

**KESPUKWITK DISTRICT
NETUKULIMK LIVELIHOOD FISHERIES
POLICY AND PROTOCOL**

As declared by

Acadia First Nation

Bear River First Nation

[Add additional First Nations as required]

APRIL 13, 2021

1 PREAMBLE

The Members of Mi'kmaq First Nations in Nova Scotia are beneficiaries of the Covenant Chain of Treaties made with the Crown between 1725 and 1761, including the Treaties of 1760-61, that were the subject of the 1999 Supreme Court of Canada decision in the case of Donald Marshall, Jr.

In accordance with these Treaties, Mi'kmaq in Nova Scotia have the right to harvest and sell fish for the purpose of earning a moderate livelihood (MLF harvest). Accordingly, Mi'kmaq Band Councils in Nova Scotia recognize the obligation to manage fisheries activities of the Mi'kmaq communities' members in Nova Scotia.

The First Nations of the Kespukwitk District intend to explore a Nmitiknen among their First Nations. The goals and purpose of exploring the development of a Nmitiknen, include to:

- 1) Take responsibility for the stewardship of our territory through a collaborative collective approach.
- 2) Recognize and implement our inherent right to fish as Mi'kmaw.
- 3) Govern according to Mi'kmaw customs.
- 4) Demonstrate respect for all within the territory. It is not to exclude.
- 5) Exercise self-determination and self-government, along with our right to self-regulate as a Nation, as protected under section 35 of the Constitution.
- 6) Strengthen relationships and further Mi'kmaq self-determination through fulfilling ancient responsibilities, to all of our relations, through the support and assistance of various kinds and levels of Mi'kmaw governments – Band Councils, the Grand Council and the Assembly.

That work on the Nmitiknen may result in further refinement of this District Policy and Protocol.

This Kespukwitk Livelihood Fisheries Policy and Protocol provides the policies and protocols for the management of the Mi'kmaq Netukulimk livelihood fishery in our District.

The Kespukwitk communities believe that it is in keeping with traditional Mi'kmaw law that every community or district of communities in Mi'kma'ki has a responsibility to be protectors and stewards of the resources around them for their families, their community and for the Mi'kmaq Nation as a whole. The purpose of this Policy and Protocol is not to claim exclusivity of access to these resources by our communities, but to ensure that all Mi'kmaw communities respect Netukulimk values and the part that our communities play as stewards of Kespukwitk lands and waters, as we need to respect the same values in lands and waters under their stewardship.

Our Band Councils will seek to ensure that this Kespukwitk Livelihood Fisheries Policy and Protocol is properly and fully communicated amongst our Band members and to other First Nations in the

effort to promote a Netukulimk MLF harvest and collaboration with other Mi'kmaw communities and Districts for the sustainable management of Mi'kmaq fisheries in our District of Kespukwitk.

This Kespukwitk Livelihood Fisheries Policy and Protocol has been prepared, adopted, and implemented without prejudice to the Mi'kmaq Aboriginal and Treaty Rights and the inherent Rights and interests of Bands and all members of the Mi'kmaq Nation.

This Kespukwitk Livelihood Fisheries Policy and Protocol should be read and interpreted in its entirety.

This Kespukwitk Livelihood Fisheries Policy and Protocol is a living document and may be amended from time to time based on experience, dialogue and communication with our members.

2 MANAGEMENT VALUES

2.1 Management values applied to the implementation of the Kespukwitk Livelihood Fisheries Policy and Protocol will be:

2.1.1 Netukulimk

Netukulimk is defined as the use of the natural bounty provided by the Creator for the self-support and well-being of the individual and the community by achieving adequate standards of community nutrition and economic and spiritual well-being without jeopardizing the integrity, diversity or productivity of the "natural bounty".

The principle of Netukulimk has been the foundation of sustaining Mi'kmaw families, communities and society since time immemorial.

2.1.2 Protection of Treaty and Aboriginal Rights

The implementation of this Kespukwitk Fisheries Management Plan including all harvesting and marketing activity will be undertaken in a manner that does not compromise, abrogate, or diminish the inherent and Treaty Rights of the Mi'kmaq Nation. Accordingly, harvesting shall not compromise the viability of individual species for harvesting by future generations.

2.1.3 Sustainability

Sustainability refers to the capacity of natural systems and Mi'kmaw society to coexist through ecological and societal balance. Sustainability involves five distinct factors: environmental, social, economic, cultural, and spiritual. Each of these are principal factors for the sustainability of a Mi'kmaq fishery livelihoods.

2.1.4 Economic

Economic sustainability is the long-term success of the structure and function of the Mi'kmaw economy through efficient and responsible use of natural resources in a sustainable manner through focus on the other components of sustainability (environmental, social, cultural, and spiritual).

2.1.5 Social

Social sustainability involves maintaining and improving Mi'kmaw social well-being across varying levels of social systems, including family, community, district or organization. Social indicators include equality, equity, poverty, education, and importantly, health and wellness.

2.1.6 Environmental

Environmental sustainability refers to the ability of the biophysical environment of each District of Mi'kmaki to support long-term environmental quality through protection of natural capital (i.e. land, air, water, minerals, etc.). This involves human interaction with the environment in a manner to avoid depletion or degradation of natural resources and systems.

2.1.7 Cultural

Cultural sustainability is the long-term maintenance of Mi'kmaw cultural beliefs, practices, heritage, and rights through future generations. Cultural sustainability involves initiatives and actions taken to prevent the extinction of Mi'kmaq culture within Mi'kmaki where other components of sustainability threaten Mi'kmaq existence.

2.1.8 Spiritual

Spiritual sustainability is situated at the intersection of traditional spiritual and sustainable principles through an understanding of how the natural environment contributes to Mi'kmaw spiritual wellness. This component of sustainability focuses on maintaining connections between Mi'kmaq people and our environment.

2.1.9 Fairness

This Kespukwitk Netukulimk Livelihood Fishery Plan will apply impartially to all Members of our First Nations and will be implemented without favoritism or discrimination.

2.1.10 Gender Equity

This Kespukwitk Netukulimk Livelihood Fishery Plan is based on the principles of gender equity in the fishery. Accordingly, efforts will be undertaken to remove any gender barriers in the implementation of all fishery related activities.

2.1.11 Transparency

The implementation of this Kespukwitk Netukulimk Livelihood Fisheries Policy and Protocol and the decisions made under it will be recorded and communicated to all Band members, regardless of their involvement in fisheries activities.

2.1.12 Conservation

This Kespukwitk Netukulimk Livelihood Fisheries Policy and Protocol will be implemented in a manner consistent with the Mi'kmaq standard of Netukulimk, supported by internationally accepted principles of conservation which emphasizes the integrity, diversity, and productivity of the natural resource.

2.1.13 Safety

This Kespukwitk Netukulimk Livelihood Fisheries Policy and Protocol aims to ensure and promote the safety of harvesters, other fisheries workers, and community members through prevention, education, monitoring and enforcement.

2.1.14 Community Benefit

Fisheries management activities are designed and implemented with the aim of enhancing and maximizing community benefit over the benefit of any one individual or enterprise.

2.1.15 Accountability

Without limiting or infringing on the Rights of our members, fisheries management activities will be conducted in a manner that demonstrates good governance, procedural principles and the sharing of information in a respectful manner, honoring the treaty relationship of collaborative co-existence.

2.1.16 Cooperation and Respect

If our First Nations wish to seek MLF fishing opportunities for our Band members in other Districts outside of the traditional area of Kespukwitk, or when MLF fishing opportunities or activities directly or indirectly effect other First Nations, we will seek to develop a formal protocol, policy, group or process with the other First Nation(s) that may be affected and seek to accommodate any concerns they may have.

Similarly, when Band members of other First Nations wish to MLF harvest within our District of Kespukwitk, they will be expected to abide by the principles and rules of this Kespukwitk Netukulimk Livelihood Fishery Plan, as may be modified by discussion and agreement with us.

2.1.17 Peace

Without limiting or infringing on the Rights of the Mi'kmaq Nation, communities and Band members, fisheries management activities will be conducted in a manner to promote and protect peaceful relations with adjacent communities.

3 PURPOSE AND INTERPRETATION

- 3.1 Mi'kmaq Netukulimk Livelihood fishing is a small scale, artisanal fishery with sale, trade and barter attributes, for any viable aquatic species, fished within and surrounding the traditional territory of Mi'kma'ki, using traditional and modern methods and techniques, practiced under the management and protection of First Nation Netukulimk livelihood fishery Plans, following the expectations of the Assembly of Nova Scotia Mi'kmaw Chiefs' Statement of Standards and the Mi'kmaq concept of Netukulimk, with the goal of improving the well-being of many Mi'kmaq individuals and their families.

Mi'kma'ki is comprised of seven Districts, of which we are principally involved in the District of Kespukwitk. We do not claim exclusive right to regulate the MLF activities of members of other First Nations when they are within our District. Our worldview principles are based on honour, cooperation, respect and traditional Mi'kmaw law.

When our Band members MLF harvest outside of our District, we expect to communicate with and develop protocols, policies, groups or processes with other First Nations that may be affected and seek to accommodate concerns they may have.

Similarly, we expect that members of other First Nations will abide by the principles and rules of this Kespukwitk Netukulimk Livelihood Fishery Plan when MLF harvesting in our District. If other First Nations wish their members to be able to MLF harvest in our District in a manner not contemplated by this Kespukwitk Netukulimk Livelihood Fishery Plan, their Chiefs and Councils will consult with us to develop protocols, policies, groups or processes as may be required to reflect changes accepted by discussion and agreement with us.

Purpose

- 3.2 This Kespukwitk Livelihood Fisheries Policy and Protocol provides clarity on the roles and responsibilities of the Band Councils and community members with respect to implementing our inherent right to manage fisheries.
- 3.3 This Kespukwitk Livelihood Fisheries Policy and Protocol is a living document prepared to assist Mi'kmaq communities, Band Councils and Fisheries Departments in the development and implementation of livelihood fishing activities in our District by Mi'kmaq community members.

Interpretation

- 3.4 Our respective Chiefs and Councils remain solely responsible for the implementation of this Kespukwitk Livelihood Fisheries Policy and Protocol and associated Species-Specific Conditions and Harvest Plans for the respective members of each of our First Nations.
- 3.5 This Kespukwitk Livelihood Fisheries Policy and Protocol comes into force on the date of the Band Councils' Resolution adopting the Plan. Subsequent Harvest Plans and Conditions for access and use of individual species will be adopted on an annual basis or as needed from time to time.
- 3.6 This Kespukwitk Livelihood Fisheries Management Plan intends to create limits that could reasonably be expected to produce a moderate livelihood for individual Mi'kmaq families at present day standards who wish to harvest and sell fish for the livelihood of themselves and their families.
- 3.7 Members of our First Nations wishing to engage in a MLF harvest may only do so in compliance with this Kespukwitk Netukulimk Livelihood Fisheries Plan.
- 3.8 Mi'kmaq Band Members registered to fish under this Kespukwitk Netukulimk Livelihood Fisheries Policy and Protocol are expected to conduct harvesting activities in accordance with this Plan and, as such, shall demonstrate their commitment through formal acceptance of the terms and conditions of access.
- 3.9 This Kespukwitk Netukulimk Livelihood Fisheries Policy and Protocol is without prejudice to the rights of Mi'kmaq Band Members.

Region of Application

- 3.10 This Kespukwitk Netukulimk Livelihood Fisheries Policy and Protocol shall apply in and throughout the watersheds within the traditional District of Kespukwitk, including all rivers, streams, brooks, lakes, bays, and estuaries in the District and its adjacent nearshore banks, offshore banks and other adjacent ocean space.
- 3.11 This region of applicability is a shared jurisdiction amongst our First Nations and with the federal and provincial governments and will involve effective communication and the development of collaborative arrangements to ensure the effective implementation of this Kespukwitk Netukulimk Livelihood Fisheries Policy and Protocol.

4 DEFINITIONS

- 4.1 **Aboriginal Rights:** Aboriginal Rights refer to the practices, traditions and customs that distinguish Mi'kmaq culture and result from our ancestor's longstanding use and occupancy of the land and waters. Aboriginal Rights are protected under s.35 of the *Constitution Act*, 1982.
- 4.2 **Access:** Access refers to the authorization of Band harvesters to harvest within the traditional Mi'kmaq territory in accordance with Band Management Plans.
- 4.3 **Allocation:** Allocation refers to the distribution of opportunity for individuals to participate in livelihood fishing through the provisioning of fishery quotas according to species-specific harvest limits and total allowable catches.
- 4.4 **Chief and Council:** The Chief and Council of each First Nation is responsible for the governance and administration of the First Nation, including in the exercise by its members of Aboriginal Rights and Treaty Rights, and may, upon direction from the Band Council, include an authorized delegate/agent of the Band Council.
- 4.5 **Kespukwitk Bands or First Nations:** any of Acadia First Nation, Bear River First Nation or _____ First Nation, or them acting together, as applicable.
- 4.6 **Communal use:** Communal use includes the shared use of harvest for food, social and ceremonial purposes as set out by the Band Council.
- 4.7 **Community management structure:** to be defined
- 4.8 **Community Fishers Committee:** A band member established, Community endorsed, committee of harvesters, fishers, knowledge keepers, elders and youth.
- 4.9 **Conservation:** Conservation means protection and preservation of the integrity of the resource and its ecosystem. Conservation of fisheries resources is important for the protection of Aboriginal Rights and Treaty Rights in perpetuity.
- 4.10 **Designated Captain:** The person who is responsible for the day to day operations of a vessel during fishing activities, under the general supervision of the Band Council or their designate.

- 4.11 **Kespukwitk** is one of the traditional Districts of the Mi'kmaq Nation.
- 4.12 **Livelihood:** Livelihood refers to any and all means of securing the necessities of life, including food, water, shelter, clothing, and other desirables. A livelihood is more than employment and income which are terms that are often used to limit a livelihood. A livelihood is made up of the capabilities, activities, and assets, including material and social resources that contribute to a means of living in a comfortable, secure, socially, and culturally relevant way.
- 4.13 **Management:** Management is the application of specific rules and regulations designed to meet the goals and objectives set by communities for our fisheries.
- 4.14 **Member or harvester:** a member of a First Nation.
- 4.15 **Mentor:** Mentor means any person (Band member only) who is hired to provide training and advisory support to fisheries staff, harvesters, seafood buyers, or seafood processors from the Bands.
- 4.16 **Personal Use:** Personal use includes use of harvest for food, social and ceremonial purposes.
- 4.17 **Treaty Rights:** Treaty Rights arise from constitutionally recognized and negotiated agreements between the Crown, Indigenous peoples, and provinces or territories that define ongoing rights and obligations of all parties (also known as treaties). Mi'kmaq Treaty Rights emerge from those set out in the Covenant Chain of Treaties (1725-61). These include the right to harvest and sell all those resources harvested and sold by Mi'kmaq at the time the treaties were signed.
- 4.18 **UNDRIP:** The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a non-legally binding resolution passed by the UN General Assembly in September 2007 that outlines protection of the rights of Indigenous peoples. Canada has committed to the principles of UNDRIP, further referenced in the September 23, 2020 throne speech, delivered by Gov. Gen. Julie Payette.

5 OBJECTIVES

5.1 The Fishery Management Objectives are established to ensure the effective sustainable management of the MLF fishery. These objectives are consistent with the principles of Netukulimk, traditional Mi'kmaw law and advance those defined in the United Nations Declaration on the Rights of Indigenous Peoples, the terms outlined in the 1999 Supreme Court of Canada Marshall decision and form the basis for fishery decision-making within Mi'kmaq First Nations.

5.2 The Objectives for the Kespukwitk Netukulimk Livelihood Fishery are as follows:

- To ensure conservation of the resource and to protect and exercise Mi'kmaq Treaty and Aboriginal Rights to harvest natural resources for the benefit of the community and its members.
- To conduct the MLF fishery in a manner consistent with the parameters outlined in the Marshall II clarification decision (SCC, [1999] 3 SCR 533), in particular,
 - Fishing of species of historical importance and evidence (para 19-20)
 - Consideration of the conservation of the resource (para 42)
 - Consideration of first access of Aboriginal rights to the resources (para 38)
 - Respecting traditional fishing grounds (para 38)
 - Using catch limits needed to acquire necessities (para 37).
- To conduct the MLF fishery in a manner consistent with the opportunities outlined in the Marshall decision, in particular,
 - Recognition of the authority of the Mi'kmaq community (para 17), while at the same time respecting DFO's important role in the fisheries to protect them while honoring the intent of a treaty relationship; and
 - Incorporation of Mi'kmaw conservation and management techniques (para 44(e)).
- To alleviate family poverty and advance the size and security of the grassroots within the Mi'kmaq communities.
- To promote community adherence to traditional Mi'kmaq law and the principles of Netukulimk.
- To contribute to the social and economic well being of the community.
- To develop and promote livelihood fishing activities that will provide stable and effective employment and income for community members.
- To contribute to the spiritual well-being of members through the exercise of traditional activities and Rights.
- To ensure the community and harvester safety are protected.
- To have economically self-sufficient fishing operations, including management and administration.

6 ROLES AND RESPONSIBILITIES

- 6.1 Each Kespukwitk Chief and Council or its designate will be responsible for establishing Band-specific policies regarding the purpose and procedures for fish harvesting by community members.
- 6.2 Each Kespukwitk Chief and Council or its designate will establish Band-specific governance rules and regulations that will promote fisheries and other resource-based businesses within the community.
- 6.3 Each Kespukwitk Chief and Council or its designate will be responsible for the determination of species-specific harvest limits and total allowable catches which could reasonably be expected to produce a moderate livelihood. These limits may be determined through:
 - 2 eyed ways of knowing, which respects Mi'kmaq knowledge
 - Negotiation amongst and between First Nations
 - Negotiation with the Government of Canada
- 6.4 Each Kespukwitk Chief and Council or its designate will be responsible for developing and adopting access and harvesting conditions and harvest plans for each individual fisheries species that may be harvested by Band members for their consumption and sharing or livelihood use.
- 6.5 A Kespukwitk Chief and Council or its designate may establish criteria for the sharing of catches from species-specific harvesting activities to ensure sustainability and acquisition of family necessities in accordance with the principles of this Plan.
- 6.6 A Kespukwitk Chief and Council or its designate may enter into co-management arrangements with Crown in Right of Canada and the Crown in Right of Nova Scotia in the interest of conservation and management of fisheries resources.
- 6.7 A Kespukwitk Chief and Council or its designate may enter into business arrangements within commercial enterprises in accordance with the principles of this Kespukwitk Livelihood Fisheries Policy and Protocol.
- 6.8 A Kespukwitk Chief and Council or its designate may establish criteria for species-specific harvesting activity that will promote intergenerational traditional knowledge transfer amongst Band members.

- 6.9 Each Kespukwitk Chief and Council or its designate will monitor the harvesting activities of the Band members conducting activities under this Plan. The Band Councils may hire personnel, expand the capacity of Aboriginal Guardians, or enter into co-management monitoring arrangements to conduct monitoring activities.
- 6.10 Each Kespukwitk Chief and Council or its designate will have the responsibility to promote and encourage compliance with this Management Plan. Accordingly, Band Councils, appointed personal or Aboriginal Guardians, may conduct patrols, surveillance, and enforcement activities.
- 6.11 A Kespukwitk Chief and Council or its designate may enter into a formal arrangement with appropriate private sector companies or federal/provincial government departments to provide compliance control (enforcement) services related to this Plan.
- 6.12 A Kespukwitk Chief and Council or its designate may employ the necessary professional fisheries management personnel to oversee and implement the community management plan.
- 6.13 A Kespukwitk Chief and Council or its designate may employ the necessary personnel to coordinate scientific activities and to coordinate initiatives with agencies outside of the Band.
- 6.14 A Kespukwitk Chief and Council or its designate may for conservation or safety concerns alter the time, duration or areas in which fisheries harvesting can occur.
- 6.15 Each Kespukwitk Chief and Council or its designate will provide public notice of any changes to the KESPUKWITK LIVELIHOOD FISHERIES PLAN including, but not limited to changes to fishing times, duration, or areas. Notice will be provided to registered fishers in writing and a notice will be posted on the community bulletin board at the respective Band Offices, or another acceptable space for member access.
- 6.16 In the fulfillment of its mandate, a Kespukwitk Chief and Council may also:
- Promote traditional values and practices (Netukulimk) that protect the fishery and the environment;
 - Conduct resource assessments and inventories;
 - Engage in scientific activities for the purpose of establishing harvesting limits;
 - Identify special protection zones;
 - Conduct restoration and enhancement activities as required;
 - Examine alternative harvesting techniques;

- Encourage the development of pre-and post-harvest commercial components to the Band's fishery; and,
- Establish a Netukulimk livelihood fishery management committee, or a joint management committee between the three First Nations, which will be chaired by the Fisheries Director. The Council at their discretion may invite representatives from other Mi'kmaq agencies, federal and provincial government departments, or commercial fishers' associations to participate on the committee.

Species-specific Harvest Plans and Conditions

- 6.17 Each Kespukwitk Chief and Council or its designate will provide limits defined within the KESPUKWITK LIVELIHOOD FISHERIES PLAN in accordance with Species-specific Harvest Management Plans that apply to fisheries harvesting by Band members for any given year.
- 6.18 A Kespukwitk Chief and Council or its designate may establish Local Fisheries Management Committees or authorized delegate/agent of the Band Council to monitor and oversee the implementation of fisheries management activities. The Fisheries Director or his/her designate may act as the Chair of the Committee.
- 6.19 A Kespukwitk Chief and Council or its designate may prepare resource materials and hold public meetings or meet with a organized group of Band fisher representatives, or established Community Fishers Committee, for the purpose of establishing, where appropriate, common procedures, criteria, and objectives for individual species harvesting activities, which will be set out in the form of Species-specific Harvest Management Plans.
- 6.20 Species-specific Harvest Management Plans will be developed in consultation with members and the Community Fishers Committee, and will be provided to members in advance of the applicable season.
- 6.21 Species-specific Harvest Management Plans may include:
- Statement of the Community's Fisheries Objectives
 - Rules and regulations concerning eligibility to access the Band fishery
 - Harvest regulations and procedures for the Netukulimk livelihood fishery
 - Marketing guidelines/procedures
 - Allocation rules and procedures
 - Safety requirements and procedures
 - Community support activities (contributions for development support)
 - Food fishery rules and regulations
 - Conflict resolution procedures
 - A list of fishers designated for the current year, including details of the individual allocations

6.22 A Kespukwitk Band Council may, due to extenuating circumstances, alter the Species-specific Harvest Management Plans during the season. Except in cases of urgency, all amendments will be made through the Community Fishers Committee, and an open public meeting and drafting of an Amendment to the Harvest Management Plan. The Council will provide public notice of any changes to the Harvest Plan by posting the Amendment in a conspicuous place at the respective Band Offices, and through the issuance of a special community newsletter.

7 ACCESS AND ALLOCATION

Registration

- 7.1 Band members who desire to conduct livelihood fishing activity under this Plan must register with and be approved by their Kespukwitk Band Council.
- 7.2 The Kespukwitk Chief and Council will communicate to the Community Fishers Committee and post a public notice for applications for access to Species-specific livelihood fisheries. Public notice will include explanation of application procedures.
- 7.3 All applications shall contain, as a minimum, the names of all persons who will be involved with the access allocation (captain and crew), intended location of the fishing activity, start and end date of fishing, name and specifications of the vessel, number of traps and/or fishing gear, and name and role of any mentor/trainers who will be involved with the fishing activity.
- 7.4 Complete applications will be reviewed and written notice of acceptance will be provided to the applicant. Authorizations, registrations, licenses or approvals issued to MLF harvesters are not transferable.

Guidelines for access:

- 7.5 All harvesters must pay any administration fees or sharing arrangements set by their Kespukwitk Chief and Council for MLF tags or replacement tags, log books or other reporting requirements, or to contribute towards the expense of monitoring, enforcement or defence activities.
- 7.6 The Kespukwitk Chief and Council may establish minimum ages for individuals to access the Netukulimk livelihood fishery. Minimum ages for access will be set out in the LIVELIHOOD FISHERIES PLAN Specific-species Conditions.
- 7.7 Harvesters are not and shall not be deemed to be employees or agents of the First Nation nor Band Council and shall save harmless the Band Council and the First Nation.
- 7.8 All harvesters must possess fishing gear or demonstrate the capacity to obtain required fishing gear or equipment prior to the granting of access by their Kespukwitk Band Council.

7.9 All harvesters must meet the following criteria:

- Be a member of a Kespukwitk Band.
- Possess a valid MED certificate.
- Have demonstrated fishing experience, or willingness to fish with a mentor.
- Have demonstrated capacity to use and operate vessels and/or gear to be used in the fishery.
- Any other criteria that may be established by their Chief and Council from time to time.

7.10 The Kespukwitk Chief and Council may waive the requirement of valid MED certificates for an individual harvester depending on the size of vessel used by the harvester and the time or location of fishing activity. Waiver of the requirement will be provided to the harvester in writing by the Chief and Council.

7.11 Designated captains shall be in charge of all vessel operations during harvesting activities. Designated Captains are not employees or agents of their Band or Band Council.

7.12 Unless otherwise agreed upon in writing by the Kespukwitk Band Council, traps can not be fished unless the harvester to whom the tags were allocated is on the vessel.

7.13 All harvesters must have their Band card and fishery registration papers with them during harvesting activities.

Safety Considerations:

7.14 For Fisheries that require the use of a fishing vessel, harvesters must follow recommended safety requirements, including as a minimum Transport Canada Life Saving Equipment Requirements based on vessel size and classification.

7.15 Harvesters are to demonstrate Certification that shows that a crew has at least the minimum level of training required that is mandatory for all non-pleasure vessel crews in three areas:

7.15.1 *First aid* – At least one crew member must hold a valid certificate in marine basic first aid while a vessel is engaged on a Near Coastal Voyage, Class 2, or Sheltered Waters Voyage. A valid marine advanced first aid course is required for vessels engaged on a Near Coastal Voyage, Class 1. In some cases, a first aid training course (2 days as a minimum) recognized by a province or territory is acceptable

7.15.2 *Operator competency* – The operator of the vessel must be certified at the appropriate level, or higher, for the size and type of vessel and the voyage that is being undertaken.

7.15.3 *Basic safety training* – The owner and operator must make sure that all crew members receive on board familiarization and safety training before they start to perform any assigned function.

7.16 Unless the level of operator competency required is a Pleasure Craft Operator Card (PCOC), each crew member must also obtain a certificate in basic safety training, also known as MED or Marine Emergency Duties, before completing six months of sea service.

Guidelines for allocation in a Quota Fishery

7.17 Fisheries where the harvesting activities by Kespukwitk Band Members may be responsible for endangering fish stocks or wildlife populations may be managed as quota fisheries.

7.18 In quota fisheries, the total allocation of harvest limits will not exceed the total amount set by the Kespukwitk Band Councils with recommendations from the Community Fishers Committee, through research and negotiation.

7.19 In quota fisheries, registered harvesters with designated access must request an allocation from the Kespukwitk Band Councils. That request for allocation must include:

- The name and number of vessel and/or gear to be used for the access,
- The amount and type of fishing gear that will be used,
- A list of all Band members who will be involved in the harvesting activity,
- The port or location from which fishing activity will be conducted, and
- The names of any Band trainers to be employed through the access as mentors, along with detailed mentorship training plan.

Loss of access:

7.20 Specific criteria (indicators) will be determined by the Kespukwitk Chief and Councils and the Community Fishers Committee, to determine whether fishers are fishing in an acceptable manner. In the interim period, until such a time that a graduated sanctions policy is developed, access may be removed or suspended for fishing in a manner contrary to the Kespukwitk Livelihood Fisheries Policy and Protocol.

7.21 In the event that a Band or Band Council become aware of or have reasonable cause to believe by their harvesters or Designated Captains are using or under the influence of drugs, alcohol or other intoxicants, then for safety purposes, their Chief and Council may suspend, remove or deny access to the MLF harvest.

- 7.22 Harvesters who do not conduct fishing activities in a manner that is consistent with the principles and objectives of this Plan, as determined by the Kespukwitk Band Councils, may have their access to the Netukulimk livelihood fishery temporarily restricted or suspended.
- 7.23 In the instance of repeated instances of improper fishing based on First Nation community standards and understandings or serious conservation or safety issues, the affected Chief and Council may suspend or permanently remove a Band member's access to the Kespukwitk Netukulimk livelihood fishery.

8 HARVEST UTILIZATION

- 8.1 The use of all fishery harvests will be for the benefit of the harvesters and their families in accordance with the principles and objectives of this Plan and Species-specific Harvest Plans.
- 8.2 Harvesters may freely share their catch within the community.

9 MONITORING

- 9.1 All fisheries will be monitored to determine fishery performance (economic, social), state of the fishery (biological, economic), contribution to the family and community spiritual and cultural well-being, and identification of new opportunities for the community.
- 9.2 Harvesters will be required to provide reports on the location of harvesting activity and catches to the Band Council or authorized delegate/agent of the Band Council.
- 9.3 Monitoring may be conducted through the collection of log sheets or logbooks that are provided by the Kespukwitk Band Councils or their designate or such other methods determined by the Kespukwitk Band Councils.
- 9.4 No person or agency other than personnel duly appointed by the respective Kespukwitk Chief and Council or its designate shall monitor or enforce activities pursuant to this Plan, unless requested in writing by the Band Council.
- 9.5 In some instances, all catches may be logged by a designated personnel at the point of landing as set out in the Species-specific Harvest Plans.
- 9.6 In some instances, electronic monitoring procedures may be required including, but not limited to video logs of harvesting activities or dockside monitoring of unloading catch as set out in the Species-specific Harvest Plans.
- 9.7 All harvesters must provide access to their vessels and activities to Band-hired Monitors for the purposes of observing and monitoring.
- 9.8 All data and information compiled by monitoring activities will be reviewed and stored by the Kespukwitk Band Councils or their designate.
- 9.9 Information regarding individual harvesters or individual harvesting activities will be treated as confidential and will not be released to the public, including necessary data for stock assessments that align with DFO science collection/reporting deadlines. Only aggregated data from monitoring will be released to any third party.

10 COMPLIANCE

10.1 In order to promote and encourage compliance, the Kespukwitk Band Councils:

- may hire personnel or expand the capacity of Aboriginal Guardians
- may enter into a formal arrangement with appropriate private sector companies or federal/provincial government departments to provide compliance control (enforcement) services related to this Plan
- Conduct monitoring activities in areas in which Band members conduct harvesting activities;
- Conduct patrols, surveillance, investigations; and
- Develop and promote fisheries education programs.

10.2 The Kespukwitk Band Councils, through the community management structure, may establish rules concerning monitoring and other measures that duly appointed personnel hired by the Kespukwitk Band Councils shall apply in situations of non-compliance with any provision of this Management Plan.

10.3 The Kespukwitk Band Councils, through consultation with their Community Fishers Committee, will develop a set of graduated sanctions as repercussions for violations of the Kespukwitk Netukulimk Livelihood Fisheries Plan.

10.4 Violations of any provision of this Plan recorded by duly appointed personnel may be placed before the affected Band Council for resolution through a community justice process.