

From: Kotyk, Mel
Sent: Friday, July 11, 2008 10:38 AM
To: 'Lapointe, Mike' <Lapointe@psc.org>; Cheema, Bilal <Bilal.Cheema@dfo-mpo.gc.ca>
Cc: Cave, Jim <Cave@psc.org>; Trager, Diana <Diana.Trager@dfo-mpo.gc.ca>; Jackson, Corey <Corey.Jackson@dfo-mpo.gc.ca>; Cantillon, Dave <david.cantillon@noaa.gov>; Ryall, Paul <Paul.Ryall@dfo-mpo.gc.ca>; Kyle Adicks <adickvka@DFW.WA.GOV>; Kowal, Don <Kowal@psc.org>; Bartlett, Kim <bartlett@psc.org>; Trotti, Jennifer <Jennifer.Trotti@dfo-mpo.gc.ca>
Subject: RE: Sumas FN fishing and Mission Hydroacoustics site

Thanks Mike for a good summary. Of course DFO would have a few additional perspectives to add specifically on why we might have concerns regarding precedence and the role the PSC might want to take.

Primarily it would be very difficult for DFO to take the lead in removing snags for Sumas as this may set a precedence and raise expectations from other FN's that we do similar work, for a variety of reasons, at their fishing locations. Obviously we cannot take this burden on. The other issue DFO would have challenges if in the event this new fishing site for Sumas becomes more, or less, productive than the current area. DFO could be under some criticism from Sumas if the site is less productive and viewed as 'sub-standard', or criticized by other FN's if it is more productive and thereby providing an advantage over others.

Secondly it is difficult for DFO to take the lead in signing the MOU on behalf of the PSC as we have no ability to deliver on the commitments. The majority of (if not all) the issues Sumas is looking for can only be delivered by the PSC through the management of the site (employment, training etc), and therefore it seems logical that the primary responsibility resides with the Commission. In a similar way the PSC enters into agreements for office space, computers, vehicles etc in the delivery of the program, a non-binding cooperation agreement with Sumas may be viewed in a similar, non-threatening, manner.

I appreciate there is not a straight line to resolving this issue with Sumas, nonetheless your email is a very good summary of events to date, and I appreciate you pulling it together. It is my belief that everyone is committed to finding a solution, it just seems we have yet to craft the correct wording.

Ps - I added Jennifer Trotti to the distribution list as she spent many hours with Sumas trying to resolve this issue.

Cheers

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Please note my email address has changed to: mel.kotyk@dfo-mpo.gc.ca

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

From: Lapointe, Mike [mailto:Lapointe@psc.org]
Sent: Friday, July 11, 2008 10:09 AM
To: Cheema, Bilal
Cc: Cave, Jim; Trager, Diana; Kotyk, Mel; Jackson, Corey; Cantillon, Dave; Ryall, Paul; Kyle Adicks; Kowal, Don; Bartlett, Kim
Subject: RE: Sumas FN fishing and Mission Hydroacoustics site

Hello Bilal,

Thanks for your phone call and follow-up yesterday morning. I was encouraged by our conversation and hope that this is an indication that we will be taking some positive and definitive steps towards resolving this issue soon. As promised below find a summary which will hopefully help bring you up to speed on this issue.

Summary point

Purpose of the Mission program

1. The Mission hydroacoustic program operates under the Pacific Salmon Treaty to estimate daily passage of sockeye and pink salmon required by the Fraser River Panel to meet conservation and allocation goals defined by Canada and the United States. Specifically the hydroacoustics program is used to monitor progress toward gross escapement targets (fish needed for spawning grounds plus First Nations catch allocations upstream of Mission) and it is also the primary tool used to assess overall return abundance.

Program components

2. We have operated the hydroacoustics program at Mission every year since 1978. The program has 3 components operating at the site: a vessel that transects the river 24 hrs per day 7 days per week, with downward looking sonar and 2 shore based systems on each bank of the river that use sonar that looks sideward from the shore toward the middle of the river. The vessels have been a consistent part of the program since inception, the shore based systems are more recent improvements.

Impacts of drift fishing

3. Drift gillnet fishing at the site has 2 main impacts: a. Safety, we have had several near collisions between drift gillnet fishers and the transecting boat, principally during the night and foggy periods of low visibility. The vessels are small, do not have radar detectors and have either poor lights or no lights. b. the act of drifting through the site disturbs the distribution of the fish, affecting the integrity of the data collected by the hydroacoustics system. Estimates either cannot be generated or if attempted are not comparable with the rest of the data collected from undisturbed periods. The comparability of estimates between days is an essential part of the program. Fisheries tend to be scheduled during periods of significant abundance and during these periods the Mission estimates for a particular day may represent fairly high fractions of the totals for the season. In other words even though the fisheries are scheduled for only a relatively small fraction of the days during the summer (say 3-6 weekends), the days when there are fisheries are very important days for the estimates.

History of drift fishing at site

4. Prior to 2004 we encountered few if any difficulties with FN fishers. There were rare occasions when set net fishers got close to the site, but when staff explained the purpose of the program these fishers agreed to move to other locations. In 2004, we began to have our first encounters with drift fishers at the site. As this activity was illegal, it took place primarily at night and there were a couple of near collisions that year. There were also a few threatening encounters between my staff and fishers when DFO enforcement personnel became involved. Beginning in 2005, DFO authorized drift fishing in areas upstream of the Mission Bridge for the first time including the area around the Mission site. Staff requested a 0.5 km boundary on either side of the transecting vessel area to buffer against potential fishing interference. We received 200m. Since 2005, most of the evening activity has stopped, but day time activity during openings has resulted in many occurrences of fishers drifting through the site. While many of the fishers are apparently attempting to respect the boundary, the area immediately upstream of the Mission site is a good fishing spot and when catches are large, fishermen cannot complete picking of their nets prior to reaching the boundary. A larger boundary would reduce this problem, but would largely eliminate the good fishing spot.

History of dialog between PSC staff, DFO and Sumas FN

1. It is the view of PSC staff that given that this program is required to ensure conservation under an international Treaty, Canada and DFO specifically is obliged to ensure that this program can operate free

of interference. Such protection is afforded to domestic assessment programs including for example spawning ground enumeration fences where no fishing boundaries are routine. Despite this strongly held view regarding responsibilities, we have participated numerous discussions with DFO and the Sumas First Nation on this issue. It is our view that DFO's actions on this issue are not consistent with the importance and value of this program. In fact frequently the onus has been put on PSC staff to engage in discussions to find solutions, with minimal if any leadership and initiative from DFO. Notwithstanding turnover in DFO personnel, the fact that the most recent discussions with DFO and Sumas FN ended last October and there have been no discussions since that time, is the most recent example of why we hold this view. I will not belabor the details of these discussions, but the main points that have been put forth by parties are as follows:

- a. PSC Staff have documented the impacts on the program as described in point 3 above. As discussed, we cannot move this site, we have a significant history at this location have made substantial investments in infrastructure, long term leases with landowners, etc.
- b. Sumas FN contends that the presence of the boundary around our site eliminates a prime fishing site and affects their ability to access their FSC entitlement. One could try to quantify, debate or challenge this contention, but I doubt this type of exercise would change Sumas FN perception or assist in achieving a long term satisfactory resolution.
- c. All parties including PSC, SFN and DFO agree that enforcement actions do not represent a long term solution to the issue. (for our part PSC staff have been more tolerant of boundary infractions, while discussions are ongoing, most SFN are trying to respect boundary but interference still occurs (~ 40 times in 2006, last year of fisheries).
- d. Sumas FN has asked for the following:
 - i. Greater involvement with the programs (PSC staff have post job openings at SFN office each of last few years and in 2007 employed 2 SFN member in a test fishery for pink salmon; we have had folks to the site and will continue to try to be good partners in this regard; We have had few if any applicant for positions at the site, qualifications may be an issue, but we have discussed potential for internships and offered to assist with guiding interested folks to appropriate educational venues e.g. BCIT). In fact this winter, Jim Cave phoned Murray Ned to offer to come and talk to the community about training etc, but unfortunately, Murray wasn't able to organize a time for us.
 - ii. Compensation for reduced fishing opportunity as a result of the boundary.

Specifically, they have requested alternative fishing site(s) – this would involve removal of snags. Cost is hard to estimate as it depends on size of area and size of snags, etc. Probably on the order of \$10,000-\$30,000. (Note we did the leg work to get these some estimates and can provide more detail) We don't believe snag removal is within PSC staff mandate but rather is Canada's obligation, but we offered to assist with identification of snags (perhaps through use of DIDSON acoustics). Potential sites were identified by SFN last fall. DFO has expressed concerns about the potential precedence of snag removal and the potential for ongoing annual costs. An alternative option to other sites would be to increase fishing time. Initial reactions to this option were unfavorable from DFO. I don't recall a response to this possibility from SFN.

- e. We began drafting an MOU last year which defines some of these items. While such a document clearly must reference PSC activities, it is our view that this MOU should be between SFN & DFO (i.e. Government to Government). PSC staff are not authorized to enter into such agreement and we would seek DFO to sign are our representatives via the Treaty. Furthermore, the MOU does not yet address the compensation issue, which I believe is the major obstacle to a solution.

I believe this represent a fair assessment of where we are and how we got there from a PSC perspective.

We remain committed to work with DFO and SFN in resolving this issue. Pls call me with further

questions or items for discussion. Also it might be helpful for you and Diana to come and visit the site and we would be happy to set that up and join you at a time of your convenience.

Sincerely, Mike Lapointe, Chief Biologist, PSC staff

Kim – pls file - 63001