

MEMORANDUM FOR THE DEPUTY MINISTER

**RESPONSE TO SEPTEMBER 22, 2004 LETTER FROM GORDON MACATEE,
DEPUTY MINISTER OF BRITISH COLUMBIA MINISTRY OF WATER, LAND
AND AIR PROTECTION, REGARDING SPECIES AT RISK**

(For Decision)

SUMMARY

- On September 22, 2004, Gordon Macatee, Deputy Minister of British Columbia Ministry of Water, Land and Air Protection, responded to your letter of August 5, 2004, updating your provincial and territorial counterparts on the status of Species at Risk Act (SARA) implementation and seeking input on intergovernmental issues and initiatives.
- Deputy Minister Macatee identified the key outstanding issues for BC.
- A letter of response is attached for your signature.

Background

- On September 22, 2004, Gordon Macatee, Deputy Minister of British Columbia Ministry of Water, Land and Air Protection, responded to your letter of August 5, 2004, updating him on the status of the Species at Risk Act (SARA) and requesting input on issues related to the legislation.
- Deputy Minister Macatee identified the following priority issues for BC:
 1. Using existing legislation, like the *Fisheries Act*, instead of SARA, to achieve the same objectives.
 2. Need for addressing outstanding policy issues to ensure the full implementation of SARA.
 3. Meaningful consultations on the full range of processes affecting the Province, at the appropriate levels.
 4. Provincial involvement in the analysis of socio-economic implications of listing.
 5. Full consideration of the probability for recovery when making listing decisions.

Analysis / DFO Comment

Issue 1: Using existing legislation, like the *Fisheries Act*, instead of SARA, to achieve the same objectives

DFO Position:

- When SARA was enacted, the Government of Canada noted the Fisheries Act already existed and determined that there was a need for species-at-risk legislation as well. SARA provides for stronger protections and is a backstop for existing legislation.
- Unlike the *Fisheries Act* or provincial legislation, SARA provides for recovery strategies, action plans, consultations on the protection and recovery of species at risk and money to support protection and recovery efforts. SARA also provides a degree of transparency and accountability not included in existing legislation.
- With respect to commercial fisheries, Integrated Fisheries Management Plans (IFMPs), a planning tool developed under the *Fisheries Act*, will be used to avoid, eliminate, or minimise incidental harvest of SARA listed species. In other words, IFMPs can be used to implement aspects of SARA recovery action plans, as required. This will ensure DFO's management approach for fisheries affecting listed species is consistent with SARA.
- DFO is also working with other federal departments and provincial-territorial governments to ensure there is no duplication of efforts.

Issue 2: Need for addressing outstanding policy issues to ensure the full implementation of SARA

DFO Position:

- All parties recognize that we cannot delay the full implementation of SARA because all policies are not formalised and in place. In the absence of these policies, progress must be made to protect and recover species at risk of extinction.
- In September 2004, the Canadian Council of Fisheries and Aquaculture Ministers (CCFAM) created Aquatic Species at Risk Task Group (ASAR-TG) to develop a national strategy and framework to address key national issues like science and information needs, species protection, organisation and governance, and partnerships and communication. The ASAR-TG workplan was approved in September 2004
- DFO's working closely with provinces and territories to ensure that implementation policy is practical and meets SARA objectives. As such, negotiations are well underway to develop a high level bilateral agreement that establish bilateral committees to develop working arrangements that address specific regional policy and program issues including permitting, enforcement, and recovery strategies.
- DFO is working closely with Environment Canada and Parks Canada Agency to resolve issues surrounding critical habitat and residence.

Issue 3: Meaningful consultations on the full range of processes affecting the Province, at the appropriate levels

DFO Position:

- DFO is committed to full and meaningful consultation with provinces and territories. DFO is also committed to allowing sustainable activities to proceed, as long as species receive appropriate protection. As such, DFO officials are working with BC to find the necessary balance between the protection and recovery of species at risk and sustainable development.
- There are a large number of processes currently in place, at all levels, where discussions and consultations between DFO and BC occur. These include regular meetings of DFO's DM and DM of BC MAFF, the Canada-BC Committee on Environmental Regulatory Reform, Pacific Council of Fisheries and Aquaculture Ministers meetings, the bilateral negotiations and resulting implementation committee and Regional Implementation Board, Recovery Plan Team membership, Governor-in-Council consultations, Recovery Strategy Consultations and the process for conducting socio-economic work. These opportunities for consultation should be used to their best advantage rather than creating new processes.
- There is also a need to link existing processes. For example, the work of the ASAR-TG needs to be linked to DFO's bilateral work with provinces-territories to advance policy discussions such as permitting.
- It is important to note that DFO will continue to consult on the protection and recovery of species at risk but the development of policy and management measures for commercial fisheries affecting listed species remains a DFO responsibility.

Issue 4: Provincial involvement in the analysis of the socio-economic impacts of listing

DFO Position:

- DFO-Pacific Region is working closely with BC to be open and transparent in the development of socio-economic tools to assess the implications of listing. Work was recently initiated to develop a technical report for white sturgeon, bocaccio, and interior Fraser River coho, the next round of candidate species. The BC Ministry of Agriculture, Food and Fisheries and BC Ministry of Water, Land and Air Protection have been involved from the outset. It is expected that the final technical report will be used by both federal and provincial officials to brief senior management. Further, once the analysis is complete, broader dissemination of the report is planned both internally and externally.
- This process was developed as a result of the Department's experience with the Cultus and Sakinaw sockeye listing process. For those species, the SARA normal listing process did not allow sufficient time for a fulsome analysis and consultation. This new process attempts to address the concerns identified around the sockeye listing process.

- DFO looks forward to working closely with BC in areas of provincial jurisdiction to ensure provincial and federal objectives with respect to the protection and recovery of species at risk are met in areas such as water extraction and use.

Issue 5: Full consideration of the probability for recovery when making listing decisions

DFO Position:

- BC believes it is of critical importance that we do not list species with a very low probability of recovery. In SARA, however, whether recovery is biologically or technically feasible is a question for the Minister to answer after a species is listed.
- DFO acknowledges that considering the feasibility of recovery during the listing decision process is an important question and that assessing the probability that a species can be recovered raises important policy issues that require further discussion. This issue will be referred to the ASAR-TG, as the appropriate forum for these issues.
- BC also raises the issues of the COSEWIC policy on “designatable units” which requires COSEWIC to first look at species and then population sub-units within the overall context of the species assessment.
- The Wild Salmon Policy will be released for public comment in a matter of weeks. It will propose a management framework to conserve salmon sub-units below the species level which reflect their geographic and genetic diversity and is consistent with the approach used by COSEWIC to identify salmon sub-units. This issue may require further discussion; it is another possible area for discussion by the ASAR-TG.

Recommendation / Next Steps

- The attached letter responding to the issues identified by Deputy Minister Macatee was developed in consultation with the Pacific Region, Oceans and Habitat, Fisheries and Aquaculture Management, Science, and the SARA Secretariat.
- It is recommended that you sign the attached letter.

Michaela Huard
A/Assistant Deputy Minister

Attachment

K.Darling (990-0139)/É.Lavigne/G.Belzile/H.Powles/J.Davis/M.Huard/mdl