

Elsipogtog / Esgenoopetitj / Canada
Interim Fisheries Implementation Agreement



Canada

INTERIM FISHERIES IMPLEMENTATION AGREEMENT

This Agreement is dated the 16th day of August, 2019 (the “**Effective Date**”).

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Fisheries, Oceans, and the Canadian Coast Guard and the Minister of Crown-Indigenous Relations (“**Canada**”)

AND:

ELSIPOGTOG FIRST NATION (“**Elsipogtog**”)

AND:

ESGENOÛPETITJ FIRST NATION (“**Esgenoûpetitj**”)

(collectively, the “**Parties**”)

RECITALS:

WHEREAS the Mi’kmaq hold and exercise Aboriginal title, rights and Treaty rights.

AND WHEREAS the Supreme Court of Canada in *R. v. Marshall*, [1999] 3 S.C.R. 456 and *R v. Marshall*, [1999] 3 S.C.R. 533 (the “**Marshall Decisions**”) confirmed the Mi’kmaq’s Treaty rights to harvest and sell fish in pursuit of a moderate livelihood.

AND WHEREAS Elsipogtog and Esgenoûpetitj (the “**First Nations**”) and their members are responsible to past and future generations for protecting their lands and waters and defending and advancing their Aboriginal title, rights and Treaty rights.

AND WHEREAS by Band Council Resolution dated March 26, 2015, Elsipogtog Chief and Council mandated Iapjiw Maliaptasiktítiew Wskwitqamu Kopit Lodge Consultation Delegation (“**Kopit Lodge**”) to protect Mi’kmaq title, rights and Treaty rights on behalf of Elsipogtog.

AND WHEREAS Elsipogtog and Esgenoûpetitj are members of MAWIW Council Inc. (“**MAWIW**”).

AND WHEREAS the Parties agree that MAWIW will serve as the organization through which funding to support future governance arrangements will flow to the First Nations.

AND WHEREAS Canada would like to facilitate further access by the First Nations to

the commercial fisheries, including the acquisition of vessels and gear (the "Access"), and has agreed to provide funding to the First Nations in accordance with this Agreement for the purpose of facilitating the Access.

AND WHEREAS the Parties wish to enter into this Agreement to facilitate the transfer of funding for Access and to guide future discussions regarding the co-development of a collaborative fisheries management approach.

AND WHEREAS the Parties agree that this Agreement only applies to the implementation of the *Marshall* Decisions and the First Nations' right to harvest and sell fish in pursuit of a moderate livelihood, and will not in any way prejudice, limit, substitute for or otherwise interfere with the First Nations' right to fish for food, social and ceremonial purposes.

AND WHEREAS the Parties acknowledge that Elsipogtog and Kopit Lodge are currently participating in discussions with Canada as part of a Recognition of Indigenous Rights and Self-Determination exploratory table (the "**RIRSD Table**").

AND WHEREAS the Parties have agreed to establish a fisheries subgroup, with participants from Elsipogtog and Kopit Lodge on behalf of Elsipogtog, Esgenoôpetitj, MAWIW and Canada, as part of the RIRSD Table to enable the Parties to engage in discussions respecting the transfer of funding for access to the commercial fisheries and regarding the co-development of a collaborative fisheries management approach (the "**Fisheries Subgroup**").

AND WHEREAS the Parties agree that the discussions taking place in accordance with this Agreement will not in any way prejudice, limit, substitute for or otherwise interfere with any other discussions for subject matters not addressed by this Agreement taking place between Elsipogtog, Kopit Lodge and Canada as part of the RIRSD Table.

NOW THEREFORE in consideration of the mutual covenants herein and subject to the terms and conditions of this Agreement, the Parties hereto agree as follows:

1.0 PURPOSE

1.1 The purpose of this Agreement is to:

- (a) set out the Parties' obligations related to the transfer of funding for the Access from Canada to the First Nations; and
- (b) set out provisions to guide discussions between the Parties regarding the co-development of a collaborative fisheries management approach and tools and procedures to support fisheries management objectives, including funding.

1.2 The Parties agree that the provisions of this Agreement will govern the First Nations' Access for the term of this Agreement.

- 1.3 The Parties are committed to implementing this Agreement in a manner that establishes and fosters a relationship based on understanding, trust and mutual respect.

2.0 WITHOUT PREJUDICE

2.1 Nothing in this Agreement:

- (a) is intended to create, define, diminish, abrogate, limit or extinguish the Aboriginal title and rights, including the laws, practices or traditions, of the Mi'kmaq;
- (b) is intended to create, define, abrogate, or extinguish the Treaty rights of the Mi'kmaq;
- (c) will have a permanent effect on Aboriginal title, rights and Treaty rights, and following the expiration or termination of this Agreement, will prejudice the ability of any of the Parties to exercise their rights and responsibilities in accordance with the law;
- (d) will prejudice, limit, substitute for or otherwise interfere with discussions taking place as part of the RIRSD Table, for subject matters not addressed by this Agreement;
- (e) constitutes a Treaty within the meaning of Section 25 or 35 of the *Constitution Act*, 1982.

2.2 For greater certainty, the Parties agree that this Agreement is only intended to facilitate the implementation of the First Nations' right to harvest and sell fish in pursuit of a moderate livelihood, as established by the *Marshall Decisions*.

3.0 FISH FOR FOOD, SOCIAL AND CEREMONIAL PURPOSES

3.1 The Parties agree that:

- (a) the First Nations' right to fish for food, social and ceremonial purposes will not be discussed as part of this Agreement; and
- (b) nothing in this Agreement will prejudice, limit, substitute for or otherwise interfere with the First Nations' right to fish for food, social and ceremonial purposes.

4.0 PARTIES' OBLIGATIONS

4.1 Canada agrees to:

- (a) provide the First Nations with the funding to facilitate the Access in accordance with this Agreement;
- (b) engage in good faith and timely discussions with the First Nations regarding the co-development of a collaborative fisheries management approach, including by considering and responding to information and / or recommendations received by the First Nations respecting the implementation of this Agreement and the topics identified in Section 1.1;
- (c) engage in good faith and timely discussions with the First Nations to develop a process to ensure the First Nations can participate in obtaining new and emerging fisheries in addition to this Agreement; and
- (d) work with the First Nations to develop a communications strategy for non-Indigenous commercial fishers respecting the First Nations' Treaty rights.

4.2 The First Nations agree to:

- (a) use the funding to obtain Access in accordance with this Agreement;
- (b) operate their commercial fisheries in a manner that is in compliance with federal fisheries legislation and regulations;
- (c) not initiate or support legal proceedings related to the exercise of their Treaty rights in relation to the subject matters addressed in this Agreement if the cause of the proceedings arises or arose while this Agreement is or was in force;
- (d) engage in good faith and timely discussions with Canada regarding the co-development of a collaborative fisheries management approach; and
- (e) engage in any other discussions with Canada in accordance with this Agreement in good faith and in a timely manner.

5.0 CAPACITY FUNDING

- 5.1 Canada recognizes that First Nations require reasonable capacity to meaningfully participate in the future discussions of the Fisheries Subgroup to co-develop a collaborative fisheries management approach. The Parties will work to develop a mutually acceptable work plan and budget to support these discussions. Any work plan, budget and funding agreement will be consistent with the Treasury Board of Canada –Policy on Transfer Payments and is subject to the appropriation of funds by Parliament for the program for the fiscal period(s) in which funds are provided.

6.0 FUNDING FOR COMMERCIAL ACCESS

- 6.1 As part of the implementation of the *Marshall* Decisions and the First Nations' right to harvest and sell fish in pursuit of a moderate livelihood, Canada will provide the First Nations with funding totalling \$ [REDACTED], using a trust established by each of the First Nations, in accordance with section 6.2, to provide the First Nations with increased Access.
- 6.2 Funding for the Access will be divided between the First Nations as follows:
- (a) Elsipogtog will receive \$ [REDACTED] in funding for the Access, in accordance with the terms and conditions set out in the Agreement To Fund A Trust For Obtaining Fishing Access, Fishing Vessels, And Fishing Gear;
 - (b) Esgenoôpetitj will receive \$ [REDACTED] in funding for the Access, in accordance with the terms and conditions set out in the Agreement To Fund A Trust For Obtaining Fishing Access, Fishing Vessels, And Fishing Gear.
- 6.3 The First Nations will use the funding to:
- (i) obtain commercial fisheries access; and
 - (ii) acquire vessels and gear.

7.0 COMMITMENT TO NEGOTIATE COLLABORATIVE MANAGEMENT STRUCTURES

- 7.1 In accordance with Section 1.1(b) the Parties agree to jointly co-develop a collaborative fisheries management approach through the Fisheries Subgroup, which will include tools and procedures to support fisheries management objectives.
- 7.2 Canada will provide the First Nations with funding to support the implementation and co-development of the collaborative fisheries management approach by the Parties as part of any negotiated agreement signed before March 31, 2022.
- 7.3 Canada will provide the funding described in Section 7.2 to the First Nations through MAWIW, who will then be responsible for distributing this funding to the First Nations as agreed to by the Parties.

8.0 CONFIDENTIALITY

- 8.1 The Parties acknowledge and agree that through the course of their relationship each Party may disclose to the other Party confidential information, which the disclosing Party will clearly mark or otherwise identify as "Confidential Information", regarding the history, traditions, customs and business interests and activities of the disclosing Party, that may not be publicly known and is the

property of the disclosing Party. Unless otherwise required by law, each Party will respect the confidentiality of such Confidential Information which it receives from the disclosing Party, and will not distribute such Confidential Information without the consent of the disclosing Party.

8.2 Notwithstanding section 8.1, the First Nations may disclose to its Mi'kmaq neighbours confidential information relating to this Agreement and discussions taking place under this Agreement, provided that the First Nations:

- (a) notify Canada in advance of disclosing the confidential information; and
- (b) provide the confidential information to the other Mi'kmaq First Nations on the basis that the information is confidential.

8.3 Notwithstanding section 8.1, Canada may have a duty to consult an Indigenous group other than the First Nations which has or may have rights protected under section 35 of the *Constitution Act, 1982* that may be adversely affected by this Agreement and, in order to ensure any such duty to consult is fulfilled, Canada may disclose to another Indigenous group confidential information and documents relating to negotiations under this Agreement, including part or all of any proposed agreement, including this Agreement, provided that Canada:

- (a) engages with the First Nations and discloses to the First Nations factual information and materials on which the decision to consult is based in advance of disclosing any confidential information; and
- (b) provides the confidential information to the other Indigenous group on the basis that the information is confidential.

8.4 The provisions of this section 8.0 are intended to be binding on the Parties and enforceable by one Party against the other and will survive the termination or expiry of this Agreement.

9.0 DISPUTE RESOLUTION

9.1 The Parties agree that the only matters that can be referred to dispute resolution are those in relation to the interpretation or implementation of this Agreement.

9.2 The Parties will use best efforts to prevent or minimize disputes and where the best efforts to prevent a dispute are not successful, the Parties to the dispute agree to:

- (a) identify and resolve the dispute as quickly and as cost-effectively as practicable; and
- (b) participate in good faith in the dispute resolution processes set out in this section

9.0.

9.3 Prior to referring a dispute to a court, a dispute will progress through the following stages until resolved:

- (a) initial written notice of matter in dispute;
- (b) collaborative negotiations; and
- (c) mediation.

9.4 Where a dispute is resolved pursuant to this section 9.0 the resolution will be:

- (a) in writing;
- (b) signed by the Parties to the dispute;
- (c) delivered to the Parties to the dispute; and
- (d) binding on the Parties to the dispute.

9.5 All communications or documents concerning a dispute will be “without prejudice” and the Parties to the dispute will treat all communications or documents related to the dispute as confidential, unless otherwise agreed in writing.

9.6 Where the Parties to the dispute agree, a time frame set out in this section 9.0 may be amended.

9.7 Where a dispute has not been resolved informally, a Party to the dispute may initiate dispute resolution by delivering a written notice of the dispute to other Parties to the dispute. Such notice will identify the:

- (a) nature of the dispute;
- (b) parties to the dispute;
- (c) grounds; and
- (d) documents relied upon.

9.8 Upon receipt of a notice delivered pursuant to section 9.7, each Party to the dispute agrees to:

- (a) within 7 days of receipt of the notice, appoint a senior official; and
- (b) direct their senior officials to meet within 14 days, and attempt to resolve the dispute through collaborative negotiations.

- 9.9 If a dispute cannot be resolved by the senior officials through collaborative negotiations within 30 days, the Parties to the dispute will jointly select a mediator.
- 9.10 If the Parties to the dispute are unable to agree on a mediator within 7 days after the end of collaborative negotiations, the Parties to the dispute will refer to the Federal Court to appoint a mediator from a provincially recognized roster of mediators.
- 9.11 Within 14 days of a mediator being retained, the mediator will consult the Parties to the dispute to arrange for the commencement of the mediation.
- 9.12 Within 14 days of the conclusion of mediation, whether by way of a resolution of the dispute or otherwise, the mediator will submit a report to the Parties to the dispute.
- 9.13 A Party to the dispute will bear its own costs, and an equal share of the costs of the mediation, including remuneration and expenses of the mediator, unless otherwise agreed in writing by the Parties to the dispute.

10.0 RATIFICATION

- 10.1 Considering that Elsipogtog Chief and Council have been elected by and are accountable to Elsipogtog's members and the public nature of Elsipogtog's Chief and Council meetings, Elsipogtog agrees to enter into this Agreement pursuant to a Band Council Resolution duly passed by Elsipogtog Chief and Council in accordance with the procedure set out in the *Indian Act*.
- 10.2 Considering that Esgenoôpetitj Chief and Council have been elected by and are accountable to Esgenoôpetitj's members and the public nature of Esgenoôpetitj's Chief and Council meetings, Esgenoôpetitj agrees to enter into this Agreement pursuant to a Band Council Resolution duly passed by Esgenoôpetitj Chief and Council in accordance with the procedure set out in the *Indian Act*.

11.0 REVIEW AND AMENDMENT

- 11.1 Any Party may make a request in writing to review this Agreement.
- 11.2 The Parties will discuss and if requested by a Party, negotiate potential amendments to this Agreement or other measures relating to any of the following developments:
- a) new developments in the common law related to the matters set out in this Agreement;

- b) changes to federal legislation that relate directly to the matters set out in this Agreement;
- c) any developments in federal policy related to the matters set out in this Agreement;
- d) innovations in other Agreements, with a view to incorporating such innovations into this Agreement, if applicable;
- e) changes required because of unforeseen circumstances that significantly impact the First Nations' participation in the commercial fishery;
- f) other matters with respect to the implementation of the provisions of this Agreement as the Parties may agree in writing.

11.3 This Agreement may only be amended with the written consent of the Parties.

12.0 RENEWAL

12.1 Twelve (12) months prior to the end of the term of this Agreement, each Party will provide the other Parties with written notice of its intent to seek the necessary authorities to renew, extend, or request amendments to this Agreement.

12.2 Should the Parties obtain the appropriate authorities to renew, extend or amend this Agreement the Parties will meet to commence negotiations regarding additional funding.

13.0 EFFECTIVE DATE, TERM AND TERMINATION

13.1 This Agreement will come into effect on the day that it has been signed by all Parties.

13.2 Subject to section 13.3, this Agreement will remain in effect:

- (a) for a period of ten (10) years from the Effective Date; or
- (b) until it is superseded by any future agreement negotiated between the Parties as part of the Fisheries Subgroup

whichever comes first.

13.3 Subject to section 13.4, any Party may terminate this Agreement by providing ten (10) days' written notice to the other Parties in accordance with the following:

- (a) For Elsipogtog, through a Band Council Resolution duly passed by Elsipogtog Chief and Council in accordance with the procedure set out in the *Indian Act*;

- (b) For Esgenoôpetitj, through a Band Council Resolution duly passed by Esgenoôpetitj Chief and Council in accordance with the procedure set out in the *Indian Act*; and
- (c) For Canada, through a letter signed by the Minister of Fisheries and Oceans and the Minister of Crown-Indigenous Relations.

13.4 For greater certainty, if one First Nation provides written notice of its intention to terminate this Agreement in accordance with section 13.3, this Agreement will continue to be in effect between the other First Nation and Canada.

13.5 If this Agreement is terminated by one or both First Nations, the First Nation or First Nations terminating this Agreement will:

- (a) repay Canada any unexpended and uncommitted funding for Access provided under section 6.0; and
- (b) no longer be eligible to receive ongoing funding under sections 5.0 and 7.0, and any funding provided under these sections to the First Nation or First Nations terminating the Agreement will be prorated for the year in which the Agreement is terminated, and the First Nation or First Nations terminating the Agreement will return the ongoing funding amounts for any period of that year that is not covered by the Agreement.

13.6 Regardless of when this Agreement ends or is terminated by any Party, any funds expended under Section 6.0 are part of the implementation of the *Marshall* Decisions and the First Nations' right to harvest and sell fish in pursuit of a moderate livelihood.

14.0 NOTICE

14.1 All notices or other communications necessary for the purposes of this Agreement will be in writing and will be delivered personally or will be sent by registered mail or by prepaid first class mail, facsimile or by e-mail to the following addresses:

in the case of Canada, to:

Fisheries and Oceans Canada
P.O. Box 5030
343 Université Avenue
Moncton, NB E1C 9B6

Attention: Regional Director General

Telephone: (506) 851-7750

in the case of Elsipogtog, to:

373 Big Cove Road
Elsipogtog First Nation, NB E4W 2S3

Attention: Chief and Council

AND

CP 3178
Tracadie-Sheila, NB E1X 1G5

Attention: Jake Augustine

in the case of Esgenoôpetitj, to:

620 Bayview Road, Suite 1
Esgenoôpetitj First Nation, NB E9G 2A8

Attention: Chief and Council

AND

2261 Rue du Quai
Bas-Caraquet, NB E1W 5 X9

Attention: Clark Dedam

or such other address, facsimile number, e-mail address or person as a Party may designate in writing to the other Parties.

14.2 Any notice or other communication will be deemed received:

- (a) if delivered by facsimile or by e-mail, 24 hours after the time of successful transmission to the other party;
- (b) if delivered by pre-paid first class mail, on the earlier of the day it was received and the fifth (5th) calendar day after it was post-marked; and
- (c) if delivered personally or by registered mail, on the date of delivery.

14.3 If postal service is interrupted, threatened to be interrupted, or is substantially delayed, any notice will be delivered personally, by facsimile transmission or by e-mail.

15.0 REPRESENTATIONS AND WARRANTIES

- 15.1 Canada represents and warrants to the First Nations that, in respect of the matters dealt with in this Agreement, it has the authority to enter into this Agreement.
- 15.2 Elsipogtog represents and warrants to Canada and Esgenoôpetitj that, in respect of the matters dealt with in this Agreement, it has the authority to enter into this Agreement on behalf of its members and to carry out the provisions of this Agreement on behalf of Elsipogtog.
- 15.3 Esgenoôpetitj represents and warrants to Canada and Elsipogtog that, in respect of the matters dealt with in this Agreement, it has the authority to enter into this Agreement on behalf of its members and to carry out the provisions of this Agreement on behalf of Esgenoôpetitj.

16.0 GENERAL CONDITIONS

- 16.1 **Program Eligibility:** Entering into this Agreement will in no way impede, alter or disqualify the First Nations from participation in or eligibility to receive funding through any other DFO administered transfer payment program under which they are otherwise eligible to apply or receive support.
- 16.2 **Legally Binding:** This Agreement is legally binding.
- 16.3 **Successors and Assigns:** This Agreement is binding on the Parties and their successors and permitted assigns.
- 16.4 **Severability:** Any provision of this Agreement prohibited by law or otherwise invalid or ineffective will be ineffective only to the extent of such prohibition or ineffectiveness and will be severable.
- 16.5 **Governing Law:** This Agreement will be governed by the laws in force in the Province of New Brunswick and the laws of Canada applicable therein.

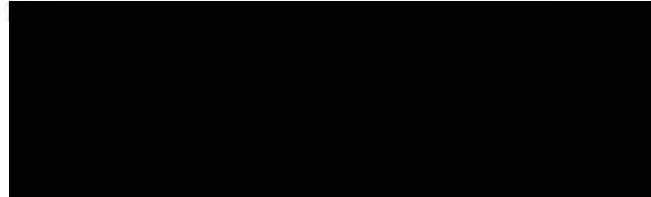
IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement as of the date recorded on the first page of this Agreement.

**HER MAJESTY THE QUEEN IN RIGHT
OF CANADA, as represented by the Minister of
Fisheries, Oceans, and the Canadian Coast Guard**

AUG 15 2019

Date

Per:

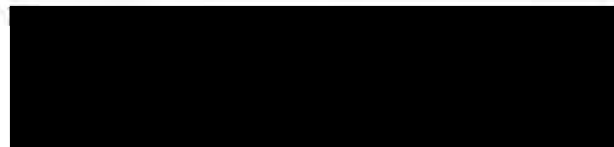


**HER MAJESTY THE QUEEN IN RIGHT
OF CANADA, as represented by the Minister of
Crown-Indigenous Relations**

AUG 16 2019

Date

Per:

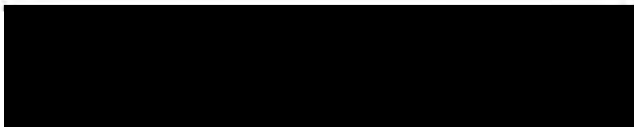


ELSIPOGTOG FIRST NATION

AUG 15 2019

Date

Per:

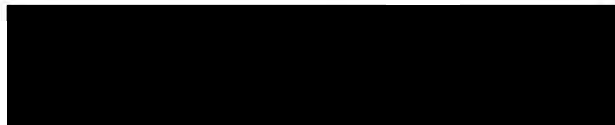


ESGENOÔPETITJ FIRST NATION

AUG 15 2019

Date

Per:



ANNEX "A"

INTERIM COLLABORATIVE FISHERIES MANAGEMENT AGREEMENT

This Annex made in triplicate this 20 day of June, 2023.

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF CANADA, as represented by the Minister of Fisheries, Oceans and the Canadian Coast Guard

AND:

ELSIPOGTOG FIRST NATION, as represented by its Chief Arren Sock, duly authorized ("Elsipogtog")

AND:

ESGENOÔPETITJ FIRST NATION, as represented by its Chief Alvery Paul, duly authorized ("Esgenoôpetitj")

RECITALS:

WHEREAS the Parties entered into an Interim Fisheries Implementation Agreement on August 16, 2019;

WHEREAS the Parties wish to add the present Annex A to the Interim Fisheries Implementation Agreement;

WHEREAS the present Annex A will apply and form part of the Interim Fisheries Implementation Agreement signed on August 16, 2019;

WHEREAS Annex A will come into effect upon signature;

WHEREAS pursuant to sections 1.1 (b) and 7.0 of the Interim Fisheries Implementation Agreement, this Annex addresses arrangements for the collaborative fisheries management approach and tools and procedures to support fisheries management objectives, including funding;

WHEREAS the Mi'kmaq hold and exercise Aboriginal title, rights and Treaty rights;

WHEREAS Elsipogtog and Esgenoôpetitj (the "First Nations") are members of the Mi'kmaq Nation;

WHEREAS Canada acknowledges that recognition of the inherent jurisdiction and legal orders of Indigenous nations, including the Mi'kmaq, is the starting point of discussions aimed at interactions between federal and Indigenous jurisdictions and laws;

WHEREAS Canada recognizes that the First Nations have authority in relation to the governance of their fisheries and the exercise of their fishing rights;

WHEREAS the Government of Canada recognizes that all relations with Indigenous peoples must be based on the recognition and implementation of the inherent right to self-determination, including the right of self-government;

WHEREAS Canada recognizes the right of the Indigenous peoples to participate in decision-making in matters that affect their rights through their own representative institutions and the need to consult and co-operate in good faith with the aim of securing their free, prior, and informed consent;

WHEREAS the Parties wish to enter into this Annex as an addendum to the Interim Fisheries Implementation Agreement to address their management of the fisheries on an interim basis while the Parties work to co-develop a shared decision-making process to collaboratively manage the fisheries;

WHEREAS Canada has existing mechanisms to reach additional agreements or other constructive arrangements with the goal of revitalizing and recognizing the mechanisms, including Mi'kmaq Laws, by which the First Nations govern and manage their fisheries.

NOW THEREFORE in consideration of the mutual covenants herein and subject to the terms and conditions of this Annex, the Parties hereto agree as follows:

1.0 DEFINITIONS

1.1 In this Annex:

- (a) **“Agreement”** means the Interim Fisheries Implementation Agreement entered into by the Parties on August 16, 2019, of which this Annex forms a part of as of the Effective Annex Date;
- (b) **“Canada”** means His Majesty the King in Right of Canada, as represented by the Minister of Fisheries, Oceans and the Canadian Coast Guard;
- (c) **“Chief”** means the elected Chief of the First Nations, or a person appointed by the respective Chief with appropriate authority and capacity to fulfil the commitments of the Chief under the terms of this Annex. For greater certainty, the Chiefs shall not appoint a delegate to attend the annual meeting between the Parties identified under section 6.9 of this Annex and shall attend in their own respective capacities;

- (d) “**Effective Annex Date**” means the date first written above;
- (e) “**Elsipogtog**” means Elsipogtog First Nation;
- (f) “**Elsipogtog and Esgenoôpetitj Fishery**” means the fisheries governance and fishing activities undertaken by the Elsipogtog and Esgenoôpetitj and members of the Elsipogtog and Esgenoôpetitj First Nations, for commercial purposes, in relation to any species for which DFO issues the Elsipogtog and Esgenoôpetitj First Nations an Aboriginal Communal Commercial Licence;
- (g) “**Esgenoôpetitj**” means Esgenoôpetitj First Nation;
- (h) “**Executive Oversight Committee**” means the committee described in Section 6.0;
- (i) “**First Nations**” means Elsipogtog and Esgenoôpetitj;
- (j) “**Joint Operational Management Committee**” means the committee described in Sections 4.0 and 5.0;
- (k) “**Minister**” means the Minister of Fisheries, Oceans and the Canadian Coast Guard or a person appointed by the Minister with appropriate capacity and authority to fulfil the commitments of the Minister under the terms of this Annex. For greater certainty, the Minister shall not appoint a delegate to attend the annual meeting between the Parties identified under section 6.9 of this Annex and shall attend in their own capacity as Minister.
- (l) “**Mi’kmaq Laws**” means the rules, norms, traditions, and customs, whether elaborated in writing or in oral tradition, that govern Mi’kmaq community members, bodies, and institutions pursuant to Mi’kmaq communities’ inherent right to self-determination, including the right to self government; for greater certainty this definition is without prejudice to how Mi’kmaq Laws could be defined in any other agreement entered into by the First Nations.
- (m) “**Operational Guidelines**” means the guidelines described in section 5.0;
- (n) “**Parties**” means Canada, Elsipogtog and Esgenoôpetitj.
- (o) “**Parties’ Decision Makers**” means the decision makers for each of the respective Parties who are authorized to make a final decision regarding the advice received from the Joint Operational Management Committee or Executive Oversight Committee, as follows:
 - i. Canada’s decision maker shall be the Minister,

- ii. Elsipogtog's decision maker shall be its elected Chief,
- iii. Esgenoôpetitj's decision maker shall be its elected Chief.

2.0 PURPOSE

- 2.1 The purpose of this Annex is to:
- (a) recognize the right of the First Nations to govern their fisheries pursuant to Mi'kmaq Laws;
 - (b) confirm the Parties' commitment to ensure the proper management and control of fisheries and the conservation and protection of fish and fish habitat;
 - (c) set out structures and mechanisms through which the Parties will undertake the collaborative management of the First Nations' fisheries, and other fisheries activities impacting the First Nations;
 - (d) confirm the principles that will guide the Parties' collaboration and the implementation of this Annex, and;
 - (e) confirm Canada's funding commitments to the First Nations to ensure the full and proper implementation of this Annex and support the First Nations' role in the governance and management of their fisheries.
- 2.2 The Parties are committed to implementing this Annex in a manner that establishes and fosters a relationship based on understanding, trust and mutual respect.

3.0 FISHERIES GOVERNANCE

- 3.1 The Parties agree that nothing in this Annex can be interpreted as affecting the following:
- (a) the First Nations' authority with respect to the exercise of their Aboriginal and Treaty Right, including the conduct of the First Nations' fisheries under Mi'kmaq law, and;
 - (b) the Minister's authority as set out in the *Fisheries Act* and its regulations;
 - (c) any constitutional or lawful authority, or;
 - (d) the decision-making authorities of any Party.
- 3.2 The Parties undertake to implement this Annex in accordance with the following principles:

- (a) respect for each Party's jurisdiction or other authorities, including their laws, customs and traditions, and decision-making authority;
- (b) collaborative decision-making with the goal of achieving consensus where possible;
- (c) a timely process, proportionate to the nature of the activities under consideration;
- (d) well-defined governance structures that include appropriately authorized representatives to support the decision-making process;
- (e) access to timely dispute resolution mechanisms, as set out in this Annex, or other culturally appropriate dispute resolution mechanisms as may be developed by the Parties through the Executive Oversight Committee to resolve any disputes arising among the Parties;
- (f) Canada and the First Nations remain committed to ongoing discussions regarding the co-development of a shared decision-making process to collaboratively manage the fisheries.

3.3 In accordance with this Annex, the Parties agree to work together to:

- (a) ensure mutual and reciprocal sharing of knowledge and expertise between the First Nations and Canada;
- (b) enable collaborative decision-making between the First Nations and Canada regarding,
 - i. the identification and sharing of commercially exploitable fisheries resources;
 - ii. the development of fishing plans affecting the First Nations' fisheries and related fisheries activities, including the conditions and issuance of the First Nations' Aboriginal Communal Commercial Fishing Licenses, and;
 - iii. any other fisheries-related decision affecting the First Nations;
- (c) enhance the capacity of the First Nations with respect to fisheries management;
- (d) enable shared responsibilities among the Parties with respect to the management of the First Nations' fisheries and related fisheries activities;

- (e) promote the growth and diversification of the First Nations' fisheries and related fisheries activities to maximize socioeconomic benefits for the First Nations;
- (f) promote a common understanding of the Parties' respective needs and issues in relation to fisheries activities, and;
- (g) ensure the First Nations' involvement and the integration of Mi'kmaq knowledge and expertise in researching, developing and implementing measures to protect fisheries resources and their habitat.

4.0 GOVERNANCE AND COLLABORATIVE FISHERIES MANAGEMENT

Joint Operational Management Committee

- 4.1 Upon signing this Annex, the Parties will establish the Joint Operational Management Committee made up of 8 representatives, 2 appointed by Elsipogtog, 2 appointed by Esgegoôpetitj, 2 appointed by MAWIW and 2 appointed by Canada.
- 4.2 The Parties will select the chair of the Joint Operational Management Committee from among the Committee's members.
- 4.3 The Joint Operational Management Committee is established as a joint advisory body, and shall be used to implement a collaborative process for reviewing and providing advice and recommendations to the Parties' Decision Makers regarding any decision affecting the First Nations' fisheries or other fisheries activities that have the potential to affect the First Nations, in accordance with the provisions of this Annex.
- 4.4 The Joint Operational Management Committee will review and consider any fisheries-related matters affecting the First Nations and provide written recommendations to the Parties' Decision Makers concerning these matters, including regarding the following:
 - (a) existing or new and emerging fisheries activities in areas of interest to the First Nations;
 - (b) measures necessary for the management and conservation of fisheries resources, and;
 - (c) any other issue concerning the First Nations' fisheries and related fisheries activities, including the following:
 - i. coordinating the First Nations' fisheries activities with other fisheries activities;

- ii. the timing and duration of fishing seasons applicable to the First Nations' fisheries;
- iii. integrating the First Nations' fisheries activities into the integrated planning process;
- iv. discussing information related to measures necessary for conservation, public health or public safety;
- v. gathering and exchanging publicly available data on fisheries activities;
- vi. developing and implementing enforcement measures related to the First Nations' fisheries and related fisheries activities, including related provisions in the First Nations' annual fishing plans;
- vii. developing measures to protect and prioritize the First Nations' fisheries activities;
- viii. communicating with other advisory bodies regarding questions of common interest;
- ix. examining proposals concerning commercially exploitable enhancement initiatives and development opportunities for the First Nations' fisheries and related fisheries activities;
- x. exchanging information about questions related to international agreements that could have an impact on the First Nations' fisheries or related fisheries activities;
- xi. preparing an analysis, report or scientific assessment regarding harvesting and fisheries resources;
- xii. facilitating access to capacity development initiatives, including with existing programs where possible;
- xiii. coordinating the development of the First Nations' annual fishing plans;
- xiv. developing a plan for identifying fishing licence conditions based on the First Nations' annual fishing plans and preferred means of conducting their fishery, which may be implemented through the collaborative decision-making process set out under this Annex;

- xv. developing a plan for recognizing and implementing the First Nations' Mi'kmaq Laws relating to their fisheries;
 - xvi. modifying the First Nations' fisheries activities during the season;
 - xvii. consulting the Government of New Brunswick or any other third party as necessary; and
 - xviii. any other issue that the First Nations may raise in connection with their fisheries or related fisheries activities.
- 4.5 The Joint Operational Management Committee will use best efforts to operate on a consensus basis.
- 4.6 When the Joint Operational Management Committee reaches consensus as to any matter listed in 4.4, the Joint Operational Management Committee shall submit a joint written recommendation reflecting such consensus to the Parties' Decision Makers.
- 4.7 If the Joint Operational Management Committee is unable to reach consensus on any matter listed in 4.4, the Joint Operational Management Committee shall submit the matter to the Executive Oversight Committee for its review, making sure to explain the nature of the disagreement.
- 4.8 In the event the Executive Oversight Committee is unable to reach an agreement, each Party may submit its own recommendations and an explanation of the nature of the disagreement to their Party's Decision Maker, and will provide a copy of this information to the other Parties' Decision Makers.
- 4.9 Upon receipt of the information in section 4.8, or before a Decision Maker makes a determination that departs from a consensus recommendation of either the Executive Oversight Committee or Joint Operational Management Committee, the Parties' Decision Makers shall meet and seek to reach a consensus on the matter that would resolve the dispute based on recognition of rights, respect, partnership, and the considerations listed in sections 4.12 - 4.13.
- 4.10 In the event that a person with delegated authority is appointed by the Minister or the Chiefs to fulfil their respective commitments when meeting in accordance with section 4.9, the Parties shall ensure the appointed person has sufficient delegated authority to resolve disputes creatively and collaboratively.
- 4.11 If upon meeting in accordance with section 4.8 the Parties' Decision Makers are unable to reach consensus, the Parties' Decision Makers:
- (a) may make decisions or take action within their lawful authority in a timely

- manner and where practicable, they will give prior notice of the action to the other Parties; and
- (b) must, as soon as practicable, provide written reasons to the Executive Oversight Committee and the Joint Operational Management Committee outlining the circumstances and the action taken, and a detailed explanation as to how it is consistent with the principles and objectives of this Annex.
- 4.12 In responding to any recommendation of the Joint Operational Management Committee or Executive Oversight Committee, the Parties' Decision Makers shall take into account:
- (a) the rationale for the recommendations; and
 - (b) the principles and objectives of this Annex.
- 4.13 When making any decisions in relation to the Elsipogtog and Esgegoôpetitj Fishery, and in responding to any recommendation of the Joint Operational Management Committee or Executive Oversight Committee, the Minister shall take into account:
- (a) Indigenous knowledge that the First Nations have provided;
 - (b) any adverse effects the decision may have on the Aboriginal and Treaty rights of the First Nations as recognized and affirmed by Section 35 of the *Constitution Act, 1982*;
 - (c) the Parties' Nation-to-Nation relationship and the objectives of reconciliation, and;
 - (d) the federal government's commitment to the implementation of UNDRIP and its reception in Canadian law.
- 4.14 The Joint Operational Management Committee will meet at least four times a year and may meet as often as deemed necessary by the Parties and in the manner the Committee deems appropriate to implement its obligations under this Annex.
- 4.15 The Parties will provide the Joint Operational Management Committee with any information required to assist them in its collaborative decision-making process in a timely manner.
- 4.16 The Parties' may invite individuals to provide technical and governance support to their representatives on the Joint Operational Management Committee. These individuals may attend Joint Operational Management Committee meetings.

- 4.17 The Joint Operational Management Committee may strike technical subcommittees to support its activities, including regarding the assessment of commercially exploitable fisheries resources, the collection of the necessary information and data, and to address scientific and technical questions.
- 4.18 The Joint Operational Management Committee will promote mutual and reciprocal access to all data and information relevant to the matter under its consideration.

5.0 Operational Guidelines

- 5.1 Within 12 months of signing this Annex, the Joint Operational Management Committee, with input and advice from the Parties, will develop and adopt Operational Guidelines regarding the First Nations' fisheries and related fisheries activities to guide each Party's conduct in implementing this Annex.
- 5.2 The Operational Guidelines will provide for the implementation of this Annex and include measures to support the objectives of this Annex, including practices and measures to identify, enhance and promote:
- (a) the First Nations' fisheries, including but not limited to the First Nations' traditional fishing grounds;
 - (b) options for obtaining increased access to fisheries resources for the Nations' Fisheries in locations suitable for the exercise of the Nation's fishing rights, including obtaining access to any new and emerging fisheries;
 - (c) the First Nations' fisheries governance and fishing rights;
 - (d) current and future fisheries activities of interest to the First Nations;
 - (e) the operation of commercially exploitable fisheries resources by the First Nations;
 - (f) collaborative decision making with respect to the issuance of Aboriginal Communal Commercial Fishing Licenses and its terms and conditions;
 - (g) the First Nations' capacity in relation to the management of the First Nations' fisheries and related fisheries activities;
 - (h) the sharing of responsibilities related to the First Nations' fisheries and related fisheries activities among the Parties;
 - (i) growth and diversification of the First Nations' fisheries and related fisheries activities; and

- (j) mechanisms for communication and the exchange of documents and other information relevant and useful for the purpose of supporting the objectives of this Annex.
- 5.3 The Joint Operational Management Committee will, on an annual basis, assess the degree of attainment of objectives set out in this Annex and will, acting diligently and in good faith, provide recommendations to the Parties to update the Operational Guidelines to ensure that these objectives are met.

6.0 EXECUTIVE OVERSIGHT COMMITTEE

- 6.1 Upon signing this Annex, the Parties will establish the Executive Oversight Committee, made up of senior representatives from each Party, including 2 senior representatives from Elsipogtog, 2 senior representatives from Esgenoôpetitj, and 2 senior representatives from Canada.
- 6.2 Each Party will ensure that its representatives on the Executive Oversight Committee have the required authority to perform the functions of the Committee.
- 6.3 The Parties will select the chair of the Executive Oversight Committee from among the Committee's members.
- 6.4 The Executive Oversight Committee will oversee the implementation of, and ensure compliance with, this Annex, and will be responsible for:
- (a) ensuring the harmonious implementation and respectful and efficient monitoring of this Annex and its objectives;
 - (b) providing a platform for promoting ongoing interaction between the Parties for all matters pertaining to the First Nations' fisheries and related fisheries activities;
 - (c) identifying and facilitating access to other government ministries, agencies or departments likely to contribute to the successful implementation of this Annex;
 - (d) addressing any advice or recommendations from the Joint Operational Management Committee and providing guidance to the Parties and their respective authorities regarding this Annex;
 - (e) serving as the preferred forum for the Parties to address disputes arising in connection with the interpretation and implementation of this Annex, and;
 - (f) supporting the Joint Operational Management Committee in reaching consensus on any matter under its consideration.

- 6.5 The Executive Oversight Committee may develop dispute resolution mechanisms based on traditional Mi'kmaq practices as identified by the First Nations to:
- (a) assist the Joint Operational Management Committee and Executive Oversight Committee with reaching consensus under Section 4 of this Annex;
 - (b) address any dispute that may arise during the implementation of the Parties' obligations under this Annex and replace the dispute resolution processes outlined under the Agreement.
- 6.6 The Executive Oversight Committee will meet at the times and in the manner it deems appropriate to ensure the fulfillment of its obligations under this Annex.
- 6.7 The Executive Committee will, within 12 months of the Effective Annex Date, bring forward a plan to the Parties outlining options, priorities and timeframes for the development of shared decision-making authorities with respect to the operation of the First Nations' fisheries.
- 6.8 Each year, the Executive Oversight Committee will assess the degree of attainment of the objectives set out in this Annex and will make any recommendations it deems necessary to the Parties to support the full and proper implementation of this Annex.
- 6.9 The Parties, as represented by the Minister and the First Nations' Chiefs, will make best efforts to meet annually to:
- (a) review the degree of attainment of the objectives set out in this Annex and discuss the recommendations provided by the Executive Oversight Committee under section 6.8;
 - (b) identify and discuss any other issues or opportunities arising with respect to the implementation of this Annex and the relationship between the Parties.

7.0 GOVERNANCE AND COLLABORATIVE MANAGEMENT FUNDING

- 7.1 Within 30 business days following the ratification of the contribution agreement, Canada will remit to the First Nations, pursuant to a contribution agreement, the following funding amounts to support the implementation of this Annex, including the development and implementation of the Interim Collaborative Fisheries Management Agreement:
- (a) a one-time payment of [REDACTED];

- (b) annual funding for the duration of this Annex in the amount of [REDACTED]; and
 - (c) [REDACTED], representing the annual funding accumulated since the Effective Date of the Agreement.
- 7.2 The Parties agree that the funding to be provided pursuant to section 7.1 will flow through and be administered by MAWIW Council Inc. on behalf of the First Nations.
- 7.3 The Parties will execute a contribution agreement, including an agreed-upon work plan, for the release of the funds described in section 7.1 in accordance with the terms and conditions set out in the contribution agreement.
- 7.4 The contribution agreement referred to in section 7.3 will be consistent with the Treasury Board of Canada Policy on Transfer Payment, and the provision of funds under section 7.1 is subject to the appropriation of funds by Parliament for the program for the fiscal period(s) in which the funds are provided.
- 7.5 The one-time funding described in subsection 7.1(a) is for governance development and will cover, among other things, the costs associated with setting up governance structures. This may include the creation of internal management committees, the implementation of management systems, the development of management tools, and the acquisition of physical offices or other work tools.
- 7.6 The annual funding described in subsection 7.1(b) is for the development and implementation of the First Nations' governance of the Mi'kmaq fisheries and related fisheries activities and will be used at the First Nations' discretion. This may include any costs associated with the First Nations' governance of the Mi'kmaq fisheries, including the implementation of the Interim Collaborative Fisheries Management Agreement, employee salaries, consultants and administrative support.

8.0 TERM AND TERMINATION

- 8.1 This Annex will come into effect on the Effective Annex Date.
- 8.2 Subject to section 8.3, this Annex will remain in effect:
- (a) until the expiration of the Agreement, or
 - (b) until it is superseded by any future agreement negotiated between the Parties, whichever comes first.

- 8.3 Notwithstanding section 8.2, any Party may terminate this Annex by providing 10 days' written notice to the other Parties in accordance with the following:
- (a) for Elsipogtog, through a Band Council Resolution duly passed by Elsipogtog Chief and Council;
 - (b) for Esgenoôpetitj, through a Band Council Resolution duly passed by Esgenoôpetitj Chief and Council; and
 - (c) for Canada, through a letter signed by the Minister of Fisheries and Oceans.
- 8.4 For greater certainty, if one First Nation provides written notice of its intention to terminate this Annex in accordance with section 8.3, this Annex will continue to be in effect between the other First Nation and Canada.
- 8.5 Upon termination of this Annex or withdrawal by one First Nation, the First Nations' or the withdrawing Party will:
- (a) repay Canada any unexpended and uncommitted governance development funding [section 7.1], and;
 - (b) no longer be eligible to receive future annual implementation and governance funding provided under section 7.1(b) of this Annex.

9.0 GENERAL

- 9.1 **Program Eligibility:** Entering into this Annex will in no way impede, alter or disqualify the First Nations from participation in, or eligibility to receive funding through any other DFO administered transfer payment program under which they are otherwise eligible to apply or receive support.
- 9.2 **Legally Binding:** This Annex is legally binding.
- 9.3 **Successors and Assigns:** This Annex is binding on the Parties and their successors and permitted assigns.
- 9.4 **Severability:** Any provision of this Annex prohibited by law or otherwise invalid or ineffective will be ineffective only to the extent of such prohibition or ineffectiveness and will be severable.
- 9.5 **Governing Law:** This Annex shall be governed by the laws in force in the Province of New Brunswick and the laws of Canada applicable therein.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Annex as of the date recorded on the first page of this Annex.

ELSIPOGTOG FIRST NATION



Arren Sock
Chief, Elsipogtog First Nation

June 14/23

Date

ESGENOÔPETITJ FIRST NATION

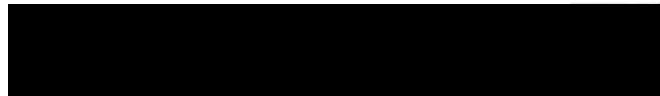


Alvery Paul
Chief, Esgenoôpetitj First Nation

June 14/23

Date

HIS MAJESTY THE KING IN RIGHT OF CANADA, as represented by the Minister of Fisheries, Oceans and the Canadian Coast Guard



Honorable Joyce Murray
Minister of Fisheries, Oceans and
the Canadian Coast Guard

JUN 20 2023

Date