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Chair: Mr. Ken McDonald



Standing Committee on Fisheries and Oceans

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• (1610)

[English]

The Chair (Mr. Ken McDonald (Avalon, Lib.)): I now call this meeting to order. Welcome to meeting number six of the House of Commons Standing Committee on Fisheries and Oceans. Pursuant to Standing Order 108(2) and the motion adopted by committee on Monday, October 19, 2020, the committee is resuming its study on the implementation of Mi'kmaq treaty fishing rights to support a moderate livelihood.

Today's meeting is taking place in a hybrid format pursuant to the House order of September 23, 2020. The proceedings will be made available via the House of Commons website.

So you are aware, the webcast will always show the person speaking rather than the entirety of the committee. To ensure an orderly meeting, I would like to outline a few rules to follow. Members and witnesses may speak in the official language of their choice. Interpretation services are available for this meeting. You have the choice at the bottom of your screen of floor, English or French.

For members participating in person, proceed as you usually would when the whole committee is meeting in person in the committee room. Keep in mind the directives from the Board of Internal Economy regarding masking and health protocols.

Before speaking, please wait until I recognize you by name. If you are on the video conference please click on the microphone icon to unmute your mike. For those in the room, your microphone will be controlled as normal by the proceedings and verification officer.

I will remind you that all comments by members and witnesses should be addressed through the chair. When you are not speaking, your mike should be on mute.

With regard to a speaking list, the committee clerk and I will do the best we can to maintain a consolidated order of speaking for all members, whether they are participating virtually or in person.

I would now like to welcome our witnesses back today.

We have Naiomi Metallic, chancellor's chair in aboriginal law and policy and assistant professor, Schulich School of Law, Dalhousie University. We also have Dr. Thierry Rodon, associate professor and Canada research chair in sustainable northern development, Université Laval. As well, we have Dr. William Craig Wickens, professor, department of history, York University.

Since the witnesses appeared with us on November 2 and already made their opening statements, we will now go to questions from members.

Mr. Richard Bragdon (Tobique—Mactaquac, CPC): I have a point of order, Mr. Chair.

We had the call this week and the email correspondence and I wanted to follow up for a point of clarification in regard to the subcommittee. Is it possible for the clerk to find time at another point other than committee time for us as subcommittee members to meet to go over some of the agenda items and witness lists, etc., so that some of that would be ready for some of the upcoming meetings that will be happening? Is it possible to find additional time somewhere else? If not, then I would suggest that we'll need to, maybe as a committee of the whole, set aside some time for committee business, maybe not at the next committee meeting but the one a week from today, on Monday, to have some time to deal with committee business.

I'm wondering if it's possible for the subcommittee to meet at a separate time at any other point prior to next week's meetings.

Thanks, Mr. Chair.

The Chair: Mr. Bragdon, in communicating with the clerk, we've been advised that if it is our wish to meet as a subcommittee, we would have to do it during normal committee meeting time. We will try to accommodate in some way, whether it is committee business or whatever, discussion of the issues that you're talking about in regard to our upcoming schedule.

Madam Gill also asked for something to be discussed in committee business.

We will look at trying to carve out a portion of a meeting along the way to do exactly that, if we can't get the additional time.

Mr. Gord Johns (Courtenay—Alberni, NDP): Mr. Chair—

The Chair: Is this on the same issue, Mr. Johns?

Mr. Gord Johns: No, I'm having technical problems. My headset is not working. You can hear me, though, okay?

The Chair: I can hear you, but it's up to the sound crew if they can hear you properly in order to continue, Mr. Johns.

Mr. Gord Johns: Okay, great. Interpretation is fine, good.

The Chair: Okay.

Now we'll go to Mr. Williamson for six minutes or less, please.

Mr. John Williamson (New Brunswick Southwest, CPC): Thank you, Mr. Chair. I'm so glad our witnesses were able to return.

I hope you can understand at the time we were interrupted—and I was the primary interrupter—we had some important business to try to get the fisheries minister before us, so here we are. I'm glad we're able to proceed and I'm also glad to report that the fisheries minister will be joining us the day after tomorrow. Your testimony will, I think, help inform us for that meeting.

I have some general questions. I suppose I'll ask you to respond to them each briefly.

[*Translation*]

I will ask my questions in English, but you can answer in French.

[*English*]

In the context of this study that we are undertaking, what would you say are the main differences between individual and communal indigenous rights?

I'm hoping that each witness could respond for 35 to 45 seconds.

• (1615)

[*Translation*]

Mr. Thierry Rodon (Associate Professor and Canada Research Chair in sustainable northern development, Université Laval, As an Individual): That's a highly legal issue and I wouldn't want to venture too strong a position on it.

It's a question that many lawyers are asking themselves right now on the basis of indigenous rights. Section 35(1) of the Constitution Act, 1982 clearly recognizes the collective rights of indigenous peoples. This is actually one of the exceptions in the charter. There are several cases in Canada, specifically mining developments, where rights have been attached to families or individuals. There is no clarity on this issue.

The current general understanding in Canada is that, under section 35(1), these are recognized collective rights. Of course, it is an evolving right.

Mr. John Williamson: That's great.

Thank you very much.

[*English*]

Would any other witnesses like to weigh in on this?

Professor Naomi Metallic (Chancellor's Chair in Aboriginal Law and Policy and Assistant Professor, Schulich School of Law, Dalhousie University, As an Individual): I guess since I'm the lawyer, it would make some sense to.

I would probably ask you for more details about your question because it's pretty generally formed.

In terms of section 35, it has been held by the Supreme Court to protect collective rights. However, the Supreme Court has also recognized that there could be individual exercises of those collective rights.

In a decision called *Sally Behn, et al v. Moulton Contracting Ltd., et al*, from 2014, the Supreme Court did say that in certain circumstances—they didn't set them all out; they never do—there can be individual exercises of rights and situations where people could solely rely on those collective rights to defend against charges, for example.

Mr. John Williamson: With that in mind, how do first nations resolve these different rights in terms of a communal right that exists to, in this case, harvest lobster versus an individual's right to also want to participate in it? Is there a mechanism to oversee that, to police that, to ensure that agreements are maintained or even that conservation levels are respected?

Prof. Naomi Metallic: There are several decisions from the Supreme Court now that suggest a communal right implies a right to manage the right—sort of an implicit right to self-government. In *Tsilhqot'in*, the Supreme Court referenced that in relation to aboriginal title, but even in *Marshall II*, the Supreme Court talked about how these were collective rights.

In fact, there is the case that I argued in New Brunswick in the Court of Appeal in 2017, where the court there specifically said that the “nature of communal rights mandates that the community regulate, or authorize, appropriate exercise of these rights by its individual members through ensuring equitable access to...resources.”

So, there's a management right implicit in the communal.

Mr. John Williamson: Could it be argued that what we were seeing and what was happening on the waters in Nova Scotia, because it was sanctioned through a first nations process, was that those who were advocating it were trying to meet the tests of the court? By that I mean, instead of individuals on the water—indigenous as individuals—

The Chair: We lost your sound, Mr. Williamson. Your video is frozen.

Mr. John Williamson: Mine is?

The Chair: Okay, you're back.

Mr. John Williamson: Did you hear me?

The Chair: No.

Mr. John Williamson: That's odd. I'll repeat myself. Pardon me.

With what was just said regarding those cases, is it fair to say that because indigenous fishers were operating through the barrel of a self-regulated fishery, they were trying to meet the thresholds that the courts had established?

• (1620)

Prof. Naomi Metallic: I can only say looking from the outside—I'm not their legal counsel—that given the fact there were communal management plans that were set in place, it seems as if that's what they were attempting to do, which would be consistent with the law.

Mr. John Williamson: Right.

The Chair: Thank you, Mr. Williamson. You have gone over your time. I did allow a bit of extra time for your losing your video.

I want to impress upon committee members to try to identify the person their question is for. You tend to lose time if you don't direct it to a particular witness. Keep that in mind.

We'll got to Mr. Battiste for six minutes or less.

Mr. Jaime Battiste (Sydney—Victoria, Lib.): I would like to ask a question of Professor Bill Wicken.

I've heard arguments that the Mi'kmaq were never part of the lobster fishery. Based on your research and your analysis, is that an accurate statement, or did the Mi'kmaq participate historically in a lobster fishery? Did they trade/sell lobster? Can you let us know what your thoughts are on that?

Professor William Craig Wicken (Professor, Department of History, York University, As an Individual): Yes. Thank you for the question. I hope you can hear me.

I presented evidence in the follow-up to Marshall, which was known as *R v. Alex MacDonald*, and prepared the 246-page report on this. I directly addressed that issue.

We have extensive documentation from the late 18th century on into the 19th century about the involvement of the Mi'kmaq in the lobster fishery. We actually have a picture from 1795 that shows a woman putting a lobster into a lobster pot.

We also know that before the treaties were signed, which was in the 1760s, the Mi'kmaq were involved in the lobster fishery. They used this.... They were a fishing people. They exercised that right communally, collectively. Lobster was one of the many species that they fished and sold to non-indigenous people in Nova Scotia and throughout the Maritimes.

Mr. Jaime Battiste: Mr. Wicken, as a follow-up, can you point to when the Mi'kmaq were displaced from this fishery, and can you give me a sense of how come that was?

Mr. William Craig Wicken: This was a long process. It occurred from the point of the American Revolution during the 1770s and the Loyalist immigration into Nova Scotia in the 1770s and 1780s.

Most Mi'kmaq people actually live below the Shubenacadie River, in the areas of Queens, Shelburne and Yarmouth, as well as in Kings county. It was a gradual process. They were dispossessed from their coastal areas where they had historically lived. These are a coastal people and they're a fishing people.

Reserves were created beginning in the 1840s, but most of them were inland and very, very small, and as in Bear River and Shubenacadie, which are on swampland, they are not very accessible to coastal areas. So this was a gradual process.

In the 1871 census, we had 22 Mi'kmaq people living on St. Marys Bay. We also had many other people living in coastal areas who were Mi'kmaq and who were fishing up until the early part of the 20th century.

Mr. Jaime Battiste: Thank you for that.

My next question is for Professor Metallic.

I've heard a bit of discussion where people have alluded to the fact that the Mi'kmaq have an individual right and a collective

right. Is there anything in place in terms of Mi'kmaq law or Mi'kmaq knowledge that would set limitations on an individual right to practise a moderate livelihood?

Prof. Naomi Metallic: There is this concept in Mi'kmaq called *netukulimk*. It is a broad concept. We're doing some research on what it fully means. I think there's some more work that can be done on that. The Unama'ki Institute of Natural Resources has some good information on this as well. It's a concept about stewardship and resource use that is intended to provide for people but not to take excessive amounts.

I don't have the exact definition of it, but that could be a very helpful Mi'kmaq law concept that could help in this communal right to manage.

Mr. Jaime Battiste: As a follow-up to that, in your initial speech, you noted there was a time when you acted for the Assembly of Nova Scotia Mi'kmaq Chiefs when there was no mandate under the fisheries.

Can you give me a sense of when that was, where that litigation was? What was the background behind that litigation, and what ended up happening with it?

• (1625)

Prof. Naomi Metallic: It's on the public record, so I think it's fine for me to talk about.

It was a case in 2013. This was after the assembly had been at their tripartite table for quite some time waiting for the Canadian negotiators to come to the table with a mandate to negotiate fisheries. By that point they had become quite frustrated and wanted to see Canada come to the table with a mandate. That was part of what was driving that litigation.

Mr. Jaime Battiste: Did the litigation stop or is that litigation still ongoing?

Prof. Naomi Metallic: It's in abeyance. At first Canada tried to fight the case, but we managed to keep the case going. By the point it was clear they were not going to get a matter struck, negotiators then came to the table and said they had an increased mandate to negotiate, but here we are seven years later.

Mr. Jaime Battiste: In what year was the increased mandate given to negotiators?

Prof. Naomi Metallic: That was in 2013. It was started in 2013, and we put it in abeyance in that year, too.

Mr. Jaime Battiste: Following up on the collective right—and I don't think you're going to be able to talk about that—how do we, as communities, figure out how to balance the collective right versus the individual right? Do your best in 30 seconds to explain how we can do that. I know I didn't give you much time.

Prof. Naomi Metallic: I think a Mi'kmaq law and a Mi'kmaq lens can help us see that. We were a people who shared with each other. We were a communal society, and so I think our own values can help inform that.

Mr. Jaime Battiste: Thank you.

The Chair: Thank you, Mr. Battiste.

We'll now go to Madam Gill for six minutes or less, please.

[*Translation*]

Mrs. Marilène Gill (Manicouagan, BQ): Mr. Chair, my thanks to all the witnesses who are back today.

When we parted a few weeks ago, I had been speaking with Mr. Rodon. We had mentioned how co-management could, to some extent and clearly depending on the circumstances, reduce tensions. It was also a model for certain communities to succeed in managing resources in a responsible way and through compromise.

I would like to hear Mr. Rodon's opinion again on the prerequisites and what it would take for us to establish a co-management formula. We see the tensions in Nova Scotia.

What are we missing right now to be able to set up a co-management formula?

Mr. Thierry Rodon: Thank you for the question.

I will try to answer by first giving you a little context. I have had some contact with Innu fishers on the North Shore, who experienced tension but not to the extent of the tension we experienced with the Mi'kmaq. However, in the case of the Innu, at the beginning of the fishing season for both commercial and subsistence fishing, the processes are exactly the same for commercial fishing—with the licence buyout and the rest—and for the subsistence fishing in the region. There was a lot of friction at the outset, although not to the same extent, meaning that there were no criminal acts, for example.

Furthermore, the Innu fisheries manager at the time told me, during our discussions, that their solution was to become fully involved in the fishermen's associations. As a result, the Innu of the North Shore are part of the Lower North Shore Fishermen's Association, and therefore of all fishermen's associations. There was really a proactive will to be part of those associations in order to have a voice and be able to move forward.

I don't think this is the case in Nova Scotia, where, clearly, there is division and a great deal of tension.

To come back to your question, we see that co-management is sometimes used in times of extremely high tension. It's a way of forcing people to sit around the table and come up with solutions. However, someone has to call them together. I think the federal role could be important in that regard. As we said at the outset, everyone is there for the right reasons. However, everyone is entitled to their share and must be able to enjoy a decent standard of living. I would remind you, though, that the unemployment rate among the Mi'kmaq in the community we are talking about is 20%, double the unemployment rate in Nova Scotia. So it's a question of economic development.

Clearly, we have to find a way to manage the resource in a responsible way. According to my experience of working with the Innu, they have as much, if not more, interest in managing the resource as responsibly as everyone else. Clearly, the indigenous people are not going to move. The Mi'kmaq, who have been around for millennia, are not going to deplete the resource and then move away, as is often the case with other fishers. That is what we are seeing all over the place. I feel that it is not really a valid argument

to think that the indigenous fishery is going to destroy everyone's way of life, since no one has any interest in doing that.

Nevertheless, a way must be found to overcome this mistrust. People need to have places where they can talk to each other and show that there is responsible management on both sides. In fact, it's not just the Mi'kmaq who need to demonstrate this, it's the commercial fishers as well. Together, they need to define what can and cannot be fished. We cannot do it any other way, in my humble opinion.

• (1630)

Mrs. Marilène Gill: In other words, we all have the prerequisites right now to be able to meet and discuss, but we lack the will to bring people together. Of course, the Department of Fisheries and Oceans could take steps to make it possible for people to meet.

Mr. Thierry Rodon: Yes, this should be its role, a role that it has actually played on several occasions.

I am a little astonished by its inaction in this conflict. I'm not the only one, in fact, because several people have mentioned that, following the Marshall decision and because of well-established practices, Fisheries and Oceans Canada was much more proactive with the Innu in getting the fishery accepted. But here, it has chosen not to be very present. I do not think that either the fishermen or the Mi'kmaq will be able to resolve this on their own. It's not a matter of going to arbitration, because that's not the issue. But the federal government has a fiduciary responsibility to indigenous peoples on behalf of the Crown. So it would be a matter of taking that responsibility and protecting the right of the Mi'kmaq to have access to the resource, a right that is recognized constitutionally and by treaty, while not allowing tensions to arise in the region. There are ways to do this. In fact, as many have said, it is Fisheries and Oceans Canada's unwillingness to become involved in the region that has created those tensions.

Mrs. Marilène Gill: How could we—

[*English*]

The Chair: Madam Gill, you have four seconds left.

[*Translation*]

Mrs. Marilène Gill: My six minutes are up already?

Okay.

Thank you, Mr. Rodon.

[*English*]

The Chair: It doesn't take long when you're having fun.

Thank you, Madam Gill.

We will now go to Mr. Johns for six minutes or less, please.

Mr. Gord Johns: Thank you, Mr. Chair, and thank you to the witnesses for coming back to this committee to testify. We greatly appreciate your being here.

I'll start with Chancellor Metallic. It has come up several times at this committee that in the course of our study we could be doing more harm than good, given that there are ongoing discussions with the Department of Fisheries and Oceans and the Sipekne'katik.

Could you cite some recommendations this committee could bring to Parliament that would actually support those discussions without undermining their legitimacy?

Prof. Naomi Metallic: Okay. I think some of Monsieur Rodon's suggestions around co-management are really key. I think it's about the parties working together and talking together.

The legal context here is complicated, right? It's not black and white. That was in the article which I submitted to the committee. It's not black and white. The Supreme Court has this very complex test that requires the government to meet its fiduciary duty and the honour of the Crown, but it's not a checklist of what [*Technical difficulty—Editor*] It's about listening to each other. I think it's really recognizing that the Mi'kmaq people have an interest in not just the fish, but also around the management of this right as well, and in being treated as a nation and not simply a stakeholder. I think that's really key.

I think the other part of this is that you can't see this as a one-time thing: "Oh, we'll solve this; we'll throw some money at it, and it's going to go away." It's about a relationship between two nations. It will grow and change, and it will continue to require nurturing that relationship and actually looking at things. What is a moderate livelihood in 2020 is going to be different from what is a moderate livelihood in 2030, and there's the role of the parties in that.

Various other factors can influence that, but those would be some of the key things.

• (1635)

Mr. Gord Johns: When you talk about co-management—and I really appreciate that—and when we look at monitoring and enforcement of treaty fisheries, does DFO have that mandate if the nations have actually asserted their governance by passing their own regulations within their treaty fisheries management law? How does everyone move forward there in terms of with the department?

Prof. Naomi Metallic: Well, I think by getting out of the mentality of one government enforces and the other one is not really a government and doesn't have any say in it. I think it's about working together to address mutual issues of concern.

There are some examples of this. Monsieur Rodon already gave some. I'm from the Listuguj Mi'gmaq First Nation, and we have had our own fisheries law since about the mid-nineties. We have our own Rangers program, so we have our own enforcement officers who go out in the water. This is not new. There are models out there to look at. That's what I would say.

Mr. Gord Johns: We have heard about DFO obviously wanting to work more towards an aboriginal communal licence that could be made available, but that's inconsistent with the nature of their section 35 rights for the Sipekne'katik. What other viable option is available to the minister? We've heard that they've talked about section 4.1, which might be better suited to support the co-operation within the two parties.

Can you speak about some of the options around that in the common interests so they can exercise their right to a moderate living?

Prof. Naomi Metallic: It's hard in sort of the abstract to give a lot of examples. Again, I think it goes back to talking through on probably a species by species.... Lobster might be different from

shrimp, and various other species might be different, but it's about looking at what are the demands on the fisheries and honestly talking together about what are their conservation issues. It's not about what are the other demands on the fisheries from others. The court did say that Canada can also consider the interests of other fishers, but at the same time, it has to show some priority for the treaty rights.

It's hard to give a rule book, because it's not. It's a conversation, honestly talking to each other and listening and recognizing the Mi'kmaq interest and giving it priority. Also, recognizing the Mi'kmaq management or governance interest in this, too, is really key, because that's what the model for the last 20 years with the aboriginal communal fisheries licences under the fisheries regulations.... I mean, that was never set up to be a response to Marshall in the first place, but because it treated the Mi'kmaq exactly like any other stakeholder, that is a huge part of the problem.

Mr. Gord Johns: How much time do I have, Mr. Chair?

The Chair: You have one minute.

Mr. Gord Johns: Professor Wicken, obviously this study is taking place after the Marshall decision came down 20 years ago. At the time, that committee found DFO was caught off guard. Do you think that right now DFO has been caught off guard in terms of preparing for the situation that's unfolded with the Sipekne'katik?

Mr. William Craig Wicken: I'm really not in a place to answer that type of question, Mr. Johns. I apologize. I'm just a historian. I can give you a historical perspective on that, but I can't answer contemporary questions like that.

Mr. Gord Johns: Historically then, do you believe there's systemic racism in the Department of Fisheries and Oceans?

Mr. William Craig Wicken: First of all, I have to define what you mean by racism. I've already said in my opening statement that I think there are many good people within the Department of Fisheries and Oceans. I know that within the Government of Canada there are very good people, and some of them are listening today.

Whether or not there is seems to me to be something to address to the Mi'kmaq as well as to non-indigenous fishers.

Mr. Gord Johns: Mr. Bragdon, do you want to—

The Chair: Thank you, Mr. Johns. Your time has gone a little bit over.

If I don't hear any objection, I'm going to make an executive decision to do a full three-minute round for all four parties to have three minutes each before we finish with this group of witnesses.

I'm not hearing any objection.

Mr. Arnold, you have three minutes or less, please.

Mr. Mel Arnold (North Okanagan—Shuswap, CPC): Thank you, Mr. Chair.

Thank you to the witnesses for coming back today.

I'll start with Ms. Metallic.

DFO determines fishing season dates that stipulate season openings and closings for species including lobster. Do these dates represent an infringement on aboriginal treaty rights?

• (1640)

Prof. Naomi Metallic: Yes, they can. It depends. That's what the Supreme Court of Canada said in the Marshall decision. With respect to Marshall and the dates that were set, he was fishing outside of closed fishing seasons and was found to be in violation. So absolutely, but again, it goes back to looking at species by species, what the issues are and what the conservation concerns are, so it's not a yes or no answer.

Mr. Mel Arnold: Thank you.

In what has become known as Marshall II, in paragraph 6, the Supreme Court states, "In a series of important decisions commencing with the R. v. Sparrow [1990] 1 S.C.R. 1075, which arose in the context of the west coast fishery, this Court affirmed that s. 35 aboriginal and treaty rights are subject to regulation...." In paragraph 61 of the Marshall decision, Justice Binnie for the majority stated, "Catch limits that could reasonably be expected to produce a moderate livelihood for individual Mi'kmaq families at present-day standards can be established by regulation and enforced without violating the treaty right."

Do you agree, based on the Marshall case, that DFO has the right to regulate the fishery for both indigenous and non-indigenous commercial fishers, including those seeking a moderate livelihood?

Prof. Naomi Metallic: There is, but I'll point you to the article that I provided to the committee that "regulate" doesn't mean "regulate" in the way that the Crown can unilaterally do whatever it wants. My article sets out how the various Supreme Court of Canada decisions from Sparrow to Gladstone to Badger to Marshall set out a very detailed process about how that regulation with respect to aboriginal and treaty rights is supposed to happen.

Mr. Mel Arnold: Should the fishery eventually result in legal pluralism here with more than one governing body, how should the Canadian government or DFO and first nations resolve the differences of law, regulations and policy?

Prof. Naomi Metallic: They can do it by negotiating with each other. I think that would be the first thing. I don't think we would want to resort to the courts. It works okay. It can be bumpy at times, but federalism exists in Canada. That's how the federal government and the provincial governments work things out for the most part, usually trying to negotiate, so it's the same idea.

Mr. Mel Arnold: How's my time, Mr. Chair?

The Chair: You have 10 seconds. I guess we'll move on.

Mr. Morrissey, you have three minutes or less, please.

Mr. Robert Morrissey (Egmont, Lib.): Thank you, Chair. My apologies for technical issues.

I want to go back to an answer that Ms. Metallic gave.

Was I correct that you were referring to the Marshall court decision regarding the dates which said he was in violation? Could you just clarify that answer you gave?

Prof. Naomi Metallic: The court in Marshall I found that Marshall was fishing out of season. The court found that the restriction on fishing within season was unconstitutional in that particular case.

Does that answer your question?

Mr. Robert Morrissey: Yes.

Perhaps you could comment on this question, because I'm not sure anybody has referenced it so far.

There is a perception that since Marshall, there's been a vacuum as it relates to access to fisheries for first nations communities. We all know the record will say that there's been a significant transfer of fishing rights and access to the fishery to first nations communities since Marshall.

Has the transfer of fishing licences since Marshall 1999 satisfied any definition of moderate livelihood?

Prof. Naomi Metallic: In fact, it addresses that directly in the paper I gave to the committee, and was recently posted as an article on Policy Options.

When the commercial agreements came out of Marshall, the negotiators actually told the Mi'kmaq that this was not the implementation of a moderate livelihood right. To see it as such is problematic, given the representations that were made.

Beyond that, yes indeed, access helped the communities financially. However, one of the issues with respect to that is that in over 20 years, populations grow within the community; the boats that were provided get old, and the licences become insufficient to meet the needs. This idea of a relationship that continues can't just be a one-time thing. That's the challenge with looking at personal access.

• (1645)

Mr. Robert Morrissey: I'll go back to your comment that it would be problematic. Therefore, if DFO were to remove the fishing licence, access to the fishery that occurred, would it not have any negative impact on the continued negotiations on moderate? Could DFO remove those? The only part was moderate livelihood. There was no onus on the court decision to do that. The onus was on allowing a moderate livelihood. Would I be correct in assuming that those licences could be removed from the equation?

Prof. Naomi Metallic: I feel it's comparing apples and oranges.

We're talking about a moderate livelihood treaty right and you're talking about commercial access. The government presented it as just being commercial access at the time. Sure, maybe it could potentially do that. It's a separate question from the moderate livelihood right, but the government had to—

Mr. Robert Morrissey: So you do acknowledge it's separate and [*Inaudible—Editor*] is not bound by it.

The Chair: Sorry, Mr. Morrissey, but your time is up.

We'll go to Madam Gill for three minutes or less, please

[*Translation*]

Mrs. Marilène Gill: Mr. Chair, I would like to ask Mr. Rodon another question, again on co-management.

I would like to thank him for giving an example from our region. With the Innu on the North Shore, we can see that the tensions are really not the same and that people are able to discuss them now. Let's hope that this will always be the case.

I apologize, because I don't like to ask for speculation, but I would still like to hear what you have to say about the following, because you have solutions. Right now, if you were the Minister of Fisheries and Oceans, what would be the first steps that you would take to address this urgent situation, to mitigate the current impact and to find a solution, given that the department will not be negotiating the legal issues?

I humbly ask for your advice. I agree that neither you nor I are ministers.

Mr. Thierry Rodon: You are putting a lot on my shoulders.

One of the only political scientists to have gone into politics has not always been successful.

Without putting me in the shoes of a minister, action is clearly needed, as I said. In fact, Fisheries and Oceans Canada's inaction has been a big problem, as I have said several times and as has been noted by many people, because of the tensions that have been raised. When tensions rise and crime is committed, clearly, it always becomes much more difficult to negotiate.

I think there is always a chance and I come back to that. They have appointed a negotiator, but I think they could come up with proposals to make sure they have sound management of the resource. We have to recognize the constitutional right of indigenous peoples to have access to resources.

I began my opening remarks by saying that in fact, the history of indigenous peoples in Canada is a history of dispossessing them of their access to resources. It is very much marked by that. Basically, at the heart of these tensions, we see a player who had a central role being eliminated and wanting his protected rights back. This is where it is important for the government to be present, precisely to avoid tensions. There are solutions.

Mrs. Marilène Gill: Given a co-management framework, can the stakeholders start the process without the government, without government leadership?

Mr. Thierry Rodon: Yes, they can certainly start the process. Some examples of co-management associations have come out of major conflicts. The users made that decision. That said, since the government is responsible for regulation, it must clearly be at the table at some point.

Community leaders could actually agree to find a solution to ensure that the resource is well managed and then provide Fisheries and Oceans Canada with proposals, for example.

Mrs. Marilène Gill: Thank you very much.

[*English*]

The Chair: Thank you, Madam Gill.

We'll now go to Mr. Johns.

Mr. Johns, I want to remind you to put the microphone a bit closer to your mouth. We're having trouble getting the interpretation.

Go ahead, Mr. Johns, for three minutes or less.

• (1650)

Mr. Gord Johns: Thanks, Mr. Chair.

I agree with Mr. Wicken that there are some fantastic people working in the Department of Fisheries and Oceans, but we've seen a repeated set of biases against indigenous peoples that inform decision-makers and the government.

Ms. Metallic, can you speak to whether you see systemic racism within the Department of Fisheries and Oceans and how that's playing out for indigenous people when it comes to fisheries?

Prof. Naomi Metallic: I am not doing a study on the ground, but I think the lack of implementation by Canada writ large of moderate livelihood rights is a problem. That it goes down to the enforcement arm of the state is another aspect of that problem. It does seem that those at the top and the people who are enforcing the law are not recognizing section 35 rights with respect to a moderate livelihood. Yes, there was access to the commercial fishery post-Marshall, but that hasn't really been informed by or hasn't looked at what's actually required under Supreme Court of Canada cases.

I don't know if it's active anti-indigenous animus, but it's certainly about not knowing the law or following the law or respecting the heart of the law. I think that's a really big problem and it needs to change.

Mr. Gord Johns: Do you feel the implementation of the United Nations Declaration on the Rights of Indigenous Peoples in Canada would help avoid or exacerbate fisheries issues in the future?

Prof. Naomi Metallic: I think it would help, but why not implement section 35? It's in our Constitution. Some people say UNDRIP is aspirational. These are decisions from the Supreme Court of Canada, from our highest court. It's the law. We could start there. UNDRIP would help that, but first and foremost it's about section 35.

Mr. Gord Johns: You talk about implementing the court's decisions. We frequently see the government lose in court or get tested in court and the first thing they do is appeal. Do you not see that as systemic racism? They appeal at every opportunity.

Prof. Naomi Metallic: There have been many instances where government has appealed. I guess in some respects that seems to be viewed as par for the course. I will note that in 2017 the government put forth litigation guidelines or standards that are supposed to reduce that.

I have been a litigator. As somebody who has read many Supreme Court of Canada cases, I've seen that government will often put forward positions that make you wonder if they are really facilitating reconciliation or decolonization.

The Chair: Thank you, Mr. Johns.

That clews up the first half of our committee discussions for today.

I want to thank the three witnesses for their patience and indulgence, for coming back and for helping to educate me and the committee on this very important issue.

We'll say goodbye to our witnesses and suspend for a moment, until we set up our next panel.

Thank you.

• (1650) _____ (Pause) _____

• (1658)

The Chair: Welcome back. We're going to get started.

Would everyone please click on their screen in the top right-hand corner and ensure they are on gallery view. With this view you should be able to see all the participants in a grid view.

I would like to repeat a few comments for the benefit of our new witnesses.

Before speaking, please wait until I recognize you by name. When you are ready to speak, click on the microphone icon to activate your mike. I remind everyone that all comments should be addressed through the chair.

Interpretation in this video conference will work very much like it does in a regular committee meeting. You have the choice at the bottom of your screen of floor, English or French. When speaking, please speak slowly and clearly. When you are not speaking, your mike should be on mute.

I would now like to welcome our witnesses in the second panel. We have Chief George Ginnish from the Eel Ground First Nation, chief executive officer, North Shore Micmac District Council. We also have Chief Darlene Bernard, from the Lennox Island First Nation.

We will now go to opening remarks of five minutes or less. Chief Ginnish will go first.

Chief George Ginnish (Chief Executive Officer, North Shore Mi'kmaq District Council, Eel Ground First Nation): Thank you, Mr. Chair.

Good evening. My name is Chief George Ginnish. I am the chief of the Natoaganeg First Nation and I co-chair Mi'gmawel' Tplu'taqnn, which is the organization of our Mi'kmaq first nations in New Brunswick. I have been the chief of my community since 1996 and I am speaking to you today from Mi'kma'ki, the unceded and unsundered territory of the Mi'kmaq people.

Mi'kmaq are signatories to peace and friendship treaties with the British Crown, of which Canada is now a beneficiary. Our ancestors negotiated treaties in which they were promised that we would be allowed to continue to hunt and fish, as we had for thousands of years, and to trade in these goods. Signing these agreements was intended to bring a peaceful relationship between our people and yours. Unfortunately, this has not been the case. DFO rules have expressly been designed to systemically exclude us from the fishery.

We had hoped that the Marshall decision would usher in a new era of peace and prosperity for our communities. We hoped that we would be able to work together to implement our right to a moderate livelihood in a way that was respectful of our rights as a self-governing people and in accordance with Mi'kmaq laws. Again, this has not been the case. Instead of working to implement the treaties, the federal government chose a policy response to a court decision, known as the Marshall response initiative.

Under the Marshall agreements, instead of implementing a treaty-based fishery, DFO offered funding to bands to purchase licences, vessels and gear from existing fishers so that we could participate in the existing commercial fishery under DFO's rules. This was designed to appease non-indigenous fishers, not implement Mi'kmaq rights. While some Mi'kmaq communities refused to sign, many communities, impoverished and long denied any access to fisheries, felt compelled to sign these one-sided agreements.

There were significant inequities in the funding and in the distribution of access to various fisheries. My community was specifically excluded from access to the lucrative snow crab fishery, access that all of our neighbouring Mi'kmaq communities in northern New Brunswick enjoy. Some communities also received much higher levels of funding per capita than others.

We were told that these were interim measures, that the inequalities would be rectified, and that our rights would be implemented through a trilateral negotiation table. A table was established in New Brunswick in 2007-08. For the next decade we made little progress as DFO refused to negotiate. This was supposed to change in 2017 when the federal government came to our table with a new fisheries mandate and a new negotiator.

When our chiefs first met with the newly appointed federal negotiator, Jim Jones, in December 2017 we made clear that we did not want this negotiation process to be a repeat of the Marshall response initiative. We wanted DFO to negotiate with the Mi'kmaq as a collective and respect our need to implement our treaty rights in a way that was respectful of our right to self-determination and of our nation-to-nation relationship. Specifically, we wanted to work together to define and implement a moderate livelihood, to recognize the fact that a rights-based Mi'kmaq fishery must be self-governing and to provide access on a priority basis for our communities that have long been denied their rights.

Unfortunately, again this has not been the case. DFO came to the table with a mandate that they unilaterally developed. The mandate is to provide funding to purchase more commercial access and not to define and implement a true livelihood fishery. DFO has again sought to undermine and divide us as a collective and to negotiate agreements with individual bands.

Although they acknowledge that purchasing commercial access is inadequate to address a moderate livelihood, they refuse to explore other possible solutions. Everything the Mi'kmaq have put forward as a potential solution to the impasse has been rejected by DFO as being outside their mandate.

We have tried to express these concerns to a series of ministers, but they have fallen on deaf ears. Despite repeated requests, we have been unable to get a meeting with Minister Bernadette Jordan. In the responses that we do receive, she merely reiterates the same inflexible position that has already been heard at the table.

• (1700)

This needs to change. In collaboration with the Mi'kmaq, the Government of Canada needs to revisit and revise DFO's negotiation mandate. The mandate must recognize our right to self-determination, and it must recognize that a rights-based fishery must be self-governing in accordance with Mi'kmaq laws.

I thank you for listening and welcome any questions you may have later.

Wela'lin. Thank you.

• (1705)

The Chair: Thank you, Chief Ginnish.

We'll now go to Chief Bernard for five minutes or less, please.

Chief Darlene Bernard (Lennox Island First Nation): I have a lot of notes, so can I use up the rest of his time? I don't know if he used five minutes or not.

I'll read quite quickly, but I'll try to be very clear.

Mr. Chairman, honourable committee members, ladies and gentlemen, thank you for inviting me to present today.

My name is Darlene Bernard, and I am the chief of the Lennox Island First Nation and one of the leaders of the Mi'kmaq of Epekwitk here in Mi'kma'ki. We are the beneficiaries of the constitutionally entrenched aboriginal and treaty rights in P.E.I.

I am not the first P.E.I. chief to present to this committee on this issue. My predecessor, Chief Charlie Sark, presented to this committee, which had a different composition and a different chair, almost 21 years ago. It is disconcerting that there has been no resolution in the two decades that have followed.

A day shy of 21 years and two months ago, the Supreme Court of Canada released the Marshall decision. It was a landmark day for my people, the Mi'kmaq. It confirmed what we have maintained for generations: that the treaties signed by our ancestors guaranteed our right to hunt, fish and gather to generate a moderate livelihood. Our fishing rights have been practised for millennia, were codified with the Crown 260 years ago, were entrenched in 1982 and were affirmed by the Supreme Court in 1999. The Mi'kmaq right to fish in support of a moderate livelihood is constitutional—the supreme law of the land in terms of Canadian law.

As was done immediately following Marshall, we have been engaging our community in discussions and the decision-making process with respect to the implementation of our treaty right to fish. We have always acknowledged that the exercise of the right would be regulated. We understand that when the Supreme Court affirmed our treaty right, it was confirmed that the Government of Canada would regulate the right. However, the ability to regulate is not unfettered. The high court outlined the purposes for which regulation was appropriate. Specifically, the livelihood fishery can only be regulated for purposes such as conservation and/or compelling and substantial public objectives. Any Crown attempt to regulate must be justified and must be consistent with the parameters set down by the Supreme Court of Canada, specifically in *R. v. Sparrow* and then later in *R. v. Badger*, which were referenced in Marshall. The ruling is clear. If the Crown is attempting regulation, it must justify the restrictions on the exercise of the treaty right as follows:

There must be a valid legislative objective, and it must be remembered that the objective of the department in setting out the particular regulations will be scrutinized.

The honour of the Crown must be upheld. The honour of the Crown is at stake in dealing with aboriginal peoples. The special trust relationship and the responsibility of the government vis-à-vis aboriginals must be the first consideration in determining whether the legislation or action in question can be justified.

There must be as little infringement of the right as possible in order to effect the desired result. Further, the aboriginal group in question must be meaningfully consulted with respect to the regulation measures being implemented.

While the Mi'kmaq treaty right has been established, there is a heavy onus on the Crown to justify any limitations of that right. The minister cannot use her arbitrary discretion to limit the treaty right through regulation. Recognition and affirmation require sensitivity to and respect for the rights of aboriginal people on behalf of the government, courts and indeed all Canadians.

The Mi'kmaq people have lived in Epekwitk for 12,000 years, and our priority for the resources has always been and always will be inherently based on conservation. We are not looking to exploit the fisheries. For centuries, we have existed in accordance with the principle of *netukulimk*: taking what you need and leaving the rest for the next generation.

We have respect and gratitude for our resources. Any overfishing of a particular species in this country that has raised alarms over conservation has only happened as a result of post-colonial, non-indigenous commercial fishing. The Mi'kmaq have survived for thousands of years by embracing a sustainable approach to harvesting resources. It is hard to adequately convey the level of disrespect felt and offence taken when we read about those, including current members of Parliament, who are trying to thwart our constitutionally protected rights by making irresponsible assertions under the pretense of unfounded conservation arguments. The Mi'kmaq are the original stewards of our land and resources, and this respect for Mother Earth and what she gives us will live on in perpetuity.

• (1710)

It should also be noted that in late September, according to Dalhousie University research, there are currently no conservation concerns with the livelihood fishery.

I state to this committee that we need leadership and decision-making based on science and fact, not based on innuendo and fear-mongering. It must all also be noted that if there were to be any issues regarding conservation, the privilege-based commercial fishery would be the first place where limitations would need to be explored, not the rights-based livelihood fishery.

I am not here to debate—

The Chair: Thank you, Chief Bernard.

Chief Darlene Bernard: I'm not even half done.

The Chair: You've gone a little bit over, actually.

I know you have an extra long statement. Committee members will be provided with your statement in both official languages if it hasn't already been done. Hopefully, some of the rest of the things you want to say will come out in the line of questioning. It is a five-minute time limit. Unfortunately, we have gone over.

Now, we'll go to our first questioner.

Mr. Calkins, you have six minutes or less, please.

Mr. Blaine Calkins (Red Deer—Lacombe, CPC): Thank you, Chair. Thank you to the witnesses we're hearing from in this part of the committee meeting.

I have a question for both Chief Ginnish and Chief Bernard.

If you were in the negotiation room.... I don't want you to divulge any secrets in what you are trying to do or what you are trying to accomplish, but please help me understand. What is your definition of moderate livelihood?

I'll put it in context. We know that the fisheries have been set up for communal benefit, yet previous witnesses, including Ms. Metallic who was here just before you, said that there are individual acts that can be allowed within that context of communal benefits.

I'm just wondering if the moderate livelihood is for an individual who is fishing or if the moderate livelihood is a communal redistribution of that wealth, so that everybody in the band has a moderate livelihood from fishing.

Chief George Ginnish: I can go first, Mr. Chair.

Because our negotiations have been infrequent and not directly related to the directive to the court decision, it has been a challenge to even begin to talk about what moderate livelihood could mean to our community.

I can share really quickly some information that would give you a feeling of where our communities sit economically. From the 2016 census data, the median family after-tax income in New Brunswick is \$52,000. In my first nation, in Natoaganeg, it is \$25,000 per family for after-tax income. The unemployment rate in my community is at least double what it is in New Brunswick. We have a very young and growing population who need an opportunity and want to be able to practise their treaty rights. They are not being given that opportunity to this date.

I can tell you that we are a community of 1,000. We have close to 260 families. We have six lobster licences that were part of the initial Marshall interim allocation. That doesn't satisfy any definition of moderate livelihood from my perspective.

Mr. Blaine Calkins: What would your definition of a moderate livelihood be then, Chief?

Chief George Ginnish: It would be that all our members who would like to work in the fishery have that opportunity. Right now, dozens are asking me on a daily basis when they will get a chance. When will they get an opportunity to go out and fish? At this point they haven't been given that opportunity.

We've been trying. We've been sitting down at every possible opportunity to ask how we can make access available.

We've submitted a plan by our members for our members to fish snow crab to support the community overall. It's a management plan based on available quota. The response from DFO was to seize our traps and to threaten buyers.

• (1715)

Mr. Blaine Calkins: I understand there's lots going on in this conversation. Try to help me understand.

Right now my understanding is that a commercial fisherman with a quota going out for lobster.... It's an effort-based fishery. They have an opportunity to earn a livelihood. There's no guarantee based on their effort that they will actually have a profitable year. The same could be said for farmers. The same can be said for anybody else who is in business.

In your definition of a moderate livelihood, do you believe there should be a guarantee of that livelihood when you pursue the fishery?

Chief George Ginnish: I guess if our community was to be supported in a diversified fishery which would include other species, other available quotas, that might be achievable.

Any one fisher, any one licence, can have a good year, a bad year, but with more access it would mean more of our members would actually have the opportunity to work. That's the first part of it. If you're out fishing, being paid, at minimum, a wage to be able to do that, then that is improving your life, your livelihood. Is it a moderate livelihood? We haven't had a great chance to really look at what that means at this point because we're at the very front end of that conversation.

At a minimum, if you were to say off the cuff, "Wouldn't it be nice for all of the families in my community to have at least the median income"—

Mr. Blaine Calkins: Do you—

Chief George Ginnish: —and by no means don't hold me to that. A median income would be double what our families see now after tax.

I don't expect that's—

Mr. Blaine Calkins: Thank you.

Am I out of time, Chair?

The Chair: Thank you, Mr. Calkins.

You're dead on the six minutes, sir.

Chief Darlene Bernard: Can I speak? Can I answer?

The Chair: Not right now, no. It will have to come up in other questioning, or you can write an answer and submit it to committee.

We'll now to go Mr. Morrissey for six minutes or less, please.

Mr. Robert Morrissey: Thank you, Chair.

Welcome, Chief Bernard. It's good to see you appearing before the committee from Lennox Island.

I have a couple of questions. Chief Bernard, you reference no resolution in the two decades that followed from Marshall. Could you outline for the benefit of the committee what access to the fishery Lennox Island First Nation has now versus 1999?

Chief Darlene Bernard: Sure. As far as the rights to a moderate livelihood fishery are concerned, we have nothing. We don't have a livelihood fishery in our community.

We have a communal commercial fishery in our community; that is, there are 10 vessels, I guess, that fish commercially for the community. That money is used to help with projects, with deficits from the federal government because we're underfunded in everything. Right now, we don't have a livelihood fishery.

What we got when Marshall came down was we signed Marshall agreements that had no prejudicial language in them at all. This was all about our getting access so that we could start teaching our people how to fish again, because we were pushed out of the fishery for 260 years. We needed that access to bring it into our community.

These were negotiated agreements. At the time, they were negotiated in good faith, and I think if the government's thinking about clawing that back, that's going to put more pressure on the bands to do the livelihood fishery.

There needs to be more commercial access for all the bands so that we can lessen the pressure that's being felt for a livelihood fishery, in my opinion.

Mr. Robert Morrissey: I appreciate that. I believe you addressed it. Are the proceeds from the fisheries that the Lennox Island First Nation is involved in now distributed to the community on a communal basis?

Chief Darlene Bernard: Not all of it... There are people in our community who fish like any other commercial fishermen fish, with 300 traps. They go out. They feed and look after their families—

• (1720)

Mr. Robert Morrissey: Chief Bernard, were those acquired by them, or were they part of the licences that were transferred?

Chief Darlene Bernard: All we have are communal licences. All of our commercial licences belong to the band, so the band allocates them to the community. They have to follow our management plans and everything else.

Mr. Robert Morrissey: Within that fishery, am I correct that there are fishers who participate who keep all the proceeds?

Chief Darlene Bernard: Yes, but they also pay their own bills. They bought their own boats and they've really been entrepreneurial. We like that in our community. We like entrepreneurs.

Mr. Robert Morrissey: Okay.

Chief Darlene Bernard: There are many people in our community who are poor, who can't get a big boat or anything like that, but would like to go out to fish for a moderate livelihood, by fishing maybe 50 traps. I don't know. We're going to be engaging our community and all our members over the wintertime to come up with what the needs are in the community. We will develop a management plan and an enforcement plan.

We have already engaged with the P.E.I. Fishermen's Association. We've talked to them. I asked the young fishermen, "What's your livelihood? You go out there. You work hard every day and you come home. At the end of the week you get paid. You make your car payment, your boat payment. You get your groceries, you pay your rent and you make sure your kids have what they need. Then there's a little bit left over." They said yes. I asked whether they would consider themselves as having a moderate livelihood. They said yes.

That's good enough for me. If they're making that livelihood, then we should be able to make the same livelihood, in my opinion.

Mr. Robert Morrissey: Thanks, Chief. I appreciate it.

Do first nations have access to snow crab in Lennox?

Chief Darlene Bernard: Yes, we do.

Mr. Robert Morrissey: Okay.

Are there any other fisheries, such as tuna, herring or mackerel?

Chief Darlene Bernard: There are tuna and herring fisheries.

Mr. Robert Morrissey: Did those come post-Marshall? I think you indicated that.

Chief Darlene Bernard: All of those licences have been the result of Marshall agreements, not prejudicial agreements.

Mr. Robert Morrissey: Okay.

I'm not sure if you were listening to the comments from Professor Metallic, who presents herself as an expert witness on first nations treaty law. She indicated that in the transfer of fishing rights to the commercial, which was done by DFO, there seems to be a difference of opinion that maybe this process should never have

been involved and that it should have gone directly to defining "moderate" and proceeding down that particular route.

What would your comments be on that? Is it one or the other, or is it a combination?

Chief Darlene Bernard: No.

I believe that our fisheries in our communities across the Atlantic are all going to be different. They are all very diverse.

On Lennox Island we have our food, social and ceremonial fishery, which we'll always have. We have our commercial communal fishery, and we're going to start on our rights-based fishery in the spring next year. These are all different fisheries but we're going to manage all of these fisheries under one umbrella, and we are doing that.

Mr. Robert Morrissey: The one from the treaty rights was the moderate one.

Chief Darlene Bernard: Yes.

Mr. Robert Morrissey: There was no court and it never directed DFO that it had to transfer commercial licences to first nation communities. The courts upheld the right to a moderate livelihood fishery and then DFO attempted to fill this with the transfer of commercial fishing licences—

Chief Darlene Bernard: No.

Mr. Robert Morrissey: —which, for me, is confusing and appears [*Inaudible—Editor*] discussion.

Do you agree with that?

Chief Darlene Bernard: It is confusing, but I don't agree with that, no.

Mr. Robert Morrissey: Okay. I appreciate that.

I have one final question for you, Chief, as I'm running out of time.

You made a reference to Dalhousie University and that there are currently no conservation concerns.

I did not hear any witness from Dalhousie University provide evidence to this committee that there were no conservation concerns with a livelihood fishery as it relates to some warm-water fisheries. There were other biologists who expressed concern that there would be harm to the fishery if the fishing was occupied at certain times.

Chief Darlene Bernard: I can provide you with that [*Inaudible—Editor*]

The Chair: Thank you, Mr. Morrissey. You're now over time.

We'll now go to Madam Gill for six minutes or less, please.

[*Translation*]

Mrs. Marilène Gill: Mr. Chair, my thanks to the witnesses joining us today: Chief Ginnish and Chief Bernard.

First, Ms. Bernard, you were not able to finish your opening remarks.

Do you have anything essential that you would like to tell us and that you were not able to mention earlier?

• (1725)

[*English*]

Chief Darlene Bernard: I don't understand.

I'm not getting the English interpretation.

[*Translation*]

Mrs. Marilène Gill: Is the interpretation working?

[*English*]

The Clerk of the Committee (Ms. Nancy Vohl): I'm sorry, Ms. Bernard.

I believe you will have to go to the bottom of your Zoom, take interpretation and select English.

Chief Darlene Bernard: Okay. I'm sorry about that. I apologize.

[*Translation*]

Mrs. Marilène Gill: It's not your fault.

I was saying thanks to both of you, Chief Ginnish and Chief Bernard.

Chief Bernard, I know that you did not have the time to finish your remarks just now. I was asking whether you had anything essential that you did not have time to tell us. If you do, you can have a moment of my time to do so.

[*English*]

Chief Darlene Bernard: Do you want me to continue where I was reading?

[*Translation*]

Mrs. Marilène Gill: I don't know. I have a number of questions, but, if you have any major points that you would like to pass on to us, I can give you time to do so.

[*English*]

Chief Darlene Bernard: I didn't have time to look through them. There were still three pages. I will just answer questions. Unless I—

[*Translation*]

Mrs. Marilène Gill: Okay.

I know that you have started community discussions where you live. Could you tell me what has come out of those consultations?

[*English*]

Chief Darlene Bernard: We've just barely begun the whole idea of being engaged in our community and talking about the livelihood fishery. We're just beginning that, so we're setting up a plan. We plan on engaging every community member, 16 and up, talking

to them about the livelihood fishery, what their thoughts are on it and how they see it happening.

We have commercial fishermen who fish next to commercial fishermen, right? There are all kinds of different opinions in my community right now. There are very strong opinions in my community, and there are other people who just want to know how to get involved. We're going to take the next three months and really do that engagement and do a really good job of that, so we can come back to the community and give them an idea of what the discussions were all about and a plan to go forward.

[*Translation*]

Mrs. Marilène Gill: You are talking about community plans, but what should be done to establish a regulatory framework that would allow you to exercise your right to fish? What do you think the ideal process would be?

The question goes to Mr. Ginnish too, of course.

[*English*]

Chief Darlene Bernard: I think that in the process we really do have to engage our communities.

Both bands are committed in Abegweit. There are only two bands in P.E.I. We are committed to looking at it together in unity to build that framework. We have L'nuey, which is our rights-based initiative. They are going to be helping us with this to be able to build that framework around this on Prince Edward Island. We are small so we can do things a little bit differently here. We can work together and really come up with a very strong plan moving forward.

I don't know if I answered your question.

[*Translation*]

Mrs. Marilène Gill: I was seeing it more broadly. I was talking about the involvement of the Department of Fisheries and Oceans. What do you think the ideal process would be? Of course, there's a micro level and a macro level.

[*English*]

Chief Darlene Bernard: Okay.

[*Translation*]

Mrs. Marilène Gill: You can answer too, Chief Ginnish.

[*English*]

Chief Darlene Bernard: I would just want to say quickly about DFO's role, that it is to work with us to help us develop our enforcement capabilities and our science ability and to work with them to make sure that our waters are being fished safely and following the regulations that we put forward.

In other words, I don't expect them to be cutting my traps.

Chief George Ginnish: I would ask that we actually have discussions with Fisheries about treaty access. That hasn't happened with our communities.

DFO needs to change its mandate. It does not address moderate livelihood, and that needs to happen in collaboration with us. So far it's the Jones rights reconciliation agreement that is on the table and it has no latitude for movement. It asks as part of the signing process that we agree to not assert our treaty rights for another 10 years if we sign onto those agreements.

We have not treaty fished for 21 years, and to ask us not to do that for another 10 years while dangling some additional moneys in front of us is an insult. We have raised this issue with the minister and from our perspective we say lift that non-assertion clause in those agreements—it's been 20 years—and sit down to really begin to talk about treaty access and including our members.

Our political organization, MTI, is engaging with our communities now to see who wants to fish, what skills people have and what skills we need. We know what our challenges are in terms of poverty in our community. It's a reality. This is a right. We want to be able to support our members to have a livelihood, to support their families, to feel good about practising a traditional skill.

When you look at the Miramichi River 150 years from Confederation, our community had salmon galore that filled our rivers. That salmon was fished commercially by everyone but the three first nations on the river. It was fished to the point of extinction. Our communities were never allowed to take a fish and sell it.

That really is hard to swallow. My grandfather had a commercial licence. He could catch fish finally in the 1960s to feed his family, but he was not allowed to sell it. It was years later before there were finally court cases that would have held up our right to be able to fish to support our families.

We have come from a hard—

• (1730)

The Chair: Thank you, Chief Ginnish.

Thank you, Madam Gill.

[*Translation*]

Mrs. Marilène Gill: Thank you.

[*English*]

The Chair: We are at the end of our time, but if I don't hear any objections from the committee, we can go for another 25 minutes before we have to come to a dead stop.

I'm not hearing any objections, so we'll now go to Mr. Johns for six minutes or less, please.

Mr. Gord Johns: Thank you, Mr. Chair.

I want to thank Chief Bernard and Chief Ginnish for their important testimony.

Chief Ginnish, it's good to see you again. I met you with the fisheries and oceans committee when we landed in your community. Thank you so much for hosting us a few years back.

You've been really vocal the last few months about the systemic racism that's been directed at the Mi'kmaq, especially when it comes to the Sipekne'katik. You've also been speaking out about the justice system and the systemic racism that's there. Chantel

Moore was from my riding of Courtenay—Alberni. I want to, and the Nuu-chah-nulth people also would like to, extend our gratitude to you for speaking out about the injustices, not just to her but to indigenous people.

On the theme of systemic racism, we've heard at this committee that many indigenous people have to just break the law for the right law to be put in place. I would imagine that this leads to greater instances of criminalizing indigenous people who are simply practising their inherent rights. Can you talk about the systemic racism and how you see these repeated sets of biases that the government is bringing to the table? What needs to change?

I'll start with Chief Ginnish and then I'll go to you, Chief Bernard.

Chief George Ginnish: I'll keep it short.

Absolutely. It is a reality. Our first nation has been on the river here—Metepenagiag, Natoaganeg, Esgenoopeetitj—for over 5,000 years. We've always shared. It's really bothersome that we aren't extended that same courtesy. It seems that we have to continue to fight the battle for equity, for access, to be able to look after our...

I know this is off topic, but we've been talking with the Premier of New Brunswick about the need for an inquiry into the justice system. Nova Scotia had the Donald Marshall inquiry. Our reality is that many of our people, because of their poverty, are making bad choices in regard to how they survive. They are prosecuted for that and they cannot afford legal. We are putting forward a number of things with the Province of New Brunswick to address that racism in the justice system, that systemic racism, that exclusion and marginalization.

A number of our people will reach out. They will try to work outside. Many times they will come back with stories like, "Geez, I just wanted to work. I got told to go back to the reserve. They asked me what I was doing trying to take a job away from one of their family members." I mean, that's a real struggle. That is a constant reality for many of our people. That hurts. I feel really bad for our young people, who aren't willing to take the chance and challenge this really bad behaviour.

I'll leave it at that and let Chief Bernard in.

• (1735)

Mr. Gord Johns: Chief Bernard, can you also expand on what you've seen in terms of the last 20 years—the 10 years under the Harper government and now the five years under the Liberal government and the promises for change? Can you elaborate on the history of that over the last 20 years?

Chief Darlene Bernard: Well, what I'll say is this. To me, all you have to do is look at the last three months and see what happened in Nova Scotia to see that there is systemic racism in our system. You can't deny that. I think the people who don't want to come out and say there's systemic racism are denying it to themselves. It's there. We need to deal with it.

I want to read this excerpt, because I think it kind of brings us back to what I wanted to say:

In order to achieve the equitable and mutually satisfactory resolution we are seeking, the Government of Canada must commit the political will, including the necessary resources, to the initiatives we are developing. It is imperative that the Government of Canada understands that it does not have the answers, it cannot meet the challenges presented by the Marshall decision unilaterally. In order to avoid further unrest or further litigation the Government of Canada must accept that the process has to be truly cooperative. Through Crown-Indigenous Relations and Northern Affairs, Canada must work with us as a good faith partner on a nation to nation basis to uphold the constitution.

So implement section 35. I think that just speaks to what needs to happen.

Mr. Gord Johns: Here where I live, in Nuu-chah-nulth territory, we've seen the government knowingly go to the table empty-handed, spending \$19 million just on government lawyers fighting the Nuu-chah-nulth on the right to catch some fish. Do you actually believe that the government is sending their negotiators to the table with a mandate to work with the Mi'kmaq on their moderate livelihood and their treaty right?

Chief Darlene Bernard: No.

Mr. Gord Johns: Thank you Chief Bernard.

Chief Ginnish, could you also comment?

Chief George Ginnish: I would say no.

Chief George Ginnish: When you have a negotiator who comes to your chiefs and says, "Here's the package. Here's the deal. Take it or leave it," I don't see how that is negotiation. I don't see how that begins to address moderate livelihood.

Many of our communities, because of the dire poverty, had signed onto these initial agreements 21 years ago in the hope of helping build our economies, and 21 years later, why is it taking so long?

I've shared a stack of documents as well with the participants here. They weren't available today, but it speaks to our efforts over the last 10 years to try to get ministers to the table to talk about this. This isn't in the last three months. This has been going on constantly.

Chief Darlene Bernard: The negotiations should be done by CIRNAC.

The Chair: Thank you. We've now run over time.

We'll go to Mr. Bragdon for five minutes or less please.

Mr. Richard Bragdon: Thank you, Chief Bernard and Chief Ginnish, for taking the time to be with us this evening. We appreciate your being here and joining us.

I have couple of questions.

We've heard this from witness after witness, and it has come up quite repeatedly and has been mentioned already in what you pro-

vided to us this evening. There is a growing frustration around the absence of direct communication, as it were, with the minister and with the department, as it relates to the indigenous fishery as well as to fisheries in all of Atlantic Canada. There is growing frustration, obviously amongst the indigenous communities but also amongst the commercial fisheries, who feel there hasn't been proper consultation or communication, or bringing people to a table of dialogue. I would like to get your thoughts as they relate to this.

Do you feel that there has been adequate communication with indigenous communities as well as with other stakeholders and interested parties such as the commercial fisheries in this area?

If I could have brief comments from both of you, that would be great.

I'll start with you, Chief Bernard.

• (1740)

Chief Darlene Bernard: I've had conversations with the P.E.I. Fishermen's Association in Prince Edward Island. We've had our talks. I've talked to DFO on Prince Edward Island, and I pretty much was saying that we really need to sit down and have a discussion around this, because I think they need to know what their role is. I don't think it's clear what their role is. Look at what happened in Nova Scotia. Cutting traps of the livelihood fishery was not their role. That was wrong. They shouldn't have been doing that.

With the RCMP, I think we have to be careful. They have to know what their role is in all of this in helping to protect the Mi'kmaq, because this is about protecting the Mi'kmaq when we are asserting our right to a moderate livelihood.

I've talked to them. I think that what really has to happen, though, is that DFO has to be taken out of the negotiations. They shouldn't be negotiating our rights when they're trying to enforce fisheries. CIRNAC needs to be brought to the table. Carolyn Bennett needs to be the one who's setting the parameters and appointing negotiators to come and talk with us.

We want to talk to the negotiators. This whole thing about the RRAs, rights and reconciliation agreements, those are nothing but a slap in the face to first nations. At the end of the day, if they have an envelope of money and they're holding it up to try to get us to sign these agreements that are detrimental to our rights, that can't happen. We can't be signing those things. That money should just be given to the first nations so that we can continue to develop our commercial fisheries and our livelihood fishery.

Mr. Richard Bragdon: Thank you, Chief Bernard.

Chief Ginnish.

Chief George Ginnish: I would agree with Chief Bernard that in these discussions, DFO has clearly shown they're not capable of negotiating, and they're in conflict anyway. They're supposed to be enforcing. They're supposed to be regulating. I agree with Chief Bernard that we need to meet with Canada. That is what needs to happen here. We need to meet with the Minister of Indigenous Affairs.

That's where this needs to begin. There's a spot there for the Minister of Fisheries, but no more trying this treaty—

Chief Darlene Bernard: Obviously, they're struggling.

Chief George Ginnish: Absolutely. For us to continue to meet with district or regional DFO... We haven't got anywhere in 21 years. Why would we want to continue that and continue to raise the level of frustration and disappointment that clearly exists all across Atlantic right now?

Mr. Richard Bragdon: Thank you to both of you.

It seems it's been expressly pointed out throughout this committee that there just has not been adequate direct dialogue among all of the parties, in particular with Crown-Indigenous Relations and the minister as well as with the communities that are going to be directly affected by all of these decisions and talks that are being undertaken.

Post-Marshall, can you describe the relationship? It seems that you've referenced it somewhat in testimony so far this evening, and I believe you referenced it, Chief Bernard. You've had ongoing talks with the P.E.I. commercial fishery. I'm sure Chief Ginnish can speak to some of the fisheries in New Brunswick.

Between you as communities and the fisheries, there has been some dialogue and conversation going on. How would you describe that post-Marshall? It seems that recently, perhaps because of what's been happening in Nova Scotia and building beneath the surface, there's been somewhat of a breakdown.

Can both of you speak to that?

The Chair: Mr. Bragdon, I'm sorry, but you've completely gone over the time.

I have to be strict on the time because I want to get in full rounds of questioning and be fair to everybody.

Mr. Richard Bragdon: Okay.

The Chair: We will now go to Mr. Finnigan for five minutes or less, please.

• (1745)

Mr. Pat Finnigan (Miramichi—Grand Lake, Lib.): Thank you very much, Mr. Chair.

Thank you to Chief Bernard and Chief Ginnish for taking the time to be with us today.

I'll start with Chief Ginnish, but I'm sure it probably also applies to Chief Bernard.

As you're certainly aware, Chief Ginnish, you've been involved with the negotiations and the so-called.... In our region it's the Jim Jones process that's been happening. I'm not saying that should replace the treaty rights; we all know that.

Several communities have signed on to it, but many more have not. In your opinion, what are the sticking points? I know this is just...I wouldn't call it a band-aid, but it's been 20 years since your community, Chief Ginnish, has been trying to access a crab quota, for instance.

Is there a way that we can at least get that and then move on to the rights?

I ask both of you.

Chief George Ginnish: As far as communities signing on to the Jones agreements is concerned, we don't know what they signed, so it's kind of hard to comment on what that was.

I know what was placed before our North Shore Mi'kmaq chiefs, our seven chiefs. Seven of the 10 poorest postal codes in Canada are in northern New Brunswick, and we still would not sign those agreements. It's an insult that, after 21 years, they would try to lock our rights up again for another 10.

Mr. Pat Finnigan: Right.

Chief George Ginnish: It's really frustrating, Pat. We've had this discussion a number of times, and you understand that, when you look at the....

The Jones agreements purport themselves to be per capita and fair, and that might have influenced those communities. Maybe they had been treated more equitably in the initial allocations, but our communities weren't.

When I look at the 35 Mi'kmaq communities and I look at the per capita that was given to our first nation, we're number four on the list. I don't know how those decisions were made, but there was a great amount of unfairness in those initial allocations. Like I said earlier, you cannot build an economy for 250 homes for over 1,000 people with six lobster licences.

Mr. Pat Finnigan: I feel the frustration, Chief. I know I've had several ministers up in our riding, including Minister Leblanc and Minister Wilkinson, and we have gone over that. For a while I thought that at least we would get you a crab quota.

Chief George Ginnish: We actually have a crab licence. We have no quota, so figure that one out.

Chief Darlene Bernard: How did that happen?

Chief George Ginnish: We got a one-time, 100-tonne allocation.

Mr. Pat Finnigan: Were you able to fill that quota and use that?

Chief George Ginnish: It helped the community immensely. It generated \$400,000.

We're in northern New Brunswick as well. Communities in New Brunswick have these HST revenue-sharing agreements. The communities that do well are the communities that are on the main highway, the Trans Canada. You get to Metepenagiag and you get to Eel Ground, and we're off the main drag. It's difficult to generate economic opportunity.

Mr. Pat Finnigan: What do you see going on now in Nova Scotia, Chief Ginnish and Chief Bernard?

Chief George Ginnish: I mean—

A voice: [*Inaudible—Editor*]

Mr. Pat Finnigan: I'm sure you're all following that. If you recall, last year you had some traps set out, which were seized by DFO. How do you see that? Do you see an inconsistency in the way they treat...?

A voice: Absolutely.

Chief George Ginnish: We're still waiting for a response to a snow crab treaty management plan that was submitted to DFO in March 2019. I shared emails in the packages I sent around: "Please respond. We know there is a surplus. Why can you not allow Eel Ground, the only Mi'kmaq first nation in the gulf region not to have some access to crab, to help build our economy?"

We can't get a straight answer. It's maddening.

Mr. Pat Finnigan: Chief Bernard, did you want to comment? I don't have much time left.

Chief Darlene Bernard: One thing I'm getting very frustrated with is that we've sent letters. We sent a letter to the Minister of Fisheries and Oceans months ago, in August, saying, "We want you to get back here and talk to us, because there is a lot of unrest going on." We never even got a response to it.

We're not getting responses when we're actually asking them to come to talk to us. That has to be changed. A lot of treaty education has to happen in the Atlantic region, and I think the government has to support it.

Also, the minister has to stop calling this an illegal fishery, because it's not an illegal fishery. Also, the work needs to be done, by this committee or somebody, to change the legislation so that it includes the livelihood fishery within its wording.

That's the work you guys have to do.

● (1750)

Mr. Pat Finnigan: Yes, I know—

The Chair: Thanks, Mr. Finnigan.

We'll now go to Madam Gill for two and a half minutes or less, please.

[*Translation*]

Mrs. Marilène Gill: Thank you, Mr. Chair.

I would like to start again at the point that Ms. Bernard got to.

As I really like people putting themselves in ministers' shoes, I will ask you what steps you feel that Minister Jordan and the government should be taking.

What are the first steps that you would like to see taken? A huge number have not been taken over the last 21 years, maybe longer. What would you like to see?

Of course, my questions also go to Mr. Ginnish.

[*English*]

Chief Darlene Bernard: I would like to see that the mandate for the negotiation be taken from the Minister of Fisheries and Oceans and given to Carolyn Bennett under CIRNAC, because she has the portfolio to work on rights and this is a rights-based issue. It's not about commercial access, as this minister's mandate is.

She doesn't understand. I've heard her speak. She clearly does not understand. For her to call the fishery an illegal fishery... As minister of the department, she should understand that stuff. Clearly there needs to be some education within the ranks of the government. That's what I would say.

This is the first thing that has to happen. The mandate needs to be moved to a different department.

Chief George Ginnish: The behaviour in Nova Scotia is unfortunate. When a first nation is exercising its legitimate right to a treaty fishery, to be treated that way....

It's heartening to know that not everyone feels that way. According to the latest CTV Nanos poll, 74% of Canadians feel that Mi'kmaq treaty rights should be respected and honoured.

That's how we have to move forward. We have to educate. We have to share. We need the opportunity to sit down with the minister. If we need to educate her, we'll do that. We've been trying to do it relentlessly but have been butting up against....

We did the same thing. We tried again this year to access snow crab. DFO has a science quota of crab of 3,500 tonnes, which they use to generate money for their science program. Why the hell can you not—? And that was originally. There was another set-aside too, for MFU when their lobster fishers were having a hard time. There was a quota that was used to help those fishers when lobsters were in tough times.

Listen, first nations have been in tough times for a couple of hundred years. How about spreading some of that access around?

Chief Darlene Bernard: Release the RRA envelopes.

[*Translation*]

Chief George Ginnish: Thank you very much.

[*English*]

The Chair: We'll now go to Mr. Johns for two and half minutes or less.

Mr. Gord Johns: Chief Bernard, can you talk about what DFO could do to help support your communities in their need to develop their own moderate livelihood fisheries?

Chief Darlene Bernard: They should release the RRA envelopes to the first nations so that money could be used for us to do our engagement. We need to be supported in our engagements. We need the minister, whichever one is going to be responsible, to come to our communities and to talk to us. We need that. We need treaty education. We need that support.

DFO can support us in a lot of ways by helping to develop our guardian program, so that we can develop really strong enforcement processes and capacity. This is what we are trying to do, but there's no support for that from the department, and there should be support for that.

Mr. Gord Johns: That's fabulous. I really appreciate your response, Chief Bernard.

Chief Ginnish, you talked about the education of your rights and making the space for you to determine what a moderate livelihood is for your communities. Can you speak a bit more about that?

How important is it that Minister Bennett and the Department of Crown-Indigenous Relations be at the table?

• (1755)

Chief George Ginnish: It's absolutely essential. We look at the TRC calls to action. That in itself isn't happening fast enough here in New Brunswick. We have a provincial government that's kind of half-heartedly approaching that. That needs to be embraced.

We're in a situation where we have to look at changing the minister's control of allocation of quotas. You have one person who has more authority in that one position than most any other minister. Her word is it. There is no other. It's about time we gave priority to ourselves in sitting with DFO and moving the ball forward on treaty rights, because it's long overdue.

Chief Darlene Bernard: Treaty education is so important.

The Chair: We'll now go to Mr. Williamson for five minutes or less.

Mr. John Williamson: Thank you, Mr. Chair.

I want to thank the witnesses from Atlantic Canada. This has been very informative. You've done a very good job of explaining the hardships your communities have faced over many generations. We've heard your perspective on possible solutions. You were also asked to provide input on what you would do if you had ministerial authority.

This is perhaps the other side of the table. I'm curious to get your perspective. How do you see the development or implementation of the Marshall decisions, working with what I call the traditional fisheries, commercial fisheries, the owner-operator, those individuals? Do you have concerns about conservation, or do you think that's a non-issue? Is this really just a question of granting the space, or does one displace the other? How do you see the various communities coexisting in your regions or in your provinces?

I'm more than happy to turn over the remainder of my time, provided you share it equitably, if you don't mind. I would like to hear from both of you.

Chief George Ginnish: I would begin by following the rule of law. You have conservation. Then you have first nation access, and then you have other user groups. That has not been the case. That has been ignored. As I said earlier, fortunes have been made from resources that our ancestors freely shared. We've been denied. That's how I would start the conversation.

How do we get our first nation communities to be equitable with others? If the unemployment that exists in our communities were anywhere else, there would be movement.

Mr. John Williamson: Is it really fair to say that fortunes have been made? I see livelihoods that are made, good livelihoods, but not fortunes in the fishing communities that I know. I'm curious to hear your thoughts on that.

Chief George Ginnish: Yes, I guess what I was referring to indirectly was that you have the huge, huge companies. You have Clearwater, which is really remarkable. Now the Nova Scotia Mi'kmaq have a stake in that and their communities can benefit from that. That's remarkable. That's what we'd like to see. We'd like to have other opportunities. We'd like to have a Mi'kmaq brand, to be part of processing and other opportunities, but that has yet to happen.

Mr. John Williamson: Yes, fair enough. I'd point out as well that for many of the traditional fishers, these large corporate fisheries, as I call them, are the bane of their existence. They view them as a threat to their livelihoods and their communities as well.

I want to give Chief Bernard some time to respond to some of my questions, but thank you, Chief Ginnish.

Chief George Ginnish: Thank you.

• (1800)

Chief Darlene Bernard: Thank you.

You were asking about our relationship with the traditional fisheries on P.E.I.

Mr. John Williamson: Yes. How do you see it coexisting going forward if there's a complete entrance of indigenous fishers as well, in terms of conservation and livelihoods?

Chief Darlene Bernard: Well, we're already in the fishery. We are fishing side by side to some degree with the traditional fishers, like the commercial, privilege-based fisheries. We've had a really good discussion with them. The younger fishermen especially ask a lot of really good questions. What I learned from that discussion was that they really don't know about the treaty right at all. They were asking some really basic questions, which were really good questions. They were asking, "How come you guys weren't involved in the fishery? Why didn't you go buy a licence when they were \$25 a piece?" We had a really good discussion about how we were pushed out of that and our people were completely disassociated with everything that was going on at the time when it came to our natural resources. The questions were really good.

On P.E.I., because we're small, I think it's by doing all kinds of treaty education and getting out there and talking with people and helping everyone to understand that we are the Mi'kmaq, right? We're not here to exploit the resources. We've never exploited resources. We want them to understand that we just want our people to be able to have the same things they have, like fishing in—

Mr. John Williamson: Yes, but let me ask you about that—

The Chair: Thank you, Mr. Williamson. Your time is up.

Mr. John Williamson: Yes, okay. Thank you.

The Chair: I'm going to try to get Mr. Battiste in for a few minutes.

Mr. Battiste, you have five minutes or less, please.

Mr. Jaime Battiste: Thank you, Chiefs. You guys have done great. We're very happy to have you here.

When we've discussed things with Nova Scotia chiefs, they've told us very much so that the Mi'kmaq aren't willing to sell their rights. Would you say that in New Brunswick and P.E.I. the Mi'kmaq would be very disappointed and angry at you as chiefs if the chiefs entertained any kind of discussion around selling rights? Do you think that's accurate?

Chief Darlene Bernard: We wouldn't be chiefs. We won't be chiefs for very long if we start talking about selling out our rights. I'll tell you that much.

Mr. Jaime Battiste: Chief Ginnish, do you agree?

Chief George Ginnish: We have resisted the Jones overtures that would require non-assertion of our treaty rights. That's a no-go zone.

Chief Darlene Bernard: Our people would expect us to bring it to a community discussion and a vote if we were to sign some kind of a rights-prejudiced agreement.

Mr. Jaime Battiste: Okay.

There have been those out there who have called for, instead of a band-by-band approach, an approach that is based on Mi'kmaq nationhood by Mi'kma'ki or by traditional Mi'kmaq districts. As chiefs from different provinces, do you think there would be a way for Mi'kmaq chiefs to actually sit down and have a discussion that brings a nation-model approach to the governance of fisheries?

I'd like to hear from both of you.

Chief Darlene Bernard: Do you mean like a Mi'kmaq fishers authority? Well, the senators have approached the first nations on P.E.I. to talk about that idea. I've approached the chiefs at an all-chiefs meeting and said, "Let's have a nationhood gathering; let's have a Mi'kmaq nation gathering." I didn't get much uptake on it right now.

I think right now everybody is just trying to find their own way. We're trying to get our engagement done and get our plans started. That's where I think we are right now.

Mr. Jaime Battiste: Okay.

Chief Ginnish.

Chief George Ginnish: We had actually met with Nova Scotia first nations and with P.E.I. and Newfoundland. The invite was sent out to all and we had met in Membertou, probably about a year and a half ago. I guess the plan was to—

Chief Darlene Bernard: I wasn't there.

Chief George Ginnish: Yes, the plan was to continue to do that and begin a dialogue on a number of issues. The talk about fishery would be a perfect opportunity to do that. When the Jones agreements first came out, they were touted as nation-to-nation agreements. We had high hopes that this would happen. It didn't take too long for Jones and company to start working to divide and conquer.

Chief Darlene Bernard: Yes, they always have the big nation-to-nation discussions, and then we all splinter at the end of the day. I think it would be great if we could have the overarching Mi'kmaq fisheries authority, and then everybody, like the provinces, work together.

Chief George Ginnish: Absolutely.

Chief Darlene Bernard: I don't think we're going to get there really quickly, so for this winter...

P.E.I. is small. I think we could get a lot of things done. We could come together in unity on a bunch of things. We want to talk to all of P.E.I. We want all islanders to understand our treaty rights and we want them to be a part of it. When we're doing really well, P.E.I. does really well. That's just a known fact. We've done studies.

● (1805)

Chief George Ginnish: Absolutely. It's the same here. If our nations in New Brunswick prosper, everyone else feels that, Miramichi especially.

Chief Darlene Bernard: Yes, it's a ripple effect.

Chief George Ginnish: You have three first nations on the river here. Miramichi would feel it if we all decided to take our resources to Moncton or to Eel River Bar or Dalhousie.

To be truthful, we understand how the smaller fishermen who are struggling to survive feel. We would think they would understand our situation better than most. Look at our poverty rates. Look at our unemployment. It's 21 years, but it was a really uneasy relationship at first. The few licences that we have are in Pointe-Sapin, which is an hour from here. It took a while, but the guys work together now.

Fishing in the winter lobster season in New Brunswick is not an easy life. The good thing about it is that it provides employment. We have six licences now. At least two or three first nations from Eel Ground are on every vessel, so that is important in providing some employment. If we can double or triple that, we're in an even better position.

Chief Darlene Bernard: Our communal lobster commercial fishery is all first nations people from our community who are involved in that: the management, the fishermen, right down to the deckhands.

Chief George Ginnish: One thing I want to mention before you cut us off is we've been talking about food diversification as well as commercial diversification, and we've been having a hell of a struggle to try to get any lobster through to our community. I got a letter,

which I included in the pack. It's from three years ago. It says, "It doesn't look like we're going to be able to do it again this year; it looks like we're going to have to take it off your commercial communal." We've had to do that. Why? We were talking about feeding our people.

Chief Darlene Bernard: We don't do that. Our food, social ceremonial fishery is completely different. It goes from August to October.

Chief George Ginnish: We haven't been able to get tags for that.

The Chair: Thank you, both.

Thank you, Mr. Battiste.

A big thank you, of course, to Chief Ginnish and Chief Bernard for appearing before committee today and enlightening us on this very important topic.

That concludes our session for today. I want to say a big thank you to the committee members for their patience and indulgence, and as well to the clerk, the analysts, translators and all the staff for putting up with us running over time again this evening.

We'll see everybody on Wednesday.

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