

# **RIGHTS IMPLEMENTATION AGREEMENT ON FISHERIES**

(Hereinafter this "Agreement")

**THIS AGREEMENT** made in duplicates of 10 this \_\_\_\_ day of \_\_\_\_\_, 2023.

## **1. PARTIES**

AMLAMGOG (FORT FOLLY) on behalf of itself and its members, as represented by the Chief and Council

AND:

L'NU MENIGUG (INDIAN ISLAND) on behalf of itself and its members, as represented by the Chief and Council

AND:

METEPENAGIAG (RED BANK) on behalf of itself and its members, as represented by the Chief and Council

AND:

NATOAGANEG (EEL GROUND) on behalf of itself and its members, as represented by the Chief and Council

AND:

OINPEGITJOIG (PABINEAU) on behalf of itself and its members, as represented by the Chief and Council

AND:

TJIPOGTOTJG (BUCTOUCHE) on behalf of itself and its members, as represented by the Chief and Council

AND:

UGPI'GANJIG (EEL RIVER BAR) on behalf of itself and its members, as represented by the Chief and Council

(each a "Mi'gmaq Community" and together the "Mi'gmaq Communities")

AND:

MI'GMAWE'L TPLU'TAQNN INC., a company incorporated pursuant to the *Companies Act* (New Brunswick), being an Indigenous representative organization representing the Mi'gmaq Communities;

("MTI", and together with the Mi'gmaq Communities, the "Mi'gmaq Parties")

-and-

HIS MAJESTY THE KING 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")

Collectively referred to as the "Parties"

## **2. PREAMBLE**

WHEREAS this Rights Implementation Agreement (“Agreement”) seeks to, among other things, address and preserve the recognized historic treaty rights of the Mi’gmaq and advance self-determination to close socio-economic gaps and improve the quality of life of the Mi’gmaq;

WHEREAS this Agreement is time-limited, incremental in nature, and will build toward the longer-term objective of reconciliation and aims to provide predictability, stability and clarity regarding the exercise of rights for the Parties for the duration of this Agreement;

WHEREAS the Parties wish to enter into this Agreement in a manner and spirit that respects and upholds the significance of the Peace and Friendship Treaties and the continuing treaty relationship of the Parties;

WHEREAS this Agreement is not intended as a re-negotiation of the Peace and Friendship Treaties of 1760-61, nor as a process leading towards their extinguishment;

WHEREAS Canada recognizes that the Mi’gmaq have rights protected under Section 35 of the *Constitution Act*, 1982;

WHEREAS Canada is committed to a renewed, nation-to-nation relationship with the Mi’gmaq based on recognition of Mi’gmaq Aboriginal and treaty rights, including the rights of self-determination and self-government, respect, co-operation and partnership, and rooted in the principles of the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”);

WHEREAS Canada adopts and is committed to following the *Principles respecting the Government of Canada’s relationship with Indigenous peoples* to guide reconciliation and renewal of the nation-to-nation relationship with the Mi’gmaq;

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 *Marshall* (D.J.) has recognized the existence of certain Mi’gmaq harvesting and trading rights pursuant to the Peace and Friendship Treaties of 1760-61;

NOW THEREFORE, the Parties agree as follows:

## **3. DEFINITIONS**

In this Agreement, in addition to any term defined in the Preamble:

“Board” means the Oversight Board established pursuant to Section 11.21.

“Committee” means the Joint Technical Committee established pursuant to Section 11.6.

“Mi’gmaq Governance Entity” or “MGE” means the Mi’gmaq Governance Entity established pursuant to Section 13.9.

“Interim Livelihood Fishery” refers to the fishery recognized pursuant to Section 13.

“Mi’gmaq Peoples’ Laws” means laws adopted through a law-making process to be developed by Mi’gmawé’l Tplu’taqnn.

“Mi’gmaq Community Member” means an individual who is a member of a Mi’gmaq Community, or who is recognized as Mi’gmaq under a Mi’gmaq identity law developed by Mi’gmawé’l Tplu’taqnn.

“Mi’gmaq Chiefs” means the Chiefs of the Mi’gmaq Communities.

“Minister” refers to the Minister of Fisheries, Oceans and the Canadian Coast Guard.

#### **4. SHARED PRINCIPLES**

4.1 The relationship between Fisheries and Oceans Canada and the Mi’gmaq Parties is based on the stewardship of our fisheries and our Waters. The Parties wish to work together to implement this Agreement, and are guided by the following principles:

4.1.1 A shared commitment to work together to explore, define, develop, and implement a common understanding of shared stewardship over our fisheries and our Waters, which includes:

- a. the Mi’gmaq perspective of the responsibility given to the Mi’gmaq by the Creator;
- b. collaborative governance of the use and management of the Waters; and
- c. conservation and sustainable Mi’gmaq harvesting activities in accordance with this Agreement, and the Mi’gmaq principle of Mawi Anqotemenj Nimejuaq’nminu.

4.1.2 A shared commitment to develop and strengthen our relationship over time, to reaffirm and advance reconciliation, and to work together in an open and transparent manner.

4.1.3 A shared wish to honour and live the Peace and Friendship Treaties.

- 4.1.4 A shared recognition of the rich Indigenous knowledge of the Mi'gmaq, which affirms the ongoing relationship with the Lands and Waters of Mi'gma'qi since time immemorial, and which includes Lnu'wey Tplu'taqnn (Mi'gmaq Peoples' Laws).
- 4.1.5 A shared respect for the unique connection of the Mi'gmaq to Waters, and a commitment to renew and strengthen those connections, and allow for knowledge transfer to future generations of Mi'gmaq, to help facilitate cultural integrity and well-being, and the cultural survival of the Mi'gmaq.
- 4.1.6 A shared respect for Etuaptmumk (two-eyed seeing), combining the strength of Mi'gmaq Indigenous knowledge and Western scientific knowledge, in managing the Waters, and in seeking solutions to challenges such as climate change and environmental degradation, in a spirit of collaboration, and co-learning.

## **5. GENERAL**

- 5.1 The Preamble is incorporated into this Agreement to serve as an aid in interpreting the Agreement and its Schedules.

## **6. RECOGNITION LANGUAGE**

- 6.1 Canada recognizes the Mi'gmaq have Aboriginal rights, including the rights to self-government and self-determination, and treaty rights. More specifically Canada recognizes that the Mi'gmaq have the Treaty right to harvest and sell fish for the purpose of earning a moderate livelihood for individual Mi'gmaq and their families.

## **7. STATUS OF THE AGREEMENT**

- 7.1 This Agreement does not create Section 35 rights of the *Constitution Act*, 1982 nor does this Agreement define the nature, scope or location of specific Section 35 rights of the *Constitution Act*, 1982 and it will not have a permanent effect on the rights. The Parties may have differing views on the scope, nature and extent of these rights.
- 7.2 Fisheries and Oceans Canada acknowledges and agrees that any duty to consult Mi'gmaq on subject matters other than those addressed in sections 11, 12, and 13 are unaffected by this Agreement.

- 7.3 This Agreement does not constitute a treaty within the meaning of Section 25 or 35 of the *Constitution Act*, 1982.
- 7.4 This Agreement is binding on the Parties.
- 7.5 Upon signature, the Mi'gmaq Parties or Canada may make this Agreement public, upon notification to the other Party, except for the funding amounts found in Schedule B of this Agreement which will remain confidential and only released if required by law.

## **8. FISH FOR FOOD, SOCIAL AND CEREMONIAL PURPOSES**

- 8.1 The Parties agree that:
- a. the First Nations' right to fish for food, social and ceremonial purpose is not addressed 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.

## **9. OPERATIONAL PREDICTABILITY**

- 9.1 Rights and benefits provided under this Agreement for the Mi'gmaq are vested collectively and may be exercised by Mi'gmaq Community Members subject to any limitations established by or under any provision of this Agreement.
- 9.2 Where the Mi'gmaq have or assert treaty rights which relate to those subject matters addressed in sections 11, 12 and 13 of this Agreement, the Mi'gmaq agree to exercise those treaty rights in a manner consistent with this Agreement and the interim livelihood fishing plans referred to in Section 13, during the term of this Agreement.
- 9.3 The Mi'gmaq Parties agree not to initiate or support legal proceedings related to the exercise of their treaty rights pertaining to the subject matters addressed in sections 11, 12, 13 and 14 in this Agreement if the cause of the proceedings arises or arose while this Agreement is or was in force.
- 9.4 Subject to the dispute resolution process established by this Agreement, nothing in this Agreement prohibits the Mi'gmaq Parties from initiating or supporting legal

proceedings against Canada in relation to an alleged breach of this Agreement by Canada.

## **10. REPRESENTATIONS AND WARRANTIES**

- 10.1 The Mi'gmaq Parties represent and warrant to Canada that, in respect of the matters dealt with in this Agreement, they have the authority to enter into this Agreement on behalf of all persons who are Mi'gmaq and to carry out its provisions on behalf of the Mi'gmaq.
- 10.2 Canada represents and warrants to the Mi'gmaq Parties that, in respect of the matters dealt with in this Agreement, it has the authority to enter into this Agreement.
- 10.3 Ownership of Mi'gmaq Indigenous knowledge shared with Canada does not transfer to Canada.

## **11. FISHERIES GOVERNANCE**

### **MANAGEMENT OF FISHERIES RESOURCES**

- 11.1 Fisheries and Oceans Canada and the Mi'gmaq Parties undertake to implement collaborative management in relation to fisheries and oceans.
- 11.2 Collaborative management includes, amongst other things:
- a. ensuring mutual and reciprocal sharing of knowledge and expertise related to fisheries and oceans;
  - b. enabling participating in the decision making process related to the identification and sharing of commercially exploitable fisheries resources, the development of integrated fisheries management plans affecting Mi'gmaq fisheries activities, and any decision that affects them;
  - c. making provision for learning the methodology and issues related to the identification and sharing of commercially exploitable fisheries resources and the development of integrated fisheries management plans in a manner that honours the Peace and Friendship Treaties;

- d. promoting a common understanding of Fisheries and Oceans Canada and the Mi'gmaq Parties' respective needs and issues in relation to fisheries and oceans;
  - e. working with the Mi'gmaq to align Mi'gmaq practices of research, developing and implementing measures to protect fisheries resources and their habitat and those Fisheries and Oceans Canada uses to achieve those objectives; and
  - f. such other functions as are necessary to carry out this Agreement or as Fisheries and Oceans Canada and the Mi'gmaq Parties may mutually agree.
- 11.3 Fisheries and Oceans Canada and the Mi'gmaq Parties undertake to set up the Joint Technical Committee with the mandate to take the necessary steps to achieve the objectives listed above, and an Oversight Board with the mandate to provide oversight and direction to the Joint Technical Committee.
- 11.4 The Joint Technical Committee and the Oversight Board will have authority to develop their own processes and procedures beyond what is contained in this Agreement.
- 11.5 Recommendations of the Joint Technical Committee and the Oversight Board does not discharge any duty of the Minister to consult with the Mi'gmaq.

#### **JOINT TECHNICAL COMMITTEE**

- 11.6 Within six (6) months of the Agreement coming into force, Fisheries and Oceans Canada and the Mi'gmaq Parties will establish a Joint Technical Committee (the "Committee").
- a. The Committee will be composed of three persons appointed by the Mi'gmaq of New Brunswick and three persons appointed by the Minister, and co-chairs appointed by both.
  - b. Initial appointments will be for staggered terms, and subsequent appointments will be for three-year terms.
  - c. Quorum of the Committee will require one representative appointed by each Fisheries and Oceans Canada and the Mi'gmaq Parties, plus the chair.
  - d. The Mi'gmaq of New Brunswick and the Minister may each appoint two observers. Should either Fisheries and Oceans Canada and the Mi'gmaq Parties require more observers, approval by both Fisheries and Oceans Canada and the Mi'gmaq Parties is required.



- e. The Committee may agree upon the attendance of experts or advisors at its meetings, as required.
  - f. Meetings of the Committee will be closed to the public, except where the Committee decides otherwise.
- 11.7 Within 12 months of signing the Agreement, the Committee will adopt operational guidelines to guide the conduct of Fisheries and Oceans Canada and the Mi'gmaq Parties in implementing the Agreement.
- 11.8 The operational guidelines must provide for collaborative, participatory and evolving measures, supporting the Agreement's objectives and, in particular, providing for:
- a. fisheries activities of interest to the Mi'gmaq, current and future activities; and
  - b. mechanisms for communication and the exchange of documents and information relevant and useful for the purposes of the Agreement.
- 11.9 The Committee will, on an annual basis, assess the degree of attainment of objectives set out in the Agreement and will update, diligently and in good faith, the operational guidelines for Mi'gmaq fisheries' activities to ensure that these objectives are met.
- 11.10 In addition to establishing operational guidelines, the Committee may discuss any issues and make recommendations to the Minister and to the Mi'gmaq Chiefs concerning:
- a. existing or new and emerging fisheries activities in areas of interest to the Mi'gmaq;
  - b. measures necessary for fisheries resources conservation; and
  - c. all other points related to fisheries activities, including:
    - i. discussing how Mi'gmaq fisheries activities can be coordinated with other fisheries management activities and processes (e.g. fisheries management advisory processes);
    - ii. discussing how Mi'gmaq fisheries activities and Indigenous knowledge may be integrated into the fisheries management planning process;

- iii. considering information provided related to measures necessary for conservation, public health or public safety;
- iv. making provisions for gathering and exchanging data on fisheries activities;
- v. discussing the enforcement of fisheries legislation, including provisions respecting an annual interim livelihood fishing plan;
- vi. discussing any measure to protect and prioritize Mi'gmaq fisheries activities;
- vii. communicating with other fisheries management and scientific advisory bodies (e.g. Indigenous and non-Indigenous) regarding questions of common interest;
- viii. examining the proposals concerning commercially exploitable enhancement initiatives and development opportunities for fisheries activities;
- ix. exchanging information about questions related to international agreements that could have an impact on fisheries activities;
- x. requiring an analysis, report or scientific assessment regarding harvesting and fisheries resources;
- xi. facilitating access to capacity development initiatives, particularly with existing programs where possible;
- xii. collaboration on the preparation and the development of integrated fisheries management plans;
- xiii. making modifications to fisheries activities during the season;
- xiv. any other element that constitutes an issue for the Mi'gmaq or that could have an impact on fisheries activities;
- xv. consulting the Government of New Brunswick or any other third party when deemed desirable.

11.11 In making recommendations, the Committee will have regard to the principles set out in Section 4 of this Agreement.

- 11.12 Fisheries and Oceans Canada is committed to informing the Committee in a timely manner of any factors that could affect Fishing Activities, including, for example, the issuance of potential exploratory, experimental, educational and commercial licences or additional licences.
- 11.13 For the purposes of its mandate, the Committee may strike one or more technical committees to support certain fisheries activities, such as the assessment of commercially exploitable fisheries resources, the collection of the necessary information and data, as well as scientific and technical questions.
- 11.14 The Committee will strive to operate based on consensus and to promote mutual and reciprocal access to all data and information relevant to the topic being debated.
- 11.15 If the Committee is unable to reach a consensus on a question, the Oversight Board (the "Board") will endeavour to assist in reaching one.
- 11.16 If a consensus cannot be reached despite the support of the Board, Fisheries and Oceans Canada or the Mi'gmaq Parties may submit its own written recommendation(s) to the Minister and provide a copy to the other.
- 11.17 The Minister will conduct a complete and impartial review of any recommendation(s) received pursuant to the Agreement, whether consensual or not.
- 11.18 When issuing new exploratory, experimental, educational and commercial licences or additional licences or supplemental licences in Mi'gmaq fishing areas, with respect to existing fisheries, the Minister will take special consideration to the recommendation(s) from the Committee.
- 11.19 Except when accepting consensual recommendations from the Committee, the Minister will provide written reasons for his or her decision before the decision is implemented.
- 11.20 The Committee will meet at the times and in the manner it deems appropriate to ensure adequate monitoring of the Agreement and the decision-making processes of the Minister.

**OVERSIGHT BOARD:** (Board with a mandate to protect what Fisheries and Oceans Canada and the Mi'gmaq Parties have agreed upon).

11.21 Within six (6) months of the Agreement coming into force, Fisheries and Oceans Canada and the Mi'gmaq Parties will establish the Board made up of four representatives, two representatives appointed by each Fisheries and Oceans Canada and the Mi'gmaq Parties with the required authority to perform the functions of the Board.

- a. Initial appointments will be for staggered terms, and subsequent appointments will be for two-year terms.
- b. Quorum of the Board will require one representative appointed by each Fisheries and Oceans Canada and the Mi'gmaq Parties, plus the chair.
- c. The Mi'gmaq of New Brunswick and the Minister may each appoint two observers. Should either Fisheries and Oceans Canada or the Mi'gmaq Parties require more observers, approval by both Fisheries and Oceans Canada and the Mi'gmaq Parties is required.
- d. The Board may agree upon the attendance of experts or advisors at its meetings.
- e. Meetings of the Board will be closed to the public, except where the Board decides otherwise.

11.22 The Board will oversee the implementation of, and ensure compliance with the Agreement, and will have the following mandate, amongst others:

- a. to ensure harmonious implementation and respectful and efficient monitoring of the Agreement and its objectives, in particular, to ensure its evolving nature;
- b. to be a platform for promoting ongoing interaction between Fisheries and Oceans Canada and the Mi'gmaq Parties for all matters pertaining to fisheries activities and any other topic concerning the marine domain;
- c. to identify and allow access to contacts likely to contribute to the smooth operation and successful implementation of the Agreement;
- d. to address any recommendations and guidance to Fisheries and Oceans Canada and the Mi'gmaq Parties and the Minister regarding the efficiency and improvement of management measures and the collaborative approach put in

place, and on any other question that may be useful for achieving the objectives of the Agreement;

- e. to serve as a preferred forum between Fisheries and Oceans Canada and the Mi'gmaq Parties for finding mutually satisfactory solutions to disputes with respect to the interpretation or implementation of the Agreement, and to address any other ensuing topic; and
- f. to support the Committee in reaching a consensus on any question.

11.23 The Board will meet at the times and in the manner it deems appropriate to ensure adequate monitoring of the Agreement.

11.24 Each year, the Board will assess the degree of attainment of the objectives set out in the Agreement and will make any recommendation and guidance in relation to achieving the objectives set out in Section 11.2 of the Agreement. The Board may summon any senior official requested by the Parties for the purposes of this article.

## **12. PRIORITY ALLOCATION**

12.1 Fisheries and Oceans Canada and the Mi'gmaq of New Brunswick remain committed to ongoing discussions, through the Committee or Board, to address the priority to facilitate the further implementation of the right to fish in pursuit of a moderate livelihood.

12.2 Where the Minister proposes to establish a new or emerging commercial fishery within traditional fishing areas, the Minister will advise the Committee or Board of the proposal to establish the fishery and will consult with the Committee or Board on a process for Mi'gmaq participants to enter the fishery on a priority basis and for the preferential allocation of quota/licences to the Mi'gmaq of New Brunswick for the further implementation of the right to fish in pursuit of a moderate livelihood.

12.3 Where the Committee or Board may have recommendations around the preferential allocation of quota/licences in established fisheries within traditional fishing areas, the Minister will consider such recommendations on a priority basis for the further implementation of the right to fish in pursuit of a moderate livelihood. This includes any new licences/allocation of those species identified in Schedule "A".

12.4 Considerations for Ministerial Decision-Making:

- a. In responding to any recommendation of the Committee or Board or either Party, including by issuing and setting or amending the conditions of an Aboriginal Communal Licence, the Minister will take into account, amongst other things:
  - i. Indigenous knowledge that the Mi'gmaq has provided to the Minister;
  - ii. community knowledge that the Mi'gmaq has provided to the Minister;
  - iii. the Mi'gmaq's relevant interim livelihood fishing plan(s);
  - iv. the rationale for any recommendations by the Committee or Board or either Party; and
  - v. social, economic, and cultural factors relevant to the Mi'gmaq in the management of fisheries about which the Mi'gmaq has informed the Minister.
- b. When making any decision in relation to the Mi'gmaq livelihood fisheries, the Minister will consider any adverse effects that the decision may have on the rights of the Mi'gmaq recognized and affirmed by Section 35 of the *Constitution Act*, 1982.
- c. When making any decision in relation to the Mi'gmaq livelihood fisheries, the Minister will 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 Mi'gmaq with respect to that decision.
- d. When making any decision in relation to the Mi'gmaq livelihood fisheries, the Minister will not impose any restriction on the conduct of the Mi'gmaq livelihood fisheries, 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 Mi'gmaq.
- e. The Minister will provide written reasons to the Committee or Board if any decision made by the Minister differs from the recommendations of the Committee or Board under sections 11.16, 11.18 and 12.3.

### **13. INTERIM LIVELIHOOD FISHERY**

- 13.1 The Interim Livelihood Fishery will be governed by the Mi'gmaq Governance Entity (MGE) in accordance with this Agreement and Lnu'wey Tplu'taqnn (Mi'gmaq Peoples' Law) including the principles of Mawi Anqotemenj Nimejuaq'nminu.
- 13.2 An interim livelihood fishing plan(s) for the Interim Livelihood Fishery will be developed by one or more Mi'gmaq Communities in collaboration with the MGE, for review and recommendation by the Committee and Board, and approval by the Minister and the Mi'gmaq Chiefs, with priority consideration given to any advice from the MGE, as outlined in Section 13.

- 13.3 Prior to imposing any restrictions on the conduct of the Interim Livelihood Fishery, the Minister will seek the recommendation of the Committee regarding the proposed limitation. For greater certainty, any such limitation must still meet the infringement/justification test as required by law.
- 13.4 The interim livelihood fishing plan may include the following elements:
- a. Species Conditions
    - i. Definitions
    - ii. Compliance
    - iii. Registration and Identification
    - iv. Safety
    - v. Conservation and Catch Prohibitions
    - vi. Authorized Fishing Gear
    - vii. Ropes, Buoys and Marking
    - viii. Rope Marking for Right Whales
    - ix. Fishing Area
    - x. Reporting
    - xi. Lost Gear Reporting
    - xii. Marine Mammal Reporting
    - xiii. Species at Risk
    - xiv. Bycatch
- 13.5 Where, due to urgent circumstances beyond the Minister's control, the Minister is unable to seek the advice of the Board prior to imposing such a limitation, the Minister will promptly submit the limitation to the Board for their review and advice.
- 13.6 Fisheries and Oceans Canada and the Mi'gmaq Parties acknowledge that the Mi'gmaq Fisheries Fund provided in Schedule B of this agreement is incremental and a step towards the further implementation of a Mi'gmaq Livelihood Fishery.
- 13.7 In order to facilitate and inform a community discussion on the implementation of an Interim Livelihood Fishery, Fisheries and Oceans Canada and the Mi'gmaq Parties will initiate a process to test various models on an Interim Livelihood Fishery.
- 13.8 The process to test various models will include the following:
- a. In years one and two (1-2) of this Agreement, the MGE will undertake research and community engagement in respect of moderate livelihood, including testing moderate livelihood fisheries across various fisheries, seasons, fishing gears and vessel classes and develop and report on all aspects of the test fisheries including comprehensive data on landings, by-catches, gear types, vessel sizes,

revenues and costs of fishing. This information will be made available to the Committee.

- b. In year three (3) of this Agreement, the Committee will engage in discussion on various parameters of moderate livelihood and make recommendations to Fisheries and Oceans Canada and the Mi'gmaq Parties.
- c. In year four (4) of this Agreement, Fisheries and Oceans Canada and the Mi'gmaq Parties will review all of the information collected during years one to three (1-3) and develop recommendations to guide and inform a successor agreement.
- d. In year five (5) of this Agreement, Fisheries and Oceans Canada and the Mi'gmaq Parties will endeavour to negotiate a successor agreement based on the recommendations of the MGE and the Board.

### **MI'GMAG GOVERNANCE ENTITY**

13.9 The Mi'gmaq will establish a Mi'gmaq Governance Entity (MGE), which will be responsible for governing the Interim Livelihood Fishery and for providing advice to the Board regarding fisheries matters.

13.10 The MGE will have the following mandate:

- a. supporting the Mi'gmaq to take on a greater role related to the management of Mi'gmaq fisheries activities;
- b. promoting the growth and diversification of Mi'gmaq fisheries activities to maximize socioeconomic benefits for the Mi'gmaq;
- c. undertaking practices and measures, including administrative directives, that promote the operation of commercially exploitable fisheries resources by the Mi'gmaq;
- d. fostering and enhancing Mi'gmaq skills in relation to fisheries activities;
- e. developing a plan to recognize, reclaim, and reinstitute responsibilities related to fisheries activities;
- f. supporting the development of Mi'gmaq interim livelihood fishing plan;
- g. such other matters as it may be empowered to address by the Mi'gmaq.



## **14. FUNDING**

### **Mi'gmaq Fisheries Funding**

- 14.1 Each of the signatory Mi'gmaq Communities will establish an individual trust in accordance with the terms and conditions set out in a contribution agreement.
- 14.2 Upon establishing the trust and the ratification of a contribution agreement for fisheries access, vessels and gear, Fisheries and Oceans Canada will provide to the Mi'gmaq Communities with the Mi'gmaq Fisheries Funding, in the amount specified in paragraph 1 of Schedule B 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 Mi'gmaq Fisheries Funding will be used by the Mi'gmaq Community in keeping with the object, terms, and conditions of the trust.
- 14.3 The Mi'gmaq Fisheries Funding will be used by the Mi'gmaq Communities to:
  - a. obtain fisheries access, which could include licences and/or quota; and/or
  - b. acquire vessels and gear.
- 14.4 To access the Mi'gmaq Fisheries Funding, the Mi'gmaq Community 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 Fisheries and Oceans Canada and the results will be shared with the Mi'gmaq Community as part of the decision regarding release of funds. In consideration of the findings and recommendations, Fisheries and Oceans Canada and the Mi'gmaq Community will direct the trustee to release the portion of the Mi'gmaq Fisheries Funding in question to the Mi'gmaq Community.
- 14.5 Further details regarding the Mi'gmaq Fisheries Fund and the object, terms, and conditions of the related trust will be negotiated by Fisheries and Oceans Canada and the Mi'gmaq Community and be set out in a contribution agreement.
- 14.6 In addition, upon signature of the Agreement, Fisheries and Oceans Canada will issue the fishing licences set out in Schedule C to the Mi'gmaq Communities identified by MTI.

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

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

- 14.7 Upon ratification of a contribution funding agreement for governance development, Fisheries and Oceans Canada will provide MTI with one-time funding in the amount specified in paragraph 3 of Schedule B of this Agreement.

- 14.8 The one-time governance development funding will support the establishment of the governance structures required to facilitate governance and collaborative management of the Mi'gmaq's fishery.

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

- 14.9 Upon ratification of a contribution agreement for implementation and governance, Fisheries and Oceans Canada will provide MTI with annual funding in the amount specified in paragraph 4 of Schedule B of this Agreement for the duration of this Agreement.
- 14.10 Upon ratification of a contribution agreement for community governance, Fisheries and Oceans Canada will provide the identified Mi'gmaq Community with annual funding in the amount specified in paragraph 5 of Schedule B of this Agreement for the duration of this Agreement. These monies are incremental to the monies that the Mi'gmaq Community receives through an Aboriginal Fisheries Strategy agreement.

### **General**

- 14.11 Any work plan, budget or contribution agreement described in this Agreement shall be consistent with the Policy on Transfer Payments of the Treasury Board of Canada, and is subject to the appropriation of funds by Parliament for the fiscal period(s) in which the funds are provided.
- 14.12 Upon termination or expiration of this Agreement:
- a. MTI shall reimburse Fisheries and Oceans Canada for amounts unspent and uncommitted from the annual governance and implementation funding in Schedule B, paragraph 4 at the time of termination;
  - b. Mi'gmaq Communities shall reimburse Fisheries and Oceans Canada for amounts unspent and uncommitted from the annual community governance funding in Schedule B, paragraph 5 at the time of termination;
  - c. MTI and Mi'gmaq Communities will no longer be eligible to receive annual implementation and community governance funding as described in this Agreement; and
  - d. Notwithstanding the expiry or termination of this Agreement, any amount of the trusts spent will be considered as being part of the implementation of the New Brunswick Mi'gmaq Treaty Right.

## **15. DISPUTE RESOLUTION**

- 15.1 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.

- 15.2 If there is a dispute concerning the interpretation, breach, or anticipated breach of this Agreement, the Parties to the dispute must in good faith make every reasonable effort to resolve the dispute informally and quickly, failing which they may agree on mediation, arbitration, or both, on such terms as they agree.
- 15.3 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.

## **16. TERM OF THE AGREEMENT**

- 16.1 The term of this Agreement is five (5) years.

## **17. RATIFICATION**

- 17.1 Each Party represents and warrants to and agrees with the others that it has the power, capacity, and authority to enter this Agreement and for greater certainty, in the case of a Party that is a Mi'gmaq Community, that it has done all such things as are necessary for this Agreement to bind a Mi'gmaq Community.

## **18. EFFECTIVE DATE**

- 18.1 This Agreement will come into force and effect upon the signature by at least four (4) of the Mi'gmaq Communities, Mi'gmawe'l Tplu'taqnn Inc. and Canada (the "Effective Date") and will continue in force and effect unless terminated by the Mi'gmaq Parties or by Canada upon six months written notice to the other Parties. The Party that terminates the Agreement will provide written rationale to the other Parties for the reasoning why the Agreement is terminated.

## **19. REVIEW AND AMENDMENT**

- 19.1 The Board must monitor the implementation of this Agreement and whether the commitments set out in this Agreement are being achieved. The Board must provide a report regarding the foregoing annually and in such form as the Board deems appropriate.
- 19.2 Without limiting the generality of the foregoing, any Party may make a request in writing to review this Agreement.

- 19.3 Any Party may propose, in writing, an amendment to this Agreement for consideration by the Parties.
- 19.4 This Agreement may only be amended with the written consent of all of the Parties.
- 19.5 At the request of any Party, the Parties will discuss and if requested by a Party, endeavour to negotiate potential amendments to this Agreement or other measures relating to any of the following developments:
- a. new developments in the jurisprudence 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 agreements with other Indigenous groups, with a view to incorporating such innovations into this Agreement, if applicable;
  - e. changes required because of unforeseen circumstances that significantly impact the Mi'gmaq 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.

## **20. RENEWAL**


- 20.1 Twelve (12) months prior to the end of the term of this Agreement, each Party will provide the other Parties written notice of its intent to seek the necessary authorities to renew, extend, replace or request amendments to the Agreement. The Agreement is renewable for one or more additional period(s) of five (5) years or more, up to a maximum term of twenty-five (25) years.
- 20.2 Should the Parties obtain the appropriate authorities to renew, extend, replace or amend the Agreement, the Parties will meet to commence discussions regarding additional funding.

## **21. TERMINATION AND WITHDRAWAL**

- 21.1 Any Mi'gmaq Community, as represented by the respective Chief(s), may, by Band Council Resolution and upon six months' written notice to all the Parties hereto, withdraw, or rejoin this Agreement.
- 21.2 If one or more of the Mi'gmaq Communities, as represented by the respective Chief(s), decides to withdraw from this Agreement pursuant to 19.1, this Agreement will not automatically terminate. Furthermore, any potential funding implications associated with the withdrawal from the Agreement by any of the Mi'gmaq Communities, as represented by the respective Chief(s), will be reviewed and made through amendments to the associated contribution agreement(s).
- 21.3 If, at any time, as a result of Mi'gmaq Communities withdrawing pursuant to 19.2, three (3) or more Mi'gmaq Communities withdraw, the Parties may individually consider whether to negotiate amendments or to terminate this Agreement.
- 21.4 The following clauses will survive and continue to have effect following the termination or expiration of this Agreement: sections 7.1, 7.2, 9.2, 9.3, 10.1, 10.2 and 10.3.
- 21.5 Where Fisheries and Oceans Canada and the Mi'gmaq Parties have established a process for priority access pursuant to sections 12.2 or 12.3, that process will survive termination or expiration of this Agreement. If no such process has been established at the time of termination or expiration of the Agreement, the Parties will seek to negotiate in good faith the establishment of such a process.

**In witness whereof, the Parties have signed:**


**For the Mi'gmaq Parties, as represented by their respective Councils, through their Chiefs**



Chief Rebecca Knockwood  
Fort Folly First Nation

June 1 2023

Date



Chief Kenneth Barlow  
Indian Island First Nation

June 1 2023

Date



Chief Bill Ward  
Metepenagiag Mi'kmaq First Nation

June 6 2023

Date



Chief George Ginnish  
Natoaganeg First Nation

June 13, 2023

Date



Chief Terry Richardson  
Pabineau First Nation

June 13/2023

Date



Chief Brenton LeBlanc  
Buctouche First Nation

June 1 2023

Date

Chief Sacha LaBillois  
Eel River Bar First Nation

\_\_\_\_\_

Date

**For Mi'gmawe'l Tplu'taqnn Inc., MTI, as represented by its Co-Chair**

[Redacted Signature]

Chief George Ginhfish  
Co-Chair Mi'gmawe'l Tplu'taqnn Inc.

*9 May 2023*

Date

**For His Majesty the King in Right of Canada as represented by the Minister of Fisheries, Oceans and the Canadian Coast Guard**

[Redacted Signature]

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

JUN 21 2023

Date

**and the Minister of Crown-Indigenous Relations**

[Redacted Signature]

The Honourable Marc Miller  
Minister of Crown-Indigenous Relations

JUL 05 2023

Date

## **SCHEDULE A**

### **1. Striped Bass**



## SCHEDULE C

1. Upon signature of the Agreement, Fisheries and Oceans Canada will make available the following fishing licences to the Mi'gmaq Communities identified by MTI.

Province	Licence Type	Licence Id	Licence Species Description	Area
NB	COASTAL	006551	ALEWIVES/GASPEREAU	Buctouche Bay
NB	COASTAL	030243	BAR CLAMS	25
NB	INSHORE	004582*	GROUND FISH	3PN,4R,4S,4T
NB	INSHORE	007673	GROUND FISH	3PN,4R,4S,4T
NB	INSHORE	025345	GROUND FISH	3PN,4R,4S,4T
NB	INSHORE	009861*	GROUND FISH	3PN,4R,4S,4T
NB	INSHORE	021936	HERRING	16C,16E
NB	INSHORE	007674	HERRING	16C,16E
NB	INSHORE	021090	HERRING	16C,16E
NB	INSHORE	003214	LOBSTER	25
NB	INSHORE	006563	LOBSTER	25
NB	INSHORE	006814	LOBSTER	25
NB	INSHORE	007671	LOBSTER	25
NB	INSHORE	008010	LOBSTER	25
NB	INSHORE	009859	LOBSTER	25
NB	COASTAL	035475	MUSSELS	23-25
NB	COASTAL	015968	OYSTERS, AMERICAN	Miramichi Bay
NB	COASTAL	021413	OYSTERS, AMERICAN	Northumberland St.-Kent & Westmorland
NB	COASTAL	036099	OYSTERS, AMERICAN	Gloucester Co.
NB	COASTAL	034830	OYSTERS, AMERICAN	Northumberland St.-Kent & Westmorland
NB	COASTAL	033117	OYSTERS, AMERICAN	Miramichi Bay
NB	COASTAL	035474	QUAHAUGS	23-25
NB	INSHORE	021351	SCALLOP, SEA	21B
NB	INSHORE	009086	SCALLOP, SEA	21B
NB	INSHORE	010610	SCALLOP, SEA	21B
NB	COASTAL	010390	SMELTS	Miramichi Bay & Napan River
NB	COASTAL	020840	SMELTS	Northumberland Strait
NB	COASTAL	035373	SOFT SHELL CLAMS	23-25
NB	COASTAL	035472	SOFT SHELL CLAMS	23-25
NB	COASTAL	030245	SOFT SHELL CLAMS	23-25

\*= Access to mobile gear

2. The Minister shall impose conditions, including in-season adjustments, on the fishing licences set out in paragraph 1 of this Schedule C in keeping with the processes and considerations established by this Agreement.
3. Following the expiry of the fishing licences set out in paragraph 1 of this Schedule C, the Minister shall make a decision regarding their renewal in keeping with the processes and considerations established by this Agreement and the understanding that the issuance of these licences is an incremental step towards the further implementation of a Mi'gmaq Livelihood Fishery.
4. The following licences relate to species that are currently closed, and will be issued to Mi'gmaq communities identified by MTI once the closure is lifted.

<b>Province</b>	<b>Licence Type</b>	<b>Licence Id</b>	<b>Licence Species Description</b>	<b>Area</b>
NB	INSHORE	043092	MACKEREL	16
NB	INSHORE	007672	MACKEREL	16
NB	INSHORE	010395	MACKEREL	16

5. Following the termination or expiration of this Agreement, Fisheries and Oceans Canada will make available the licences listed in this Schedule C to the Mi'gmaq Communities identified by MTI, subject to fisheries closures.