



The Honourable Bernadette Jordan, Minister of Fisheries and Oceans
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Ottawa, Ontario
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Via email: min@dfo-mpo.gc.ca

Re: Concerns with Rebuilding Plan for Atlantic Mackerel

July 3, 2020

Dear Minister Jordan:

With this letter, the Ecology Action Centre, Maritime Aboriginal Aquatic Resources Secretariate, Oceans North and WWF-Canada are providing comments, concerns and recommendations on the Rebuilding Plan for Atlantic Mackerel (“the Plan”) following its release to the Mackerel Rebuilding Plan Working Group (RPWG). We have participated in the RPWG either as official members or observers during the multi-year process and have provided substantial input throughout. We all support sustainable fisheries and livelihoods, and given mackerel’s importance as a food, bait and recreational fishery—in addition to its role in the ecosystem as a forage fish species—we are particularly concerned with the current state of the mackerel stock.

It is our collective view that the Plan:

- Does a disservice to the rebuilding plan process, is not compliant with the Precautionary Approach (PA) Framework, and will do little to rebuild the mackerel stock.
- Inappropriately interprets DFO policy on socioeconomic concerns to the detriment of mackerel rebuilding.
- Contains no mention of lowering the quota in the future as a crucial step to rebuilding, which blatantly disregards rebuilding objectives, the PA Framework and the best available science.

Our detailed comments below outline areas of concern and provide specific recommendations to ameliorate a Plan which appears to flout DFO’s legal commitments to rebuilding through the modernized *Fisheries Act*—a piece of legislation that we expected would lead to a departure from the status quo, not a continuation fish populations in Canada in the critical zone. DFO has had enough experience with managing depleted fisheries, and it is beyond time that we take seriously our obligations for ensuring that our fisheries and oceans are managed with the expectation of rebuilding and recovery.

I. Concerns with Process

We recognize the time, effort and financial resources DFO has used from the public purse to develop the Plan. However, many other stakeholders and Indigenous groups, including the ones writing you today, have also done the same, spending time, effort and money to contribute to this process since the rebuilding plan was initiated in 2017. Even after all of this, the Plan is not reflective of the conversations, analyses and agreements that were made throughout the process. As a group, we agreed to prioritize the development of a Management Strategy Evaluation (MSE)—an approach that provides an opportunity for rightsholders, industry, fisheries managers, and other stakeholders to collectively develop an objectives-centred management plan that would further the rebuilding of the stock while equitably distributing the costs. It is disappointing to invest so much in a process that promised a path towards rebuilding but yielded a final plan which all but ensures failure.

There are many examples that are further detailed in this letter where the Plan does not reflect the work of the RPWG, DFO policies or current science. Departmental policy around the development of rebuilding plans is clear that the probability of growth should be high. As such, the RPWG spent considerable time at multiple meetings to decide on probabilities for achieving objectives that align with the PA Framework in combination with the MSE. These agreed-on probabilities were not included in the rebuilding plan, even after this shortcoming was made clear to DFO both in writing and in person at the most recent meeting. Furthermore, the extensive results of the peer-reviewed MSE process are relegated to an exercise in the Plan, doing a disservice not only to the time, money and energy spent by DFO and the RPWG, but also to the results of the MSE itself and to the scientists who worked diligently on the analyses. The understanding by the RPWG participants was always that the MSE process and results would guide the rebuilding plan and process. The MSE process allowed far more uncertainties and scenarios to be tested than a traditional stock assessment and was subject to vigorous peer review. The fact that the results were pessimistic was entirely predictable given the previous scientific assessments and knowledge about the state of the stock. We understand that the MSE did not present a harvest control rule or trade-offs that were favourable for industry or management, but this is not a rationale to invalidate the process and final results. The analyses and results are extensive and should provide a way forward for management in the Plan rather than simply being noted.

II. Concerns with the Plan

i. Not compliant with the PA Framework

*Guidance for the Development of Rebuilding Plans under the Precautionary Approach Framework: Growing Stocks out of the Critical Zone*¹ (subsequently described as the Guidance Document) states that rebuilding plans are to have the aim of a high probability of the stock growing out of the critical zone within a reasonable timeframe. These probabilities associated

¹ From the guidance document (<https://waves-vagues.dfo-mpo.gc.ca/Library/40584781.pdf>) pg 4: “**This document should be viewed as an annex to the PA [Precautionary Approach] Framework, and thus subject to the terms and conditions set out in that policy.** (bold text as it appears in the actual document, not added for emphasis)

with rebuilding objectives were agreed to and used in the MSE process but not included in the Plan.

The Plan contains no indication or mention of any greater rebuilding goal beyond getting above the limit reference point (LRP) or any indication of what the desired rebuilt stock would be. The Guidance Document indicates “that overall rebuilding success should be defined in a broader ecological context and entail restoring a stock to its “normal” or “near normal” life history characteristics and ecological function, to the extent possible.” Furthermore, the PA Framework clearly demonstrates that the overall goal of rebuilding should be to get the stock back to the healthy zone, not just above the LRP or growing from year to year. The Plan should state a goal of getting the stock into the healthy zone and indicate what that would be.

ii. Mischaracterizes the influence of US catches as a barrier to rebuilding

On page 11 of the Plan, it states “rebuilding out of the critical zone is expected to take longer than 10 years even with no commercial fishing. This is in large part because the US manages the stock independently and could continue to take an important fraction of the stock even in the absence of a Canadian commercial fishery.” However, the MSE process revealed that recruitment matters most for all three objectives². The MSE also shows that while missing catches, including US catches, can affect projections, total allowable catch (TAC) reductions can still be effective at increasing the probability of rebuilding, particularly at low TAC levels. Therefore, stating that the long timeframe for rebuilding is “in large part” because of US catches is not entirely accurate given how important recruitment and the choice of TAC are. Notably, Canada also catches mackerel at the time and location of spawning. Blaming US catches for the long rebuilding timeframe inappropriately shifts the impetus to take action away from Canada and towards the US while downplaying the importance of reducing catch in Canada.

iii. Inappropriately uses socioeconomic concerns as a scapegoat

The Plan inappropriately interprets the Guidance Document and PA Framework by inaccurately justifying delays in rebuilding using socioeconomic concerns that are insufficiently demonstrated. The Plan states on page 11, “As outlined in the guidance document for rebuilding plans in the critical zone, some flexibility in setting the rebuilding timeframe is desirable from a socioeconomic perspective. Such flexibility allows for a management approach that promotes slow, yet positive, stock growth with fewer socioeconomic impacts.”

The Guidance Document states explicitly on page 18,

General guidance for harvest decision rules for a stock in the Critical Zone, as outlined in the PA Framework, include:

- a. conservation considerations should prevail; management actions cannot be inconsistent with secure recovery;
- b. harvest rates, taking into account all sources of removals, should be kept to an absolute minimum until the stock has cleared the critical zone; and
- c. management actions must promote stock growth.

² see Van Beveren et al 2019. Atlantic mackerel rebuilding plan working group meeting MSE final results – Trade-offs. Presented November 5 2019 (slides 23, 27, and 30)

The PA Framework indicates that “the LRP represents the stock status below which serious harm is occurring to the stock. At this stock status level, there may also be resultant impacts to the ecosystem, associated species and a long-term loss of fishing opportunities.” Furthermore, “in the Healthy zone, where economic considerations may prevail, stock reductions resulting from management actions with a low probability of the stock falling to the Critical zone are tolerated because of their reduced impact on the integrity of the stock. In the Critical zone, conservation concerns are paramount and there is no tolerance for preventable declines.”

Lastly, the Guidance Document notes that “The role of socioeconomic factors in determining rebuilding feasibility should only be considered with great caution, and should not be viewed as an easy “off-ramp” from the rebuilding process. Infeasibility due to socioeconomic factors should only be considered in the most extreme of cases, and informed by a cost benefit analysis.” No such cost benefit analysis is provided in the Plan or was ever discussed or presented to the RPWG by DFO. While “trade-offs” were presented by science as part of the MSE, “catches” were the only factor used, which is an extremely limited proxy for socioeconomic health. The trade-off analysis highlighted the very stark reality that “under all model scenarios, the risk of decline is positively related to annual catches.”³

The rebuilding plan Guidance Document and the PA Framework are clear: **conservation takes priority over socioeconomic concerns when stocks are in the critical zone.** The “flexibility” that the mackerel rebuilding plan refers to in the DFO policies is for the cautious and healthy zone, not the critical zone. Indeed, the Guidance Document explicitly cautions against using socioeconomic factors as an offramp from the rebuilding process. The Plan clearly interprets DFO policy on socioeconomic concerns in an appropriate manner and to the detriment of mackerel rebuilding.

iv. Current TAC not in line with rebuilding

The current TAC of 8,000 tonnes, despite being reduced by 20% in 2018, is not in line with the MSE results or science advice. In fact, the current TAC is more likely to result in declines than increases, which DFO even acknowledges in the Plan. It is also concerning that the TAC has been exceeded in recent years through additional, unknown quantities of bait and recreational catch. The Plan itself notes on page 9 that the removal reference in 2019 exceeded the maximum removal reference. The Plan goes on to rightly note the results from the MSE: “The HCR that most closely reflected the 2019 Canadian TAC of 8 000 t failed to meet all candidate performance thresholds for all objectives and shorter-term milestones. Simulation also showed that catches of 6 000 t to 10 000 t over the next 3 to 10 years were progressively more likely to result in stock declines than increases.” Furthermore, the most recent stock assessment indicated that “while there was a slight increase in SSB from 2016 to 2018 due to the arrival of the 2015-year class into the fishery, the actual total number of fish in the water has decreased.” The Plan and best available science reveal that management action to date has failed to rebuild mackerel. In a blatant disregard for rebuilding objectives, the PA Framework and the best available science, the Plan contains no mention of lowering the quota in the future to encourage rebuilding.

³ see Van Beveren et al 2019. Atlantic mackerel rebuilding plan working group meeting MSE final results – Trade-offs. Presented November 5 2019 (slide 33)

v. Does not consider continued access for Indigenous food fishery

The Plan does not appreciate that there are constitutional requirements and court decisions that require DFO to manage a stock to a level that allows Indigenous people access to that stock. Recalling *R. v Sparrow*, [1990] 1 SCR 1075, it is described that “any allocation of fishery resources after valid conservation measures have been implemented must give top priority to Indian food fishing.” As the matter stands, the PA Framework in general gives no consideration to the level at which a stock must be fished solely to meet the needs of Indigenous communities; rather, the critical, cautious, and healthy zones are described in terms of hard lines and overarching fishing targets (or reference points). In terms of Atlantic mackerel, the Plan describes that there exists an Indigenous fishery for both food, social, and ceremonial purposes, as well as communal commercial. While this is true, DFO has no understanding of the level of need by Indigenous communities harvesting the species or where to draw the proverbial ‘line’ of priority access for Indigenous harvesters.

vi. Management measures presented are weak

In general, the Plan lists few measures that will be put in place to rebuild the stock in the future, despite continually noting how long it will take to rebuild. While the Plan describes a number of management measures that have been taken since 2018 to “promote rebuilding,” these are, for the large part, insufficient and weak. In fact, many of the measures described (e.g. catch reporting, addressing illegal fishing, or limiting entry to a fishery exploiting a stock in the critical zone) are simply mechanisms of responsible fisheries management which might have been sufficient if this was a healthy stock. However, this is a stock that has been in the critical zone since 2011 and it is inappropriate to rely on these to rebuild.

Further, the Plan puts excessive emphasis on the management measures that have already been put in place, noting that the results of these measures will not likely be realized for several years. Recognizing this time lag, the rebuilding plan is meant to be a forward-thinking document, not one focused on measures implemented in the past. The MSE has provided some foresight into the reality that will exist if we continue on the current path. The Plan must do better to realistically promote growth over the long-term by addressing the persistent issues that are present in this fishery, as described below.

There are no definitive measures for managing bait fishery catches, despite the fact that an absence of bait fishery data has been noted as a problem for years. The one concrete measure to limit catches to 2,000 lbs daily (described on page 15) is not even in place for all bait licenses.

There are no management measures to protect spawning fish other than a minimum size. Recalling that the minimum legal size does not apply when fishing with a gill net (per section 48 (4) of the *Atlantic Fishery Regulations*), it is imperative that additional measures are considered and implemented. While management has restricted pre-spawning fishing in the Gulf during the month of May, fishing during the peak spawning period (June and July) has not been restricted, as indicated in the Plan. There have also been a number of conversations with respect to the amount of net permitted in the water, minimum mesh sizes, and modifying the fishing season, among others, none of which are described in the Plan. These potential management measures have been permitted to languish unresolved for too long.

vii. **No management measures which account for current ecosystem conditions**

The Plan clearly states that “environmental conditions (warming temperatures and the reduced availability of their preferred prey) have likely had a negative influence on mackerel recruitment and condition, both of which have been below average over the same time period.” However, there are no management measures in the plan which even acknowledge, let alone account for, poor ecosystem conditions. While we cannot manage water temperature or zooplankton community composition and abundance, a TAC and removal limits for the recreational and bait fisheries can be set which reflect current ecosystem productivity. The complexity of this management measure should not deter the action; looking into it over the life of the Plan is no longer sufficient.

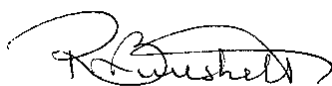
III. Recommendations and Conclusions

1. Ensure that the rebuilding plan follows the PA Framework and corresponding Guidance Document.
2. Ensure that the rebuilding plan considers the results of the MSE.
3. Include the probabilities and timelines with the objectives, in line with what was agreed to by the RPWG.
4. Do not characterize the US catches of Canadian fish as more impactful than the MSE suggests.
5. Lower the mackerel quota to the lowest possible levels to offer a better chance at rebuilding.
6. Consider the requirements under the Constitution and Supreme Court decisions for priority access to Indigenous harvesters for food.
7. Include management measures that reflect current ecosystem conditions.
8. Circulate a new draft of the rebuilding plan for review by the RPWG, indicating where corrections were made.

We strongly support the need for rebuilding plans as transparent guiding documents for decision making and management in the difficult (and unfortunately frequent) occasions when stocks are in the critical zone. We also support the need for stakeholder and rightsholder participation in developing these plans. However, these participants must not feel that their efforts are in vain and the plans must at a minimum uphold best available science and DFO policy. Unfortunately, we do not feel this is the case for the Rebuilding Plan of Atlantic Mackerel, as outlined above.

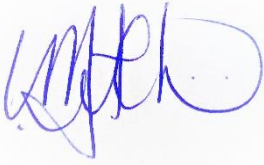
Sincerely,

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