gear can be used.

- 2.16 Harvesters employing a method of fishing elvers other than those listed in s.2.15 must always carry authorization documents with them while fishing and transporting eel caught with the gear for which permission was granted, and show said documents to a Band designated monitor, DFO Enforcement or Guardian upon request.
- 2.17 All fyke nets must be clearly marked with a tag issued by the harvester's Band Council or Band designate. Each tag will be distinctly numbered and will be recorded against the name of the harvester.
- 2.18 All harvesters will indicate in writing their agreement and commitment to the terms and conditions of this Plan upon receipt of the tags. The harvester's Band or designate may provide a form letter for signature by the harvester.
- 2.19 Harvesters are not permitted to check nets or haul traps other than those with tags issued in their name.

***SAFETY:***

- 2.20 The minimum age for access to Netukulimk Livelihood Fishery will be 18 years of age.
- 2.21 All harvesters must wear a personal flotation device (PFD) at all times while fishing Elvers.

## *CONSERVATION AND CATCH PROHIBITIONS*

American Eels are a species that has a Committee On the Status of Endangered Wildlife In Canada (COSEWIC) Status as Threatened (2012), but regionally eel densities have been increasing since the late 1980s (COSEWIC Assessment and Status Report 2012). Abundance studies of Elver (juvenile Eel) supporting steady increases in levels, and record catch levels in 2018, indicate that this species can support some support level of Mi'kmaq Livelihood harvest. Currently, DFO supports an "experimental" commercial elver fishery with a Total Allowable Catch (TAC) of 10,000KG, comprising of 9 commercial licenses utilizing only a small geographical area of Nova Scotia's watershed (approximately 30% of available fishable habitat).

Our First Nations have traditional knowledge and current experience with Eels and Elvers, especially in the Kespukwtk District. We hereby establish an experimental Elver fishery as an interim management plan. The purpose is to observe and document the upstream migration of elvers on selected rivers in Southwest Nova Scotia to identify potential locations and appropriate gear types for a future Elver fishery on those rivers. Kespukwtk harvesters will retain a small amount of those Elvers for a livelihood fishery and establish an Elver index for the rivers that do not have an established Elver fishery.

- 2.22 Effort or harvest level conservation practices will be determined collectively by our Band Councils based on community, science, and co-management recommendations.
- 2.23 Band Councils may request harvesters support science, research or restocking methods as opportunities are made available.
- 2.24 When moving between watersheds, harvesters must wash, dip, or spray or otherwise treat boots and all fishing gear with iodine-based or similar disinfectant before entering or placing fishing gear in another watershed.

***AUTHORIZED FISHING GEAR:***

- 2.25 While fishing under the authority of their Band Council, the harvester is prohibited from fishing with more fyke nets, or dip nets at any one time than the maximum number specified in their registration and certification documents. Electro-fishing is prohibited
- 2.26 The harvester is only permitted to use the number of fyke nets, and dip nets authorized by the Band.
- a maximum of 2 fyke nets, opening of each net is not to exceed 3.0 m in width and 4.3m in height, with each wing (2 wings per net) is not to exceed 10m in length.
  - the openings of each fyke net cod end must have an excluder panel mesh ½" or smaller, or.
  - dip net(s) as required; can be fished in conjunction with a stationary wing not exceeding 10m in length.
- 2.27 The harvester shall not utilize, place, or erect a fyke net or stationary wing that obstructs more than two thirds (2/3) of the width of the main channel of fishing location at low tide.
- 2.28 The total number of fyke nets authorized on any one river will be subject to the discretion of the collective fisheries committee.
- 2.29 When stationary wings are left in the water unattended, they must be set in a way that does not obstruct the upstream passage of elvers
- 2.30 All actively fishing gear must be checked within a 24-hour period unless prohibited by the weather.

***BUOYS and MARKINGS***

- 2.31 All floats and buoys must clearly indicate the harvester's name, community and contact number.

***OTHER***

- 2.32 Elver fyke nets must be set not less than 20 m (60') apart (i.e., no part of a net may be less than 20 m from any part of another trap) in any of the waters set out in item 1.29.
- 2.33 When fishing for elvers one-third of the width of any river or stream and not less than two-thirds of the width of the main channel at low tide in every tidal stream must be left open.

## FISHING AREAS

2.34 Harvesters are only permitted to fish for Elvers in the waters set out in the following table and use only the types and quantities of gear set out in s.2.15 at the specific locations set out in this table.

<u>Fishing District(s)</u>	<u>Watershed or River</u>	<u>Total Allowable Catch per River within Watershed</u>	<u>MAXIMUM Total Allowable Catch per Harvester (Elver)</u>
Kespukwit	Medway	400 kgs	35Kg
	Bear	400 kgs	
	Chebogue	36 kgs	
	Gaspereau	400 kgs	
	Cornwallis	373 kgs	
	Hardings Brook	29 kgs	
	Shag Harbour Brook	47 kgs	
	Atwoods Brook	12 kgs	
	Fresh Brook	18 kgs	
	Downeys River	59 kgs	
	Northwest Creek	25 kgs	
	Bakers Flat	14 kgs	
	Annapolis		
	Annis		
	Mersey		
	Roseway/Sable		
	Meteghan		
	Tusket		
	Barrington/ Clyde		
	Gold		
	Lahave		
	Clyde		
	Jordan		*Individual TAC is subject to the management discretion and equitable distribution of effort by the Kespukwitk District Collective Fisheries Committee.
	Salmon River		
	Petite River		
	Argyle River		
	Sissiboo		
	Martin's		
	St. Croix		
	<i>*Other rivers will be added as discussion continues</i>	<i>*River TAC are subject to changes.</i>	



#### *REPORTING, MONITORING*

- 2.37 Harvesters will be required to provide a Daily Report including selling activity and catches to the harvester's Band or their designate. The Daily Report will identify which of the Designated Holding Facilities the elvers have been delivered to.
- 2.38 Monitoring may be conducted through the collection of log sheets, logbooks, online applications, and daily holding facility reports; the forms of which are provided by the harvester's Band, or other methods to be determined by committee, which may include third party oversight.
- 2.39 The harvester's Band or their designate may work with other communities, organizations and DFO science to ensure watersheds TACs are maintained.
- 2.40 Harvesters will be required to create a record of fishing activity including start and stop times, location, species, and method of harvest. This is subject to Committee discretion, and or third-party oversight.

#### *Lost Gear Reporting*

- 2.41 The harvester must report any lost tagged fishing gear to their Band Council designate within 24 hours of discovering that gear has been lost.
- 2.42 The harvester must report the retrieval of any of their own previously reported lost gear to their Band Council designate within 24 hours of retrieving gear previously reported as lost, or within 24 hours. Retrieval can only occur by an authorized harvester and only in relation to the specific type of gear authorized to be used.

#### *Bycatch*

- 2.43 The harvester is required to return all incidentally caught fish.
- 2.44 It is mandatory release of all bycatch species to control unintended mortality for all species.