

Meeting Minutes

ENGO – DFO National Workshop Strengthening Application of the Habitat Protection Provisions of the *Fisheries Act*

Date	October 11 – 12, 2006
Location	Sussex Room, Government Conference Centre 2 Rideau Street, Ottawa

Day 1: Wednesday October 11

Proceedings:

▪ *Introductions*

▪ *Agenda Review:*

- The three main issues for discussion are to be the *Fisheries Act* Renewal, enforcement of the Fisheries Act, and the use of the *Fisheries Act* to trigger CEAA.
- Bruce: A key issue is Minister Hermes' announcement on Friday [October 6] regarding bottom trawling. There is need for discussion and feedback. I motion to extend an invitation to the Minister to attend.
- Organizing committee will meet during break regarding this request.

▪ *Questions / Discussion:*

- Is this a consultation or an information session? How does this discussion fit into implementing EPMP?

- Are the DFO members present biologists? We want to know status of the DFO employees.

- There are representatives from all regions, most are biologists.

- Is there a DFO enforcer here?

- No. From Habitat Management, overseers of habitat protection, CEAA, conservation.

- Contact information and an organizational chart for DFO representatives will be provided tomorrow.

- Martha: This is a consultation. We are in the process of trying to secure a meeting with the Minister as a follow-up. DFO can only go so far (no political decision-making). This is to be a collaborative joint-process.

▪ *Joint Presentation (Susan Rutherford & Christine Stoneman):*

Meeting Minutes: ENGO – DFO National Workshop

- Susan: The purpose of this workshop is to initiate a two-way conversation to understand parties' interests, conserve and enhance environmental quality, and influence decision-making re: CEAA and fisheries policies.

- Christine: We are often criticized for lack coherence, predictability, transparency, and credibility and a great deal of time spent on things that were very low risk. There is a strong need for integrative planning and stewardship. There was a programming shift in 1999 that was fragmented and reactive. We need another shift to something that is more proactive.

- DFO/ENGO interests in the Risk Management Framework (RMF):

- Christine: The Risk Matrix (RM) is based on biological science. We want to find better ways to minimize harm and make this information accessible for proponents.

- Susan: Points in backgrounders: Reaction from ENGOs to the risk-based approach include (1) concerns that this is a shift away from a regulated process to an administrative process, (2) questions around how risk is defined (especially low risk), (3) site-specific considerations will be lost, and (4) there is a lack of clarity. Enforcement concerns include the small size of the enforcement budget, slashed budget, reduced number of Fisheries Officers, and the status of Fisheries Officers.

- Christine: There has been reductions in Habitat Monitors and Fisheries Officers. We want to have dedicated Fisheries Officers in field.

- ENGO: Re: triggers: non-triggering approach not in compliance with CEAA. There is a lack of assessment, cumulative impacts, and public involvement which is diluting the effectiveness of EA to its lowest denominator. Narrow(ing) the scope affects the effectiveness of EA where only fisheries issues are looked at and not the bigger picture. FA renewal includes wanting to remove s. 35 as an EA trigger.

- Christine: DFO cannot adjust policy on spot. We want and need to hear all concerns and opinions.

- ENGO: We need to be respectful, brainstorm solutions, and have a constructive discussion.

- *Questions / Discussion:*

- Re: reallocation to high-risk activities. What is the goal? Want to understand department mindset.

- What is difference between Letters of Advice (LoA) and Operational Statements (OPS)?

- Is the risk-based approach open to changes?

A: Will bring recommendations to the Minister and talk about changes. Will try to arrange a meeting with political leaders. Will make notes re: discussions and recommendations.

Meeting Minutes: ENGO – DFO National Workshop

- Re: water quality and deleterious substances. There is no one here to address this issue. Can we have someone from the Minister's office come to this meeting?

A: We will discuss this at break. Expectation is no.

▪ *Presentation on Fisheries Act Renewal (Pat):*

- See deck

- *Questions / Discussion:*

- Q: How do you expand powers when there will be reductions in Fisheries Officers?

- A: There will be no reductions except in C&A. Biologists will be able to be inspectors.

- Q: Existing case law under s.35, decrees that a "work or undertaking" cannot apply to s.35. Is this going to be addressed?

- A (Pat): Yes.

Q: Why are Conditions and Authorizations not enforceable? There are no specific provisions that provide for enforcement of the FA, only a failure to comply. This is limited.

A: The intent is to create a specific provision to address this.

- Q: Not clear on authorizing a class work or undertaking?

- A: Be able to designate a class to a work (ex: pulp/paper). This would allow for regulations for HADD under the FA.

- Q: Where is the reallocation coming from?

- A: Internally, from within the department due to additional resources. Fisheries officers will increase by about 60 -70 Officers. Instead of chasing paper, we are putting people in field (Re: OPS).

- Q: What is the position of an inspector? Will there be new positions / monitors? Who? Can they respond? What will be the ratio?

- A: There will be three designations: Inspector, Analyst, and Fisheries Officer (Limited power. Will be able to inspect site for non-compliance and give advice.).

- Q: What is monitoring? Are you going to employ other departments? What other resources will be used?

- A: There are three types, two are project-based: (1) Compliance, (2) Effectiveness of mitigation, (3) Effects on the health of the ecosystem.

Q: Will you share resources?

A: There will be provincial and inter-departmental sharing (For example: EC, Parks Can.).

- Q: How will staff be allocated for prevention? To avoid damage? You find damage instead of preventing it.

- A: We review referrals and major projects and work with proponents to redesign and/or relocate. The purpose of OPS is to let people know of the effects and measures

beforehand. OPS streamline and inform by clarifying the rules of game using communication tools. We will also be working at the watershed level to yield proactive planning, and working with the provinces to integrate policies.

- Q: Is there transfer of authority with OPS? By only looking at high-risk projects, is the government being complicit in letting HADDs happen? Could they be open to a class-action lawsuit dependant on decision of individual?

- A: They never had to seek allowance from DFO.

- Organizing committee:

- Re: Having someone from Minister's office present. DFO wants these discussions to take place at the bureaucratic level. A report will be submitted to the Minister's office and delegates will meet with representatives from Minister's office on October. 30, 2006 to discuss.

-Q: Is there two solitudes between DFO and the Minister's office? There will be no DFO staff at meeting to address bottom-trawling? We have no feed into the agenda. This is a main issue for Greenpeace and no time will be set aside for discussion.

- A: The CEN selected the workshop group based on ENGO criteria and to fit everyone's needs. There was no DFO input. The risk management and enforcement discussion can also be augmented to involve fisheries technologies. This can be injected without altering the agenda.

▪ *EPMP and Risk Management:*

- *Questions / Discussion:*

- Q: An accountability mechanism when DFO fails to protect fisheries is missing. Who is being held accountable in the federal government? There has been a 60% loss in the Bay of Fundy under DFO's watch. Who is being held accountable?

- *An ENGO Perspective of the Department of Fisheries and Oceans' Risk Management Framework*

- *Questions / Discussion:*

- Q: How does a DFO biologist decide what is low/ med/ high risk? Will they use a consultant's approach? Experience is that consultants use a cut and paste methodology that can be ineffective and local, site specific knowledge can be missing.

- C: DFO is evading CEAA by avoiding looking cumulative impacts. Without a legal requirement, these won't be dealt with. It needs to be addressed directly in the policy.

- C: There is no scientific background to inform the Risk Assessment and no true ecosystem meaning in it. It does not define what "fish habitat" is. What is the scientific protocol? What are the reference points?

- Q: How can we change the view / interpretation of "sustainable development" (re: "A sustainable environment that allows for development...")? The proposed changes are making it easier for people to do *business*. Should development be a mandate for DFO?

Meeting Minutes: ENGO – DFO National Workshop

- C (Fred): The word “healthy” is not anywhere. Foremost, the ocean must be healthy. We need vision statements to this effect in the Act. We need to protect *generally*.

- C (Martha): I disagree entirely with the Risk Management approach. The public had no input in its development. DFO should not be looking just at high-risk projects. Through the use of Letters of Advice (LoA), DFO is acting unlawfully. In only one month, many LoAs authorized HADDs. In this way DFO has contributed to damage to fish habitat. Use the tools you have. “1996 recommendations” should be implemented.

- C: I agree with Martha. This approach does not address cumulative impacts. We do not want this to proceed as is. A geographic scan is essential and regional, strategic EA is critical. The extra layer of oversight in development is lacking. I do agree with streamlining low-risk projects (for example: a footbridge) but rubber-stamping Class Assessments ignores regional and temporal issues and the different sensitivities in different areas.

- C: DFO needs to raise the bar and needs more people in the field. The “Oldman River” decision generated progression which is now receding.

- C (Gerry): The RMF is being applied in the Yukon (re: Placer mining)... While salmon spawning grounds get high protection, there are “different strokes for different fish”... Instead of one Authorization there will be nineteen Authorizations. There is no process for assessing these Authorizations and no public input and the Conditions of the Authorizations will be used to justify it. Re: enforcement / compliance: DFO wants to use a partner (A development partner for mining, creating a conflict of interest). There are problems with weighting, assessment of Authorizations, choosing partners, ect.

- C (Denys): My experience in the province of New Brunswick is that new programs always have a hidden agenda—which is to gnaw away at environmental protection. Streamlining is a concern but predictability is not, it’s common sense. DFO needs to focus on their objective, not go around it. What constitutes a minor failure? What is “a project” in NB? This is a concern because there are no major projects there.

- C (Judy): Need to focus on habitat protection. We see a strong emphasis on voluntary incentives developed without consultation. The view is that this de-enhances protection to fish habitat. Re: change to Schedule 2: a case in point is a mine in Newfoundland developed by AUR Resources. In this case no alternatives were looked at and there was no consultation beyond the minimum. The mine was set up to deposit tailings. What is the criteria of the Risk Matrix from both a science and enforcement perspective? The proposed changes to the legislation (re: reduction in legal CEAA triggers) are going to make it easier for a HADD to occur.

- Q (Zo Ann): Re: accountability: In some cases a large project may be divided into smaller projects to bypass process. Re: Operational Statements (OPS): are they working as intended? How will their effectiveness be assessed? Re: cumulative impacts: These need to be documented in order to examine the effects. We also need legal processes that engage authorities and a division of application.

- Q (Bill): There is room for more acute regulations. There is concern regarding discretion and how the regulations are applied by DFO. How do they get around this?

- Q (Inca): Is the Risk Matrix operational?

- A: Yes.

- C: Would like to bring up a case study demonstrating the failure of “low-risk” designations. Suspension oyster culture was sent to CEAA to undergo a class-screening. The assumption was that the project was low-risk and was in operation with no environmental impact assessment, no measures with which to assess, and no mechanisms to look at impacts on traditional fisheries. The National Science Review for Aquaculture determined that aquaculture is not low-risk and asked DFO to withdraw. Worry is that low-risk activities will not be reassessed and that there will be a lack of information. DFO seems to have an interest in satisfying industry.

- C (Olga): In DFO’s 2004-05 Annual Report to Parliament, the fact that DFO had saved money and that streamlining had reduced or ceased referrals was emphasized but there was no talk about protecting fish habitat. If MOUs are not legally binding, they are meaningless.

- Q (Diane): What about full-cost accounting? What about cumulative impacts? Concern regarding the lack of prosecution. There is a provision for a one million a day fine for FA violation—has this ever been used? What is the cost beyond loss of jobs? These elements need to be present in policy.

- C (Irene): Re: OPS, ect.: the province is not the appropriate level to download to, should be lower. At the provincial level there is no capacity, money, or political will. The promotion of science and research at the local level needs to happen simultaneously. Re: low / med / high risk: we need a new design as it’s too open to political discretion. Only high risk will be worthy of consideration. Risk Assessment has a 30% confidence level. It can be used as a tool for the proponent to minimize the risk. Politically sensitive projects may be designated as medium-risk. What does medium-risk mean? It will be left up to DFO to define.

- C (Fred): Re: s. 7. (decision-making power of minister): ocean fisheries have been destroyed by this section due in part to pressures from lobby groups and license issuing. We need to rethink how we manage. Proactivity requires changes in power and administering. Watershed and ocean management should include people from all backgrounds along with the best science—not just DFO science. There is a need to restructure.

- C: There is a concern that fishing activities will be classed differently under the proposed changes.

- C: (Denys): Habitat policy’s guiding principle is “no net loss of fish habitat”. The focus seems to be shifting to “fisheries management”. We should not just focus on the economics of fisheries.

Meeting Minutes: ENGO – DFO National Workshop

- C: Suggestion: show the effectiveness of DFO policy. What will be the evaluation process for Risk Management policy? Suggestion: evaluate the sea lice issue using the RMF. Also suggest doing five-year reviews. DFO should make a commitment to evaluating using case study assessments.

- Overview of main themes (Facilitator):

- Accountability
- Cumulative effects (avoidance of process)
- Science (what / where is scientific basis for this approach?)
- Partnering & delegation
- Political will

- C (Scott from CEAA): Concern regarding breach between DFO and ENGO group. We share your concerns around the coverage of the CEA Act. As the Agency is the guardian of Act, we have an ongoing issue with DFO regarding this. Re: disagreement with the Risk Management approach. Risk Management is implicit in all policy. The debate centres around whether it is being applied properly, whether there is proper delegation of projects. Are we doing a good job designating? Is low-risk addressing cumulative impacts? This is a major issue for many organizations. There is not a very effective tool kit to address this yet. Therefore non-project assessments (SIA, ect.) are critical.

- Response to Scott: The inland perspective is that more CEAA triggers are necessary. Disagreement with Risk Management. Should look at alternatives to risk assessment such as alternative assessment (which reviews alternatives, does not accept damage, looks at pros /cons, considers the “do nothing” approach). A case in point is the study of culverts: done by DFO and found that every one caused fish habitat Damage (re: cumulative impacts). It is thought that important considerations are selectively left aside when reviewing projects.

- C (Christine): We considered having break-out groups to work on defining concepts but were hesitant because many of you don't want the RMF. The purpose of OPS, ect. is that we want to let people know upfront alternatives and their mitigation and impacts. OPS try to capture projects that always avoid HADD. It's not that all small projects are considered low risk, it's how its done. The Pathways of Effects (PoE) reflects a common sense approach to list effects. Precautionary principles were built into the framework to address this. Everyone was doing Risk Management at their desk. We are now trying to become more transparent and standardized. We want to capture more consistency in DFO evaluation. It still needs improvement as cumulative impacts weren't being assessed. We are working on this and seeking input.

- Q: What if provinces don't want a Lake Management Board?

- Q: What can we do to improve process? Once you assign a classification to project the doors are closed. Show us the hoops.

- A: The purpose was to make this process more transparent.

Meeting Minutes: ENGO – DFO National Workshop

- Q (Inca): Have experience with aquaculture file. Have dogged the department with published science and recommendations about HADDs while DFO has done nothing. Is DFO going to now have a new approach to address this (re: concrete legislation)?

- A (Christine): Yes, we need a new discussion.

- C (Ginny): DFO has a huge range of involvement, nationwide, and a vast mandate. RMF is not trying to avoid CEAA. OPS are there to provide information.

- C: OPS do not avoid impacts. For example, there has been five impacts on the Ottawa River using these. There is no enforcement.

- A (Ginny): We are working with proponents to mitigate HADDs.

- C: DFO *has* to be everywhere. This is your mandate. Policy is to opt out of CEAA, replacing hard fought-for bundle of rights. Rights are being taken away. Regulation is the *only* trigger for assessment. The public needs tools to participate. The current system is that unless impacts are proven, they will not be addressed (ENGOS agree).

- C (Bruce): Would like opportunity to discuss/ be heard on issue of bottom-trawling.

- A (Martha): Pat has inquired about personnel to address this issue. Proposal made to stay until 6:00 (half an hour later) to discuss bottom-trawling.

▪ *Enforcement of the Fisheries Act:*

- *Questions / Discussion:*

- Q (Meredith): Who is monitoring compliance trends? This information is either hidden or non-existent. There is a need for a method to measure compliance in order to report on effectiveness. Is this information made public? If so, who and how?

- C (Martha): Re: enforcement of FA. This is not being done. A few strategic FA prosecutions can have huge value as a deterrent. There is concern regarding staff cut-backs. Fish & Wildlife came to me to prosecute because DFO impeded this. FA is strongest law to protect environment.

Q: How much surveillance? Where is it to be done? Provinces need to do their job. We want to see more proactiveness by DFO. Don't be afraid to enforce FA.

- C (Gerry): Re: Using enforcers with outlook of development agencies in the Yukon: There is a need to monitor this. The development of the partnership regime has resulted in a maze of decision-making without accountability. If we're going to rely solely on the FA, we need to change it to make it more effective. The best tool you have is an occasional major law suit.

- C (Julie): Re: exemption under the FA: fish harvesting is not deemed an undertaking under the FA as is, therefore, not enforceable.

- C (Linda): Compliance Modernization is outdated and a step backwards. Recommendation: a new compliance enforcement policy. Compliance means compliance with the law. You cannot have compliance when it's non-binding. LoAs, ect.

Meeting Minutes: ENGO – DFO National Workshop

are against the rule of law and undemocratic. We need a dialogue to discuss this. Let's not put friendly federal-provincial relationships ahead of compliance law. We need DFO back in Alberta (re: oil sands) as they are the only ones with the power.

- C (Denys): The Backgrounder contains "buzz words" (ex: streamlining, effectiveness, timely). "No money" for enforcement does not exist. How can we have these things if we cut staff and funding? The "harmonization process" is a way to rid DFO of responsibility and accommodate friends.

- C (Bill): Last year a forestry assessment was done where there were documented infractions. DFO was contacted about this yet three months later there was still no action by DFO. They did not visit the site. This represents just one sample and shows that no one is paying attention. Estuary land was said to be not known to be fish habitat by DFO. A website has been set up to document FA infractions and lack of action.

- C (Judy): A case in point: the stream in my yard was filled in. DFO was contacted, visited once, and never followed up. DFO was determined to keep the riparian area static, leading to inconsistencies. Advice: get tough on small things. The trend of reducing legislation means reducing protection. We need enforcement.

- C (Jason): Re: operational position statements: there is a need for the increased use of inspectors vs. officers.

- Q: Re: the connection between CEPA and DFO: does this involve sentencing and reporting? What are they prosecuting? Why is the rate so low (48%)? Why are the penalties (punitive amount) so low? How much is actually paid to the community (restorative justice)? There is no deterrence because the penalties are so low. The public needs to see justice, not be told about it.

- C: Suggestion: make it possible to enforce protection measures. Let's prevent problems. OPS measures have to be enforceable. If you visit a site and see that BMPs not in use make it so that you can lay charge and not wait for a HADD to happen.

- C (Bruce): Re: enforcement: under the renewal process there is no increase in the maximum penalties. This is moot because maximum penalties are not enforced anyway. Why renew when you're not going to enforce?

- C: Re: official DFO policy: gear is not responsible, people are. There are no regulations in the Act to charge for fishing irresponsibly. No one deals with problems in the oceans. Example of NL fishery: the last 60 years have been catastrophic. Yet this has never been addressed in DFO documents. The Port aux Basques fishery has been destroyed. It was beyond management and uncontrollable, the spawning grounds were destroyed. 1.6 million lbs of fish were sitting on the wharf. Integrated management means using people from all areas.

- C (Stuart): There are contradictions which cause problems with enforcement. Aquaculture has caused the introduction of invasive species which are destroying

Meeting Minutes: ENGO – DFO National Workshop

habitat. Provincial and federal operations and relationships are destroying habitat (ex: hydro developments). First nations have put in requests for these to be addressed and have received nothing. The decrease in enforcement officers would be a good thing for First Nations as they infringe on our aboriginal / treaty rights.

Re: regulatory or administrative tribunals: First Nations have concerns about their location and accessibility.

- C (Julie): Re: enforcement: when calling to report an FA infringement, you are referred to Ottawa where often no one takes your call and no one comes or comes late to do a site visit. A check and balance is provided by ENGOs. There needs to be someone present at all times to answer to infringements. Education for fishermen is important as well.

- C (Inca): Increasingly, EC and DFO are moving away from regulation towards performance-based management. Re: “Dying for Development” is a book that exposes how DFO and others failed to protect Belledune from contamination by a lead smelter. This continues today and there has never been fine or warning. We have no confidence in EC and DFO.

- C (Isabel): Re: talk of deregulation of water control for irrigation in Saskatchewan. Where do we go? We are experiencing drainage programs, siltation, illegal ditching, ect. We need help from DFO for re: regulations. Development interests reign in Saskatchewan (ex: hog farms).

- C (Diane): 5% of DFO’s budget is going to habitat. There is a report showing that more fish have been lost due to habitat loss (through agriculture & development) than to over fishing. 95% of DFO’s budget needs to go towards habitat protection. Fish can repopulate streams if the habitat is restored.

- C (Zo Ann): We need new people and strong leadership in the public service. Stop apologizing for doing your job (re: applying the FA). When you decrease the number officials who can lay charges, industry plays on this. We have “complaint-based” monitoring.

- C (Bruno): Re: Olga’s comments on the inadequacy of consultation and the attempted pacification of ENGOs: We need the people here that can answer to enforcement. We need to increase DFO officers, not cut them. We will be your partners in enforcing the FA if you can’t. We need informed, empowered citizens to enforce the regulations that government can’t or won’t. The EPMP is useless.

- C: Alberta “loves” feds as they’re the only hope for protection. We need you to be strong to beef up ENGOs power. How are we going to move very quickly to change the image to young talent coming in to government? There is a need to intensify training and alter the mindset of field officers and enforcers. We need to table new discussions soon. CEMA is an abomination in Alberta; never a target or deadline.

- *DFO Response:*

Meeting Minutes: ENGO – DFO National Workshop

- Pat: The department is not reducing enforcement. Re: spending less than 5% on fish habitat: we have C&A officials who only work on habitat issues. Re: non-responses: we have limited resources and are trying to better deal with occurrences and complaints and are working on improving the way we deal with complaints and monitoring. There is a separate training program in place. Its going to take time to find the right balance. On the contrary, municipalities and others complain that DFO is too strict. Working with provinces is difficult because of jurisdiction. Ministers agreed in 2001 to enter into agreements. This has proven very difficult (only 4 in 4 years).

- Christine: We are trying to increase the number of biologists in field to have more expertise as Fisheries Officers have less expertise. Provinces can order removals, ect. whereas DFO has to prove a HADD. Therefore, it is sometimes more effective to partner with provinces.

- C (Ed): DFO staff has tried to do their job very well and are trying hard to enforce the DFO presence in central Canada. Fact sheets and OPS are meant to make people more aware. DFO staff makes prescriptive assessments surrounding s.35. Some staff work 50% on proactive projects. Help us bring your energy to our approach.

- C: There is a fundamental power imbalance: ENGOs vs. industry. Industry wants and economic interests inform their position. ENGOs are not in a power position. We are the only ones who do not directly benefit from this. The dialogue is imbalanced with industry driving it.

- Q: How are OPS going to be enforceable?

- A (Chris): Without a HADD we cannot do anything.

- A (Pat): We cannot charge on an Authorization if no HADD occurs. If they follow the OPS and a HADD occurs, they've practiced due diligence and cannot be charged.

- C: OPS will be used as a defence.

- Q: If not an egregious HADD violation, will you prosecute? In the case of a violation on a stream, DFO will not charge as it is "too expensive".

- A: That depends on the crown attorney. Can't say when it may be public interest to proceed.

- C: DFO should come up with policy and criteria to decree when it will "be in the public interest" (re: private prosecutions).

- A: It varies with each set of circumstances.

- C (Denys): The civil servant's job not easy but the tools are in place for the enforcement process. It should not always have to be "in the public interest". It could be the possibility of a win. "Slapping" could be done to industry for effectiveness. Even if only bringing them to court to then later drop it. This will have an impact on share-holder reaction and public opinion.

▪ *Use of the Fisheries Act to Trigger CEAA:*

- *Questions / Discussion:*

Meeting Minutes: ENGO – DFO National Workshop

-C (Martha): Oldman River ruling showed a joint constitutional responsibility. Since then, DFO has been trying to get out of their responsibilities. Re: True North decision (oil sands development in Northern Alberta): oil sands are classified on the Comprehensive Study list. DFO narrowly scoped project as stream disruption project which only required a Screening. The case was lost in the SCC. As a result, CEAA has been destroyed as an Act to protect fisheries and the environment in Canada. However, True North did not limit DFO ability to scope. CEAA is now dead and we need to decide where to go next. We are calling for more government involvement in assessing and regulating oil sands projects.

- C (Cliff): The public is on-side for federal responsibility to the environment but the feds are failing. We need more triggers, not less. DFO have a duty to “fish” but it is bigger. There is pressure from industry to “lighten up”.

- C (Julie): Under the FA it must be a “work or undertaking”. Under CEAA it has to be a “project” but its not (fishing).

- Q (Meredith): What is the strategy to change the application, piecemeal?

- A (Ginny): The cabinet directive is put out by the Minister of Environment. DFO is sometimes the only trigger on project but their mandate is very narrow. We want to resolve how to look at more. The big issue is follow-up. Monitoring is the responsibility of EA, not their mandate.

- C (Martha): CEAA added responsibility onto DFO which they never accepted. Make the agency take over responsibility.

- C (Steve from CEAA): The Speech from the Throne unified the EA process nationally. We have a concern with credibility in pursuing a unified approach. Consolidation was to address these issues (re: have agency take over “major project” with additional resources). This initiative was stalled with the change in government. We are currently working on a renewed initiative. There are also issues re: predictability, time (industry), quality, and efficiency. We are working with other departments (ex: transport) on better scoping methods.

- Q: What kind of methods will broaden the scope of EA?

- A: Referring projects that we’re uncertain what the cumulative effects will be. There will be more comprehensive studies than ever. To broaden too much is constraining as well.

- Q (Linda): When does this start? At the last tar sands hearing, DFO was a no-show.

- A: Its not in place yet.

- C: Re: federal unilateral jurisdiction over fisheries, ect.: the instrument comes from contracts with industry. DFO doesn’t use regulations, they use impediments plus this. The federal government has the responsibility for transparency, ect.

- A: CEAA is unenforceable as is (lacks triggers). Rather than creating triggers in many different situations, we wanted to create an enforcement capacity but this died with the new government.

Meeting Minutes: ENGO – DFO National Workshop

- Q (Cliff): Alberta is to get 45 new gas wells. Would 10 at one time be considered a major project?

- A: Yes.

- Q (Dianne): Is there money only for CEAA? Where can we get core funding to inform ourselves as ENGOs, ect. How can we engage without resources?

- A: This will be discussed tomorrow.

- C (Ginny): Re: participation: There is a legal obligation to consult with aboriginals but no funding for this now. We would focus there first if given funding for this.

- C (Cliff): There is limited funding, legal counsel is supposed to be available but even duty counsel was denied. How can we organize our argument?

- A: CEAA public review process is not to be controlled by lawyers When some have representation and others do not its unfair.

- C: There is no trigger under SARA, Migratory Bird Treaty, ect. DFO has no enforcement. Is this systemic? If provisions are unenforceable, it is useless to apply it to CEAA proponents, just to public servants making decisions.

- A: CEAA does not apply to proponents, just practitioners. It is designed so that triggers serve as enforcement actions.

- C: Pesticide spraying was reasoned as not impacting food (birds).

- A: You need a project for CEAA to apply that meets the criteria.

- Q: Are migratory birds under EC?

- A: No trigger for destruction of birds. Migratory Birds Act applies but not CEAA.

- C: Re: in the event of a chloramine spill: Where does CEAA fit?

- A: A plant is a physical work, but there needs to be a decision on behalf of federal government.

- C (Gerry): From the public's perspective, DFO is the Government of Canada. People look to you to protect environment. If you lack people in-house, you need to get the people and do the job. If you have a narrow mandate then why trigger less by using the RMF? You are "ripping the public off" by introducing RMF and denying process guarantees to the public. You need to do EA in order to do your job right. The EA law is in place because people will always break the law.

- C (Ginny): EA practitioners lack expertise in the area of migratory birds which results in a narrow scope. Scoping broad will result in less EA.

- C: The new ministerial guideline on public participation restricts public involvement.

- C (Christine): PoE is a HADD determination outside of CEAA.

- C: The concern is that HADD determination is made outside of the public process.

Facilitator: CEAA wants to scope narrowly to get it inside their mandate.

- C (Michel): Fisheries assessment is done by DFO when fish habitat is involved (limited to fish-related issues). It is used by DFO to determine whether there is a trigger. The decision does not reach out to the public, it's an internal decision.

- C (Jerry): DFO is looking at making Conditions enforceable which is good. Even when scoping narrowly, if a HADD is going to occur, would a CEAA assessment be triggered? The Yukon placer mines are going to be assessed and there is no way for the public to look at these assessments. Why does DFO not champion to have these HADDs assessed?

- A: You have to meet one of four conditions...

- Q: Can we have a commitment on behalf of DFO to get back to ENGOs on this issue (Agreement)

- Q: There are more barriers to legally enforceable conditions. No assurance to ensure openness and transparency. Why was there no requirement for an Authorization in the occurrence of a HADD?

- C (Martha): CEAA expands the DFO mandate beyond fish and fish habitat which you are reluctant to fulfill. Re: True North scoped as stream destruction: you cannot look at the most significant impact of project (migratory birds). LoA states that HADD will occur but is authorized by DFO. Judgement calls are being made without consultation with public. If not through CEAA, another method should be instated. There should be a mandatory requirement for authorization.

Q (Dianne): Is there no moral obligation for government? Can government employees take action in the interest of public good, without regulatory requirements? Are you limited in any way? Can you enact CEAA if not triggered?

- A: No.

- Q: Can we change the triggers?

- A: No. It is possible to change the types of regulatory decisions that trigger CEAA re: the lawlist. We plan to revise the lawlist. Constraints: Uncertainty of where act is going... The backgrounder on CEAA guarantees that the FA will not be removed from the lawlist.

Meredith: Under s.35(2) if DFO gives authorization for HADD... ?

A; Authorizations require assessment unless on exclusion list since CEAA was proclaimed (95)

Q: Can I go look at all authorizations under s.35(2)?

A: No. Internal process.

C: If made public, NGOs could help monitor.

-Follow-up on person to contact to access sec. 35 authorizations.

-How can we access LoA?

-Community consultation on authorizations.

-Make authorizations public so that public can monitor.

-Parks Canada case: EC & PC will include values for things like oxygen production.

-Quality Assurance program: How does QAP inform policies?

A: '98 CEAA provision cannot be changed.

Tomorrow: How do you think you could provide input into Ops, ect.?

Bottom-trawling:

- DFO willing to record concerns, pass on, respond to concerns.

Overview:

-Impacts of fishing never trigger CEAA b/c not considered "work".

-Renewal of FA: s.35 elements will be amended but needs to be stronger.

-Scallop dragging/ dredging in Bay of Fundy. Only twice has bycatch been monitored. Has been fundamental ecosystem change in BoF. Scallop drag: Rubber, chainlink drag bottom. Asking it to be done appropriately, not cessation. Sponges are bycatch = hab. destruction. Highest concentration of coral in "hot spots" closed by DFO but a lot is gone. If process to expanding fishery, we could have avoided much of this. Hab has been wiped out before any science research has been done. Impacts of fisheries: after cod moratorium, fishery went north, deep. Deep sea coral: nothing is known about them except that they've been caught in trawling. These are not considered under sec 35(2). Structural habitat to fish but not considered habitat under s35. Science-advisory document on CEAA site.

Bruce:

-Message to hand upward re: Friday decision Canada will not support UN resolution moratorium on bottom-trawling outside of 200 miles restriction. This decision is wrong internationally, will be isolated, wrong hab point of view.

Not ban: moratorium = temporary time out.

Press release says "in good company" (Japan, Iceland, Spain), not.

-79% Canadians oppose bottom-trawling, even if it would cost Canadians jobs.

-Establish structure in decade, as stands = no good. Moratorium buys time to establish this.

-Balance?

-Clarification: no regulations in some countries (south pacific, ect.).

Bill: Gov. not worried about international reputation. Inside Canada, Minister says cannot vilify trawling. Min: going to require amendments. Said: gear type is damaging.

-We should demand to min. what is this going to be?

Julie: faith in min. acknowledges damage to stocks, habitat but not willing to take action.

Linda: Is fishing excluded in CEAA act?

A: Ruling by judge.. law does not specifically exclude fishing. Could be put onto inclusion list.

Bruno:

Meeting Minutes: ENGO – DFO National Workshop

- Strong lobby in Canada. Ministers generally become instrument of lobby.
- Discard up to 9 fish for every shrimp taken in. (?)
- Policy, application of environmental precautions are being perverted.

C: Discussion takes place b/c ENGOs bring issues to gov attention. Ex: sand/ gravel extraction on bottom. DFO has not yet had “the wrap”. DFO needs to be proactive. Ex: impingement/ entrainment in power plants. 56 million larvae on intake valve of one power plant. 46 k away another plant. 10 year rule: between time issue is flagged and DFO reacts (“twitch”).

C: Worked on dragger. Impact = Looked at distance towed in one year (Projection) = 10 000 linear miles/ year, 199 vessels (180 ft. wide) = +40 million miles of ploughing the bottom. Systematic destruction of banks.

DFO response:

- Identified as issue, use amendments of FA to address this issue.

C: Proposed amendments: fisherman still cannot pursue recourse if affected. No scientific definition of fish habitat.

Diane: If one part of FA authorizes HADD, are they not complicit?

- Discussion of FA amendments with Richard Wex tomorrow morning.

Day 2: Thursday, Oct 12.

Agenda Review:

- Looking Forward
- Summary of “What I’ve Heard” by FAC.
- Discussion on Moving Forward
- Evaluation

Richard Wex (DG of Hab Management):

- What I heard: Yesterday constructive, exchange views, share info on how to run hab program, conserve hab. Hope for more reg, ongoing dialogue between NGO/ DFO. To be better aware, more informed policy directions. Good for NGO to understand DFO workings to be better informed publicly. General sense of importance of relationship. DFO hab staff have much more in common with NGOs than those we regulate. Our motivations are the same – protecting environment, fish hab. Don’t always agree, your job to disagree. Our job to listen, engage, dialogue.
- EPMP = our effort to make hab program more effective. In early days, some directives have been set, need help to inform delivery... work together, dealing with new development, define tools, developing implementing program, providing input to proposed amendments to FA.

FAC:

- FA questions were put aside for RW yesterday. Discussion about points raised by RW.

Meeting Minutes: ENGO – DFO National Workshop

Q (Lara): Told yesterday that NGO can't be consulted until approved by cabinet. Troubled by this. Once sent to cabinet, over, want commitment that NGO will be consulted more extensively before sent to Cabinet. What will be the nature of comment?

C (Olga): Alternative dispute resolution. Not public process. No way for us to know, no proper representation, not clear whether outsiders get to be heard. Will there be judge present? Reasons for decision available to public?

Martha:

- Advice is positive responsibility that permit be required for HADD. Change s .32.
- CEAA. Were involved in tabling, 5-year review. Nothing preventing DFO from consulting, need process, implement same progress, want to be engaged early in process.

Linda:

- Leg should require that there be permit/ authorization.
- Diverting decisions.. want to be like CEAA. FA is silent on public consultation. Consider enabling condition to on how dept develops regs. Agreement ? that requires public be consulted... ?
- Mulroney gov consulted with public CEPA = strong leg. Reg agenda of what is anticipated would be...
- Enforcement/ compliance strategy tabled would be useful
- Has DFO consulted with industry in development of Leg?

Bruno:

- Consultation to be meaningful = timely. Cons. with aborig. But not with us. Hasn't been action of DFO in past. Want earlier consultation. More about your commitment to that.

Inca:

- Risk-based approach appears arbitrary, opaque. Requirement of science-review of activities.. no scientific underpinning to RBA. Need to commitment to evaluation to RBA to hab.

Zo Ann:

- FA looking to streamline process, not minimize FA, no waterdown.

Denys:

- “Streamlining, harmonization”... want civil servants to know.. don't dilute to make likeable to dif. prov. Make it so all policies adhere to Conservation/ Biodiversity convention. Want strong commitment to this.

Jerry: Yukon context: 1987 placer mining done behind closed doors. 92 new major developments by mining industry/ DFO behind closed doors. No consultation. New = same. Allowed to comment after development too far, no effective chance for change. Want to be allowed in early, not closed out. We want to do the job.

Meeting Minutes: ENGO – DFO National Workshop

Susan:

- FA renewal = more open transparent process. Established in law, specific, measurable...
- Public left out, can't access DFO personnel = establish process to address this.

Stuart:

- Consultation with First N. Correct record: Not consulted with FA renewal.
- Looking for FA around 20/20.
- Legal titleship not reflected in FA. FN never gave up title to certain resources

Judy:

- Industry, mining sector: industry will do what they're told.. need to BE told. Guidance on stakeholder involvement ... necessary approach.

Susanna:

- Concern: fishing not included in s35)2 never going to trigger a HADD (FA or CEAA). Public can't review b/c of this, need check & balance. Need to be assigned to regulated process. Not just to sensitive areas.
- New, exploratory fishery = should be subject to a review. Case law = not work/undertaking.

Dianne:

- Expect 3 things:
- Clear established way to protect fisheries.
- Dept. has clear mandate, money (necessary resources), people/ ability to act on this

Irene:

- History of fish kills every summer over last decade, no successful prosecutions, farmers to blame, paltry laws, PEI look to DFO to step up, major developers too close to gov. policy-making = no public, rational process. Need enforcement, carry-through.
- Northumberland strait ecosystem destruction = bottom-trawling. Families hurt. Climate change = ice loss, debris coming through strait smothering fish.
- DFO needs programs, policies in place to deal with fallout of climate change issues. DFO implicated in development causing changes.
- Don't open FA if you will weaken it, caving to industry. We can work with FA as is to protect.

Cliff:

- Inland fisheries as important. Cut-back on enforcement, don't want voluntary compliance.

Richard Wex:

- Re: Lara: What we've done is provide broad overview. No in-depth on proposed amendments. We have not consulted more, proved short pres. We can do more. Nature of Prop. Amend. Are modest. Don't want fundamental change to hab prot. Provisions.
- operating context: provide advice to Cabinet, can't control when go to cab. Provide to min. Min. takes to Cab. When sees fit. We have no control. We have opportunities to...

Meeting Minutes: ENGO – DFO National Workshop

can't provide wording, need day to drill down on proposed amendments. Through ongoing discussion..

Re: Olga: ADR: AG designs in consultation with min. the program. If in FA would take much time to develop. Min of Jus. would design with input from DFO. In proposed amendments, a violation of Cond. would be an offence. Re: compensation plan, duty to report. Right now not an offence. We will change that failure to comply is offence, maybe use AMA.

Re: Martha: Have looked at. Not recommending. changes are modest, no fundamental changes. Want to keep as is. Not weakening. Permitting: constitutional issues. Process: want to pursue co-op approach.

Re: Linda: Diverting EA process through Ops, LoA. Future meeting would like to talk. Enabling to enact policies, proposing this in A. to FA. Need regs that state rules. Enabling reg power.

-No consultation with industry, only deck pres. In 2 hr. meeting.

-Nat. Ind. Association meet reg, has talked about EPMP. Want o engage with NGO as well.

Re: Inca: RMF: Read paper suggestion. PoE are science-based, gone through DFO science. Science review in still in review process. Early stage. Will make available when in final draft. We want NGO input.

A: No public consultation.

C: RM = Failed. RE: Oyster culture. Gaps in knowledge on impacts. Matrix = codified. Want commitment to public involvement on science. What is mechanism? It is being used! Science review because end point.

Chris: Want to discuss how to facilitate discussion.

C: Credit given to EC (program?), science review was in process at time. Comments were taken to EC science in process.

Re Denis: Not talking delegation, has been consideration to equivalency agreements. Prov. regs must meet DFO (public input) to be deemed equivalent. DFO develops prevailing standards.

RE Susan: Proposal addresses this

Re Susanna: Proposing changes to licensing, allocations, to consider hab issues under regs.

Under management, provide platform that hab must taken into account. Min held accountable.

In FA policy now?

A: Don't know will follow-up.

Meeting Minutes: ENGO – DFO National Workshop

Re: Yes, cuts over three years. But 9.5 m. to hab program (Much to C&A). Could use more. Are pursuing initiatives with other dept. Other regulators, DFO need to be able to respond to growth. Want to discuss. Resource regulators, incl. inland fisheries. If new resources, would support entire program.

Linda: Response on ADR: Confusion: Broaden powers to CEPA...
If go to courts, should have broad brush. Admin Trib. Has some value for industry b/c charter. ADR: Only some parties at tables, no costs provided, not public, secret. No transparency. What is being proposed?

A: Alt. sentencing is in Act, allowing for options, is broad

C (Fred): integrated management: local river grp. Involvement of citizens in management of watershed, they can be eyes, ears, when FO can't be there. Good initiative to have mechanism to report, more legit, formal. Fuel sense of stewardship. Mechanism to have better sense of what is going on.
-Movement of hab management to fish management (fish counters). Cod Recovery Strategy: no biologists present. Need clear def. on fish v ocean habitat. Beyond commercial fishery scope. Move toward restoration of biodiversity. Magic number of fish. Too close to edge. Doesn't work (since 50s). Lobster fishery = operates on protection of spawning ground, equipment.

Bruce: Healthy fisheries = healthy oceans. Are oceans better off than 5 years ago? No. Need more resources. Confused about process to changes to FA. Are consultations happening? Process? Timeline? Will FA be better?

Sue: DFO doesn't have resources to react to SARA. Will amendments to FA help?

A (Brian): Share funding with EC re: SARA. Share concerns. Working on increasing funding next year for recovery planning.

Sue: Concern that 32 salmon pops will disappear.

- Facilitator: Ideas of things we could do as a group: Brainstorming session re: collaboration

▪ *Ideas for Building Future Successes / Working Together*

- *ENGO:*

1. Look at DFO's budget allocation for habitat and prove the effectiveness of the habitat protection program. Look to improve enforcement and habitat protection.

2. DFO should assist ENGOs re: providing policy development input and building capacity for increased roles in habitat stewardship and enforcement.

3. Learn from the CEAA process for Fisheries Act reviews.

4. Focus on habitat as well as fisheries.

Meeting Minutes: ENGO – DFO National Workshop

5. Look at expanding the model of Pacific Reg. to deliver activities through stewards.
6. Enforcement and compliance strategies tabled with the FA.
7. Develop a process for consulting with ENGOs on FA review (habitat and management).
8. Develop a mechanism to evaluate DFO effectiveness in meeting its mandate under FA obligations. (Accountability mechanism).
9. Appoint Ottawa / ENGO liaison point (1-800 #).
10. DFO should be involved in developing strategic, regional EA.
11. Clarify legislative language.
12. Instate an appeal / review mechanism to address failures under Class Authorizations.
13. Establish a body similar to RAC to advise the Minister.
14. Increase the number of Fisheries Officers on the ground to enforce compliance.
15. Define “habitat”.
16. Ensure integrated administration and enforcement between EC and DFO.
17. Improve transparency on data sharing re: habitat and marine impacts.
18. Regional ENGO / DFO meetings.
19. Bring back DFO enforcement officers to the prairies.
20. Develop a public registry.
21. Determine how to measure “no net loss” of production capacity.
22. National science review of Risk Matrix.
23. External scientific review of “habitat impacts”.
24. Get tough on habitat compliance.
25. Use the resources of other departments to assist in monitoring.
26. Employ experienced staff in policy to ensure coordinated policy development.

27. Be transparent on compliance.
28. Give someone maximum fine for habitat violations. Money could go to stewards for monitoring.
29. Maximize Environmental Review processes within CEAA to achieve efficiency before entrenching a new process outside CEAA.
30. Establish an ENGO Working Group on the application of the Risk Management Framework.
31. Emphasize enforcement over voluntary compliance.
32. Encourage Dept. of Justice not to stop private prosecutions.
33. Continued workshops with DFO on specific topics.
34. ENGOs to write a letter to GoC requesting more resources.
35. Ensure that habitat is included in new and emerging Fisheries policies.
36. Instate an independent audit process for self-regulating industries.
37. Learn from sustainable fishing systems.
38. Responsiveness to requests for background studies re: EPMP.
39. Define “quantity and quality” re: habitat.
40. Plan for success and evaluate effectiveness of changes along the way. Don’t be afraid to go back should new methods not be working.
41. Ensure legislative mechanisms for adaptive management.
42. Retain law list requirements for adaptive fisheries.
43. Commit to the precautionary approach in the face of scientific uncertainty.
44. Increase communication beyond ENGOs to the greater public to change political will.
45. Restore biodiversity and maintain healthy oceans.
46. Institute legal requirements for reviews of the success of the Risk Matrix, conduct periodic evaluation.
47. Establish mobile enforcement SWAT teams.

Meeting Minutes: ENGO – DFO National Workshop

48. Increase communication and education for politicians and the public at large.

49. Remain committed to “deleterious substances”.

50. Support increased funding for science branch.

51. Proactively prepare for climate change.

52. Be bold and commanding.

53. Strengthen citizen enforcement provisions.

- *DFO:*

54. ENGOs to coordinate within regions as well as nationally to enable more effective dealings with smaller groups.

55. Develop mechanism to continue dialogue.

56. ENGOs to create a framework of priorities to facilitate realistic discussions on capacity.

57. Work together on compensation policy planning.

58. ENGOs to decide which areas and sectors to focus on re: compliance monitoring.

59. Regional ENGO / DFO workshops for issues and policy implementation.

C:

-Prioritizing issues could be pursued in further process. Decide when we do this.
Process follow-up. Figure out range.

Peter: Higher principles considerations. That govern your hierarchy. Create decision criteria.

Linda: Inappropriate that DFO have say in NGOs priorities. Need better consultation process.

Who in DFO will take lead?

C: RB assessments

Martha: Substantive issues & process issues. Can't develop framework today. Some issues can be agreed on together (DFO) Get together. Give direction, form new grp.

Susanna: NGO/ DFO conversation, develop method for continued dialogue. Decide date.

Meredith: Improving enforcement major issue. Work on together?

Meeting Minutes: ENGO – DFO National Workshop

Q (Diane): Who else does DFO talk to? Can we work together with them?

A: No agreement signed. Work with Conservation Grp. (CWF). Want to bring synergy.

C: DFO knows political frame. Tell us which items you see potential engagement in.

Denis: How does DFO want to work with us?

HOW TO CONTINUE DIALOGUE? mechanisms? National? Regional?

Q to Pat, Ginny:

Pat:

-Nat, reg. parallel. Need process in place to continue discussion. 2 types: desire to have input

into policy. Desire collaborate in action on ground. Desire input in Compliance, RM, FA, Monitoring, comp.,

-Help in communication, education, deliver on ground.

Success: Would be to decide today another time to meet.

C: Regional grps could come into to deliver education, ect.

-How often a year do we need to get together? EPMP + FA am. = big issues.

Ray: Region:

-Need sense here before we open up regional discussions. Need focus. Need framework.

Ginny: Build on momentum. Nat. Adv. Grp. Similar to NAP(NAC?). Need discussion RMF,

DFO could provide framework to understand.

Martha: Usually create working committee. Suggest to nominate people to work with DFO to

take next steps. Do now or email. Needs to happen here, process in place to ensure.

Q: Do people agree that CEN is vehicle that moves NGOs forward? Yes.

Linda: We're stretched thin. Need commitment from DFO for money. Look into budget. To non-gov consultants to inform as well as meeting ect.

Peter: Does CEN rep all in regional networks?

A (Martha): Must be part of reg to be nat. some grps are conservation grp. That may not choose to incl. in CEN.

-First N grps. Are outside of CEN.

Agreed that there will be a separate discussion re: FN.

Meeting Minutes: ENGO – DFO National Workshop

RW: 2 weeks?: get names to Pat for grp.
-Next step, org. needs to meet, by end Jan?

Discuss governing structure nat, reg to feed in
Identify
Membership
Mandate: Prioritize issues
Funding
Meet to identify priorities.

Rac style on-going process? Workshops organized? Committee could decide how to do this.

Martha: Timing on selection of org. Unsure now. Want a funding commitment first.
Governance concern. Membership selection ok. Selection process to go through.
CN slant on these issues.

Within 2 weeks, org. committee be selected
Within 3 months, meet, look at consultative structure, look at membership, mandate, budget needs, priorities. Figure how to be managed.

Pat: Initiative re: workshops

FAC: Successful in establishing pathway forward.

Fill out evaluation re: 5 critical questions

Q: Could we get comments back re: evaluation? Yes.

Closing Comments:

Martha: Pleased, DFO has heard what we need to say.

Pat: We heard you, your comments are recorded, will work towards open communication.

▪ Minutes submitted by Jennifer Fougere