

Review of Changes to the Fisheries Act

Submission from the
Newfoundland and Labrador Environmental Industry Association

to the
Parliamentary Standing Committee on Fisheries and Oceans



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Members of the Newfoundland and Labrador Environmental Industry Association (NEIA) are taking the opportunity to provide input to the *Parliamentary Standing Committee on Fisheries and Oceans* in its *Review of Changes to the Fisheries Act*.

NEIA represents Newfoundland and Labrador's most experienced environmental professionals, and their views are summarized in this submission. Areas of concern and satisfaction with the current iteration of the *Fisheries Act* are outlined relating to six (6) themes (self-assessment, monitoring & enforcement, cumulative effects, offsets, definition of a fishery, and other) and specific recommendations for improvement are offered.

Self-Assessment

Industry identified issues arising from the self-assessment process for proponents which was introduced with the 2012 changes:

- Without the resources to be guided by an environmental professional on staff or an established environmental management system, small-to-medium sized business may incorrectly self-assess what mitigative measures their project requires and may underestimate the importance of soliciting expert advice from a consultant;
- 'Low-risk' projects can become 'high-risk' ones when not managed by an environmental professional;
- The self-assessment process creates uncertainty within a project for proponents, many who value stage-gated processes from a risk and stakeholder management perspective;
- The lack of regulator input (even on 'low-risk' projects) presents challenges for proponents when dealing with municipalities and other third parties who would prefer an assurance that the regulator is aware of the project and has approved it (given explicit measures are undertaken);
- As the current process does not require the proponent to notify the regulator of a project undertaking, it does not generate data or a record of self-assessed projects;
- Without a required notification, there is no awareness by the regulator or its partners of what projects are being undertaken or where they are being undertaken;
- Activities undertaken in one area may increase the risk or complexity of those proposed in another, but without any data of ongoing projects this cannot be mitigated; and
- The lack of record-keeping precludes industry from quickly accessing expected standards for projects of similar activity, scope, or geography.

Monitoring & Enforcement

Industry feels the self-assessment process has consequences from a monitoring perspective:

- The lack of project notification greatly affects the regulator's ability to monitor activities; it cannot ensure work is being done to a standard if it does not know if or where projects are taking place;
- This issue is compounded by the significant reduction of staff in the region – with fewer resources and less information, the chances of environmental damages taking place are greater;
- The reduction in the capacity to monitor at the Federal level has not been mitigated by increased monitoring at provincial or municipal levels in Newfoundland and Labrador;
- With knowledge that the regulator is unaware of a project – and that the regulator has few resources to discover and monitor such a project – proponents with little value for the environment are more likely to take advantage, increasing the odds environmental damages are taking place;
- This is to the detriment of the environmental industry – there is a reduced incentive for firms to invest in environmental professionals and processes;
- Those which do make that investment – rather than being rewarded by swift risk-free navigation through regulatory processes – are instead putting themselves at an economic disadvantage to those who choose non-compliance at a low-risk;
- This affects the professional capacity of the industry-at-large in the province; and
- Though increased fines for non-compliance and the 'duty to notify' introduced in the 2012 changes to the act are viewed at positive steps by industry, it is also felt that it is harder for the regulator to identify what constitutes 'serious harm' than it had been under similar provisions before the changes.

Cumulative Effects

Industry identified some concerns with the act as it is written with respect to cumulative effects:

- As the lack of project notification makes it impossible to know where projects are taking place, there is no way to capture the cumulative effects of multiple projects in and around the same area;
- This applies not only from a spatial perspective but a temporal one as well – the cumulation of activities over time can change the risk profile of a project in a given location;
- Records of activities are required to understand how projects in different locations and over time are affecting the ecosystem in whole;

- This is particularly true of projects in and around the ocean environment, where scientific evidence of consequences and mitigation activity outcomes is not strong; and
- The lack of project notification decreases the ability for the regulator to factor climate change in to risk profiles and aggregate risk.

Offsets

Changes to the act in 2012 provided proponents with new flexibility, which it feels is important to remain intact:

- Changes to the act gave industry more latitude in offsetting damages, namely increased opportunity to improve the ecosystem by adding value to the environment instead of a strictly spatial physical offset (which may not have much positive ecological impact);
- This approach adds incentives for proponents to monitor offsets to build evidence, and for industry to invest in higher science to increase ecosystem awareness and understanding; and
- Future changes to the act could include the ability for offsets – where value-add to the local ecosystem would be marginal – to include research to fill in information-gaps in high-priority subjects for the region.

Definitions

There was concern from industry on changes to the act in 2012 which had a material impact on what was to be considered for protection:

- As ecosystems are inter-related, restricting protection to ‘fisheries’ (commercial, recreational, and aboriginal) may be over-simplifying the environment;
- Industry feels there is a lack of clarity on what a fishery is and what elements are in ‘support’ of a fishery – this is of extreme concern when proponents self-assess and do not seek the advice of an environmental professional;
- Early history changes in ecosystems are not well known and are not being considered – making it difficult to assess what is and what is not an element that ‘supports’ a fishery;
- There is debate on if only those environments which lend themselves to a fishery are worth protecting.

Other

- Changes to the act in 2012 implemented significant changes for proponents with respect to which regulating body they should initially work with – simplifying the process significantly. It is industry's view that having one regulatory agency as the lead on a project (as opposed with multiple regulatory agencies) is a positive development which should be retained;
- Explicitly stated timelines for authorizations and project progression through the regulatory framework were positive changes which help industry plan and mitigate risk;
- Industry is concerned that the lack of project notification (and subsequent data collection) will over time compromise the regulator's ability to make evidence-based decisions and impacts its ability to ensure policies and processes 'keep up with the times'.

Concluding Remarks and Recommendations

- Members believe that the regulator's withdrawal from providing detailed advice and proposed solutions to proponents was a positive step, and that such professional environmental consulting services are most appropriately delivered by the private sector;
- However, significant data, monitoring, and risk issues stem from the self-assessment tool as currently operated;
- Members feel that many of these issues could be addressed through a registration process for project proponents when conducting a self-assessment;
- Self-assessments for all relevant projects should be mandatory, and thus registration by proponents will also be mandatory;
- This registry will: provide a greater awareness of ongoing projects; provide proponents with information on projects of similar scope to help contribute to consistent application of mitigating measures; help identify spatial and temporal concerns; inform monitoring activities; and provide the public (and regulator partners at the provincial and municipal level) with the tools necessary to make evidence-based and coordinated decisions;
- An increased focus must be placed on monitoring and perhaps a standard of oversight could be codified in the *Fisheries Act*;
- Members strongly advocate for the return of more robust regional staff deployment to both increase the capacity to monitor local projects and also to foster stronger relationships between the regulator and the private sector and to enable the sharing of information;
- Members would like to see an explicit definition of what constitutes 'permanent harm';

- Those who do not adhere to standards must be penalized accordingly in order to provide the appropriate incentive for firms to invest in the advice of an environmental professional (and take that advice); and
- New and emerging technologies (e.g. unmanned aerial vehicles) could be deployed to decrease the operating cost of increased monitoring activities, which would be in line with government's initiative to invest in clean technologies.

About NEIA

The Newfoundland and Labrador Environmental Industry Association (NEIA) is a not-for-profit association of businesses that promotes the growth and development of the green economy in Newfoundland and Labrador, Canada.

To accomplish this, NEIA must directly contribute to:

- The development of new enterprises;
- The stabilization and retention of existing local enterprises;
- The growth of existing local enterprises;
- The attraction of new enterprises to the region; and
- The creation of conditions for these activities to take place – be it through regulatory frameworks, general business climate or sector awareness

To achieve these ends NEIA focuses its activities and initiatives in 5 areas, by providing:

- firm-level supports to drive business growth;
- training tailored to environmental sector employees;
- tools to encourage and foster innovation and productivity;
- export and international trade support; and
- leadership on policy and advocacy issues

With over 150 members, NEIA is Newfoundland and Labrador's premier resource for the environmental sector, offering a diverse range of expert knowledge and support services for firms and organizations working to grow economic opportunity while respecting our natural environment. NEIA is the business of the environment.