



Yukon Fish & Wildlife Management Board Public Survey Comments on Implementation of New Protection Provisions under the Fishery Act

Submitted by Hilary Cooke and Don Reid, WCS Canada, Whitehorse, Yukon (21 August 2013)

1. What species of fish in the Yukon would be considered as part of commercial, recreational or Aboriginal fisheries, or supporting such fisheries, and thus protected along with their habitats under section 35?

Disagree with DFO implementation provisions.

Agree with YFWMB interpretation

Comments: All fish species in Yukon should be considered part of commercial, recreational or Aboriginal (CRA) fisheries under the Fisheries Act as all are directly fished, support fished species by being prey or part of a supporting food web, or may be part of a fishery either directly or as part of a supporting food web in the future. Many remote water bodies may be intermittently, or rarely, fished, but should still be covered under the prohibitions, because past experiences and future options should not be foreclosed. Thus, all water bodies in the Yukon should be explicitly recognized as having the potential to support recreational and Aboriginal fisheries and be protected under the Fisheries Act.

2. What would constitute "serious" harm to fish, and to what waters would the prohibition apply?

Disagree with DFO implementation provisions.

Agree with YFWMB interpretation.

Comments:

1. Definition of serious harm: The DFO Discussion Paper (April 2013) defines serious harm to fish as "the death of fish; the permanent alteration to fish habitat as an alteration of such duration that limits or diminishes the ability of fish to carry out one or more of their life processes; and, the destruction of fish habitat as an elimination of habitat such that fish can no longer rely on this habitat to carry out one or more of their life processes." We disagree with this definition. A project or activity should be considered as causing serious harm if it affects the present or future persistence of a fish population, either directly or through impacts on habitat and the supporting food web, and including the ability to adapt to climate change. In addition, a project or activity should be considered as causing serious harm if the cumulative effects of stressors at a watershed scale affect the present or future persistence of fish in that watershed, including through impacts on habitat and/or the supporting food web.
2. We assert that all fish species in Yukon should be considered part of commercial, recreational or Aboriginal (CRA) fisheries under the Fisheries Act and all water bodies in the Yukon should be explicitly recognized as having the potential to support recreational and Aboriginal fisheries under the Fisheries Act (see response to question 1). Thus, prohibitions on causing serious harm to fish (as we define previously) should apply to all waters in Yukon Territory.

3. Definitions of sustainability and ongoing productivity: The DFO Discussion Paper defines sustainability as "the use of the environment and resources to meet the needs of the present without compromising the ability of future generations to meet their needs" and defines productivity as "the sustained yield of all component populations and species and habitats that support and contribute to a fishery in a specified area". We agree that, in the context of CRA fisheries, the definition of sustainability should include consideration of the ability of future generations to meet their needs. However, a maximum sustained yield approach to managing fish populations, as has frequently been employed, is inadequate. This is because a harvest even slightly in excess of the maximum sustained yield level will overexploit and drive the population down. Our ability to model the wide uncertainties in recruitment and survival given a changing climate and multiple human stressors is poor, meaning we are highly likely to miscalculate the maximum sustained yield level in many years, thereby putting stocks at risk. Therefore we recommend a precautionary approach that sets catch limits substantially below maximum sustained yield model projections, allowing some leeway for the huge uncertainties that current stock assessments face.

3. How would the proposed review and decision-making process be integrated into the public environmental assessment and decision processes mandated under land claims agreements, YESAA legislation, and YESAB process in Yukon? AND

What steps have, or will be, taken to ensure that the decision factors and proposed implementation criteria are consistent with the existing process so that there is full public accountability and transparency and no duplication of process?

Disagree with the DFO implementation criteria.

Agree with the YFWMB conclusions.

Comments:

1. A proposed intervention in a fishery or fish habitat is likely to be subject to review by YESAB and ultimately the Yukon cabinet, and by the federal department (Fisheries and Oceans Canada) and ultimately the federal Minister. DFO's proposed implementation of the Fisheries Act, as outlined in the Discussion Paper (April 2013), does not address how these processes would be integrated. Which one would get priority of effect in the case of contradictory outcomes or blanket decisions? Which process could provide conditions that would necessarily be adhered to? Will the federal jurisdiction over freshwaters and waterways continue to be distinct from, and have precedence over, any Territorial legislation such as the Yukon Environmental and Socioeconomic Assessment Act?
2. The Fisheries Act identifies four factors for consideration by the Minister of Fisheries and Oceans Canada when making decisions regarding the protection of CRA fisheries. The four factors are: a) the contribution of the relevant fish to the ongoing productivity of commercial, recreational or Aboriginal (CRA) fisheries; b) fisheries management objectives; c) whether there are measures and standards to avoid, mitigate or offset serious harm to fish that are part of or that support a commercial, recreational or Aboriginal fishery; and, d) the public interest. The DFO implementation process should include a provision that any Ministerial decision should be provided in a public statement fully disclosing which of the four decision factors were used and the supporting scientific evidence. The public statement should also provide rationale for how and why a decision deviates from that suggested by scientific evidence and identify any resulting risks to CRA fisheries and associated waters. The inclusion of 'public interest' as a key decision criterion to be used by the Minister is a subjective criterion and thus it is imperative that the public statement provides argumentation of the factors deemed relevant to the 'well-being of society' when the public interest criterion is applied. Without a public document for the record, the purported additional transparency in the Fisheries Act becomes meaningless.