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# COMMENTS ON THE PROPOSED REGULATIONS AMENDING THE FISHERY (GENERAL) REGULATIONS

## Presentation to Fisheries and Oceans Canada

OCEANA Protecting the World's Oceans

February 1, 2021

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Fisheries and Oceana Canada

**RE: Regulations Amending the Fishery (General) Regulations**

Dear Mr. Waddell,

The need to rebuild our fisheries has never been greater. The passage of new rebuilding statutes in the *Fisheries Act* hold the promise a brighter future for Canada's fisheries. Now is the time to deliver on that promise. The development of the rebuilding regulations is a rare opportunity for Canada to correct the historic mistake of overfishing, made by so many nations, that continues to cause enormous hardship to people in coastal communities.

The rebuilding regulations should clarify the standards necessary to carry out the intent of the new rebuilding statutes created in the *Fisheries Act*. As currently written, the rebuilding regulations do not provide the clear direction that experience in other nations shows is necessary to allow stocks a chance to rebuild.

Instead, the proposed regulatory package is badly out of step with international best practice and the legislative approaches of major fishing nations around the world. Furthermore, it contains no clarity or guidelines regarding rebuilding objectives or definitions of rebuilding success, allows for far too much time to create plans for listed stocks and does not list all stocks requiring rebuilding or provide any timelines under which unlisted stocks will be addressed. Unfortunately, the regulations affirm the status quo rather than act as an innovative package designed to achieve the spirit of the rebuilding statues in the *Fisheries Act* or focus on sustainability and the introduction of innovative and future-facing management approaches.

The regulations fall far short of modern legislative requirements in peer nations, all of which require science-based targets and timelines for rebuilding fisheries. Laws and regulations in the United States, European Union, Japan, New Zealand, Chile and others all require actions to rebuild stocks to levels capable of producing "maximum sustainable yield," or $B_{MSY}$, the globally accepted standard of fisheries management.

Canada has signed the United Nations Fish Stocks Agreement, which commits nations to ensuring that straddling and high seas stocks are managed *"to maintain or restore stocks at*

*levels capable of producing maximum sustainable yield."*[1] Finally, The Precautionary Framework adopted by Fisheries and Oceana Canada states that "*the goal of any rebuilding process is to grow stocks up through the Cautious Zone and ultimately into the Healthy Zone (where possible)."*[2]

Without providing such standards on targets and timelines, fisheries managers will need to negotiate rebuilding plans stock by stock, subject to all the existing pressures that have prohibited the rebuilding of so many stocks to date.

In cases where the Minister may deem these standards to be impossible or inadvisable to implement, Sections 6.1.2 and 6.2.2 of the *Fisheries Act* clearly preserve the Minister's discretion to implement alternate measures.

Therefore, Oceana Canada urges Fisheries and Oceans to make the following changes to ensure the regulations appropriately support the intent and content of the rebuilding provisions of the *Fisheries Act* and bring Canada's fishing regulations into line with other major fishing nations:

1. For the purposes of Section 6.1 of the *Act*, define "the level necessary to promote the sustainability of the stock" as that which can support at least 80 per cent of "maximum sustainable yield" or a reasonable proxy;
2. Similarly, the target for rebuilding plans in section 70 (e) should be that which can produce maximum sustainable yield or a reasonable proxy. The measurable objectives should at the least require rebuilding the stock above the LRP with high probability;
3. The timeline for rebuilding a stock should be set as no more than twice the time estimated as required to rebuild the stock with no directed fishing;
4. Make reviews on progress in meeting plan objectives publicly available; and
5. Add all "critical zone" stocks to the list of Major Fish Stocks, as identified in the most recent Sustainable Survey for Fisheries.

**The state of Canada's fisheries**

The biomass of Canada's marine fish populations has declined by 55 per cent since 1970,[3] and little effort has been focused on rebuilding overfished stocks – many of which have been in a state of collapse for decades.

In 2017, the first year Oceana Canada published our annual *Fishery Audit,* we found that there were 67 stocks (34.5 per cent) in the healthy zone and 26 stocks (16 per cent)[4] in the critical

[1] https://www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm
[2] https://www.dfo-mpo.gc.ca/reports-rapports/regs/sff-cpd/precaution-eng.htm
[3] Hutchings, J.A., Côté, I.M., Dodson, J.J., Fleming, I.A., Jennings, S., Mantua, N.J., Peterman, R.M., Riddell, B.E., Weaver, A.J., and D.L. VanderZwaag. 2012. Sustaining Canadian marine biodiversity: responding to the challenges posed by climate change, fisheries, and aquaculture. Expert panel report prepared for the Royal Society of Canada, Ottawa page 216.
[4] Fishery Audit 2017 https://oceana.ca/en/publications/reports/fishery-audit-2017-unlocking-canadas-potential-abundant-oceans

zone. By 2020 the number of stocks in the healthy zone had dropped to 52 (26.8 per cent) and those in the critical zone had jumped to 33 (17.0 per cent).[5]

These declines have happened despite new investments in science and management. Declines are affecting forage fish, such as capelin, herring and mackerel that are prey for seabirds, whales and many commercially important fish, such as cod and tuna. Despite DFO policies to the contrary, in many cases Canada continues to overfish critically depleted stocks, many of which are now even more vulnerable because of climate change.

Unfortunately, political commitments and departmental policies on their own have been insufficient to spur the development of rebuilding plans, which are instrumental in halting the decline of Canada's fisheries.

In April 2019, then Minister of Fisheries and Oceans Jonathan Wilkinson was clear about the intent of rebuilding plans when he told the Senate Standing Committee on Fisheries and Oceans that:

> "those [stocks] that require rebuilding plans are those that are not healthy or in the high part of cautious. Everything else will require a rebuilding plan [critical and low/medium cautious].[6]

And the DFO policy guidance[7] is equally clear:

> *"The goal of any rebuilding process is to grow stocks up through the Cautious Zone and ultimately into the Healthy Zone (where possible)."*
>
> *"much of the information outlined in [rebuilding plans] may also prove useful for those tasked with additional rebuilding processes through other management processes (e.g., rebuilding through the Cautious Zone and into the Healthy Zone."*
>
> *"in some cases, a plan could be initiated when the stock declined past the mid-point of the cautious zone."*

In other words, the will of Parliament and existing policy both clearly assert that the goal of fisheries management and of rebuilding efforts is to maintain or return stocks to "healthy" levels, which DFO policy, international agreements and established practice all define as at or near levels capable of supporting maximum sustainable yield – not simply to grow a stock beyond the Limit Reference Point, or LRP (the level below which a stock is in the "critical" zone).

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[5] Fishery Audit 2020 https://oceana.ca/en/publications/reports/fishery-audit-2020
[6] Proceedings of the Standing Senate Committee on Fisheries and Oceans https://sencanada.ca/en/Content/Sen/Committee/421/POFO/40ev-54638-e
[7] DFO. Nd. Guidance for the Development of Rebuilding Plans under the Precautionary Approach https://www.dfo-mpo.gc.ca/reports-rapports/regs/sff-cpd/precautionary-precaution-eng.htm

It is also clear that current efforts are failing without binding requirements to implement these measures, despite the government's investment of $107.4 million over five years starting in 2019-2020 and $17.6 million per year ongoing to support the implementation of stock assessment and rebuilding provisions.[8] Only two rebuilding plans were published by the end of last year (Northern cod and Atlantic mackerel). Disappointingly, they both fall short of DFO's existing rebuilding policy guidelines and fail to meet the legal requirements and intent of the draft *Fisheries Act* rebuilding regulations. As written, the "rebuilding" plan for Northern cod ensures that populations will continue to stagnate at dangerously low levels, depriving communities of the opportunity to benefit from a rebuilt fishery.

**Economic Importance of Rebuilding**

The failure to clearly define targets and timelines in regulations means that Canada will miss out on the economic benefits of rebuilding. A report by the New Economics Foundation (NEF) found that in the EU and neighbouring waters, "[past] overfishing made the fishing industry economically vulnerable and caused coastal communities to crumble" and that "instead of rebuilding stocks, the industry has become heavily subsidized by the taxpayer."[9]

Since the Magnuson-Stevens Act (MSA) was passed in 1996, with the intent to stop overfishing and require rebuilding depleted fisheries, 47 stocks have been rebuilt.[10] A report published in 2013[11] found that rebuilding plans had been prepared for 44 overfished stocks in the U.S. Twenty-eight stocks (or 64 per cent) were either fully rebuilt or were showing significant progress and positive trends were "generally associated with the MSA and its requirements that were widely implemented around the country." The report concluded that fisheries management is most effective at recovering fisheries when rebuilding plans are mandated by the law.

**Oceana Canada recommendations**

Experience from within Canada and around the world provides clear evidence about what is necessary to rebuild depleted fisheries. The rebuilding regulations must incorporate the following elements to provide the best chance for depleted stocks to recover:

- Define "sustainability" to be consistent with existing DFO policy; that is, levels considered "healthy," which DFO policy sets at 80 per cent $B_{MSY}$ or a reasonable proxy;
- Clearly require the target for rebuilding to be to a healthy level, in keeping with the will of Parliament;

[8] Proceedings of the Standing Senate Committee on Fisheries and Oceans https://sencanada.ca/en/Content/Sen/Committee/421/POFO/40ev-54638-e
[9] NEF. 2010. Jobs Lost at Sea. Page 2
[10] Annual Report to Congress on the Status of US Fisheries, July 2020, https://media.fisheries.noaa.gov/dam-migration/2019_status_of_stocks_rtc_final_7-15-20.pdf
[11] NRDC. Bringing back the Fish. https://www.nrdc.org/sites/default/files/rebuilding-fisheriesreport.pdf

- Set timelines in which rebuilding should occur at a high probability, based on the rate at which stocks should rebuild in the absence of fishing;
- Require transparency by publishing progress on rebuilding plans; and
- List all critical zone stocks in the first batch so that rebuilding plan can be created without delays.

### 1. Target

Currently section 6.1 (1) of the *Fisheries Act* states that "*In the management of fisheries, the Minister shall implement measures to maintain major fish stocks at or above the level necessary to promote the* ***sustainability*** *of the stock, taking into account the biology of the fish and the environmental conditions affecting the stock."*[12]

To have effect, the term "sustainability" must be defined. Without a standard, such as the globally accepted $B_{MSY}$, the term "sustainable" loses actionable meaning. For example, it has been argued in recent years that increasing commercial fishing on the Northern cod stock is sustainable if it doesn't result in further declines, even though it is still deep within the critical zone. While technically correct in this context, this absurd argument would clearly foreclose any opportunity for rebuilding the stock and is inconsistent with current (unenforceable) Canadian policy, which states as the goal of fisheries management is to maintain or return stocks to healthy levels. Under DFO policy, a stock is considered to be healthy if the biomass, or its index, is higher than 80 per cent of $B_{MSY}$.[13]

The recently announced Northern cod rebuilding plan, which fails to set objectives for the stock even to reach the critical zone boundary, shows that the lack of a definition of "sustainable" in law or regulation is not an idle concern.

Without changes, the target for rebuilding could – and, evidence shows, will – be interpreted as the LRP plus one fish. This does not reflect the intent of the law or the existing policy guidance. Instead, the target for rebuilding should be to the healthy zone, with measurable objectives to grow the stock to at least above the LRP. Section 6.1 (2) and 6.2 (2) of the *Fisheries Act* maintains the Minister's discretion to set an LRP if rebuilding isn't deemed possible for various reasons.

**Recommended changes:**

| **Draft CG1 Regulation** | **Oceana Canada Proposed Amendment** |
|---|---|
| 69 For the purposes of section 6.3 of the Act, the major fish stocks referred to in sections 6.1 and 6.2 of the Act are listed in the Table in Schedule IX. | Addition of 69.1<br><br>For the purposes of the section 6.1 of the Act, **the level necessary to promote the** |

[12] https://laws-lois.justice.gc.ca/eng/acts/f-14/

[13] Glossary for fisheries sustainability survey https://www.dfo-mpo.gc.ca/reports-rapports/regs/sff-cpd/survey-sondage/gloss-en.html

| | |
|---|---|
| | **sustainability of a major fish stock is that level at which the stock is healthy, generally considered to be a level that has a high probability of being at or above 80 per cent of $B_{MSY}$ or other proxy.** |
| 70 (e) the target for rebuilding the stock; | 70 (e) the target for rebuilding the stock, **which shall be in the healthy zone.** |
| 70 (c) measurable objectives aimed at rebuilding the stock; | 70 (c) measurable objectives aimed at rebuilding the stock **above the Limit Reference Point with high probability.** |

**2. Timelines:**

For stocks that are in decline, DFO policy states that rebuilding plans should be developed and executed before the stock even gets as low as the LRP. Once the stock is below the LRP, action to rebuild becomes urgent**.**

The regulations should reflect the existing guidance on timelines, which states that rebuilding should aim to be achieved within a reasonable timeline, usually within a period of 1.5-2 generations. Additional DFO guidance, included in an ICES working group report on rebuilding fisheries,[14] states that rebuilding plans should have*: "An estimate of the minimum time to a rebuilt state in consideration of the current stock depletion, generation time, and productivity to the extent possible"*. This minimum time can then be used to demonstrate how choosing longer timelines impacts biological outcomes versus socio-economic and cultural trade-offs. Additionally, the timelines should be consistent with other peer nations. For example, the United States sets a maximum timeline based on the minimum time for the stock to rebuild in the absence of fishing, including a multiple of two times the minimum time estimate.

**Recommended changes:**

| **Draft CG1 Regulation** | **Oceana Canada Proposed Amendment** |
|---|---|
| N/A | New section<br><br>70 (i) **"The timeline for achieving the target which shall be no more than twice an estimate of the minimum time to a rebuilt state under no fishing removals and in consideration of the current stock depletion, generation time and productivity to the extent possible.** |

[14] Available in Annex 2: Recommendations for development of rebuilding guidelines in Canada, page 73 of: ICES. 2020. Workshop on guidelines and methods for the evaluation of rebuilding plans (WKREBUILD). ICES Scientific Reports. 2:55. 79 pp. http://doi.org/10.17895/ices.pub.6085.

### 3. Timeline to develop a rebuilding plan

The entire point of rebuilding plans is to bring highly focused and immediate attention to stocks that are already in or near the critical zone and trending in the wrong direction. Considering that under current policy rebuilding plan development should be initiated – and in some cases implemented – before a stock reaches the LRP, providing up to three years for plan development once a stock is below the LRP seems both unnecessary and inadvisable.

The vast majority of the information needed to create a rebuilding plan will be compiled and peer reviewed through the stock assessment process. This process will also help identify the reasonable population targets and inform related management and fishery objectives. Given these realities, in our view, allowing up to three years is much too long to complete a plan and we recommend that 70.2 be revised to feature a two-year timeline, with a year's extension allowed if necessary to meet constitutional obligations to consult with Indigenous Peoples.

**Recommended changes:**

| **Draft CG1 Regulation** | **Oceana Canada Proposed Amendment** |
|---|---|
| 70 (2) The plan must be developed within 24 months after the day on which the Minister first had knowledge that the stock had declined to or below its limit reference point. | 70 (2) The plan must be developed **and posted on the Internet site of the Department of Fisheries and Oceans** within 24 months after the day on which the Minister **or the department** first had knowledge that the stock had declined to or below its limit reference point. |
| 70 (3) The Minister may extend the timeline to the extent necessary for a period not exceeding 12 months to complete the plan. | ~~*3) The Minister may extend the timeline to the extent necessary for a period not exceeding 12 months to complete the plan.*~~<br>*70 (3)* ***The Minister may extend the timeline to complete the plan for a period not to exceed 12 months where an Indigenous governing body requests additional time to allow the Minister to meet his or her obligations under section 35 of the Constitution Act, 1982.***<br>***The Minister may designate a plan completed within the one- year time established in 70.2 as a provisional plan and stipulate that the plan shall be finalized no more than 12 months from this provisional designation.*** |

### 4. Transparency and Accountability

To bring greater transparency to the rebuilding process, progress on rebuilding should be published on DFO's website once every two years after the plan is developed**.**

The rebuilding statutes within the *Fisheries Act* imply that rebuilding plans are public documents, however it is not clear how and when the public can access these documents. An amendment to this section will ensure that the final accountability for the rebuilding plan resides with the Minister.

**Recommended changes:**

| **Draft CG1 Regulation** | **Oceana Canada Proposed Amendment** |
|---|---|
| **(h)** a schedule for a periodic review of the plan to determine whether the objectives are being met and whether an adjustment is needed. | a schedule for a periodic review of the plan to determine whether the objectives are being met and whether an adjustment is needed **and publish the results of this review on the internet site of the Department of Fisheries and Oceans.** |
| 70 (1) A plan to rebuild a major fish stock, required under subsection 6.2(1) of the Act, must contain the following information: | 70 (1) A plan to rebuild a major fish stock, required under subsection 6.2(1) of the Act, **as approved by the Minister,** must contain the following information: to include: |

### 5. Listing of stocks

Not all stocks identified by DFO as being in the "critical" zone are included in the draft regulations. The next batch of stocks to be added under the regulations will be done through the Canada Gazette process, which we understand generally takes approximately 18 months. As the proposed timeframe for the development of rebuilding plans is a maximum of three years, and given the *Act* was passed in 2019, this means that some critical zone stocks would not be required to have a rebuilding plan for six and a half years after the rebuilding provisions of the *Act* first receive royal assent.

Listing all critical stocks in the first batch will give them the best chance to rebuild and will be in alignment with DFO's own guidance for the development of rebuilding plans, which states: "*if a stock is already in the critical zone, a rebuilding plan must be developed and implemented on a priority basis."*[15]

[15] DFO. Nd. Guidance for the Development of Rebuilding Plans under the Precautionary Approach https://www.dfo-mpo.gc.ca/reports-rapports/regs/sff-cpd/precautionary-precaution-eng.htm

The six stocks below are listed as critical on DFO's most recent publicly available Sustainability Survey for Fisheries[16] results, three of which already have a rebuilding plan.

1. Atlantic cod - 4X5Y
2. Atlantic cod - 5Zjm
3. Snow crab - Scotian Shelf (4X)
4. Yellowtail flounder - 5Z
5. Northern shrimp - SFA 7
6. Sockeye salmon - Fraser (Early Stuart)

The creation of new rebuilding regulations is a unique and rare opportunity for the DFO to set Canadian fisheries on the path of abundance. As currently written, they will maintain the status quo and fall far short of the existing laws and policies in other progressive fishing nations, which history shows is necessary to rebuild stocks to abundance. The government must define sustainability for stocks as at healthy levels, not the LRP; clearly require the target for rebuilding to be back to a healthy level; and set timelines in which rebuilding should occur.

Sincerely,

Kim Elmslie
Campaign Director
Oceana Canada

**ABOUT OCEANA CANADA**

Oceana Canada is an independent charity and part of the largest international advocacy group dedicated solely to ocean conservation. Oceana Canada believes that Canada has a national and global obligation to manage our natural resources responsibly and help ensure a sustainable source of protein for the world's growing population. Oceana Canada works with civil society, academics, fishers, Indigenous Peoples and the federal government to return Canada's formerly vibrant oceans to health and abundance. By restoring Canada's oceans, we can strengthen our communities, reap greater economic and nutritional benefits and protect our future fisheries.

[16] https://www.dfo-mpo.gc.ca/reports-rapports/regs/sff-cpd/survey-sondage/index-en.html