



# We are Watching!

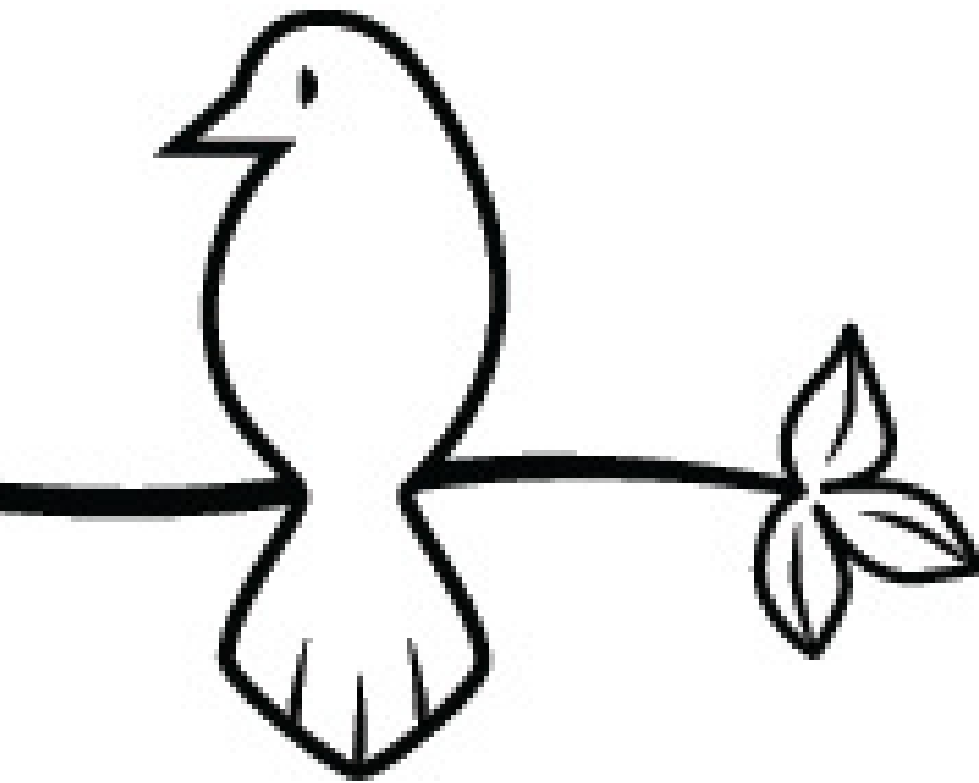


christian peacemaker teams

**HUMAN RIGHTS REPORT ON VIOLENCE  
EXPERIENCED BY MI'KMAW FISHERS IN  
NOVA SCOTIA IN SEPTEMBER AND OCTOBER  
2020**

# Christian Peacemaker Teams

*aegean migrant solidarity- borderlands - colombia - iraqi kurdistan - palestine - turtle island*



## ABOUT

CPT builds partnerships to transform violence and oppression in situations of conflict. At the invitation of local peacemaking communities, CPT places programs and teams to provide physical accompaniment, advocacy, human rights observation and reporting, and solidarity networking. CPT understands violence to be rooted in systemic structures of oppression and works to undo oppressions.

By amplifying the voices and nonviolent actions of our partners who risk their lives to confront oppression, CPT helps protect human rights and strengthen nonviolent social change initiatives. With roots in the Historic Peace Churches, CPT's membership is a broad multi-faith network that supports peacemaking and protection of human rights around the world.

## Vision

A world of communities that together embrace the diversity of the human family and live justly and peaceably with all creation.

## Values

Christian Peacemaker Teams is committed to work and relationships that:

- Honor and reflect the presence of faith and spirituality
- Strengthen grassroots initiatives
- Transform structures of domination and oppression
- Embody creative non-violence and liberating love

***Building Partnerships to Transform Violence and Oppression***



# BACKGROUND

In September and October 2020 violence against Mi'kmaw lobster fishers erupted in Nova Scotia. While reports widely cited a 'conflict', this terminology presumes two sides in conflict with one another. The events however demonstrate that what transpires are acts of aggression and violence committed largely by non-indigenous commercial fishermen and their supporters and directed at Mi'kmaq Peoples — more specifically, members of the Sipekne'katik First Nation.

The Canadian state, including the premier of the Province of Nova Scotia, the Department of Fisheries and Oceans (DFO), and the Royal Canadian Mounted Police (RCMP) enabled these violent events. While the specific episodes of aggression, intimidation, vandalism, and physical violence documented below caught the attention of both Canadians and an international audience for a short time, they were not isolated incidents. The violent events were the result of a long history of the Canadian government failing to respect Mi'kmaq treaty right to fish for a moderate livelihood, and to enable Indigenous People to govern marine resources according to their own laws as protected by their international right to self-determination.

This report, written by Christian Peacemaker Teams in support of Mi'kmaw fishers, documents the acts of violence committed against Mi'kmaw peoples. This report was written and published as part of CPT's 'virtual accompaniment' during COVID-related travel restrictions and lockdowns.

**The report provides a snapshot of the violence that the Mi'kmaq had to endure while enacting their treaty rights. However, it is not exhaustive of all acts of aggression, intimidation, and violence experienced by Mi'kmaw fishers in Nova Scotia in the fall season of 2020. For example, there are many other incidents that happened that were shared on social media but might not be documented in this report.**

In the report we describe the violent events in relation to a legal and historical context to illustrate the failure of the Canadian government to uphold the treaty rights of the Mi'kmaq. After this introduction the report goes directly into a description of the acts of violence committed against Mi'kmaw fishers in September and October 2020. After this timeline we provide explanation of the historical and legal obligations of the Canadian state to protect the rights of Mi'kmaw fishers. Ultimately, we describe a history of exclusion of Mi'kmaq Indigenous rights by Canadian state actors that set the stage for the violent acts committed against Mi'kmaw fishers in 2020.

# THE VIOLENCE BEGINS: SEPTEMBER 2020

*"Our band is behind us, everyone's behind us, and we're not taking no for an answer. The government's got to come to the table. It's been long enough. We've waited long enough".*

Robert Syliboy, member of the  
Sipekne'katik First Nation

It is a fact of law that the Mi'kmaq have a right to fish outside of the commercial fishing season to attain a "moderate livelihood" so long as their actions don't challenge conservation efforts (elaborated below). However, despite ongoing negotiations with the DFO and the Sipekne'katik First Nation, no agreements have been made on the definition of a "moderate livelihood", prompting the First Nation to move forward and establish their own fishery under regulations enforced by Mi'kmaw compliance officers. As CBC reports, Robert Syliboy, member of the Sipekne'katik First Nation, explained the motive and energy behind the establishment of the moderate livelihood fishery: "Our band is behind us, everyone's behind us, and we're not taking no for an answer. The government's got to come to the table. It's been long enough. We've waited long enough."

Discrimination against Mi'kmaw fishers began to reach a boiling point in early September 2020. At this time, Michael Sack, Chief of the Sipekne'katik First Nation, requested that the premier of Nova Scotia, Stephen McNeil, the minister of Fisheries and Oceans, Bernadette Jordan, and the Nova Scotia RCMP, protect Mi'kmaw lobster harvesters from harassment from non-Native fishers in Nova Scotia.

In a letter sent on September 11 2020, Chief Sack demands that these state actors "uphold the rule of law amid ongoing violence, threats, human rights discrimination and ongoing failure to uphold the 1999 Supreme Court of Canada decision in R. v. Marshall, recognizing the Mi'kmaq right to fish and trade". In the same letter Sack describes that Sipekne'katik harvesters are being denied goods and services from local businesses, and alleges that RCMP officers are not fulfilling their duty to uphold the peace while Mi'kmaw fishers are subjected to threats and harassment and their property vandalized. Chief Sack further explains the planned protests against the Sipekne'katik First Nation moderate livelihood fishery: "Ongoing protests planned for Tuesday, September 15th, [of] which the intention is to block Saulnierville wharf, a government wharf, by the commercial fishers is a direct violation of the conditions of their fishing license (sic) and we call on both the RCMP and the Department of Fisheries and Oceans to be present and take immediate actions if any activities hinder the Mi'kmaq fishing activities." These statements, made on September 11, indicate that the RCMP, DFO, and the premier of Nova Scotia knew of the potential for violence before it happened.

# DOCUMENTATION OF VIOLENCE

## September 14, 2020

The Sipekne'katik Chief and Council release a community notice explaining that they are launching a test moderate livelihood fishery. The test fishery would be used to collect data to inform the establishment of a moderate livelihood fishery. As explained on the notice: "The lobster caught in our test fishery will be available for sale to the public or fish buyers through a community truck house and a band established regulatory process on reserve" and "the effect of this 'test' fishery on a commercial lobster industry that lands sixty million pounds of catch is insignificant."

## September 15th, 2020

Commercial fishermen block both the Weymouth and Saulnierville ports in Nova Scotia in protest of the moderate livelihood fishery. Both ports are used by fishermen from the Sipekne'katik First Nation. While the protests were verbally confrontational, no injuries were reported. The non-Indigenous fishermen called on the DFO to prohibit fishing outside of the commercial fishing season. An estimated 300 protesters attended to show their disapproval of the Mi'kmaq treaty right to fish.

## September 17th, 2020

Hundreds of Mi'kmaq from across the province gathered on the wharf in Saulnierville, N.S., to celebrate the launch of a Mi'kmaq regulated, rights-based lobster fishery run by the Sipekne'katik First Nation. Seven Mi'kmaw harvesters from Sipekne'katik First Nation received licences and trap tags during the ceremony. It is the first fishery of its kind in the province of Nova Scotia.

Non-Indigenous lobster fishers came to express their discontent with Indigenous peoples practicing their right to gain a moderate livelihood from lobster fishing. As many as 50 boats from non-Indigenous fishing communities circled the Mi'kmaw boats. Terrence Augustine, a Mi'kmaw fisher, reported that commercial fishermen cut the lines to the 50 traps he set in St. Mary's Bay. He was not able to retrieve any of these traps. Augustine explained that he set 30 more traps in the days following but the majority of them were vandalized; every time he went out on the water, him and his 4-member crew were harassed by non-Indigenous commercial fishers waiting for him. Some of the occupants of these boats fired emergency flares at Mi'kmaw fishers, events that were filmed and posted on social media.

During these acts of aggression and intimidation directed at Mi'kmaw fishers, the DFO approached the conflict as deriving from tensions between two sides, rather than perpetuated by one side. As DFO Minister Bernadette Jordan explains in a statement September 18th: "the issues surrounding this fishery are longstanding, complex and deeply personal to all involved... the goal is, and always has been, to further implement First Nations' rights and have everyone participate in a constructive and productive fishery.

## September 19th, 2020

On the morning of September 20th Chief Mike Sack reported that moderate livelihood fleet's lines were cut during the previous night. He reports that they were cut by commercial fishers at the Saulnierville wharf. The director of operations at Sipekne'katik First Nation, Rhonda Knockwood, reports that about 350 lobster traps were taken from Mi'kmaw fishers in different locations off southwestern Nova Scotia. The gear was taken by a fleet of about 100 non-Indigenous fishing boats.

## September 22nd, 2020

APTN Journalist Angel Moore accompanies Mi'kmaw fisherman and describes her experience to the CBC. Moore explains that fishing boats belonging to commercial fishermen were out on the water before the boats belonging to the Mi'kmaq began fishing. Moore estimates that there were around 200 commercial fishing boats in total. As Moore reports, some of the boats belonging to the commercial fishermen came at the Mi'kmaw fishers quickly, circled them, and stole their lobster traps. The commercial boats were much larger than the boats belonging to Mi'kmaw fishers. Moore explains that it was a very dangerous and scary situation. At one point the Mi'kmaq went alongside a commercial fishing boat to take their traps back, and in one attempt they were successful. However, the rope attached to the trap was still on the commercial fishing boat and the commercial fishers were pulling it rather than giving it up. Moore explains that this could ultimately have killed them if the commercial fishermen attached an anchor to the rope.

## October 4th, 2020

A fishing boat belonging to a Mi'kmaw fisherman is destroyed at the Comeauville wharf in Digby county. The boat belonged to Robert Syliboy.

## October 13th, 2020

There were raids at two different pounds where Mi'kmaw fishers held their lobster catch.

In New Edinburg commercial fishers surrounded the pound. Mi'kmaw fishers sent text messages to journalist Angel Moore, telling her that they were surrounded and trapped inside. They told her it was very violent. At one point an elder was smudging and her sage was knocked out of her hand by one of the raiders.

Later that night a group of around 200 people blocked and surrounded a lobster storage facility in Middle West Pubnico. Lobster harvester Jason Marr was inside protecting his lobster. About 200 commercial fishermen were there, throwing rocks, yelling, and threatening to burn down the building with Marr inside. He left the building and people began pulling crates of lobster out and dumping them on the ground. Rocks were also thrown at cars. A truck belonging to Marr was targeted and vandalized and his tires were slashed. A van belonging to a Mi'kmaw fisher was set on fire. The RCMP were there but chose to remain bystanders and watch the violence unfold.

## October 14th, 2020

Mi'kmaq chief Mike Sack went to the Edinburg point, where he was assaulted by a commercial fisherman. A stand-off ensued between commercial fishermen and Mi'kmaq fishermen that lasted until 3 AM, October 15th. RCMP was there and kept both groups separate. Despite the presence of the RCMP, cars belonging to Mi'kmaq fishermen were vandalized during the standoff.

It is reported to CPT that during the night of October 14th and 15th, a Mi'kmaq lobster boat is set on fire and sunk.

## October 15th, 2020

It is reported to CPT that a Mi'kmaq lobster boat had sugar put in its engine and other boats have been urinated on.

## October 16th, 2020

The lobster storage facility in Middle West Pubnico was burnt down. It is reported to CPT that commercial fisherman are cutting the traps of the Mi'kmaq lobster fishers on the water.

## CANADIAN STATE RESPONSE:

In response to the violence both the RCMP and the DFO avoided taking direct responsibility. An RCMP Nova Scotia spokesperson interviewed on CTV explained in regards to the escalating violence: "The RCMP understand what the issue here is, we don't see it as a police issue, but we understand both sides, we understand the passion, what they are bringing to the table, and we respect that". Angel Moore explains that at the beginning of the violence, when Mi'kmaq traps were cut, the DFO responded by saying that this was an issue for the RCMP to deal with, meanwhile the RCMP also deflected responsibility to the DFO.

In other words, both the RCMP and the DFO reneged on their responsibilities and blamed the other in what appears to be an attempt to avoid accountability.

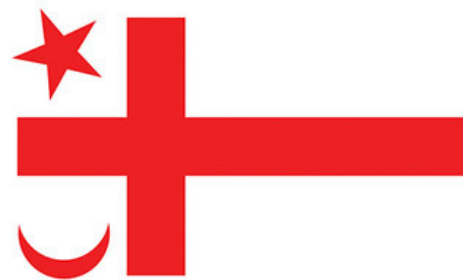




# INTERNATIONAL LAW AND NORMS ON INDIGENOUS PEOPLES' RIGHTS TO SELF-DETERMINATION, AND THE MANAGEMENT OF MARINE RESOURCES:

The Mi'kmaq assert their right to self-determination as Indigenous peoples in Canada. The right to self-determination is the backbone of international law and protected in binding treaties as well in international soft-law. The United Nations (UN) Covenant on Civil and Political Rights protects "the right to self-determination of all peoples, which includes economic, territorial, and resource rights" (Article 1). The UN Covenant on Economic, Social, and Cultural Rights affirms "the right to self-determination, which includes the freedom to determine political status, pursue economic, social and cultural development, and manage natural wealth and resources" (Article 1). In the United Nations Declaration on the Rights of Indigenous Peoples the right to self-determination is articulated and elaborated in direct reference to Indigenous peoples:

**"Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development" (Article 3).**



UN Declaration on the Rights of Indigenous Peoples elaborates on these rights by declaring that "Indigenous peoples have the right to maintain and develop their political, economic and social systems and institutions, to be secure in the enjoyment of their own means of subsistence and development, and engage freely in all their traditional and other economic activities" (Article 20(1)).

The events chronicled above illustrate the extent to which the Canadian government is refusing to uphold International Indigenous Peoples' rights, and the right to self-determination in particular, in Nova Scotia.



# INTERNATIONAL LAW AND NORMS ON INDIGENOUS PEOPLES' RIGHTS TO SELF-DETERMINATION, AND THE MANAGEMENT OF MARINE RESOURCES:

The UN Food and Agricultural Organization published the voluntary guidelines on the responsible governance of tenure of land, fisheries and forests (VGGT) in 2012. The guidelines were developed as a reference and guide for states to improve the governance of tenure of land, fisheries, and forests. The guidelines were developed through years of work by international groups made up of small scale farmers, Indigenous, pastoralist peoples and food sovereignty activists and is an authoritative text on the protection of diverse tenure systems for the protection of food security. It represents an international standard to which Canada, as a prominent and respected UN member state, is held accountable. A number of guidelines in this document relate directly to the protection of the Mi'kmaq right to self-determination. The guidelines use the word 'tenure' to refer broadly to Indigenous peoples' laws and customs concerning the use and management of land and natural resources; it is meant to avoid reductive Western notions of law and private property and account for Indigenous peoples' diverse, cultural, and spiritual relationships with the non-human environment. Relevant guidelines that demonstrate the need for more strategic support of the Mi'kmaq people, and intervention in settler violence, include:

*"states should revise relevant policies and laws to eliminate discrimination and other factors that can be a cause of conflicts" (Section 25.3).*

*"When conflicts arise, States and other parties should strive to respect and protect existing legitimate tenure rights and guarantee that these are not extinguished by other parties. Consistent with existing obligations under relevant national and international law, States should not recognize tenure rights to land, fisheries and forests acquired, within their territories, through forceful and/or violent means" (Section 25.4).*

*"Where appropriate, policies and laws should be revised to address pre-existing discrimination as well as discrimination introduced during the conflicts" (Section 25.7).*

The VGGT Guidelines underscore that Canadian state actors need not only to respect Indigenous rights and title, but also actively work to eliminate conflict and discrimination that are the ongoing outcome of histories of colonization and violent appropriation. The experiences of Mi'kmaw fishers illustrate that the Canadian government has not been effective in responding to discrimination by non-Indigenous fishers.

# CANADIAN LAW:

These aforementioned rights in international law are significantly strengthened in the Canadian context through the affirmation of Indigenous rights and title. The Charter of Rights and Freedoms was entrenched in the Constitution in 1982, where, in Section 35(1), the Charter recognizes and affirms existing Aboriginal and treaty rights. While Section 35 represents a landmark achievement for Indigenous peoples advocating for their recognition as self-determined Peoples and rights to territory in Canada, the courts have been left to determine the full character and content of Aboriginal and treaty rights. Landmark judgements have been delivered in this regard, and, in specific reference to the rights to marine resources for Mi'kmaw fishers, the Marshall Decision (1999) affirmed their treaty right to fish.

The Marshall Decision dealt with the rights of the Mi'kmaq as derived from the Peace and Friendship Treaty of 1752. The judgement affirmed that the Mi'kmaq "shall not be hindered from, but have free liberty of Hunting and Fishing". It protects the right to fish, while at the same time imposes specific regulations: "the treaty right is a regulated right and can be contained by regulation within its proper limits. Catch limits that could reasonably be expected to produce a moderate livelihood for individual Mi'kmaw families at present-day standards". The decision was met with a swift outcry from non-Indigenous fishers who felt it was unfair to recognize the Mi'kmaq treaty right to fish. In a very rare move, the Supreme Court issued a second decision within three months, now called "Marshall 2", to clarify the regulations that would apply to the Mi'kmaq right to fish.

In Marshall 2 the Supreme Court determined that governments can still restrict and regulate Mi'kmaq fishing rights, so long as it meets criteria. These include "a valid legislative objective" such as conservation. Further criterion are that there is as little infringement on treaty rights as possible and the Indigenous group in question has been consulted. As explained in the Marshall 2:

**"The federal and provincial governments have the authority within their respective legislative fields to regulate the exercise of a treaty right where justified on conservation or other grounds... The paramount regulatory objective is conservation and responsibility for it is placed squarely on the minister responsible... the regulatory authority extends to other compelling and substantial public objectives which may include economic and regional fairness, and recognition of the historical reliance upon, and participation in, the fishery by non-aboriginal groups. Aboriginal people are entitled to be consulted about limitations on the exercise of treaty and aboriginal rights"**

Despite this clarification the definition of "moderate livelihood" remains elusive and the Canadian government has for years focused more on how to restrict Mi'kmaq rights to fish rather than respect their right to self-determination and their right to govern their own fishery.

Research finds that after Marshall the government of Canada and its departments has approached Aboriginal treaty rights to fish by introducing their own governance systems rather than enable First Nations to develop and implement Indigenous governance over their fisheries. Following Marshall, Fisheries and Oceans Canada launched the Marshall Response Initiative (which lasted until 2007) and the Atlantic Integrated Commercial Fisheries Initiative (AICFI) (beginning in 2007). Both initiatives are designed to fold Mi'kmaw fishers into the state regulatory system. For example, as explained on the government website, the AICFI is implemented through the DFO, which

# CANADIAN LAW CONTINUED:

works with “program participants to increase commercial fisheries access, provide business management capacity building support, and access training resources required to build self-sustaining Indigenous-owned communal commercial fishing enterprises”. In their research on Mi’kmaq fishery management after Marshall, Marine resource management researchers Melanie Wiber (Professor Emerita at the University of New Brunswick) and Chris Milley (Adjunct Professor at Dalhousie University) find that the Government of Canada has worked to “limit as much as possible the Mi’kmaq First Nations’ capacity to manage their fishery, and to create instead a greater dependence on mainstream Canadian management systems and the prevailing economic objectives defined for the fishery”. Members of the Sipekne’katik First Nations have articulated this reality themselves, explaining their lost patience with the Government of Canada that continues to renege its responsibility to support a moderate lifestyle fishery.

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## The Way Forward: Indigenous Governance

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Indigenous Peoples have been establishing their own forms of governance. The Truth and Reconciliation Commission Final Report calls upon the Government of Canada to develop with Indigenous Peoples a Royal Proclamation and Covenant of Reconciliation, which would “renew or establish Treaty relationships based on principles of mutual recognition, mutual respect, and shared responsibility for maintaining those relationships into the future” (45:iii). The report further demands the reconciliation of “Aboriginal and Crown constitutional and legal orders to ensure that Aboriginal peoples are full partners in Confederation, including the recognition and integration of Indigenous laws and legal traditions in negotiation and implementation processes involving Treaties” (45:iv).

Sipekne'katik practices its right to self-determination and self-governance through the Sipekne'katik First Nation Fisheries Department. As they explain:

*The Sipekne'katik Fisheries Department is an economic enterprise which continues to grow. The fisheries department now manages 33 fishing licenses of various species such as lobster, snowcrab, and groundfish etc. The licenses provide/create employment opportunities for the band members through leasing of licenses or fishing for the band. The fisheries department will continue to support and manage the fishing tags for Food, Social and Ceremonial Lobster fishery. This program is for all band members who would like to fish for lobster, depending on the area fished, is the amount of tags you are entitled to. Yes, with these tags, there are rules and regulations that have to be followed. The Fisheries department has to liaise between the members and Department of Fisheries and Oceans.*

In a newsletter dated September 18th, 2020, the Sipekne'katik First Nation explains:

*As a community we have engaged for decades in discussions on how non-Indigenous governments seek to define a moderate living for Mi'kmaq people. We have shared Sipekne'katik's management plan with DFO following extensive community engagement on what a Treaty based Fishery would entail as Band members exercise their Constitutional right to support themselves and their families. In this the 21st year since Donald Marshall Jr.'s right to fish was acknowledged by the Canadian Government we felt it especially symbolic to have launched the inaugural season of our community led moderate livelihood fishery. We aim to work with all levels of non-Indigenous governments and stakeholders to ensure our treaty and constitutional rights are upheld.*

Mi'kmaq control over their own fisheries continues to be denied, however. On Wednesday March 3rd 2021, Federal Fisheries Minister Bernadette Jordan released a plan to govern Mi'kmaq moderate livelihood lobster fisheries. While First Nations have started their own fisheries outside of the commercial fishing season as an expression of their treaty rights, Jordan's plan re-confirmed that Mi'kmaq-run fisheries can only operate within the commercial, federally-regulated season. The Assembly of Nova Scotia Mi'kmaq chiefs called the plan "unacceptable". With the plan, Jordan "made unilateral decisions and asserted a position with DFO having full control over our Rights-based fishery... The Moderate Livelihood Fishery is a constitutionally protected Mi'kmaq Right and must be Mi'kmaq-led". They explain further: "DFO is continuing to impose rules without consultation with, accommodation of, or agreement with, the Assembly... Minister Jordan's announcement is... disrespectful to any attempt at collaboration and reconciliation". There is no other way forward except to recognize the Mi'kmaq treaty rights to fish and to respect their own moderate livelihood fishery.

In their Media Release dated 3 March 2021, the Assembly of Nova Scotia Mi'kmaq Chiefs explain:

*Many Mi'kmaw communities have been working to develop Netukulimk Livelihood Fisheries Plans – based on the Mi'kmaw principle of Netukulimk, taking only what you need and being respectful of the land, animals and environment. Some Mi'kmaw communities have included fishing dates outside of commercial seasons both for the safety of their harvesters who are using much smaller vessels than what is used in the commercial fishery, and our science has shown there is no concern for impacts to the species during those times. DFO has not yet provided us with justification for the imposition of the commercial seasons to our Rights-based fishery.*



# CONCLUSION

The violent events reported here are symptoms of a history of structural violence and marginalization experienced by Mi'kmaq fishers and Indigenous, Metis, and Inuit peoples across Turtle Island. This report described the specific events that transpired in September and October 2020 and demonstrated how the organs and actors representing the Canadian government failed to live up to their obligations to participate in a Nation-to-Nation relationship with members of the Sipekne'katik First Nation. State actors created the conditions that enabled the acts of violence and expressions of aggression and intimidation documented above. As explained by Rhonda Knockwood, director of operations for Sipekne'katik First Nation, the tensions and violence that erupted in September and October 2020 are the outcome of years of foot-dragging by the DFO, as well as its "deliberate dithering and underhanded tactics surrounding the negotiations to define a moderate livelihood and implementation of the treaties."

The only way forward that respects international laws and standards, as well as upholds the Marshall Supreme Court Decision and Indigenous treaty rights, is to establish a mutual relationship of respect between Mi'kmaq moderate-livelihood fisheries and the DFO. A key part of this work will be engaging with non-Indigenous fishers in decolonial and anti-racist education and creating an environment of accountability for the vandalism of Mi'kmaw fishing equipment and violence against Mi'kmaw fishers. The Sipekne'katik First Nation has been doing the difficult work of negotiating to establish their own moderate-livelihood fishery governed by their own laws. The DFO and the Federal Fisheries Minister need to adequately respond to the environment of intimidation and violence by working on a Nation-to-Nation basis with Mi'kmaq First Nations.

