

From: Saunders, Mark
Sent: Tuesday, May 17, 2005 1:05 PM
To: Chamut, Pat <ChamutP@pac.dfo-mpo.gc.ca>
Subject: RE: ENGO_Response_May17_2005_1.doc
Attach: EGNO_Response_May17_2005[2].doc

Pat,

How does this look?

Mark

-----Original Message-----

From: Chamut, Pat
To: Phelan, Deborah; Mishima, Carrie
Cc: Saunders, Mark
Sent: 5/17/2005 11:20 AM
Subject: FW: ENGO_Response_May17_2005_1.doc

Carrie and Deborah; This is the current draft of the response to the MCC ten point critique of the WSP. It is not yet final. Mark Saunders is adding a bit of context to the front end explaining how the MCC has been involved in the consultations to date, plus he will be putting it into a better format. Your comments would be welcomed.

-----Original Message-----

From: Chamut, Pat
Sent: May 17, 2005 11:16 AM
To: Saunders, Mark
Cc: Chamut, Pat
Subject: ENGO_Response_May17_2005_1.doc

Mark; My revisions to the MCC response. I hope that I am successful in transmitting this to you.

Response to Marine Conservation Caucus 10 Point Paper

DFO-155206[00-01]

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1. What the “wild salmon policy” proposes is a radical departure from Ottawa’s long-standing commitment to protect British Columbia’s salmon fisheries AND the diversity and abundance of B.C.’s 9,000-plus salmon runs.

The WSP does indeed propose a new direction for salmon management in BC, but it is one that will rectify shortcomings of past policies and provide greater assurance that we can maintain healthy and diverse salmon populations. For the first time, there is an explicit commitment to:

- * safeguard genetic diversity of wild salmon populations
- * maintain habitat and ecosystem integrity
- * manage fisheries for sustainable benefit
- * integrate watershed, habitat and harvest management
- * set clear conservation objectives to rebuild populations at risk
- *
- * evaluation of performance against objectives

The policy is not a departure from Ottawa's commitment to protect salmon, but rather is an explicit reaffirmation of that responsibility, and how the Department will do so. It is surprising that the Marine Conservation Caucus (MCC) would oppose a new WSP, and seemingly cling to past policies that they have fiercely criticized for their failure to protect genetic diversity of salmon.

A snapshot of the Wild Salmon Policy, summarizing its main elements is attached. It’s content demonstrates that the WSP does not compromise salmon conservation, but affirms that objective, and makes it an explicit part of the Departments accountability.

2. The proposed policy is the most significant, dangerous event in at least a quarter-century of attempts to address the many conflicts about salmon conservation, salmon fisheries, and salmon habitat in British Columbia. It completely undermines and defeats the purpose of efforts to reform the fishery along individual-quota lines.

The WSP is a necessary complement to fisheries reform. The foundation of this reform must be a biologically robust resource, and habitat, with clear conservation objectives. Much of the conflict and controversy over salmon management is about what to conserve, how much to conserve, and how to do so. The WSP addresses those issues, and provides an essential foundation for reform. If a decision is made to adopt individual quotas for salmon management, there is nothing in the WSP that would prevent it from being implemented. This assertion is an absolute distortion of what the policy says, and how it will be implemented.

3. The current version of the policy is firmly opposed by the Marine Conservation Caucus (eight mainline environmental organizations), almost all of B.C.'s First Nations groups and major overriding concerns have been raised by the B.C. Streamkeepers Constituency. The proposed changes will inevitably result in the emergence of a vocal, well-organized and broadly-based constituency of opposition to the Liberal government.

The above statements regarding opposition to the policy do not our current understanding of the view of the majority of salmon interests. The consultation process leading up to the adoption of the WSP has been lengthy and thorough. It culminated in two forums - one with First Nations on April 29_2005 and a second with the public and stakeholders including First Nations on April 30_2005. These sessions were in follow-up to a forum held on March 2-3, 2005 where the same 70 participants requested an opportunity to view the revised policy document. Those involved included First Nations, academics, ENGO's, Provincial government staff, Union of BC Municipalities, commercial fishers, the fisherman's union, sport fishers, and streamkeepers, among others. The concerns of the majority of participants focused on implementation and the need for additional resourcing. Most concerns addressed whether DFO could afford to implement the policy, rather than the content of the policy. Representatives of Environmental Organizations expressed reservations about the policy but their opposition was a small component of the participants and their concerns were not echoed in the responses from others. Most of the participants were satisfied that the majority of concerns had been addressed and were accepting of the need to move on from policy development to policy implementation.

4. Rather than resolve B.C.'s deepening conflicts over salmon, the new approach will in fact deepen these conflicts, heighten already-explosive tensions, and encourage a continuing erosion in public confidence in the department, and a deepening of British Columbians' mistrust of the federal government's intent to conserve salmon in the public interest.

There has been a long standing demand for a wild salmon policy. Delaying this document will do more to deepen divisions than releasing it. Given the importance of wild salmon to Canadians, this sort of policy will always prompt passionate discussion. A long and comprehensive process has been followed to build consensus. This document does not enjoy unanimous endorsement, a standard that is unlikely to be met, given the differing interests, and polarized views. But - it does reflect reasonable support among First Nations, and stakeholder organizations. Additionally, the WSP contains a commitment to design and implement a

long term strategic planning process that will finally bring those with an interest in salmon together not in conflict, but to work together collaboratively to set objectives and develop strategies for salmon conservation. Further delay will not build greater support, but will only further polarize the debate.

5. The policy explicitly declares an inherent conflict between sustainable fisheries and conservation – a contradiction of long-standing federal policy, as well as numerous international commitments Canada has made.

It is not clear whether the conflict they suggest is a general response to the document or in reference to a specific statement. In the April 30th forum a concern was raised that language used in several sentences describing Objective 1 set up this conflict. Those statements have been changed to address this concern.

In general, the policy sets objectives for both conservation and sustainable use. It is absurd to accuse the policy of declaring a conflict between use and conservation. It is clear that use can conflict with conservation objectives, and managing this conflict is what often has compromised the well being of salmon populations. This policy does not ignore this reality, but provides clear guidance as to how it will be managed so as to achieve resource protection, and sustainable use.

6. The policy allows fisheries bureaucrats unprecedented latitude to “write off” entire genetic stocks of salmon, known as Conservation Units – the conservation level recognized as “species” by COSEWIC – for the sole short-term benefit of fisheries, or for the benefit of “competing” demands on salmon habitat.

The absence of policy direction about conservation of salmon is far more a threat to their well being than having clear policy objectives about what will be conserved, and at what level. In the past, experience has shown that smaller populations did not always receive the care and attention to ensure their adequate protection. The WSP will ensure the protection of genetic diversity, and it is preposterous to claim that there will be a wholesale “write-off” of salmon by mindless bureaucrats. The policy confirms the authority of the Minister to decide to limit measures to rebuild a Conservation Unit, but only in extraordinary circumstances, and after following an open and transparent process, with full accountability to the public for the decision.

7. By leaving decisions about whether to take conservation measures solely to the political discretion of the Fisheries Minister and his officials, the prosecution of aboriginals conducting Section 35 fisheries may be impossible to secure. The law requires the Crown to cite a “valid legislative objective. . . such as conservation” in order

for the Crown to infringe upon, interfere with, or even regulate aboriginal fishing. The policy replaces conservative objectives with bureaucratic whim and ministerial fiat.

The Wild Salmon Policy is a policy. It cannot, and does not purport to, change the Fisheries Act, the authority of the Minister, or legal decisions respecting justification of infringements of aboriginal rights. The Policy sets conservation objectives to be met, and defines a process for transparent decision making by the Minister. The Wild Salmon Policy does change the Minister's authority with respect to the regulation of aboriginal fishing. If the intent of the MCC is to "heighten already-explosive tensions" in BC, falsely asserting that this Policy eliminates the Minister's authority with respect to the regulation of aboriginal fishing is the best way to do it. Such an accusation is just wrong.

8. There is nothing in the policy that states an objective, scientifically-defensible threshold at which prosecutions under the habitat-protection provisions of the Fisheries Act would be justifiable. In fact, it would appear that no such prosecutions are contemplated in the new regime at all. Even if prosecutions were attempted, they would likely fail simple court challenges, since there is nothing in the new policy that properly defines fisheries habitat, or sets out clear objectives that would make prosecutions objectively justifiable.

The notion that there would be no prosecutions under the WSP is false. Prosecution will be undertaken where it is warranted, and this is clearly articulated in the WSP. The policy states that "If specific Conservation Units are threatened by development proposals or other human activities, corrective actions will be taken under Section 35 of the Fisheries Act". However, prosecutions are only one way to protect habitat. A prosecution is taken only after damage has occurred to habitat. The policy sets out to first PREVENT damage - which seems to be a more prudent strategy than acting after the fact - but, if habitat is damaged, there is every intent to undertake enforcement and prosecution consistent with authority under the Fisheries Act.

9. The radical nature of these proposed changes, and their dire implications, are not understood by the new East coast minister holding the fisheries portfolio.

This is condescending and patronizing to the Minister, and untrue.

10. Our proposed solution: At a minimum, suspend the adoption of the policy until it has been subjected to broader consultations, to allow for its fatal flaws to be addressed.

This policy has been 7 years in the making. It has involved extensive consultation. It is necessary if we are to effectively conserve salmon

and address contemporary challenges. Further delay will only bring more criticism and discredit to the Department and the Minister.

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