

Indigenous Fisheries vs. Mob Rule. The Rights of First Nations

By [J. B. Gerald](#)
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*On September 17, 2020, the **Sipekne’katik First Nation of Nova Scotia** opened its independent fishery, affirming the Band’s rights under Canada’s Supreme Court ruling of 1999 (the Marshall Decision), which allowed the Band to fish for a moderate living under its own regulations. On the 17th and in following days from 80 to 200 fishing boats of the commercial fishing industry came to St. Mary’s Bay to protest the new fishery. There were boat rammings, flare guns, intimidation, and destruction of lobster traps and gear. Canada’s Department of Fisheries and Oceans, the DFO Conservation and Protection Division, the RCMP, the Coast Guard, were there but provided the Band no protection.⁽¹⁾*

This began two months of intimidation, burnings, assaults, destruction and confiscation of lobster traps and gear, with mob actions by commercial fishermen unhampered by the few police on hand.

The Sipekne’katik First Nation requested and received from Nova Scotia’s Supreme Court a temporary injunction assuring protection from attacks until mid-December 2020. Canadian law was not protecting them. The Band was faced with mobs of men understood to represent commercial fishing interests but under the colors of conserving lobster stock. The commercial seafood industry is known for the near extinction of several Atlantic species of fish. If the non-Indigenous fishermen of Nova Scotia who attacked the Sipekne’katik First Nation were free men, why wouldn’t they form worker-owned fishing cooperatives similar to the Indigenous fisheries?

Prime Minister Trudeau’s Liberal government said the violence was a terrible thing and although military intervention was suggested by the Sipekne’katik First Nation, the number of RCMP officers was increased. While the RCMP was not able to intervene when a mob of over two hundred commercial fishermen torched a Sipekne’katik fisherman’s van and destroyed his catch, eventual arrests of over 20 participants resulted in a court date March 29th. As of mid-May reports of their trial aren’t available in the media.

Then, instead of de-escalating, the government aggressively pursued its policies of licensing restrictions and seasonal limits affecting Indigenous fisheries, despite the serious doubts of the government’s right to interfere in the Indigenous self-regulatory process. The

Department of Fisheries and Oceans, using the same argument of the commercial fishermen that the variant Indigenous lobster season (with its tiny catch) endangered the lobster stock, is legitimizing mob rule and the crimes of November and December 2020.

The Potlotek Band of Cape Breton is one of several bands self-regulating its native fishery. During this past April 37 lobster traps belonging to a Potlotek fisherman were seized by the DFO⁽²⁾ which has steadily confiscated the Band's lobster traps since last October.⁽³⁾ To continue to assert its fishing rights the Potlotek Band has had to bring suit against Canada, May 10th at the Halifax Supreme Court.⁽⁴⁾

The DFO confiscates lobster traps of the Sipekne'katik First Nation as well, asserting regulations requiring conformity with the commercial industry's season; the restrictions are imposed without the Band's consultation and permission as required. As a law unto itself the DFO also confiscates crab traps protected by Section 35 of the Constitution and the Sparrow Decision.⁽⁵⁾ The regulations risk closing and bankrupting native fisheries and stripping them of their Supreme Court guaranteed rights to fish for a "moderate livelihood." The expense of proving that the government has exceeded its legal authority is placed on the First Nations.

Lack of visible prosecution of the primary crime here - terrorizing of a selected ethnic group, encourages the perpetrators.

From the perspective of the Convention on Genocide the concern is whether Canada's government is intentionally continuing policies which lead to the extermination of Indigenous people. To limit discussion here to fishing rights, an indication of the controls on First Peoples is available in DFO licensing policy (as of November 2020); as revealed in response to a suit by Sipekne'katik First Nation against the Nova Scotia Seafood Alliance: the Alliance revealed that the seafood buyers were only permitted by the DFO to buy from fisheries licensed by the DFO, and these purchases had to be within the DFO defined seasons.⁽⁶⁾ These government regulations exclude the Sipekne'katik First Nation and other newly formed native fisheries from the right to market their small catches of seafood.

Divisions between Indigenous and non-Indigenous peoples serve those who control both for profit. I tend to see current adversarial anti-Indigenous actions, with their similarities to KKK tactics and controls in the U.S. during the last century or so, as the result of corporate interests facilitated by the government. The criminal controls don't really benefit the often desperate commercial fishermen who effect the terrorizing. While Prime Minister Trudeau's government expressed horror at the violence dealt the Sipekne'katik fishery, his government's Department of Fisheries and Oceans increased the dissent by confiscating the Band's lobster traps. Much as boats from the commercial fleet had stolen them. The government failed to protect an Indigenous community requesting protection⁽⁷⁾. Sipekne'katik First Nation Chief Sack suggested military intervention to protect his people but was refused⁽⁸⁾ (The government was able to deploy sixty Canadian Armed Forces members to assist at Nova Scotia centres testing for COVID-19⁽⁹⁾).

The Sipekne'katik First Nation has given every indication that it will pursue justice under the law, and that this would include appeals to the U.N.. Canadian political science Professor John McGarry, described by the CBC as "an international expert on conflict management" has assured Canadians the U.N. wouldn't provide "peacekeepers" since the Canadian

government would have to approve of any intervention. By this, Professor McGarry acknowledges the seriousness of acts against the Sipekne'katik First Nation as possibly requiring the armed military intervention of 'peacekeepers'.⁽¹⁰⁾

The U.N. has refused to leave the Sipekne'katik First Nation to the promises of the Canadian State when faced by its commercial fishing industry. An April 30th letter from the head of the U.N.'s Committee on Elimination of Racial Discrimination (CERD), Yanduan Li, asks Canada to answer the allegations made by Sipekne'katik First Nations band: "According to the information received during September and December 2020, especially between 13th and 17th October, Mi'kmaw people, and in particular Mi'kmaw fishers, have been subject to escalating racist hate speech, violence, including with firearms, intimidation, burning and destruction of their property, including lobster traps, lobster processing facilities and work vehicles." Also noted: "It is further alleged that, despite being aware of the high risks of violence, the competent Canadian authorities - in particular the Royal Canadian Mounted Police (RCMP) and the Department of Fisheries and Oceans (DFO) - failed to take appropriate measures to prevent these act of violence and to protect the Mi'kmaw fishers and their properties from being vandalized." The three page letter challenges the government's inaction and asks for a thorough investigation. It verifies the need to ask the Canadian government to "respect, protect and guarantee the rights of Mi'kmaw peoples in relation to their fishing activites and territories," among other guaranteed rights.⁽¹¹⁾ The deadline for response is July 14th.

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Notes

1. "DFO, RCMP knew violence was coming but did nothing to protect Mi'kmaw lobster harvester: Documents," Brett Forester, Feb. 10, 2021, *aptn*.
2. "Traps seized by DFO in first day of Potlotek's moderate livelihood lobster fishery," Ardelle Reynolds, April 30, May 1, 2021, *Saltwire*.
3. "Potlotek chief says band losing patience with DFO over fishery," Tom Ayers, Oct. 23, 2020, *CBC News*.
4. "Potlotek First Nation seeks injunction against DFO over self-regulated fishery," Erin Pottie, May 11, 2021, *CBC News*.
5. "Mi'kmaw fisherman has crab traps seized by DFO during food fishery," Angel Moore, April 14, 2021, *aptn*.
6. "Nova Scotia Seafood Alliance says licences only let them buy from DFO-authorized fisheries," Paul Withers, Nov. 17, 2020, *CBC News*.
7. *ibid*. "DFO, RCMP knew violence was coming but did nothing to protect Mi'kmaw lobster harvester:

Documents," Brett Forester, Feb. 10, 2021, *aptn*.

8. "'We're being targeted now': Mi'kmaq chief wants military called in to N.S. lobster clashes, attacks," Greg Mercer, Oct. 18, 19, 2020, *Globe and Mail*.

9. "Canadian Armed Forces deploying personnel for Nova Scotia COVID-19 response," April 27, 2021, *CBC News*.

10. "UN peacekeepers won't monitor Sipekne'katik fishery, says expert," Paul Withers, April 30, 2021, *CBC News*.

11. "Letter to H.E. Ms. Leslie Norton, Permanent Representative of Canada to the United Nations Office, Geneva, from Yanduan Li, Chair, Committee on the Elimination of Racial Discrimination," Reference CERD/EWUAP/103rd Session/2021/MJ/CS/ks, 30 April 2021, Office of the High Commissioner for Human Rights, United Nations, Geneva Switzerland.

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