



Kwilmu'kw Maw-klusuaqn Negotiation Office
Mi'kmaq Rights Initiative

Our Rights. Our Future.

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Marc Clemens
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Dear Mr. Clemens,

Re: Mi'kmaw Comments on Proposed Possession and Export of Elvers Regulations

Please find attached our comments on the proposed 'Possession and Export of Elvers Regulations' as published in the Canada Gazette, Part 1, Volume 158, Number 26. These comments reflect the perspectives of the Mi'kmaq communities and emphasize the need for regulatory changes that recognize Mi'kmaw self-governance and rights-based fishing activities.

Our response highlights the inadequacy of current *Fisheries Act* regulations in authorizing Mi'kmaq fishing activities and stresses the importance of aligning the proposed regulations with the principles of self-determination and governance as mandated by the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDRIPA).

We look forward to engaging in meaningful discussions with DFO to ensure that the final regulatory framework supports sustainable fisheries management while respecting Mi'kmaw rights and governance.

Thank you for your attention to this matter.

Yours in Recognition of Mi'kmaw Rights and Title,

Signature withdrawn in online version for security purposes

Twila Gaudet, B.A., LL. B.
Director of Consultation
Kwilmu'kw Maw-klusuaqn

Mi'kmaw Comments on the Canada Gazette Sections

Based on the concept of Mi'kmaw Rights-based elver harvest and the regulatory documents from the Canada Gazette, here are comments for each identified section to prepare for the consultation discussion with DFO:

1. Issues:

- The Mi'kmaw perspective emphasizes that the *Fisheries Act*, as currently structured, does not make room for the concurrent operation of Indigenous governance. The introduction of new regulations under the guise of controlling unlawful harvesting must recognize Mi'kmaw treaty rights. Under the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDRIPA), Canada is required to modify regulations and laws to support Indigenous self-governance and self-determination. Mi'kmaq have the capacity to manage their fisheries sustainably and require recognition of their authority to do so without being constrained by colonial legal frameworks.

2. Objective:

- While the objective of enhancing traceability and management of the elver fishery is aligned with conservation goals, it must also respect Mi'kmaw self-governance and must support the communal/generational nature of our fishing activities. Mi'kmaw communities already possess the capability to implement a traceability system from river to buyer. The proposed regulations should incorporate provisions that allow for Mi'kmaq-led management and oversight, especially in the early stages of the supply chain. As the capacity and infrastructure of Mi'kmaw communities grow, these provisions should be flexible enough to adapt and expand Mi'kmaq regulatory oversight beyond the initial point of sale.

3. Description:

- The proposed regulations, which require possession and export licenses, must include clear recognition of Mi'kmaw authority to issue these licenses under Mi'kmaw governance frameworks. Mi'kmaw fishers should not be subject to the same regulations designed for non-Indigenous commercial operations. The description should acknowledge Mi'kmaw rights to fish, possess, and trade elvers as part of their inherent treaty rights, without the need for external licensure by DFO.

4. Regulatory Development:

- In the spirit of collaborative federalism, regulatory development should actively involve Mi'kmaw governance bodies at every stage. Consultation is a legal requirement under Canadian law, including UNDRIPA, not a courtesy. The process should ensure that Mi'kmaw perspectives shape the final regulatory framework, aligning it with both conservation goals and Indigenous rights.

5. Implementation, Compliance, and Enforcement:

- The implementation of compliance measures should prioritize community-led enforcement aligned with Mi'kmaw traditional governance. Mi'kmaw communities should have the authority and resources to oversee compliance within their territories. The use of Indigenous C&P liaison officers, as successfully demonstrated in other areas, should be formalized in the regulatory framework. This would facilitate communication between DFO and Mi'kmaw communities, ensuring that compliance measures respect Indigenous governance and legal traditions.

6. Costs:

- The costs associated with implementing these regulations must include provisions for funding Mi'kmaq-led initiatives. This includes the establishment of monitoring and enforcement infrastructure within Mi'kmaw communities, training for Mi'kmaw fishery officers, and development of traceability systems. It is crucial that Mi'kmaw communities are not economically burdened by regulations that should be facilitating their inherent rights.

7. Consultation/Accommodation:

- Mi'kmaw communities require meaningful consultation, which is impossible without adequate funding and resources. The process must move beyond informational meetings and ensure that Mi'kmaw rights holders are directly engaged in the decision-making process. DFO must accommodate the exercise of Mi'kmaw governance over this fishery.

8. General Comment:

- The Mi'kmaq of Nova Scotia view these regulations as an opportunity for Canada to fulfill its commitments under UNDRIPA by recognizing Indigenous self-determination in fisheries management. The regulations should not impose constraints on Mi'kmaw rights but should instead provide a pathway for recognizing and supporting Mi'kmaq-led governance structures in managing elver fisheries.