



SEIZURE AND RETURN INFORMATION SHEET

This Information Sheet IS NOT legal advice.

It is information for fishers engaged in their community's Moderate Livelihood fishery.

The Assembly of Nova Scotia Mi'kmaw Chiefs has stated to the Department of Fisheries and Oceans Canada (DFO) that our Treaty right to fish is not an illegal fishery, and that DFO must return all gear and traps seized from our harvesters exercising their rights.

What to do if your things are being seized:

If your gear, traps, catch or vessel (or all of it) is seized:

1. Write down a list of everything taken by the enforcement officials
Number of traps, nets, etc. and include, as far as possible, an inventory of just what was on your vessel if it is seized - gear, radios, clothing, food, etc.
2. Take pictures of your gear, catch, or vessel being seized.
3. Make the enforcement officials give you a dated and signed receipt for everything taken from you. Put it with the other notes in your notebook.
4. As soon as possible after the encounter or seizure, report it to:
 - a. Your Band Council Office
 - b. Your Band's Fisheries Officer
 - c. The KMKNO Fisheries Coordinator or KMKNO Fisheries Administrative Support Officer
 - d. Your lawyer or your Band's lawyer if you or your Band have a lawyer.

and put a note in your notebook saying who you reported the incident to and when.



The Return of things seized:

Summary of the *Fisheries Act* scheme for retention, forfeiture and return of seized items:

1. The Minister has 90-days, from the date things are seized, to decide to lay a charge or not.
2. If the Minister decides to not lay a charge all things seized must be returned to their owner.
3. If a charge has not been laid, then the items seized must be returned to their owner after the expiry of the 90-days from the date the items were seized, unless that time period is extended.
4. If DFO does not lay charges against you but wishes to keep the items seized beyond 90-days, they must apply to a Court to get a court order allowing DFO to continue to hold the items seized. The Court can require that you are given notice that DFO intends to keep your gear, traps, catch, vessel, etc., and the reasons why they intend to keep the seized items.
5. If you receive notice that DFO is looking to hold your gear beyond the 90-days, you will have an opportunity to appear before the court and give reasons as to why you are lawfully entitled to receive your seized belongs back.
6. Once a charge is laid, anything seized can be detained until proceedings are concluded.
7. The Minister may agree to the return of the things seized, in exchange of satisfactory security.

If your gear, traps, catch or vessel (or all of it) is not returned:

1. Contact your lawyer or your Band's lawyer, if you or your Band have a lawyer.
2. Have a lawyer prepare an Application to the Court to return property to owner after expiration or based on the decision of the Minister not to proceed.
3. To complete your application, you will need an affidavit, a sworn statement giving details of the seizure and the items taken by enforcement officials, to go with it. To help the lawyer complete your affidavit, bring your inventory of things seized documented in your notebook and the dated and signed receipt you received from the enforcement officers.