

## Brief to the Standing Committee on Fisheries and Oceans

From: Alan Joseph Clarke

Study: Illegal, Unreported and Unregulated Fishing (IUU)

January 19, 2024

To: FOPO Committee Members

I worked in DFO, Conservation and Protection (C&P Enforcement) for 35 years as a fishery officer, Field Supervisor, Detachment Supervisor and retired as the Southwest Nova Scotia Area Chief of Enforcement.

During my 35-year tenure with DFO, I also worked as an Area Resource Chief, Area Director, as well as Maritimes Regional Director of Enforcement.

I was also Southwest Nova Scotia Area Chief of Enforcement in Yarmouth during the Supreme Court of Canada Sparrow and Marshall I and II decisions. I managed DFO's enforcement response during these difficult times through the St Mary's Bay indigenous lobster fishing dispute, ferry and highway blockade, office occupations and protests, during which I must point out was often very confrontational. However, we were able to manage enforcement at the time to prevent the civil unrest of the magnitude that erupted in 2020. Also participated as a witness in both FOPO studies on the implementation of an indigenous moderate livelihood fishery.

I have extensive training and experience in all aspects of Fisheries Management and DFO Enforcement management. At the Canadian Coast Guard College Sydney, St Andrews Biological Station, R.C.M.P. training depot in Regina and the Canadian Police College in Ottawa. I was also the Conservation and Protection (Enforcement) representative during DFO's implementation of Mobile Groundfish Individual Transferable Quotas and Dockside Monitoring Programs.

I have not in my past or in the present any affiliation or association with any fishing organization including lobsters. I was just recently advised by some lobster stakeholders in the local Inshore lobster fishing community about your present study as titled above. As a result, I recently reviewed some of the evidence presented to you, including that of Ex - DFO fisheries manager, Mr. Morley Knight from Newfoundland.

While Mr. Knight has extensive fisheries management experience in Newfoundland in relation to management and enforcement issues on the Nose and Tail of the Grand Banks, he, however, lacks experience and knowledge on the operational parameters and compliance monitoring issues of the inshore lobster and elver fisheries - especially those of Southwest Nova Scotia.

Mr Knight's recommendations included:

1. The implementation of a new mandatory third-party Dockside Monitoring Program (DMP) for the inshore lobster fishery. Where all inshore lobster landings should be met by and lobster quantities verified by an independent third-party monitor, to weigh out each landing. In making such a recommendation.

I believe Mr. Knight demonstrated a clear lack of comprehensive understanding and knowledge of how the inshore lobster fishery actually operates in Southwest Nova Scotia. In my judgment and experience, Mandatory Docking Monitoring and weigh-out of every inshore lobster landing is not only operationally impractical but also in my opinion and experience unnecessary.

Unlike other Dockside monitored fisheries, such as Individual Transferable Quota in the Mobile Gear Groundfish fishery, the scope and operational magnitude of the inshore lobster fishery in Southwest Nova would make DMP of inshore lobsters an extremely expensive and almost impossible operational task. From my perspective, the last thing DFO enforcement (C&P fishery officers) needs at this moment in time is yet another impossible compliance monitoring task to attempt to monitor and enforce if DMP for all inshore lobster landings is ever considered or implemented.

My belief is that this would just become yet another failed compliance program for which fishery officers lack sufficient resources and ability to conduct effective Compliance monitoring. As well, it would likely also become yet another of your future studies for your committee to attempt to determine why Dockside Monitoring of inshore lobsters was so costly and yet at the same time terribly ineffective?

Your committee first needs to understand what mandatory dockside monitoring would look like for inshore lobsters. The following examples are only for Southwest Nova Scotia. While SWNS is the capital of the inshore lobster fishery in Canada, it is not the only lobster fishery in this Province or the Maritimes. The inshore lobster fishery of Southwest Nova Scotia by itself consists of 1,653 licensed commercial lobster vessels landing at least one fishing trip daily. Almost simultaneously, at approximately 81 different wharf's each with 4-6 separate unloading sites over a six-month season. That equates to 1,653 landing per day. Spread out over possibly 405 different unloading locations in 7 different Counties.

The scope and magnitude to meet each and every inshore lobster vessel at landing to weigh out each vessels daily catch would be totally impractical, if not operationally impossible. Add to this the remainder of the inshore lobster fisheries throughout Atlantic Canada to understand the full operational magnitude and cost of such an undertaking. Considering the fact that most commercial lobster vessels sail and land at approximately the same time, meaning that there could be potentially up to 1,653 landings to monitor and verify within a few hours, over a very large geographical area. In my view and experience, an impossible task to require mandatory

third-party weigh outs. This just refers to the commercially licensed vessels that fish during the season and does not include the number of food, social and ceremonial Sparrow lobster fishing authorizations issued during the closed lobster seasons.

An especially difficult task as many inshore commercial lobster fishers do not actually land, unload and weigh their catch directly at a wharf each day. However, many lobster fishers individually or in partnership with others have a lobster car which is a floating wooden raft anchored in deep water. Where lobsters are secured and held until at some later date they are eventually being weighed and sold to a Buyer. **(See some pictures attached illustrating some local lobster car storage facilities)**

Even more impractical is to expect an already overburdened and under resourced enforcement program of fishery officers to attempt to monitor this new requirement for compliance - If improved inshore lobster catch verification is deemed by your committee to be a necessity. In my opinion and experience, it should not be by a third-party dockside weigh out upon landing.

A more practical approach to verify inshore lobster catch statistics would be at the bottle neck of the lobster Buyers. Buyers purchase inshore lobsters from many different vessels and sources, some of which are even out of Province. There are less than 60 active full-time inshore lobster buyers in Southwest Nova Scotia.

As an alternative to Dock Side Monitoring, I would recommend that all vessels **authorized** to fish for, catch and land inshore lobsters, during or outside the lobster seasons, should have an expanded mandatory at sea log record reporting requirement in which they are required on a daily trip basis to record the weight, crates, quantity or count of all lobsters caught prior to offloading their catch - coupled with additional information.

A controversial aspect of a new reporting requirement may well be that to be effective, **all** licensed commercial, as well as all authorized, **food social and ceremonial** and **commercial communal** (Livelihood) lobsters harvested **must be so recorded**. I suspect this may be opposed by at least some including some indigenous communities. As much of those indigenous lobsters will be caught and unloaded during the closed commercial lobster seasons. However, to be effective, not only lobsters caught during the commercial season have to be properly recorded. So, to do those lobsters that are harvested during the closed lobster season, many of which as history has shown are being sold illegally, as well as remain unaccounted for in DFO lobster harvest statistics.

Lobster Buyers and all other persons, including, organizations and Bands, in possession of lobsters should also be required to keep accurate records of all lobsters purchased, held or stored in lobster cars and pounds as well as all lobsters being sold and purchased or otherwise in one's possession. Such records to include a copy as above of the all-log records from all vessels and harvesters from which they obtained those lobsters. Applicable copies of the appropriate lobster log record should also be attached to a new "Lobster possession/ Certification Certificate" or whatever name it is given.

There should be a requirement that lobster Buyers, exporters as well as others in possession of lobsters can not legally be in possession of any lobsters unless they are in possession of documentation to verify where and by whom the quantity of lobsters in their possession were harvested.

Buyers and others in possession of lobsters. should have a further onus of establishing, in consultation with DFO, an approved method for recording, tracking, and certifying the harvester and location from whom and where lobsters in their possession originated from. This could be as simple as issuing a registration # for every lobster licence or lobster fishing authorization; and utilize this unique # as a tracking number through the entire lobster transportation and possession process up to and including export. To be effective, tracking must also apply to indigenous food social or ceremonial possession and events. A system that can surely be designed in collaboration with indigenous groups, other lobster stakeholders and DFO.

Accurate timely lobster catch information from the completion of comprehensive daily log records, correlated with accurate information from Lobster Buyers and others in relation to their buying, holding, possession, export, utilization and selling of lobsters.

In my view, would provide an improved avenue to ensure a functional and accurate inshore accounting of all lobsters harvested, landed, purchased, sold, held or in the possession of, as well as provide fishery officers with a workable compliance requirement that would also assist fishery officers in their compliance monitoring and or enforcement responsibilities.

**Such a record or catch certification system should be mandatory for all who are in possession of lobsters.**

Anyone, harvesting and landing inshore Lobsters must complete a mandatory daily log of their daily lobster harvest. Such on board log reporting Information to include Vessel Name and Vessel Registration Number (VRN), if applicable, authorized harvester and or licence holder and list of all fishers on board the vessel, Date Sailed, Date Landed, Area Harvested, Buyer's name and address (if applicable), Quantity of lobsters harvested on a trip basis. If not being sold that day, identification of whom will have possession of those lobsters not sold and the address where such lobsters or elvers are located?

Copy of above Log record to be given to buyer of any lobsters purchased or to whoever else will be taking possession of said lobsters after they are landed. Where and by whom lobster were harvested and landed, being held, transported, or otherwise dispersed? What location and who is responsible for the final destination of lobsters that were not sold to a buyer.

When fishery officers inspect a person or location where any lobsters harvested are landed, held, sold, purchased or possessed, there should be documentation to indicate were the lobsters being inspected originated from, who harvested them and where their final destination

is intended. There must also be a onus on those in possession of lobster and or Elvers to produce such records and or catch certification upon a request from a fishery officer.

### **Lobster buyers and other lobster possession requirements.**

When purchasing, holding, selling, exporting or otherwise in possession of inshore lobsters, those who have such possession of lobsters must have a copy of the original completed log record as mentioned above. To accompany those lobsters as long as they are in their custody or possession, Buyers or anyone else in possession of those lobsters must complete a Certificate of Possession or Certificate of Certification. Including all the information contained in the original log record as well as the destination of those lobster being dispersed, Lobster buyers or others should be further required to provide a copy of this report (Catch Certification) to the next destination of said lobsters. No person shall be in legal possession of lobsters unless they have a Catch Certification Certificate indicating a copy of the original harvesting log and the chain of custody of said lobsters.

“Certification Certificates” must also be in the possession of anyone who has the possession of any lobsters, from harvester to holding facility to Buyer, Purchaser, exporter, or anyone else in possession of inshore lobsters, including both commercial and indigenous, Sparrow {food social and ceremonial) and indigenous Bands. A similar certification process could also be established for Elvers or any other species for that matter.

In my view, the industry should establish a DFO approved catch, tracking and possession catch certification program for Lobsters and Elvers in order to track the chain of legal custody from the original harvester to any subsequent buyers, purchasers, end user or Exporter.

This catch certification process could also be adapted to or any other species for Canadian Certification to indicate that any Canadian exported fish product including lobsters or elvers, were harvested sustainable and caught, sold, purchased, exported, and are possessed legally. In my view and experience a comprehensive harvest and possession lobster tacking and catch certification process would be a much more operationally, cost effective and enforceable Program than would a unworkable mandatory Dockside Monitoring requirement.

It would also be more cost effective for DFO, industry, and indigenous and non-indigenous lobster stakeholders, as well as a more effective tool to assist fishery officers in lobster harvest compliance monitoring and enforcement involving the quantity of lobsters harvested, sold, held, purchased, or otherwise utilized for food social or ceremonial purposes. Such a System could also easily be utilized as Catch Certification for Export purposes.

2. Mr. Knight also recommended in his evidence that in his opinion DFO needs to do more work on internal enforcement leadership, career progression and career development for its fishery officer Cadre. As a result of his experience with DFO at times suffering from **weak enforcement leadership** at its highest enforcement levels, I totally agree with this recommendation.

I too have witnessed time and time again when DFO had turned to ex Military or other Government Department Managers such as from Environment Canada and the Department of National Defence to **attempt** to lead DFO enforcement activities in Ottawa and Regions. To date, all attempts to do so far have eventually led to **dismal failures**. One recent example - Just consider DFO's lack of appropriate leadership, directions and response preceding the fish plant arsons of 2020. **(See DFOs attached related St Mary's Bay 2020 ATIP response information)** involving failed operational decision making Regionally by the Maritime Regional Director of Enforcement.

In this situation the Regional Enforcement Director, an ex- military manager, was brought seconded into DFO Regionally to Manage Regional fishery officer enforcement who ultimately chastised, criticized, and threatened his own staff. As a result of his fishery officer publicly voicing their concerns and displeasure that they wanted to do more enforcement on St Mary's Bay in 2020. However, were shut down from doing so by the Minister, and ordered by The Regional Enforcement Director to instead to only **observe, record and report**. When the Regional Director of Enforcement (C&P) shut down his fishery officer's enforcement efforts on St. Mays Bay in 2020. At the apparent political prompting to do so by Minister Jordan.

The Regional Enforcement Director of Enforcement at that time should have been experienced enough in DFO, on the ground fisheries enforcement to push back at such wrong, dangerous, and offensive directions. Instead, it appears he just simply acquiesced to the Ministers desires, something his fishery officer subordinates attempted to correct with little success and at their own personal peril.

In my opinion DFOs weak enforcement management in 2020 at the highest levels, coupled with an atrocious lack of appropriate DFO communication, created the hostile environment in 2020. That allowed the civil unrest and fear to flourish in the lobster industry until it eventually exploded as it did.

In my opinion, DFO at the highest levels, including National and Regional Enforcement, are responsible in large part for what ended up occurring in St Mays Bay and Pubnico Management because of a lack of an appropriate and effective chain of command, training, experience, and career progression path at the highest leadership levels in DFOs National and Regional enforcement positions.

As a result of the fisheries enforcement leaders being recruited from outside of the DFO enforcement organization and chain of Command. As a result, these Managers from outside of DFO have no training and experience in fisheries enforcement or management. Nor the training and experience that fishery officer require in their day-to-day enforcement activities, management, and direction.

Until DFO re-establishes a clear chain of enforcement command, as well as an internal career progression path to the highest enforcement levels, I fear that similar disastrous decisions will continue to be repeated time and time again as they were in 2019 and 2020.

DFO Needs to return to its tried-and-true career training and progression chain of command and stop enforcement recruitment at its highest levels from other unrelated organizations.

One that encourages trained and experienced fishery officers to progress internally through their ranks from GT-1 to GT-04 fishery officers, Field enforcement Supervisor, detachment enforcement commanders, Area Enforcement Chiefs, Regional Enforcement Chiefs and then onto National Enforcement Chief (National Director General). Then and only then will DFO again have strong leaders who fully understand and appreciate those that they are expected to be leading and managing. I doubt very much that the DND Military would recruit a DFO Enforcement manager to lead DND activities.

In my view another productive study for the FOPO to consider would be to study career progression and career development and leadership within its Conservation and Protection Enforcement Branch (see **some examples of weak DFO enforcement management examples attached**)

3. Another recommendation made by Mr. Knight was - to settle the indigenous rights issues. When he went on to say. "While there is a risk in that, and one side or the other will not like the outcome, the courts may have to be used to settle or clarify the rights of indigenous people who fish. Without that, anarchy will reign and there can be no effective compliance program". I agree with Mr. Knight in that their needs to eventually be some clarity surrounding **Moderate Livelihood** Indigenous Treaty Rights and Seasons. If you review the **Supreme Court of Canada Marshall II** Decision. It was supposedly issued to clarify some issues surrounding their **Marshall I** decision as prompted at that time by the Nova Scotia Fishermen's Association. The main outstanding legal issue remains. Are Lobster Season a justifiable conservation restriction on aboriginal treaty rights? The Crown did not attempt to justify the **EEL** seasons on the original Marshall case. For specific reasons that there is no real scientific justification for adult Eel Seasons. Baby Elvers on the other hand would be a much different matter in which to consider season justifications. Scientists past or present should be in a favourable position to justify lobster seasons if requested to do so. I suspect a lot of work in this regard may have already been initiated. In that regard, I would recommend that perhaps the FOPO Committee consider the feasibility of undertaking a new study entitled "a Review of the justifications (importance) for inshore lobster and elver fishing Seasons in the Maritimes".

Another subsequent recommendation could then be.

To recommend to government and the Governor in Council to consider requesting the Supreme Court of Canada to hold hearings in order to issue a reference opinion on the Constitutionality of the justification of Seasons on Treaty Rights. Sooner or later this question has to be addressed by the Supreme Court as a "Moderate Livelihood" has been addressed as do Seasons.

I apologize for such ramblings in my presentation and recommendations. However, after 35 years of dealing with many volatile Fisheries Enforcement Issues, as well as my last 26 years dealing with difficult indigenous treaty fishing Rights Issues in order to prevent hostilities and civil disobedience, I guess sometimes I take the retrogression of what I worked so hard to prevent rather personally.

I would be glad to address any questions anyone has in relation to my opinions, recommendations, or comments.

Respectfully :

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After 35 years with DFO



