



Newsletter

# NATURAL RESOURCES DIRECTORATE

Listuguj, Gespe'gewa'gi, Fall 2022



## History of Fall Lobster Fishery

Our history of fisheries in Listuguj is long and complex. Prior to European contact, fishing was done with the seasons and was important for sustenance, trade between other nations, important gatherings, ceremonies, and overall part of an inherent way of life.

After contact, we would discover new relationships and trading partners, which would eventually lead to signing of treaties. However, after formation of British colonies and the Indian Act, these relationships would eventually change from coexisting to displacement, leaving the Mi'gmaq displaced to reserve boundaries and prevented from fishing.

The Mi'gmaq would continue to fish, facing prosecution, until the recognition of our Aboriginal and Treaty rights. Supreme court rulings like Sparrow and Marshall allowed Listuguj to participate in fisheries without prosecution from the Canadian government. Today, the fisheries are moving away from co-management and towards self-government.

In 1996, a small group of Listuguj community members came together at the Miguasha wharf to assert their rights to fish lobster and feed their families. With the help of a lobster fisherman from Elsipogtog, the community caught lobster, sold some to pay for the boat and crew expenses, and brought the rest home to eat.



Building off the momentum created after the 1990 Sparrow ruling, and the formation of the 1995 "Salmon Law" and "Rangers Law", the community was advancing their rights to regain access to the lobster fishery. This act of resistance would result in charges to certain members, however, Listuguj members continued to fish, eventually forcing the Department of Fisheries and Oceans (DFO) to the negotiation table.

In 1997, negotiations resulted in 14 community fishers receiving 10 lobster tags each, on the conditions that they allow a DFO biologist onboard to monitor the catches. This resulted in the formation of the fall food fishery as we know it today, where lobster continues to be caught and given out to the community.

### The Lobster Law

In 2019, the community implemented the "Listuguj Mi'gmaq First Nation Law on the Lobster Fishery and Lobster Fishing" with support from community and leadership. It is a goal of the department to continue working with community in developing the annual fishing plan and moving towards self-government.

Today the community Fall Fishery is regulated by the Lobster Law, enacted in June 2019, was developed in a two-year process

of community consultations. The Law is recognized by Canada as an unprecedented step in our evolving relationship through a five-year Rights Reconciliation Agreement on Fisheries, (RRA) agreed by LMG on March 24, 2021, and endorsed by Chief and Council. The Agreement sets the base for a better relationship with Canada and DFO on Rights Recognition, Fisheries Access, Fisheries Funding, and provides a framework for LMG Fisheries Governance & Collaborative Management.

# Fall Lobster Fishery: Tradition and Governance



Silvyia Isaac explains to Misty Barnaby details of how the tag system works this year.

our jurisdiction by adopting our laws, Canada was receptive and accepted to move forward with us adopting the Reconciliation spirit that has helped to shape this Agreement. Our community will benefit from this Agreement, and we will recover our inherent jurisdictional rights on Gespe'gewa'gi," declared Saqamaw Darcy Gray when the Agreement was signed.

The implementation of the Agreement is making its way into the sea as this Fall, for the first time, the DFO has agreed to an enforcement protocol that acknowledges the role of the Listuguj's Mi'gmaq Rangers in enforcing the "rules" of the fishery. Significantly, the Listuguj Rangers are a community enforcement agency that derives its authority entirely from Indigenous law, not the Fisheries Act. "Recognition of the Mi'gmaq Rangers and the laws we use to govern our fishery is an important step towards reconciliation. Canada is finally starting to recognize that the best way to ensure our fishery is safe and sustainable is to get out of the way and let us govern ourselves," said Saqamaw Darcy Gray, in a press release announcing the opening of the Fall Lobster fishery and the enforcement of the Agreement.

Lobster is such an expensive food and I appreciate getting it for free", said Misty Barnaby after picking up one of the 175 lobster tags available to the community the first week of September. "I'm grateful to all fishermen who provide for our community," she added.

The fall season is different from the commercial spring fishery. Its main purpose is to share with the community the bounty of the sea, taking into consideration the sustainability of the lobster population.

This year, 18 fishers in seven vessels will be fishing 235 traps from September 26 to October 10. From all catches, there will be over 7,000 pounds for community distribution at the Natural Resources building, additionally, tag holders like Misty will receive lobster directly from fishers.

The Fall fishery is regulated by the Lobster Law, which was developed in a two-year process of community consultations. The Law, enacted in June 2019, is recognized by Canada as an unprecedented step in our evolving relationship through a five-year Rights Reconciliation Agreement on Fisheries, RRA.

For the first time, the DFO has agreed to an enforcement protocol that acknowledges the role of the Listuguj's Mi'gmaq Rangers in governing the fishery. Significantly, the Listuguj Rangers are a community enforcement agency that derives its authority entirely from Indigenous law, not the Fisheries Act.

The RRA, agreed to by LMG on March 24, 2021, was endorsed by Chief and Council, and it sets the base for a better relationship with Canada and the Department of Fisheries and Oceans on Rights Recognition, Fisheries Access, Fisheries Funding, and provides a framework

for LMG Fisheries Governance & Collaborative Management. "We firmly followed the mandate we received from Listugujewa'q to assume control over our Fishery Governance. Because of Listuguj's strong tradition of exercising

Listuguj has fished for lobster every fall for the past 20 years in the Baie des Chaleurs, within its traditional territory of Gespe'gewa'gi. Most lobster is distributed to community members for food. Some are sold to cover the costs or invest in the community. For years, Canada denied Listuguj's treaty rights and banned the sale of fall lobster.

Now, the RRA requires the DFO to respect Listuguj's treaty rights and Indigenous Laws. As a result, the DFO has changed course and now allows Listuguj to sell its fall catch.

## Lobster Time!



The Fall Lobster Fishery is regulated by the Listuguj Lobster Law which was developed through a series of community consultations from 2017 to 2019 when the pandemic slowed down the process.

The Lobster Law, as guided by the community's input is centered on the traditions and teachings of Weltetmeg: "We agree in thought," Ango'tmuq: "Taking care of something in a careful

manner." Gepmitet'mnej: "Respect," and Apajignmuen: "Sharing" and "giving back"

This year, 18 fishers in seven vessels will be fishing 235 traps from September 25 to October 9. From all catches, there will be around 7,000 pounds for community distribution at the Natural Resources building. Here is how the distribution is done.

### Elder & Disability Delivery

Community elders and disability patients get their names on a delivery list by calling the Natural Resource Science Team. Delivery days are on Mondays, Wednesdays, and Fridays until the season ends.

### Community Tag Distribution Information

When a person receives a tag, he or she chooses a fisherman to catch the lobster. To get a tag, the person registers in person at the Natural Resource building and

the system is on a first come first serve basis. There are 175 tags available for community members.

The person who gets a tag cannot get lobster from the community line-up or Elder delivery because the lobster will come from the fisher directly.

### Community line-up

Cooking will occur each day of fishing. All lobster will be cooked at the Natural Resource garage building. Doors open at 5 pm on weekdays and noon on weekends. Community members must arrive on-site to receive cooked lobster and it's on a first-come, first serve basis.

Lobster availability depends on weather conditions and catches.

The lobster distributed on the line-up and to Elders comes from a percentage of the fisher's catch and the 73 traps fished by the LMG vessel.

## Fishing Under Our Lobster Law



The Marshall Decision has opened the doors to regaining our Aboriginal and Treaty rights but there are still other hurdles ahead of us. In 2020, violence erupted when non-Indigenous fishers in Nova Scotia reacted to the Sipekne'katik First Nation launching their own self-regulated fishery. In response, the House of Commons Standing Committee on Fisheries and Oceans recommended the Mi'gmaq Rangers as an alternative enforcement model that could keep peace on the water.

Listuguj created the Mi'gmaq Rangers after the 1981 raid when Sûreté du Québec officers stormed the community to destroy and seize equipment and suppress Listuguj's salmon fishery. Today the Rangers enforce the community's salmon law and protect its fishers. Importantly, the Rangers are not sworn in

by either Quebec or Canada. They derive their authority from Indigenous law. "We realized that the only way to fulfill our responsibilities to the fish in our waters and the members of our community was to pass our own law and take control for ourselves. That meant we needed our own enforcement agency," affirmed Saqamaw Darcy Gray in a recent press release to announce the launching of the Fall Fisheries and the importance of the Rangers. "The DFO is still out there, but now our Rangers are out there too."

Listuguj and Canada signed a protocol that seeks to coordinate the enforcement activities of the Mi'gmaq Rangers under the Listuguj Lobster Law and of DFO Officers under the Fisheries Act. The goal is to align efforts to ensure a safe and sustainable fishery while being respectful of both Canadian and Mi'gmaq laws.

Listuguj's lobster fishery is governed by the Listuguj Lobster Law and the fishery is monitored by the community's own enforcement agency, the Mi'gmaq Rangers. They will be on the waters checking for safety regulations, the designated zones, and authorized vessels and they will also be on the dockside weighing the catch from the fishers. There will be two teams of six Rangers on the waters and two teams of three Rangers as Docksides Monitors. "I feel the Rangers play an important role in the Lobster fisheries, the role is expanding to where we need to continue to better ourselves with more training and our understanding of the role we play during this time," said Peter Arsenault, Director of Public Security.

The protocol requires any enforcement action to reflect Mi'gmaq values and acknowledge the impact and history of discrimination against Indigenous peoples by Canada. During the season, whenever the DFO takes enforcement action in relation to a Listuguj Mi'gmaq, the DFO will consult the LMG about the possibility of applying alternative measures like the Listuguj Restorative Justice mechanisms that reflect LMG Laws and Mi'gmaq norms and values. The goal is that, whenever possible, charges against Listuguj Mi'gmaq should be avoided, and matters dealt with internally by Listuguj.

# Lobster Fisheries Enforcement Protocol

The Listuguj Mi'gmaq Government (LMG) and Fisheries and Oceans Canada (DFO) have concluded a Lobster Fisheries Enforcement Protocol that applies to all Listuguj Mi'gmaq participating in the LMG's lobster fisheries, both spring, and fall.

On April 16, 2021, the LMG and the Government of Canada signed the Rights Reconciliation Agreement (RRA) on Fisheries in which Canada recognizes Listuguj's fisheries governance and fishing rights and it also recognizes the Mi'gmaq Laws that the LMG uses to govern and manage its fisheries. Additionally, the RRA includes a commitment to negotiate a fisheries enforcement protocol that will establish a cooperative approach to enforcement, restorative justice mechanisms as alternatives to prosecution, and a collaborative education initiative.



The Lobster Protocol is the first step towards a more comprehensive fisheries enforcement protocol that would apply to additional LMG fisheries and fulfill the commitments made in the RRA.

## Recognition of Rights

Similar to the RRA, the Lobster Protocol recognizes Listuguj's fisheries governance and fishing rights. The Lobster Protocol also recognizes the Mi'gmaq Laws the LMG uses to govern and manage its fisheries—in particular, Listuguj's Lobster Law and Ranger Law.

## Consultation on Enforcement Measures

Additionally, the DFO commits to consulting with the LMG regarding all enforcement action in relation to Listuguj Mi'gmaq. Where delay would not compromise the effectiveness of enforcement, a consultation will take place before enforcement; otherwise, a consultation will take place following enforcement.

The DFO also acknowledges there are existing protocols between the LMG and other Indigenous groups related to fisheries enforcement. The DFO acknowledges that these protocols may be relevant when Fisheries Officers are considering enforcement action in relation to the LMG's lobster fisheries against an Indigenous person other than a Listuguj Mi'gmaq.

## Cooperative Approach to Enforcement

The Lobster Protocol sets out a cooperative approach to enforcement, where Listuguj Rangers and DFO Fisheries Officers work together to keep peace on the water. It clearly sets out roles and responsibilities:

Listuguj Rangers are responsible for enforcing LMG Laws (including LMG Fishing Plans); and

Fisheries Officers are responsible for enforcing the Fisheries Act, and its regulations

If a Listuguj Mi'gmaq commits a violation under LMG Law that is not an offence under Federal Fisheries Law, the Listuguj Rangers will undertake enforcement.

If a Listuguj Mi'gmaq commits an offence under Federal Fisheries Law

that is not a violation under LMG Law, Fisheries Officers will undertake enforcement.

If a Listuguj Mi'gmaq commits a violation under LMG Law that is also an offence under Federal Fisheries Law, the Listuguj Rangers, and Fisheries Officers will consult and collaborate on enforcement. The goal is to ensure that a Listuguj Mi'gmaq will not be penalized twice for a violation/offence.

The Lobster Protocol also commits the Listuguj Rangers and Fisheries Officers to work together and provide mutual assistance when needed. The LMG and DFO will share information related to enforcement that will assist in implementing the Interim Lobster Protocol.

## Restorative Justice

Whenever the DFO takes enforcement action in relation to a Listuguj Mi'gmaq, the DFO will consult the LMG about the possibility of applying alternative measures like the Listuguj Restorative Justice mechanism that reflect LMG Laws and Mi'gmaq norms and values. The goal is that, whenever possible, charges against Listuguj Mi'gmaq should be avoided and matters dealt with internally by Listuguj.

## Ongoing Negotiations

Like the RRA, the Lobster Protocol commits the LMG and Canada to further negotiations on a comprehensive fisheries enforcement protocol. This comprehensive protocol would build off the cooperative approach to enforcement set out in the Interim Lobster Protocol and address restorative justice mechanisms and ongoing education, training, and cross-cultural exchange.

# Principles of our Lobster Law

The creation of the Lobster Law was based on the following principles:

## Weltetmeg:

### “We agree in thought.”

This is a form of consensus-building to reach a shared agreement. Elders emphasize that, as Mi’gmaq, we need to work together to come to an agreement about how best to take care of the lobster. We can achieve weltetmeg through building awareness, education, sharing, and exchange of views. Weltetmeg requires that we be open to other views, experiences, and possibilities.

## Gepmite’tmnej:

### “Respect”

In caring for the lobster, we need to respect that everybody brings knowledge and has a role to play in fishery management. We need to recognize and incorporate both Indigenous and scientific knowledge into decision-making processes.

## Ango’tmuq:

### “Taking care of something in a careful manner”

Ango’tmuq also suggests “acknowledgement” and “responsibility” when using the resources of the territory, e.g., “I take care of it.” As Mi’gmaq, we acknowledge our territory, our lands, waters, and all life forms that have sustained our nation for generations.

## Apajignmuen:

### “Sharing” and “giving back” to one’s community, thereby strengthening relations.

Mi’gmaq customary practices, ceremonies, and feasts, as well as information sessions and meetings, are ways of giving back. Apajignmuen also implies having gratitude, being aware, and being grateful for what has been given to you.

