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Your file *Votre référence*

Our file *Notre référence*

October 1, 2010

Ms. Heidi Wiebe
P.O. Box 235
Fort Good Hope, NT
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Ms. Wiebe:

Re: Department of Fisheries and Oceans Comments on the Sahtu Land Use Plan

Thank you for providing DFO the opportunity to comment on the Sahtu Land Use Plan. The list of comments below is our preliminary review. Between now and the Public hearings, we will undertake a further review of the plan and may have further comments.

To highlight DFO's largest issue, the Conformity Requirements should be redirected towards the proponents rather than the regulators. The onus is for proponents to meet the various requirements. In addition, where 'Regulators' are to remain within conformity requirements, it appears this would be better suited to state 'Responsible Authority' in order to avoid the issue of creating undertakings well outside the mandate of specific Departments.

Draft 2 comments and their respective incorporation

Comment 215 – It is noted that this section has been removed from the Sahtu Land Use Plan and moved to the Background Report. DFO will undertake further review of the Background Report and may provide further comments prior to the Public Hearings.

Comment 724 – DFO recognizes this is an outstanding action item. DFO will follow up in early November.

Comment 727 – DFO will request information from communities on a project by project basis in line as required.

General Land Use Plan Comments

- Definitions, page ix – Definitions should be consistent with the MVRMA or in the land claim agreement. e.g. harvesting – not the same definition as found in the land claim which includes the wording *“means gathering, hunting, trapping or fishing in accordance with this agreement or applicable legislation,”*
- The definition of “land” and the interpretation of s.41(2) of the MVRMA is not clear in the land use plan. S.41(2) of the MVRMA does not provide a definition of land but rather states that *“a land use plan shall provide for the conservation, development and use of land, waters and other resources in a settlement area.”*
- Would be beneficial to have some other definitions (e.g. development proposal) so that the MVRMA or land claim agreement does not need to be referenced for the definition.
- Section 1.2, page 2 – States, “Land Use Planning is the first of four components” and then lists four more components. Should this be “...first of five...”
- Table 11 – page 290 – under DFO Authorizations, remove “Authorization for deposit of deleterious substances”. Change “Habitat Alteration, Disruption, Destruction Authorization”, to “Authorization for the harmful alteration, disruption or destruction of fish habitat. Add Authorization to kill fish by means other than fishing.
- 7.3 Enforcement – page 293 – states, “...DFO and the NEB, also have their own inspectors.” DFO does not have “inspectors” but rather Fisheries Officers that enforce the *Fisheries Act*.

Suggested wording change to, *“...DFO and NEB, also have their own inspectors or enforcement officers.”*

- Footnote #397 – page 276 – the link is broken and should be updated
- Have the Aboriginal groups that assert rights within the Sahtu Settlement Area been addressed or consulted? i.e.) Nacho Nyak Dun, Kaska.
- There are no dispute resolution mechanisms built within the plan. Given the complexity of the land use plan and its implications to a significant number of regulators and governing bodies, unforeseen

conflict will arise. It is recommended that a conflict resolution process be established within the plan.

- Page 94 – Item #13 – “Good fish lakes are rare...” – yet almost every single zone notes significant fish harvesting occurs. Note page 279, “Many of the lakes in the Sahtu have been identified as “fish lakes” by communities; lakes from which communities regularly harvest fish.”
- Page 144 – “...Belot Lake...” should this be “...Lac Belot...”?
- Given the significant number of acronyms used through out the document, an acronym appendix would be of assistance.

Conformity Requirements

- *Conformity Requirement #2 – part 2 – Regulators shall ensure that a land use activity is designed and carried out in a manner that addresses community concerns and incorporates relevant traditional knowledge.*

While the intent and rationale is appreciated by DFO, we do have concerns as to how conflicts in differing views of relevant traditional knowledge will be resolved. Should a community member bring forth concerns that are unrelated to the mandate of the Regulator, as it is currently worded, unrelated matters could potentially have an impact.

Similarly, how will conflicts be resolved in determining if the mitigation measures effectively address the identified concerns?

In addition to the above, the onus must be on the proponent to address the intent of this conformity requirement. As a function of issuing a permit or authorization, a Regulator can request if this has been addressed or if proponents have made all efforts to do so, however DFO is not resourced to undertake such activities.

DFO does not have recommended wording at this time. It is recommended that this Conformity Requirement be discussed at the public hearings. DFO will undertake further evaluation prior to the public hearings.

- *Conformity Requirement #3 – Before any land use activity is authorized, Regulators shall ensure that communities will benefit from the proposed land use.*

Much like Conformity Requirement #2, DFO appreciates the intent of Conformity Requirement #3. DFO does not have the resources to ensure that communities will benefit by all activities authorized by DFO nor do we have the capacity to ensure those benefits are appropriately carried out. Like Conformity Requirement #2, DFO feels the onus must rest with the proponent to undertake this activity.

In addition, there is no mechanism in place to determine whether any benefit has been achieved. How will conflicts in deciding if a benefit has been achieved be resolved? e.g.) A University student based study may be proposed that would benefit the larger scientific community and local area, however the student is not in a financial position to hire local community support and the community chooses to state that this study serves no benefit to them.

Recommended Wording – Before any land use activity is authorized, Regulators will confirm that the proponent’s proposed activity has considered and incorporated community benefits where possible.

- Conformity Requirement #7 – Please include the following reference to the in-water construction timing windows for the protection of fish and fish habitat. This reference is updated from time to time to reflect current knowledge.
[http://www.dfo-mpo.gc.ca/regions/central/habitat/os-
eo/provinces-territoires-territoires/nt/os-
eo21-eng.htm](http://www.dfo-mpo.gc.ca/regions/central/habitat/os-
eo/provinces-territoires-territoires/nt/os-
eo21-eng.htm)
- Conformity Requirement #8 – Conflict may arise between traditional knowledge and science as to what constitutes minimizing the impact of a land use. – How will such conflicts between traditional knowledge and science be resolved?
- Conformity Requirement #12 – Part 4 – Define “rare plants”. – DFO does not have the resources or mandate to conduct such an undertaking.

Suggested wording “...proponents shall undertake a rare plant survey, and shall ensure that any rare plants found are monitored for impacts from the activity.”

- Conformity Requirement #14 – *Before any land use activity is authorized within a Special Management Zone, Conservation Zone or Proposed Conservation Initiative, Regulators shall assess the*

potential impacts from the activity on the values for which the zone was established and ensure that appropriate measures are in place to minimize impacts to the zone values.

DFO participates in the environmental assessment process by offering expertise specific to the department's mandate. It is possible that the values specific to the zone could be outside the mandate of the department. Thus this requirement, as written, could require DFO to take on additional duties or potentially create mitigation measures outside the mandate of all regulators.

The Conformity requirement should be redirected towards the proponents rather than regulators. The onus is for proponents to meet the set values.

Recommended wording – Before any land use activity is authorized within a Special Management Zone, Conservation Zone or Proposed Conservation Initiative, Proponents shall assess the potential impacts from the activity on the values for which the zone was established and ensure that appropriate measures are in place to minimize impacts to the zone values.

Under Conformity Requirement #14: Context and Rationale
"...Regulators and applicants are referred to the zone descriptions for the areas in which a land use is proposed, and in particular to the sections describing the reasons for protection, ecological values and socio-cultural values, and are expected to design and manage the land uses in a way that protects these values."

Similar concern: See comments above

Recommendation: Delete Regulators. Direction is for applicants to develop their application which will meet the land use plan conformity recommendations.

- Conformity Requirement #15 – Part 2 – Who determines “relevant community organizations”?
- Conformity Requirement #20 – DFO does not see this as a Conformity Requirement. This is an action item as defined under Action #11. DFO feels that Lac Belot should remain open to the potential of water withdrawal at this time. Based on the intent of Conformity Requirement #2, community concerns and traditional knowledge would have to be taken into consideration and

addressed prior to the issuance of a license, thus providing a further opportunity to address concerns prior to any approval.

Action Items

- General clarification of the force and effect of Action Items is required. DFO will be undertaking further review.
- Action #8 – DFO does not have the funds or capacity to undertake this action at this time. Suggested wording – remove 4 year time frame and “...shall collaborate with appropriate community organizations... as human and fiscal resources permit to develop and implement a Sahtu community – government strategy to partner in patrols, monitoring and/or inspection responsibilities...” As worded, implementation is to begin within the 4 year timeframe. What happens if the defined 4 year time frame cannot be met?
- Action#10 – Who is going to coordinate and pay for this initiative? Is it up to each individual organization or will there be some coordination? This is a massive undertaking and would be a very long term project.
- Action #11 - *DFO shall work with communities a) to document community traditional knowledge of i. fish and fish habitat, and ii. water levels and quality; and b) to discuss i. community concerns related to water withdrawal, ii. DFO's winter water withdrawal protocol, and iii. alternative solutions.*

It is understood by DFO that the issue of water withdrawal in Tate and Stewart Lakes is no longer a concern. Can this be confirmed?

It is appreciated this is primarily derived from issues with water withdrawal from Lac Belot. It is noted in the comments from Draft 2 of the Sahtu Land Use Plan, that CAPP questioned this approach in comment 486 and an unknown source in comment 124.

DFO supports *Part b)* of this statement and will continue discussions with communities as they are requested. As per our meeting with Colville Lake on August 19, 2010, during the Sahtu Land Use Plan Consultations, DFO will have further follow up with the community to provide additional clarification on the Water Withdrawal Protocol. Item iii. can only be discussed in the context of a specific project.

In regards to *Part a)*, DFO is limited to sediment discussion regarding water quality. Water quality is the mandate of Environment Canada. Documenting Traditional Knowledge on fish and fish habitat for the Sahtu would be a massive undertaking. DFO does support this concept, however can only support such undertakings as resources permit.

Suggested Wording - DFO shall work with communities as requested and as resources permit a) to document community traditional knowledge of i. fish and fish habitat, and b) to discuss i. community concerns related to water withdrawal, ii. DFO's winter water withdrawal protocol, and iii. alternative solutions to water withdrawal related to specific projects.

Recommendations

- Recommendation #4 – a working contact should be established when conducting research in the Sahtu. The Sahtu Renewable Resources Board may be a logical fit.
- Recommendation #5 – Part 1 – What if Federal guidelines conflict with 'guidelines from other jurisdiction'? Further recommendation for conflict resolution provisions. Note the Federal Guidelines are currently being revised. If you wish to have a web link to them, they can be found at: <http://www.ainc-inac.gc.ca/ai/arp/cnl/intgui-eng.asp>

Remove "INAC Interim guidelines on Aboriginal..." and replace with "Federal Interim Guidelines for Federal Officials to Fulfill the Legal Duty to Consult." These are not just INAC's guidelines.

Page 266, 2nd paragraph, suggested wording change to, "...impacts of contemplated Crown conduct on Aboriginal and Treaty Rights as established under section 35 of the Constitution Act.

If you require additional information, please do not hesitate to contact Trevor Sinclair at (867) 669-4937. Thank you.

Regards,

(Original signed by)

Michael Hecimovich
Area Director
Western Arctic Area