

# RIGHTS RECONCILIATION AGREEMENT ON FISHERIES

(Hereinafter this "Agreement")

THIS AGREEMENT made in triplicate this 16 day of April, 2021.

## BETWEEN:

THE LISTUGUJ MI'GMAQ GOVERNMENT,  
which is the government and representative of the Listuguj Mi'gmaq First Nation,  
as represented by its Chief (the "LMG")  
-and-

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
as represented by the Minister of Fisheries and Oceans and the Minister of Crown  
Indigenous Relations ("Canada")

(Hereinafter referred to collectively as the "Parties" or individually as a "Party")

## PREAMBLE

WHEREAS the Listuguj Mi'gmaq First Nation is a Mi'gmaq community indigenous to Gespe'gewa'gi with a sacred, inherent responsibility for the stewardship of the land, waters, and living things of Gespe'gewa'gi;

WHEREAS Canada recognizes and affirms the Listuguj Mi'gmaq First Nation's inherent right to self-determination, including the right to self-government;

WHEREAS the Mi'gmaq of Gespe'gewa'gi, including the Listuguj Mi'gmaq First Nation, have existing aboriginal and treaty rights with respect to fisheries;

WHEREAS the aboriginal and treaty rights of the Mi'gmaq, which section 35 of the *Constitution Act, 1982* recognizes and affirms, are communal in nature and exercised by Mi'gmaq individuals on the authority of the Mi'gmaq community to which they belong;

WHEREAS the Listuguj Mi'gmaq First Nation has LMG Laws by which it governs its relationship with its fisheries;

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

WHEREAS Canada recognizes that indigenous self-government is part of Canada's evolving system of co-operative federalism and distinct orders of government and that nation-to-nation,

government-to-government relationships—including treaty relationships—include ensuring, based on recognition of rights, the space for the operation of indigenous jurisdictions and laws;

WHEREAS the *Constitution Act, 1867* assigns legislative authority regarding seacoast and inland fisheries to the Parliament of Canada, and the Minister of Fisheries and Oceans has the duty to manage, conserve, and develop the fishery on behalf of all Canadians in the public interest;

WHEREAS the Crown has the authority to regulate the Mi'gmaq treaty right to fish in pursuit of a moderate livelihood, and the Crown must justify any infringement on Mi'gmaq treaty rights in accordance with the test set out by the Supreme Court of Canada in *R v Badger*, [1996] 1 SCR 771 and other subsequent jurisprudence;

WHEREAS Canada recognizes the right of 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 on November 12, 2018, the LMG and Canada signed the Framework Agreement on Reconciliation and the Fishery, by which the Parties agreed to work collaboratively in negotiating issues of concern to the LMG, including the revitalization and recognition of the Listuguj Mi'gmaq First Nation's fisheries governance and fishing rights and of the mechanisms, including Mi'gmaq Laws, by which the LMG governs and manages its fisheries; and

WHEREAS Canada has existing mechanisms on which it may rely to seek authorities to negotiate with a view to reaching additional agreements or other constructive arrangements with the goal of revitalizing and recognizing the mechanisms, including Mi'gmaq Laws, by which the LMG governs and manages its fisheries;

NOW THEREFORE, the Parties agree as follows:

## **1. PURPOSE**

1.1 The Agreement aims to provide:

- a. recognition and implementation of the Aboriginal Right and Treaty Right of the Listuguj Mi'gmaq First Nation in relation to fisheries governance and fishing;
- b. predictability regarding the management and conduct of the LMG's Fishery;
- c. increased access to Fisheries Resources for the LMG's Fishery, whether for food, social, ceremonial, or commercial purposes; and
- d. governance capacity support to enable the LMG to exercise its fisheries governance and fishing rights.

## 2. DEFINITIONS

2.1 In this Agreement, including the Preamble and Schedules:

“Aboriginal Communal Licence” means a licence issued by the Minister to the LMG pursuant to the *Aboriginal Communal Fishing Licences Regulations*, SOR/93-332;

“Aboriginal Right” means the aboriginal right to fish for food, social, and ceremonial purposes as articulated in *R v Sparrow*, [1990] 1 SCR 1075 and to be interpreted in keeping with that decision and other relevant jurisprudence;

“Annual Fishing Plan(s)” means a plan or plans developed by the LMG in keeping with any applicable LMG Law setting out the LMG’s preferred means of conducting the LMG’s Fishery or aspects thereof for a given year;

“Business Development Team” means the team of specialized experts that provides advisory services to the LMG regarding proposals referred to in paragraph 5.3;

“Co-Governance Fisheries Committee” means the committee established pursuant to paragraph 6.10;

“DFO” means the Department of Fisheries and Oceans, the department of the Government of Canada established by the *Department of Fisheries and Oceans Act*, RSC 1985, c F-15;

“Executive Oversight Body” means the body established pursuant to paragraph 6.5;

“Fish” include:

- a. parts of fish;
- b. shellfish, crustaceans, marine animals and any parts of shellfish, crustaceans or marine animals; and
- c. the eggs, sperm, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals;

“Fisheries Resources” means living Fish and plant resources in aquatic environments under the jurisdiction of Canada for monitoring and management;

“Fishing” means fishing for, catching, or attempting to catch Fish by any method;

“LMG’s Fishery” means the fisheries governance and fishing activities undertaken by the LMG and members of the Listuguj Mi’gmaq First Nation, whether for food, social, ceremonial, or commercial purposes, in relation to any species for which the DFO issues the LMG an Aboriginal Communal Licence, excluding salmon;

“LMG Law” means, for purposes of this Agreement, a codified Mi’gmaq Law adopted by the LMG related to fishing and fisheries governance and listed at paragraph 1 of Schedule B of this Agreement;

“Mi’gmaq Laws” means the rules, norms, traditions, and customs, whether elaborated in writing or in oral tradition, that govern Mi’gmaq community members, bodies, and institutions pursuant to Mi’gmaq communities’ inherent right to self-determination, including the right to self-government; for greater certainty this definition is without prejudice to how Mi’gmaq laws could be defined in any other agreement entered into by the LMG or any other Mi’gmaq community;

“Mi’gmaq Ranger” means any officer of the Listuguj Aboriginal Ranger Service as established by the LMG’s *Mi’gmaq Ranger Law*, as amended from time to time;

“Minister” means the Minister of Fisheries and Oceans or a person appointed to serve, in the department over which the Minister presides, in a capacity appropriate to fulfil the commitments of the Minister under the terms of this Agreement;

“Technical Committee” means a committee that may be established by the Co-Governance Fisheries Committee as referred to in paragraph 6.15;

“Third-Party Evaluator” means the independent evaluator referred to in paragraph 5.3; and

“Treaty Right” means the right “to obtain necessities through hunting and fishing by trading the products of those traditional activities subject to restrictions that can be justified under the *Badger* test” pursuant to the Peace and Friendship Treaties of 1760-61, as articulated in *R v Marshall*, [1999] 3 SCR 456 & *R v Marshall*, [1999] 3 SCR 533 and to be interpreted in keeping with those decisions and other relevant jurisprudence.

### **3. RIGHTS RECOGNITION**

3.1 Canada acknowledges that the Listuguj Mi’gmaq First Nation has the following aboriginal and treaty rights concerning fisheries governance and fishing, which are recognized and affirmed by section 35 of the *Constitution Act, 1982*, and must be protected in the context of Canada’s fisheries activities, in accordance with the terms of the Agreement:

- a. the Aboriginal Right to fish for food, social, and ceremonial purposes as articulated in *R v Sparrow*, [1990] 1 SCR 1075 and to be interpreted in keeping with that decision and other relevant jurisprudence; and
- b. the Treaty Right “to obtain necessities through hunting and fishing by trading the products of those traditional activities subject to restrictions that can be justified under the *Badger* test” pursuant to the Peace and Friendship Treaties of 1760-61, as articulated in *R v Marshall*, [1999] 3 SCR 456 & *R v Marshall*, [1999] 3 SCR 533 and to be interpreted in keeping with those decisions and other relevant jurisprudence.

3.2 Canada recognizes that the LMG has authority in relation to the exercise of the Aboriginal Right and Treaty Right, including the conduct of the LMG’s Fishery, and that the LMG exercises this authority through LMG Laws, among other mechanisms.

3.3 Canada and the LMG remain committed to ongoing discussions regarding reconciliation and the nature and scope of their authority regarding fisheries governance.

- 3.4 Canada shall fulfill the obligations imposed on it by the Constitution of Canada, including the Listuguj Mi'gmaq First Nation's Aboriginal Right and Treaty Right, in keeping with the terms of this Agreement and the honour of the Crown.
- 3.5 The LMG shall exercise the Listuguj Mi'gmaq First Nation's Aboriginal Right and Treaty Right in relation to the LMG's Fishery in keeping with the terms of this Agreement.
- 3.6 Subject to the consensus building and dispute resolution process established by this Agreement, nothing in this Agreement prohibits the LMG from initiating or supporting legal proceedings against Canada in relation to an alleged breach of this Agreement by Canada, including in relation to an alleged:
- a. failure of the Minister to consider any adverse effects that a decision may have on the rights of the Listuguj Mi'gmaq First Nation recognized and affirmed by section 35 of the *Constitution Act, 1982*;
  - b. failure to discharge the Crown's duty to consult and, if appropriate, accommodate the LMG through the processes set out in this Agreement with respect to a decision by the Minister in relation to the LMG's Fishery; or
  - c. unjustified infringement, as defined in the applicable jurisprudence, of the Aboriginal Right or Treaty Right of the Listuguj Mi'gmaq First Nation resulting from a decision of the Minister imposing a restriction on the conduct of the LMG's Fishery.
- 3.7 Except as otherwise provided for in this Agreement, the LMG agrees not to initiate or support legal proceedings related to:
- a. the exercise of the Listuguj Mi'gmaq First Nation's Aboriginal Right or Treaty Right in relation to the LMG's Fishery; or
  - b. the Minister's obligation, pursuant to the honour of the Crown, to consult the LMG in relation to the Listuguj Mi'gmaq First Nation's Aboriginal Right or Treaty Right regarding the conduct of the LMG's Fishery;

if the cause of the proceedings arises or arose while this Agreement is or was in force.

- 3.8 Nothing in this Agreement prohibits the LMG from initiating or supporting legal proceedings against Canada or any other party in relation to matters other than this Agreement.

#### **4. FISHERIES ACCESS**

- 4.1 As part of this Agreement, Schedule A includes provisions for the issuance of Aboriginal Communal Licences in relation to the LMG's Fishery.
- 4.2 Consistent with the processes established by this Agreement, Canada shall work with the LMG to develop and implement options for obtaining increased access to Fisheries

Resources for the LMG's Fishery in locations suitable for the exercise of the Listuguj Mi'gmaq First Nation's fisheries governance and fishing rights.

- 4.3 In addition to the fisheries access set out in Schedule A, Canada shall engage in good faith and timely discussions with the LMG to develop a process to ensure the LMG can participate in obtaining access to any new and emerging fisheries.

## **5. FISHERIES FUNDING**

### **A. Listuguj Fisheries Fund**

- 5.1 Upon signing this Agreement, Canada shall provide the LMG with the Listuguj Fisheries Fund, in the amount specified in paragraph 1 of Schedule C of this Agreement, in a lump sum by transferring it to an account held in trust by a lawyer, notary, or financial institution acting as trustee. All interest accrued by the Listuguj Fisheries Fund will be used by the LMG in keeping with the object, terms, and conditions of the trust.
- 5.2 The Listuguj Fisheries Fund will be used by the LMG to:
- a. obtain fisheries access, which could include licences and/or quota; or
  - b. acquire vessels and gear.
- 5.3 To access the Listuguj Fisheries Fund, the LMG will develop a proposal with the assistance of the Business Development Team. A Third-Party Evaluator will review the proposal and present its findings and recommendations to the DFO. In consideration of the findings and recommendations, the DFO and the LMG will direct the trustee to release the portion of the Listuguj Fisheries Fund in question to the LMG.
- 5.4 Further details regarding the Listuguj Fisheries Fund and the object, terms, and conditions of the related trust will be negotiated by the DFO and the LMG and be set out in a funding agreement.

### **B. Funding for Governance and Collaborative Management**

#### ***One-Time Mi'gmaq Governance Development Funding***

- 5.5 Upon signing this Agreement, Canada shall provide the LMG with one-time governance development funding in the amount specified in paragraph 3 of Schedule C of this Agreement.
- 5.6 The one-time governance development funding will support the establishment of the LMG governance structures required to facilitate governance and collaborative management of the LMG's Fishery.

#### ***Annual Implementation and Governance Funding***

- 5.7 For the duration of this Agreement, Canada shall provide the LMG with annual implementation and governance funding in the amount specified in paragraph 4 of Schedule C of this Agreement.

- 5.8 The annual implementation and governance funding will support the implementation of this Agreement and the LMG's role in the governance and management of the LMG's Fishery.

## **6. LMG FISHERIES GOVERNANCE & COLLABORATIVE MANAGEMENT**

### **A. Fisheries Governance**

- 6.1 Nothing in this Agreement can be interpreted as affecting the following:
- a. the LMG's authority with respect to the exercise of the Aboriginal Right and Treaty Right, including the conduct of the LMG's Fishery; and
  - b. the Minister's authority as set out in the *Fisheries Act* and its regulations.
- 6.2 The LMG shall publish all LMG Laws on its website and shall notify Canada in a timely manner whenever it adopts or amends LMG Laws.
- 6.3 Canada takes no position regarding the contents of LMG Laws.
- 6.4 In keeping with the terms of this Agreement, Canada and the LMG shall continue to work collaboratively based on the recognition of rights, respect, co-operation, and partnership to reach additional agreements or other constructive arrangements with the goal of revitalizing and recognizing the mechanisms, including Mi'gmaq Laws, by which the LMG governs and manages its fisheries.

### **B. Collaborative Fisheries Governance**

#### ***Executive Oversight Body***

- 6.5 Upon signing this Agreement, the Parties shall establish an Executive Oversight Body consisting of two (2) representatives each for Canada and the LMG.
- 6.6 Canada's representatives on the Executive Oversight Body shall be the DFO's Regional Director General for the Quebec Region and the DFO's Senior Assistant Deputy Minister responsible for fisheries and harbour management. The LMG's representatives on the Executive Oversight Body shall be the Chief of the LMG and a fisheries spokesperson appointed in keeping with any applicable LMG Law. Additional individuals may participate in meetings of the Executive Oversight Body to support or assist a representative.
- 6.7 The Executive Oversight Body shall oversee the implementation of this Agreement and, among other functions, shall provide:
- a. input and direction to the Co-Governance Fisheries Committee;
  - b. input and direction to management bodies on specific issues;

- c. a forum for addressing potential disputes as provided for in paragraphs 10.6 and 10.7;
  - d. a platform for continued interaction between executives from Canada and the LMG on fisheries and marine matters of interest to the Parties;
  - e. oversight and direction regarding additional agreements or other constructive arrangements with the goal of revitalizing and recognizing the mechanisms, including Mi'gmaq Laws, by which the LMG governs and manages its fisheries; and
  - f. a forum for consultations regarding any changes to the DFO's policies, programs, or mandates that may affect the LMG's Fishery or the implementation of this Agreement.
- 6.8 The Executive Oversight Body shall meet at least once a year and may meet more frequently where it determines that it is appropriate to do so.
- 6.9 Each year, the Executive Oversight Body shall assess the degree of attainment of and provide recommendations and guidance in relation to achieving the purpose set out in paragraph 1.1. The Executive Oversight Body may convene any senior official requested by the Parties for the purposes of this paragraph.

***Co-Governance Fisheries Committee***

- 6.10 Upon signing this Agreement, the Parties shall establish a Co-Governance Fisheries Committee to facilitate collaborative assessment, planning, and management in relation to the LMG's Fishery.
- 6.11 The LMG and Canada shall each appoint two (2) representatives to the Co-Governance Fisheries Committee, but additional individuals may participate in meetings to support or assist a representative.
- 6.12 The Parties shall provide each other with access to all relevant available information, including relevant available catch data, as may reasonably be necessary to enable the Co-Governance Fisheries Committee to carry out its functions and activities.
- 6.13 In facilitating cooperative assessment, planning, and management, the Co-Governance Fisheries Committee may:
- a. discuss existing and emerging commercial and other fisheries that could affect the LMG's Fishery;
  - b. discuss measures necessary for conservation, public health, or public safety that could affect the LMG's Fishery;
  - c. discuss how the LMG's Fishery may be coordinated with other fisheries;
  - d. arrange for collection and exchange of publicly available fisheries related data;



- e. discuss provisions of the LMG's Annual Fishing Plan(s);
- f. discuss licence conditions for the LMG's Fishery;
- g. discuss the timing and duration of fishing seasons applicable to the LMG's Fishery, including relevant conservation issues and scientific data;
- h. subject to paragraph 6.7 (e), explore additional agreements or other constructive arrangements with the goal of revitalizing and recognizing the mechanisms, including Mi'gmaq Laws, by which the LMG governs and manages its fisheries;
- i. communicate with other advisory bodies in respect of matters of mutual interest;
- j. review proposals for enhancement initiatives and stewardship activities related to the LMG's Fishery;
- k. exchange relevant available information on issues related to international arrangements that could affect the LMG's Fishery; and
- l. discuss any other matter as agreed to by the members of the Co-Governance Fisheries Committee.

6.14 The Co-Governance Fisheries Committee shall prepare an annual workplan to be approved by the Executive Oversight Body.

6.15 The Co-Governance Fisheries Committee may establish one or more Technical Committees to support the Co-Governance Fisheries Committee on scientific and technical issues. A Technical Committee may make recommendations on appropriate activities (such as stock assessment) for the collection of needed information and data and provide technical advice concerning any planned fisheries.

***Management & Planning Process for LMG Fisheries***

6.16 In keeping with any applicable LMG Law, the LMG shall, each year, prepare one or more Annual Fishing Plans setting out the LMG's preferred means of conducting its fishery, which may include:

- a. the species;
- b. the method, location, and timing and duration of the Fishing;
- c. the size, type, identification, marking, and quantity of fishing gear and the manner in which it may be used;
- d. the number and description of the vessels to be used;
- e. catch monitoring and reporting of harvest;
- f. the disposition of fish caught; and

- g. other matters, including those for which there may be provisions in a licence or licence conditions.
- 6.17 The LMG shall provide its Annual Fishing Plan(s) to the Co-Governance Fisheries Committee in a timely fashion for review.
- 6.18 The Co-Governance Fisheries Committee shall review the LMG's Annual Fishing Plan(s) with the goal of co-developing and coming to consensus on all licence conditions that the Minister will specify regarding any licences in relation to the LMG's Fishery.
- 6.19 In addition to recommendations regarding licence conditions, the Co-Governance Fisheries Committee may discuss and make written recommendations to the Minister and the LMG concerning:
- a. Fish management, harvesting, and monitoring related to the LMG's Fishery;
  - b. enforcement related to the LMG's Fishery and the conduct of consultation regarding such enforcement;
  - c. the conduct of fisheries other than the LMG's Fishery that could affect the LMG's Fishery;
  - d. Fish and aquatic plant habitat management, protection, and conservation;
  - e. escapement goals for given Fish stocks;
  - f. enhancement initiatives and other stewardship activities conducted by the LMG;
  - g. the timing and duration of fishing seasons applicable to the LMG's Fishery;
  - h. in-season amendments to harvesting for the LMG's Fishery;
  - i. occurrences where the LMG harvest of a species of Fish or aquatic plant differs from that set out under its Annual Fishing Plan(s);
  - j. new and emerging fisheries in areas of interest to the LMG;
  - k. assistance to be provided by Canada to the LMG in procuring additional commercial fisheries access;
  - l. subject to paragraph 6.7 (e), additional agreements or other constructive arrangements with the goal of revitalizing and recognizing the mechanisms, including Mi'gmaq Laws, by which the LMG governs and manages its fisheries; and
  - m. other matters that could affect the LMG's Fishery.
- 6.20 When the Co-Governance Fisheries Committee reaches consensus as to the content of any licence conditions related to the LMG's Fishery or on any matter listed in paragraph

6.19, the Co-Governance Fisheries Committee shall make a joint recommendation reflecting such consensus to the Minister.

- 6.21 If the Co-Governance Fisheries Committee is not able to reach consensus as to the content of any licence condition related to the LMG's Fishery or on any matter listed in paragraph 6.19, the Co-Governance Fisheries Committee shall submit the matter to the Executive Oversight Body for its review, making sure to explain the nature of the disagreement. Following the review of the Executive Oversight Body, either Party (or both) may submit recommendations regarding such matters to the Minister in writing.

### ***Considerations for Ministerial Decision Making***

- 6.22 In responding to any recommendation of the Co-Governance Fisheries Committee or either Party, including by issuing and setting or amending the conditions of an Aboriginal Communal Licence, the Minister shall take into account, among other things:
- a. indigenous knowledge that the LMG has provided to the Minister;
  - b. community knowledge of the Listuguj Mi'gmaq First Nation that the LMG has provided to the Minister;
  - c. the LMG's relevant Annual Fishing Plan(s);
  - d. the rationale for any recommendations under paragraphs 6.20 and 6.21; and
  - e. social, economic, and cultural factors relevant to the LMG in the management of fisheries about which the LMG has informed the Minister.
- 6.23 When making any decision in relation to the LMG's Fishery, the Minister shall consider any adverse effects that the decision may have on the rights of the Listuguj Mi'gmaq First Nation recognized and affirmed by section 35 of the *Constitution Act, 1982*.
- 6.24 When making any decision in relation to the LMG's Fishery, the Minister shall ensure that, in a manner in keeping with this Agreement and the process set out above, the Crown has discharged its duty to consult and, if appropriate, accommodate the LMG with respect to that decision.
- 6.25 When making any decision in relation to the LMG's Fishery, the Minister shall not impose any restriction on the conduct of the LMG's Fishery, including by imposition of a licence condition, that amounts to an unjustified infringement, as defined in the applicable jurisprudence, of the Aboriginal Right or Treaty Right of the Listuguj Mi'gmaq First Nation.
- 6.26 The Minister shall provide written reasons to the LMG if the provisions of an Aboriginal Communal Licence or any other decision made by the Minister differ from the recommendations of the Co-Governance Fisheries Committee under paragraph 6.20 or of the LMG under paragraph 6.21.

- 6.27 When issuing new, additional, or supplemental exploratory, experimental, educational, recreational, or commercial licences in fishing areas of interest to the LMG with respect to existing, new, and emerging fisheries, the Minister shall pay special attention to recommendations of the Co-Governance Fisheries Committee under paragraph 6.20 or of the LMG under paragraph 6.21.

## **7. CONDUCT OF THE LMG'S FISHERY**

### ***Designation to Fish***

- 7.1 In keeping with any applicable LMG Law, the LMG shall designate each individual permitted to engage in Fishing under an Aboriginal Communal Licence related to the LMG's Fishery and, before Fishing under the Aboriginal Communal Licence commences, shall issue the designated individual a designation document, which will bear the name of the designated individual, the Aboriginal Communal Licence number, and the name and registration number of the vessel.
- 7.2 No individual other than a designated individual shall engage in Fishing under an Aboriginal Communal Licence related to the LMG's Fishery. Designated individuals shall carry their designation document at all times while engaged in Fishing or any other activity covered by the Aboriginal Communal Licence, including the transporting and landing of Fish, and shall show this designation document and proof of identity to a Mi'gmaq Ranger, fishery officer, or fishery guardian duly authorized pursuant to section 5(1) of the *Fisheries Act* upon request.

### ***Withdrawal or Amendment of Designation***

- 7.3 Where the LMG makes changes to its designations, the names and registration numbers of the vessels, and/or any designated individual, the LMG shall notify each designated individual and the DFO of these amendments.

### ***Responsibilities of the LMG***

- 7.4 The LMG shall notify each individual who is designated to engage in Fishing under the authority of an Aboriginal Communal Licence related to the LMG's Fishery of the relevant provisions of or any amendments to this Agreement and the applicable Aboriginal Communal Licence.

### ***Sale of Fish***

- 7.5 Any sale of Fish harvested under an Aboriginal Communal Licence will be subject to all federal and provincial laws related to sale, including, but not limited to, laws respecting health and safety, inspection, processing, packaging, storage, export, quality control, and labelling.

## **8. COMPLIANCE & ENFORCEMENT**

- 8.1 Where delay would not compromise the effectiveness of enforcement, prior to taking any enforcement action in relation to the LMG's Fishery, the DFO shall consult with the LMG.

In all cases, the DFO shall inform and consult with the LMG after taking any enforcement action in relation to the LMG's Fishery. Among other things, such consultations may take into account:

- a. timelines relevant to ensuring the effectiveness of enforcement measures;
- b. potential roles and responsibilities of the LMG in relation to enforcement;
- c. the availability of restorative justice mechanisms that reflect Mi'gmaq norms and values;
- d. provisions of any LMG Law relevant to enforcement in the circumstances; and
- e. the impact and history of discrimination against indigenous peoples by Canada and the imperative of reconciliation.

8.2 Within one year of the signing of this Agreement, the Executive Oversight Body shall make best efforts to engage with all appropriate government departments, negotiate, and refer for approval a fisheries enforcement protocol that will address the following matters:

- a. a cooperative approach to enforcement that:
  - i) reflects Mi'gmaq norms and values;
  - ii) recognizes the role of the Mi'gmaq Rangers; and
  - iii) promotes compliance with the management regime applicable to the LMG's Fishery;
- b. restorative justice mechanisms, including diversion and the use of alternative measures to prosecution; and
- c. ongoing education, training, and cross-cultural exchange between the DFO and the LMG to promote understanding and reconciliation.

## **9. GENERAL**

9.1 The preamble and schedules are integral parts of this Agreement.

9.2 This Agreement creates legal obligations that are binding on the Parties.

9.3 This Agreement does not constitute and should not be interpreted as constituting a treaty within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

9.4 This Agreement is not intended to define or to be used to limit the nature or scope of the Listuguj Mi'gmaq First Nation's aboriginal or treaty rights.

- 9.5 This Agreement is to be construed as upholding the rights of indigenous peoples, including those of the Listuguj Mi'gmaq First Nation, recognized and affirmed by section 35 of the *Constitution Act, 1982*, and not as abrogating or derogating from them.
- 9.6 Nothing in this Agreement recognizes, affects, or infringes any rights, claims, or interests of any other indigenous nation or community.
- 9.7 Nothing in this Agreement impacts the application of federal legislation or regulations.
- 9.8 Notwithstanding any provision of this Agreement, Canada is not required to disclose any information that they are required to withhold under federal legislation.
- 9.9 The honour of the Crown will be at stake in the interpretation and implementation of this Agreement, and Canada shall implement this Agreement purposively, diligently, and in good faith.
- 9.10 No Party shall challenge, or support a challenge to, the validity of any provision of this Agreement.
- 9.11 The Parties shall collaborate in good faith and in a timely manner in implementing this Agreement based on recognition of rights, respect, co-operation, and partnership as the foundation for transformative change.
- 9.12 This Agreement will in no way restrict or limit the rights of the LMG:
- a. to negotiate or implement any agreement with third parties, including the province of Québec; or
  - b. to have access to economic incentives or economic development activities to which the LMG would otherwise have access, including, among other things, any other grant program or services program implemented by Canada, its departments, or other para-governmental bodies, including, but not limited to, the Aboriginal Fisheries Strategy, the Aboriginal Aquatic Resource and Oceans Management Program, the Atlantic Integrated Commercial Fisheries Initiative, and Recognition of Indigenous Rights and Self-Determination negotiation support funding.

## **10. CONSENSUS BUILDING AND DISPUTE RESOLUTION**

### ***Consensus Building***

- 10.1 The Parties will at all times prefer dialogue to resolve any disputes in relation to this Agreement. A dispute in relation to this Agreement is understood to include any dispute resulting from issues of compliance with, implementation, or interpretation of this Agreement.
- 10.2 Nothing in this Agreement prohibits a Party from filing a proceeding in court regarding a dispute in relation to this Agreement in order to preserve their right to do so while the consensus building and dispute resolution process described herein is ongoing.

- 10.3 If a dispute in relation to this Agreement arises, the people directly involved in the dispute shall attempt to reach a consensus that would resolve the dispute through open-minded and collaborative dialogue.
- 10.4 If the people directly involved in the dispute cannot reach a consensus that would resolve the dispute, then these individuals shall refer the dispute to the Co-Governance Fisheries Committee, making sure to explain in writing the nature of the dispute and the efforts made to resolve it.
- 10.5 The members of the Co-Governance Fisheries Committee shall collaborate to seek a consensus that would resolve the dispute based on recognition of rights, respect, co-operation, and partnership as the foundation for transformative change.
- 10.6 If a dispute in relation to this Agreement cannot be resolved to the satisfaction of the Parties by the Co-Governance Fisheries Committee, this committee shall submit the dispute to the Executive Oversight Body, making sure to explain in writing the nature of the dispute and the efforts made to resolve it.
- 10.7 The Executive Oversight Body shall conduct a complete review and seek to reach a consensus that would resolve the dispute based on recognition of rights, respect, co-operation, and partnership as the foundation for transformative change.

### ***Dispute Resolution***

- 10.8 Where the Executive Oversight Body is unable to resolve a dispute, within thirty (30) days of the conclusion of the review conducted by the Executive Oversight Body, either Party may deliver a notice to the other Party requiring the commencement of a facilitated, non-binding dispute resolution process.
- 10.9 A notice under paragraph 10.8 will include:
  - a. a summary of the particulars of the dispute; and
  - b. a proposal for a facilitated, non-binding dispute resolution process.
- 10.10 Within thirty (30) days of delivery of the notice under paragraph 10.8, the Parties shall attempt to agree on a non-binding dispute resolution process facilitated by one or more neutral third parties.
- 10.11 A facilitated dispute resolution process terminates as agreed to by the Parties.
- 10.12 Any settlement agreement reached through a facilitated dispute resolution process will be:
  - a. recorded in writing;
  - b. signed by authorized representatives of the Parties;
  - c. delivered to the Parties; and

- d. binding on the Parties.

### **Reference to the Federal Court of Canada**

- 10.13 If a dispute in relation to this Agreement cannot be resolved using the consensus building and dispute resolution processes described above, resolution of the dispute may be pursued in the courts.
- 10.14 Subject to the consensus building and dispute resolution process set out above, the Parties exclusively attorn and submit to the jurisdiction of the Federal Court of Canada to resolve all disputes arising out of or relating to this Agreement. For greater certainty, neither Party may commence any proceeding to resolve a dispute arising out of or relating to this Agreement in any jurisdiction other than the Federal Court of Canada.

## **11. REVIEW, AMENDMENT, AND TERMINATION**

- 11.1 At the request of either Party, the Parties shall review this Agreement to consider the following:
  - a. any substantial advancements, developments, or benefits arising from the jurisprudence or common law;
  - b. any amendments to federal legislation that are directly related to the issues set out in this Agreement;
  - c. any changes in federal policy, programs, or mandates concerning the issues set out in this Agreement;
  - d. any agreements of a similar nature with indigenous groups benefiting from Peace and Friendship Treaties or with fisheries governance and fishing rights otherwise recognized and affirmed by sections 25 and 35 of the *Constitution Act, 1982* or in relation to general recognition of rights by Canada;
  - e. any changes required because of unforeseen circumstances with a significant impact on the rights of the Listuguj Mi'gmaq First Nation and the performance of its fisheries activities;
  - f. any substantive difficulties in implementing the terms of or obligations imposed by this Agreement; or
  - g. any other matters that may be agreed to by the Parties concerning the implementation of the provisions of this Agreement.
- 11.2 Except as otherwise provided for in this Agreement, this Agreement may be amended with the written consent of the Parties.
- 11.3 No Party may terminate this Agreement without first having provided the other Party with written notice explaining the reason(s) for the intended termination and having pursued good faith efforts to resolve the issue(s) in question using the consensus building and dispute resolution process provided for in paragraphs 10.1 to 10.11, following which



either Party may terminate this Agreement immediately on provision of written notice of intent to terminate, including their reason(s) for termination.

- 11.4 Notwithstanding paragraph 11.3, the Parties may terminate this Agreement at any time upon written mutual consent.
- 11.5 Following termination, Canada shall seek to negotiate in good faith the recognition, respect, and implementation of the Listuguj Mi'gmaq First Nation's aboriginal and treaty rights concerning fisheries governance and fishing. This paragraph will survive the termination of this Agreement.
- 11.6 Upon termination of this Agreement, the LMG:
- a. shall reimburse Canada for the amounts of the Listuguj Fisheries Fund not spent and not incurred; and
  - b. will no longer be eligible to receive annual implementation and governance funding.
- 11.7 Notwithstanding the expiry or termination of this Agreement, any amount of the Listuguj Fisheries Fund spent will be considered as being part of the implementation of the Listuguj Mi'gmaq First Nation's Treaty Right.

## **12. RATIFICATION**

- 12.1 The LMG has ratified this Agreement by band council resolution in accordance with the procedure set out in the *Indian Act*, RSC 1985, c I-5 and its regulations.

## **13. COMING INTO FORCE AND TERM OF AGREEMENT**

- 13.1 This Agreement will come into force on the date of signature by the Parties.
- 13.2 The signatories are authorized to represent their respective Parties.
- 13.3 The Agreement is valid for a period of five (5) years upon signature.
- 13.4 The LMG may, no later than six (6) months prior to the expiry of this Agreement, choose to renew it for additional periods of five (5) years, up to a maximum term of twenty-five (25) years. If the LMG renews this Agreement, the one-time contributions referred to in paragraphs 5.1 and 5.5 are not renewable.

IN WITNESS WHEREOF this Agreement has been executed by the Parties as of the date first written above.

**THE LISTUGUJ MI'GMAQ GOVERNMENT**

[Redacted Signature]

Darcy Gray  
Chief, Listuguj Mi'gmaq Government

[Redacted Signature]

Witness

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

[Redacted Signature]

Bernadette Jordan  
Minister of Fisheries and Oceans

[Redacted Signature]

Witness

[Redacted Signature]

Carolyn Bennett  
Minister of Crown-Indigenous Relations

[Redacted Signature]

Witness

## **SCHEDULE A**

### **Fisheries Access**

1. In 2020, the Minister issued or made available the following fishing licences to the LMG:
  - a) Licence Numbers: 901270P, 901271P, 901272P, 901273P  
Species of Fish: Rock Crab  
Fishing gear type: Traps  
Designated area: 12Z
  - b) Licence Number: 900202P  
Species of Fish: Snow Crab  
Fishing gear type: Traps  
Designated area: 12
  - c) Licence Number: 900491P  
Species of Fish: Snow Crab  
Fishing gear type: Traps  
Designated area: 12B
  - d) Licence Number: 900180P  
Species of Fish: Shrimp (Group B)  
Fishing gear type: Trawl  
Designated area: Anticosti, Sept-Iles, Estuary
  - e) Licence Number: 900500P, 903319P  
Species of Fish: Herring  
Fishing gear type: Gill net  
Designated area: 16B
  - f) Licence Number: 900036P  
Species of Fish: Groundfish  
Fishing gear type: Fixed gear  
Designated area: 4RST
  - g) Licence Number: N/A  
Species of Fish: Mackerel  
Fishing gear type: Gill net, hand line  
Designated based on area of residence
  - h) Licence Numbers: 901999P, 902000P  
Species of Fish: Groundfish,  
Fishing gear type: Gill net, fixed gear  
Designated area: 4RST

- i) Licence Number: 900693P  
Species of Fish: Groundfish  
Fishing gear type: Mobile gear  
Designated area: 4RST
  
  - j) Licence Number: 900719  
Species of Fish: Herring, Mackerel (bait)  
Fishing gear type: Gill nets  
Designated area: 16B
  
  - k) Licence Numbers: 900240P, 900241P, 900250P, 900242P, LMFN-2020-FF01  
Species of Fish: Lobster  
Fishing gear type: Traps  
Designated area: 21B
2. The Co-governance Fisheries Committee will revise and update the list set out in paragraph 1 of this Schedule A annually to reflect the fishing licences issued or made available to the LMG the previous year.
  
  3. The Minister shall impose conditions, including in-season adjustments, on the fishing licences set out in paragraph 1 of this Schedule A in keeping with the processes and considerations established by this Agreement.
  
  4. Following the expiry of the fishing licences set out in paragraph 1 of this Schedule A, the Minister shall make a decision regarding their renewal in keeping with the processes and considerations established by this Agreement.

## **SCHEDULE B**

### **LMG Laws**

1. The LMG has adopted the following laws that are relevant to the implementation of this Agreement:
  - a. *Listuguj Lobster Law* No. 2019-01; and
  - b. *Mi'gmaq Ranger Law*.
2. The LMG may amend the list of LMG Laws set out in paragraph 1 of this Schedule B by providing notice of any such amendment, in writing, to Canada.