



Newfoundland and Labrador Environment Network

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28 November 2016

To: Standing Committee on Fisheries and Oceans

Recommendations from ENGOs in Newfoundland and Labrador on the *Fisheries Act*

The Newfoundland and Labrador Environmental Network (NLEN) collected the following comments from 23 environmental nongovernmental organizations (ENGOs) in Newfoundland and Labrador. The local office of Fisheries and Oceans Canada (DFO) provided an overview and scope of the consultation via teleconference on 3 November 2016. Comments were then collected via email by NLEN and on 21 November 2016 all comments were discussed and debated at an in-person meeting of ENGO representatives. These comments received general consensus, though do not necessarily represent the exact view of any particular ENGO involved unless otherwise reiterated in letters of comment attached as appendices. The appendix includes a list of organizations that participated in this consultation and three letters of comment from specific organizations.

Comments are provided as bullet points for brevity and grouped under four, often overlapping, themes: (1) conservation and protection of fish and fish habitat, (2) monitoring threats and reporting back to Canadians, (3) compliance and enforcement, and (4) opportunities for partnership and collaboration.

NLEN is a non-profit, non-governmental umbrella organisation for non-profits working across the province that hold environmental conservation and protection as an objective and who support the objective of the Network. NLEN's purpose is to carry out environmental education on issues such as sustainable development, biodiversity conservation, and climate change.

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Theme 1: Conservation and Protection of Fish & Fish Habitat

- Return to the pre-2012 habitat protection provisions, specifically the former section 32 and 35(1), eliminating the current section 35 and section 2(2), *with the following revisions, bolded*:
 - S.32 No person shall destroy **aquatic life** by any means other than **environmentally sustainable** fishing.
 - S.35(1) No person shall carry on **any work, undertaking or activity including fishing** that results in the harmful alteration, disruption or destruction of **aquatic life** habitat. (HADD)
- Provide further guidelines or definition on what it means to “destroy” and what “harmful alteration, disruption or destruction” means.
- Replace fish with aquatic animal in all parts of the act and define aquatic life as appropriate with consideration to the whole food web; specifying this includes freshwater and marine aquatic life. This would clarify that all activities that impact aquatic life in general are subject to the fisheries act.
 - Change the name of the act to the aquatic life act.
- Any regulations making exemptions should be required to comply with listed factors that aim to ensure the health and sustainability of aquatic life and its habitat, such as the guiding principles and purposes presented by West Coast Environmental Law, in their submission entitled: *Scaling up the Fisheries Act: restoring lost protections and incorporating modern safeguards*. Found at this url: <http://tinyurl.com/zvujxcp>
- Authorizations should be the concern of the Standing Committee on Fisheries and Oceans (SCFO) rather than resting solely with the discretion of the Minister
 - Authorization decisions should follow an agreed-upon set of criteria and be made public with the opportunity for appeal, listing the reasons and criteria by which the decision was made.
- Section 6, the guiding principles
 - To recognize that all fish and fish habitat need protecting, rather than just those connected to a fishery, section 6(a), (b) and (c) should be eliminated
 - Section 6(d) public interest should be understood to include open and transparent public consultation, where public input is readily and freely available to the public.
 - Make “No Net Loss” a requirement for the guiding principles with an overall goal of net gain; allow only habitat for habitat offsets with no monetary compensation.
 - Proponents would include a habitat restoration plan and monitoring in their proposal budget.
 - Proponents would not have a choice of scientists hired to monitor in order to prevent conflict of interest and biased reporting.

- Would require continued monitoring well into future to ensure no net loss.
- Generally speaking, habitats most often cannot be adequately replaced elsewhere as compensation for habitat destruction. Please refer to a paper by J.T. Quigley, and D. J. Harper "Effectiveness of Fish Habitat Compensation in Canada in Achieving No Net Loss" (2006) Environmental Management 37: 351 found at this url: <http://tinyurl.com/j8dufuk>
- Guiding principles should include sustainability principles, local knowledge and cumulative effects from prior habitat alteration and destruction.
- Should note special concern to avoid the destruction of Species at Risk, species low on the food chain, and forage fish spawning grounds.
- Identify and prioritize in the guiding principles ecologically significant areas, including wetlands and essential fish habitat.
- Recognize and always consider that aquatic life is valuable not only as supporting fisheries for human consumption but also as vital to the whole environmental web which affects many aspects of human and non-human life.
- Increased research and innovation across the board to guide authorizations.
 - Scientists should be provided protection and autonomy.
 - Research should be independent and peer-reviewed.
- All research and all records should be protected in perpetuity and available to the public for future comparison and learning on similar projects.
- Recognize responsibility of regulating all industries, including finfish aquaculture, insofar as native fish and fish habitat are being threatened with destruction and permanent alteration, including genetic changes.
- DFO should provide information, advice and guidance about specific operations and projects rather than just general guidance.
- Increase guidance and enforcement of Urban Stormwater Guidelines and BMPs for Protection of aquatic life.
- Increase guidance and enforcement on riparian buffer zone protection requirements.
- DFO should be legally bound to monitor and enforce penalties as required by the *Fisheries Act* (*Aquatic Life Act*).
- Section 35 and 36 needs to be strengthened and resources allotted concomitantly for the proper enforcement of the intent of these sections;
 - This Act should clarify that section 36 is under the jurisdiction of the Minister of the Environment.

Theme 2: Monitoring Threats and Reporting-back to Canadians

- In conjunction with a permit based system, create a public registry of all projects covered by Sections 32, 35 and 36, including projects such as those subject to the *Metal Mining Effluent Regulations*, as well as minor works/minor waters and projects jointly administered by other departments. Use to assess and manage cumulative effects by learning from past experiences.
- All works authorized by the Minister, or SCOFO as recommended, under sections 32, 35 and 36 should trigger an environmental assessment with possibility to appeal the authorizations.
 - The environmental assessment and the entire appeal process should be transparent, and open to the public, with funding available such that the public is able to fully participate.
- All major works authorized by the Minister, and areas with more than one minor works should require independent peer-reviewed research studies and reports at a variety of time intervals on the effectiveness of recovery, compensation measures and cumulative effects; this would inform future authorizations and permits (in a permit-based system).
 - This would be paid for by the proponent
 - Reports would be readily and publicly available.
- Increased mapping and data across the board to better inform the authorization and permitting systems, including:
 - *Mapping of Hydrologic Impact Zones*
 - *A Bathymetric Database*
 - *Large Ocean Management Area research*
 - *Ongoing and past habitat disruption, activities including fishing and development*
- Where possible, all effort should be made to rebuild and regularly update the DFO library at the NAFC.
- SCOFO should publish an annual public report on the effectiveness of the *Fisheries Act (Aquatic Life Act)*, including some retrospective reports.

Theme 3: Compliance and Enforcement

- Increase fisheries protection officers and local habitat management and protection offices, particularly in rural areas.
- Increase science, such that decisions can be science-based and include the cumulative impacts of projects and ecosystem interactions within regions as with a Regional Environmental Assessment.
 - Scientists should be independent, have autonomy, and protection.
 - Research should be peer-reviewed
- Increase restoration projects, use best science available to prioritize sites.
- Increase budget for NGO/local population consultations.
- Expand proponent pays provisions to fund fish and habitat protection provisions.
- Enhance partnerships to fulfill resource requirements, including:
 - universities, community stewards, environmental nongovernmental organizations, indigenous governments, provinces, municipalities and other federal departments/agencies.
- Creation of a centralized body to co-ordinate the implementation of environmental and maritime law, including:
 - facilitating a public registry of infractions
 - responding to public concerns such that individuals and organizations can file complaints against companies, municipalities or individuals causing damage to aquatic life or aquatic life habitats.
 - facilitating public involvement in the protection and promotion of maritime and environmental sustainability
- The public, through this centralized office, could help inform DFO of projects not registered on the public registry (as recommended under the theme of Monitoring Threats and Reporting Back to Canadians).
 - Reporters of infractions should benefit from any fines and/or lawsuits against the proponent
- Enhance the environmental emergencies and pollution response system (“spill line”), and eliminate current confusion for the public on where, or how, a particular even should be reported.
- Expand regulatory authority for minor works and minor waters.
- Eliminate self-assessment.
- Introduce permit system coordinated with the provincial and third party enforcement.

- Require all projects be listed on a public registry; ‘all’ to include projects regardless if authorized with no changes, authorized with changes, and not authorized. Clearly indicate the proportion of submitted projects that were eventually authorized. Registry should be freely available without requiring an ATIP request and should contain all information known.
 - In a permit-based system where self-assessment has been eliminated.
- Modernize current stock assessment systems.
 - *Improve use of automated monitoring*
- Include by-catch in fisheries assessments.
- Legislate proponents to replace or remove dated infrastructure and mandate future use of fish-friendly infrastructure (such as floodgates, fish passages and pumps).
- Enact a law whereby proponents must apply for re-licensing projects and infrastructure in a specific number of years or remove them in an environmentally sound way.
 - Dated infrastructure that is no longer considered environmentally best practices would be replaced or removed at the proponent’s expense.
 - Include the removal of barriers and culverts that are now filled in, etc.
- New and increased penalties for a wider variety of offenses with separate offenses for each further day of noncompliance.
 - Penalties should be high enough to ensure self-compliance rather than considered the cost of doing business. This may include increased monitoring paid by the proponent for current and future projects, or even a model where proposals by repeat offenders are automatically denied.
 - Individuals and organizations who report offenses should receive monetary benefit, via a portion of the fines, to encourage public monitoring.

Theme 4: Opportunities for Partnerships and Collaborations

- We need an ecosystem based, multi sector governance and regulatory system.
 - A committee may be required to decide the best way to go about this.
- Increased consultation with the provinces – to identify gaps in legislation, areas where they can collaborate on enforcement, and clarification on jurisdictions.
- Increased resources to collaborate with the public, indigenous governments and groups, municipalities, provinces and NGOs to map and classify watercourses, specifically in rural areas.
- Consistent monitoring and enforcement must include DFO officer and should be in collaboration with local guardians, specifically including indigenous communities and ENGOs, ensuring access to adequate resources that avoid conflicts of interest.
 - All projects must receive periodic monitoring directly by DFO
 - DFO must be funded sufficiently with money and staff in order to carry out their work.
- Use local knowledge to identify historical habitat loss and prioritize its restoration, if assessed to be feasible without disrupting a re-established, viable habitat.

List of Organizations

The following organizations participated in the consultation leading to this report. The individual comments of this report received general consensus, though do not necessarily represent the exact view of any particular ENGO involved unless otherwise reiterated in the attached letters of comment.

1. Atlantic Salmon Federation
2. Coalition Alternatives to Pesticides NL
3. Canadian Parks and Wilderness Society NL
4. Fishing For Success
5. Quidi Vidi/Rennie's River Development Foundation
6. Grand Riverkeeper Labrador Inc.
7. Indian Bay Ecosystem Corporation
8. Indian Head Mikmaq Sharing Circle
9. Kelligrews Ecological Enhancement Program
10. Manolis L Citizens Response Committee
11. Mercy Centre for Ecology and Justice
12. Northeast Avalon ACAP
13. Nature NL
14. Nature Conservancy of Canada
15. Newfoundland and Labrador Environment Network
16. Newfoundland and Labrador Environmental Educators
17. Port aux Port Fisheries Committee
18. Salmon Preservation Association for the Waters of Newfoundland
19. Salmonid Association of Eastern NL
20. Salmonid Council of NL
21. Stewardship Association of Municipalities
22. Sierra Club NL
23. Western Environment Centre

This report was prepared by the Newfoundland and Labrador Environment Network (NLEN). NLEN is a non-profit, non-governmental umbrella organisation for non-profits working across the province that hold environmental conservation and protection as an objective and who support the objective of the Network. NLEN's purpose is to carry out environmental education on issues such as sustainable development, biodiversity conservation, and climate change.

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samnl.org

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November 22nd 2016

Re: Public Consultations on changes to the *Fisheries Act*

Dear Parliamentary Standing Committee on Fisheries and Oceans (SCOFO),

Fisheries and coastal habitat are important to Canadians, and especially so to Newfoundlanders and Labradorians. As a small NGO working closely with coastal and inland communities across the province, we are encouraged by the current Fisheries Act consultations which offer an opportunity to strengthen protection for aquatic life and habitat across the country.

Aquatic, coastal, and riparian ecosystems are culturally and ecologically important and fall under the jurisdiction of the Department of Fisheries and Oceans Canada (DFO). As the only federal department responsible for this habitat and its associated species, we would like to see DFO take a more active role in conserving these resources that are important to our communities and future generations. A strengthened Fisheries Act would allow DFO to better fulfill its mandate, including conservation. Management, monitoring, and enforcement are all important components of this. Specifically, we would like

- a) For the Fisheries Act to include all aquatic life, not simply fish that “are part of a commercial, recreational, or Aboriginal fishery, or...support such a fishery”. All aquatic life is important, including that which may not appear to directly support a fishery;
- b) For developments near ecologically sensitive areas and important fish habitat to be entirely prevented, in some cases, as not all habitats can be compensated for;
- c) For “No Net Loss” of habitat to be a requirement for all authorized development projects;
- d) Increased enforcement, particularly in rural regions;
- e) The elimination of the Self-Assessment section of the DFO website, and for all projects to be reviewed by DFO;
- f) A public, online registry of all projects, including those which were authorized with no changes, those authorized with changes, and those not authorized, clearly indicating the proportion of submitted projects which were eventually authorized;
- g) For the term “fish” (which in the context of the *Fisheries Act* is defined as including invertebrates, marine mammals, etc) to be changed to “aquatic life” or “aquatic animals” in the *Fisheries Act*. This would clarify that developments that impact aquatic life in general are subject to the same

considerations as those that impact 'fish' in the strict sense. The use of the term 'fish' to cover entirely different groups of aquatic animals is misleading and unnecessary.

These ideas, if implemented, would go beyond addressing the harmful 2012 changes to modernize and strengthen the Fisheries Act, allowing it to both better protect aquatic life and become more transparent.

Sincerely,

Linda Bailet

President
Stewardship Association of Municipalities, Inc. (SAM)
Newfoundland and Labrador, Canada

cc: Tony Chubbs, Vice President
cc: John Norman, Secretary
cc: Catherine Kleinwort, Treasurer
cc: Laura King, Conservation Biologist for SAM

November 16, 2016

Letter to Newfoundland and Labrador Environment Network Nlen.ed@gmail.com

Re: ENGO Consultation on 2012 Changes to the Fisheries Act

First, on behalf of the Manolis L Citizen Response Committee (MLCRC), we wish to express our thanks to NLEN for having organized the November 3, 2016 telephone consultation with the DFO and Fisheries Protection Program representatives concerning changes to the Fisheries Act.

While we are unable to have a member present at the November 21, 2016 Workshop, we did wish to make certain recommendations on this important endeavour to the Parliamentary Standing Committee on Fisheries and Oceans (SCOFO). **We are sending these recommendations to NLEN with the request that they either be appended to NLEN's submission to SCOFO, or alternatively, that this letter be forwarded on our behalf to the Parliamentary Committee.**

The MLCRC is a citizen's group formed for the primary purpose of advocating for the permanent removal of oil from the 1985 Manolis L shipwreck in Notre Dame Bay, NL. The MLCRC is composed of citizens from the fishing areas of the Hamilton Sound Region.

The MLCRC outlines its concerns below.

1. The section of the Fisheries Act having the greatest impact on our Committee's goal to see the permanent removal of oil from the Manolis L wreck is s. 36(3)¹. We were disappointed this section was not 1 addressed in the November 3rd Information Session, except for the comment from the departmental representatives that it did not concern DFO as this section is administered by the Department of the Environment. The bifurcation of responsibilities for administration of the Fisheries Act, at least in this section, makes it confusing and difficult for the administration of the Act and monitoring compliance with it.

Recommendation #1:

- (i) That section 36 of the Fisheries Act, and in particular s.36(3), should be strengthened and resources allotted concomitantly for the proper enforcement of the intent of this section; and
- (ii) That the Act clarifies that this section is under the jurisdiction of the Minister of the Environment.

2. The term "**serious harm to fish**" in s.2(2) of the current Act, has replaced the prior prohibition of any undertakings that resulted in the "harmful alteration, disruption or destruction of fish habitat"². "Serious harm to fish" dilutes the former intent of the Act as breaches are now limited to "**death** of fish or any **permanent** alteration to, or destruction of, fish habitat". We submit that the new approach fails to capture other deleterious effects of undertakings that are equally as

¹ 36(3) Subject to subsection (4) [ie, authorized by regulation], no person shall deposit or permit 1 the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where the deleterious substance or any other deleterious substance that results from the deposit of the deleterious substance may enter such water. Fisheries Act RSC 1985,c. F-14

² Fisheries Act, s.35, pre-June 28, 2012

harmful and damaging to fish habitats and fisheries that may not be permanent in nature or result in actual death of fish, for example, poisoning of fish which may not result in death but genetic alteration.

Recommendation #2: That there be a return to the more stringent definition of harm as in the former Act, or in the least a strengthening of the definition of “serious harm” to include both **temporary** and **permanent** harm to fish habitat and damage or injury to fish that may not result in death to the fish but which could be even more serious to fish and fisheries.

3. We have several concerns regarding the provisions in the Fisheries Act that allow the Minister (or his delegate) to authorize exceptions to the serious harm provisions³. While at times it may be necessary to waive some of the prohibitions under the Act, we are concerned with the nature of the **self-reporting system** introduced in the 2012 amendments to the Act. We are also concerned that where authorizations are granted, these are not kept in a registry available to the public. On balance, the authorizations and s.6 guidelines appear to favour industry and commerce as opposed to fisheries and fish habitat. Further, it is our information that the Fishery Protection Program offices, along with corresponding resources, have been reduced from over 60 to less than 2 dozen.

Recommendation #3: That the process by which a proponent requests authorization to cause serious harm to fish or fish habitat be changed from a program of self-assessment to a new program requiring more departmental involvement, and public disclosure of any requests to interested parties such as recreational or commercial fisheries and aboriginal groups with an opportunity for them to respond.

Recommendation #4: That all authorizations to cause serious harm granted under s.35 of the Act be recorded in a Public Registry and made freely available upon request of an interested person, without requiring an ATIP request.

Recommendation #5: That the resources necessary to allow more departmental intervention in assessing and monitoring potentially harmful undertakings or serious harm be granted to the Department of Fisheries and Oceans.

4. The number and breadth of maritime and environmental statutes protecting fisheries and oceans is vast⁴. These are administered by at least four federal government departments⁵, not to mention additional 5 Boards and Agencies⁶. The MLCRC has experienced tremendous frustration and confusion trying to ascertain what legislation applies to what circumstance and who is the responsible government department or agency in a given instance. We do not believe we are alone in this confusion. This often results in the non-application of important laws and regulations and non-enforcement in circumstances requiring attention. Unreasonable

³ s.35(2) Fisheries Act

⁴ Fisheries Act, Marine Liability Act, Ship-Source Oil Pollution Fund, Environment Act, 4 to name but a few.

⁵ Departments of Fisheries and Oceans, Environment, Transportation, Public Works and 5 Government Services.

⁶ Ship-Source Oil Pollution Fund, Fisheries Protection Program, Species at Risk 6 Advisory Committee, Canadian Environmental Assessment Agency to name a few.

limitations of actions provisions in legislation result in valid claims being lost. This is a problem that an open and accountable government must address.

Recommendation #6: That SCOFO recommend the immediate creation of a centralized body to coordinate the implementation of environmental and maritime law; that this repository be responsible for education and outreach to individuals and groups to assist the public to navigate through difficult environmental laws and jurisdictions with a view to facilitating public involvement in the protection and promotion of maritime and environmental sustainability.

Respectfully submitted, Manolis L Citizen Response Committee

David McConkey

Carolyn Parsons Chaffey Co-Chairs