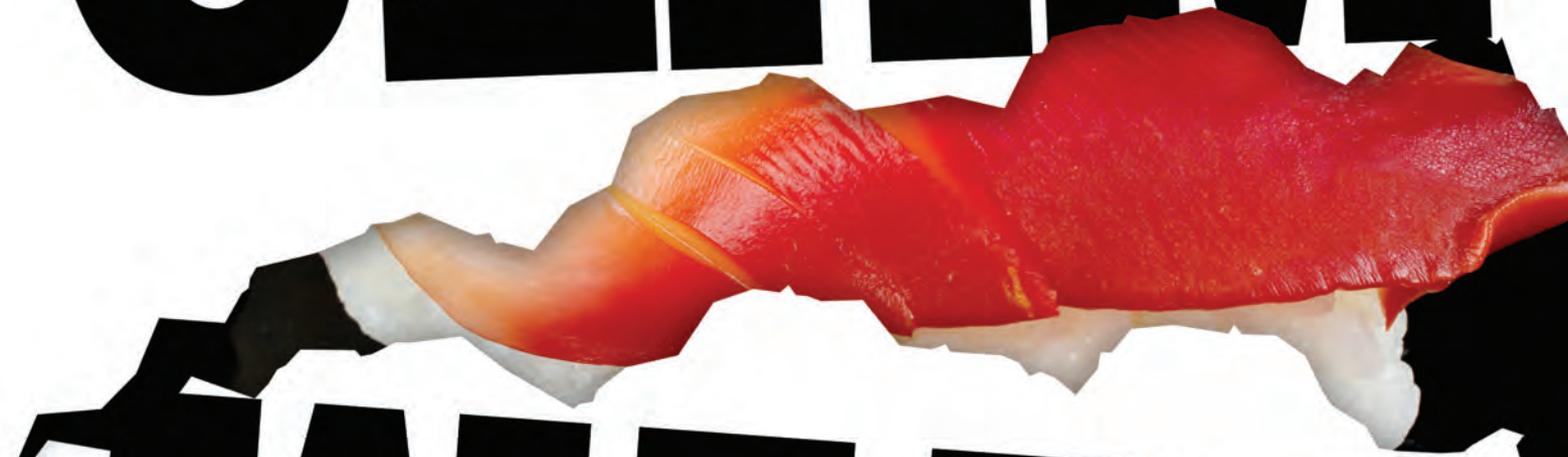


CLAIM



WARS

Reconciliation between Canada and indigenous groups was the goal when Ottawa awarded a fourth surf clam licence in 2018. But little has gone according to plan on the troubled file

BY QUENTIN CASEY

In September 2017, the federal government attempted to break Clearwater Seafoods Inc.'s lucrative and long-held monopoly in Canada's offshore Arctic surf clam fishery. The federal fisheries department said it was creating a fourth surf clam licence for 2018—representing a quarter of the total allowable catch—and would award it to an Indigenous entity in Atlantic Canada or Quebec. Halifax-based Clearwater would still hold three Arctic surf clam licences, covering 75 per cent of the total allowable catch.

Louisbourg Seafoods, a Cape Breton company that had spent \$2 million over 10 years trying to break Clearwater's exclusive hold on the fishery, praised the move. "We went through five ministers on this. It's time to move on," said Dannie Hanson, then Louisbourg's vice president of sustainability. "The surf clam battle is hopefully over."

Hanson, who died in July 2018, was optimistic but wrong. The long-simmering surf clam fight continues, with as much uncertainty as ever. The government awarded the fourth licence but eventually revoked it—following waves of criticism—and announced plans to start over. Many groups were angered by the questionable bidding process, which was even investigated by the country's ethics commissioner. The process also undermined the main goal of the entire effort: reconciliation between Canada and Indigenous groups. In short, the government's effort to reshape the Arctic surf clam fishery has been a mess since the beginning, and it's unclear exactly when or how the situation will be fixed.

The Liberal government's decision to shake up the surf clam fishery was about more than simply altering an industry. Dominic LeBlanc, then the fisheries minister, said the fourth licence would, for the first time, allow an Indigenous community to participate in an offshore fishery. He called it "a powerful step toward reconciliation." But the New Brunswick MP quickly stepped into controversy.

In February 2018, the Department of Fisheries and Oceans (DFO) awarded the fourth licence to Five Nations Clam Company, led by the Elsipogtog First Nation of New Brunswick and its industry partner Premium Seafoods Group of Arichat, N.S.

At the Miawpukek First Nation in Conne River, N.L., the decision was met with disappointment, but also happiness for Five Nations. Miawpukek, a community of 2,000 located on Newfoundland's southwest coast, had bid for the fourth licence with partners, including two other Indigenous groups and New Brunswick-based Cooke Aquaculture. The group went by the name First Nations Newfoundland and Labrador. The group's initial disappointment turned to suspicion, however, when it became clear that Five Nations was still solidifying its roster of partners after getting the fourth licence.

Five Nations' post-award manoeuvring seemed to violate the terms of the bidding process, says Shayne McDonald, a Miawpukek member and the group's legal counsel. The group wrote to LeBlanc with its concerns but according to McDonald, has never received a response or even an acknowledgment of its letter. So the Miawpukek First Nation filed documents in federal court, asking the court to overturn LeBlanc's decision.

The resulting court filings revealed interesting details about the bidding process. As reported by CBC, Five Nations beat out eight competitors despite not having all its partners secured. The company was also only 25 per cent Indigenous-owned and didn't possess a boat to fish the quota. In a ministerial decision document from Dec. 1, 2017, LeBlanc selected Five Nations and scrawled: "Please take next steps with [Five

Nations] and ensure that additional Indigenous communities are quickly confirmed.”

But Five Nations was still cobbling together its roster months after. The Miawpukek First Nation eventually withdrew its court challenge after determining the chances of quashing LeBlanc’s decision weren’t worth the time and legal costs.

But federal ethics commissioner Mario Dion investigated the decision, and ruled that LeBlanc (who is no longer fisheries minister) broke conflict of interest rules because Five Nations is linked to his wife’s cousin.

In July 2018, Ottawa suddenly cancelled the Five Nations deal without public explanation, meaning Clearwater still holds its three Arctic surf clam licences and, for now, 100 per cent of the annual quota.

DFO did not make the current fisheries minister, Jonathan Wilkinson, available for an interview. In a statement, the department confirmed that it plans to launch a new process for selecting a fourth surf clam licence holder. The successful Indigenous group will be chosen in time for the 2020 quota season, and the government says an independent third-party will evaluate the submissions received. Beyond that, there are no details.

Mcdonald says the Miawpukek First Nation is considering another bid for the fourth licence and welcomes the use of an independent reviewer. He also believes bidders must clearly prove their readiness to actually fish the quota, including their ability to get a properly equipped vessel on the water. And there must be a more detailed assessment and ranking of the bids—beyond the minister’s scrawl and a box to check off.

Most critically, Mcdonald argues, the new process must help, not hinder, reconciliation. LeBlanc’s stab at selecting a new licence holder was a “step in the right direction”, but pitted Indigenous groups against each other, as well as Indigenous communities against the non-Indigenous population, and Indigenous groups against industry, in a heated competition. “It was probably counter-intuitive to reconciliation,” Mcdonald says. “The government that touted reconciliation didn’t give Indigenous groups a voice... they

basically ignored the issues and concerns.”

Megan Bailey, an assistant professor and Canada Research Chair in integrated ocean and coastal governance at Dalhousie University puts it more bluntly: “It pissed off a lot of Indigenous groups and communities and businesses because that process was not transparent and it was flawed. It’s hard to say what went wrong with the process when there was no transparency in the process.”

According to Bailey, the effort was also unsound because it forced Indigenous groups to fight for a “mere scrap” of the Atlantic fishery. “It’s 25 per cent of the surf clam pie, but that’s one tiny slice of the entire pie of Atlantic Canada fisheries opportunities,” she says. That created a process with one winner and many losers. “(It was) highly competitive and not really in the spirit of reconciliation,” Bailey says. “It’s creating a mess all over the place.”

Bailey contends the process should be extended to cover more marine species, so Indigenous groups can bid on fisheries that best suit their capabilities and resources. “The surf clam is a necessary but insufficient exercise,” she says. “It’s still only one Indigenous opportunity in a sea of amazing fisheries that we have here.”

One of the large questions left unanswered is this: of all Canadian fisheries, why did the government choose the relatively small offshore Arctic surf clam industry for its reconciliation effort? Bailey says she is still puzzled. “It doesn’t really make sense,” she says. “If reconciliation is your goal, I don’t see this as your first mover advantage.”

Management at Clearwater, which lost and then regained 25 per cent of its surf clam quota, also seems unsure of the government’s inspiration. “I can’t speculate on the motivations behind the process,” says Christine Penney, Clearwater’s vice-president of sustainability and public affairs.

When I interviewed Penney in October, Clearwater was still hauling in its 2018 surf clam quota. (It’s a year-round fishery and Clearwater’s three licences cover roughly 35,000 metric tonnes of in-shell clams). The company will maintain 100 per cent



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of the offshore surf clam quota for 2019, but change could again arrive by 2020.

Clearwater previously bid for the fourth licence with Nova Scotia's Mi'kmaq bands, but Penney won't say if the company will pitch with them again.

It's not the only aspect of the surf clam fishery Clearwater is reluctant to discuss. I asked Penney what she saw as the main problem with the government's failed attempt to redistribute the quota.

“Um.” She paused. “Yeah.”

Then she laughed. “I'd prefer to focus on what's important for the next process.”

Penney refused to answer questions about the first reconfiguration attempt. As for the upcoming second effort, she seemed to welcome the promise of a third-party review of the proposals. “It is important to have a clear and transparent process and criteria by which these proposals are going to be evaluated,” she says. “This is a multi-million dollar licence and so a process to bid for that licence really should have some of the core elements of a government procurement process—the same level of discipline and rigour.”

Penney also argues that the economic benefits promised by the other bidders must be weighed against what will be lost if Clearwater again loses part of its quota. For example, new jobs will be added, but existing jobs could be cut. “It's not a new opportunity,” she says. “You're really talking about redistribution of an opportunity.”

According to Penney, 452 people work in Clearwater's surf clam business, most of them full-time, both on the company's three clam vessels and in two processing plants, in Grand Bank, N.L. and Glace Bay, N.S. Clearwater, which sells lobster, scallops, shrimp and other seafood, has been in the surf clam business since the mid-1980s and has held a monopoly over the offshore licences since 1999. Other companies have fought unsuccessfully to end that dominance, with Clearwater fighting to retain its stake.

The company's rationale for retaining the full quota is this: the Arctic surf clam was a product of relatively little value until Clearwater pioneered new markets and

better harvesting technology. The company also says it has spent more than \$150 million on vessels in the last three years. Thus, their argument goes, it's not fair to simply pull quota from Clearwater and hand it to someone who will benefit from the value Clearwater created.

“We've spent millions of dollars investing in the fishery and creating the market and in buying the access,” Penney says. “Clearwater has purchased all of the licences and quotas that we currently hold in this fishery.”

Bailey, the Dalhousie professor, expressed some sympathy for that argument, though not much. “From their point of view, it totally sucks. From their point of view, it is not fair,” she says. “But neither was it fair to dispossess Indigenous communities across Atlantic Canada of their ability to access fish and to support their peoples and economies and to attain food sovereignty. I don't think Clearwater gets to pull the ‘fair’ card here if we are talking about a policy that is meant to contribute to reconciliation.”

According to Penney, Clearwater pays DFO roughly \$1 million a year in fees to access the surf clam quota. Clearwater's surf clam sales totalled \$109 million in 2017, representing close to 18 per cent of the company's total annual sales. The clams, which have red flesh, are popular in sushi in Japan, China and South Korea, where they are known as hokkigai or bei gei bei.

“The Asian market didn't exist when we started fishing this product,” Penney says. “And the technology was largely unknown.”

Not surprisingly, Clearwater originally claimed its quota was “expropriated”. I asked Penney if the company regretted using that language. At first, she skirted the question. “The expectation was that the government would continue to respect the quota allocation,” she says. “It creates a level of uncertainty that is in fact stifling re-investment.”

I asked again—was it a mistake to claim quota had been expropriated from the company? “It is as close to that definition as I think anything is,” she says. “This is something that Clearwater held. The expectation was, based on existing fisheries policy, that it is essentially held in perpetuity.”

She added: "It's certainly more accurate than the use of the term 'monopoly', which has been thrown around a lot in relation to this fishery."

Penney proceeded to launch into a short lecture on the company's deep dislike of the term "monopoly". Yes, Clearwater holds all the offshore Arctic surf clam licences, but they are not the only supplier of the clam, Penney argued, pointing to a small Quebec surf clam fishery and international competitors. "It's very frustrating for us at Clearwater to hear that word thrown around in relation to this fishery," she says. "It's certainly factually inaccurate and we feel it's prejudicial to Clearwater."

Clearwater is not the only company harbouring frustrations about how the surf clam file has been managed and reported. Clearwater lost part of its quota, then got it back; Five Nations nabbed the quota, then lost it.

When I called Edgar Samson, the CEO of Premium Seafoods, the

industry player behind Five Nations, he was curt and not keen to discuss the issue. "There's really nothing to talk about. I mean, it's over. The decision's been reversed, so what can I say?" Samson told me when I reached him on his cellphone.

I asked if he planned to submit a new bid. "We'll have to look at the criteria," he says. "I really have no comments to be honest with you. I had enough of it."

So, has it been a frustrating process for you? I asked. Samson laughed. "I don't need to answer that."

Then he hung up. |nrm

18%

How much the surf clam represents in Clearwater's annual sales

2020

The year when the federal government says a fourth Arctic surf clam licence will be awarded

FEEDBACK

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