July 11, 2019

Dear Applicant:

**Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act, 2015 - FLR-56-2019**

On June 10, 2019, the Department of Fisheries and Land Resources (FLR) received your request for access to the following records:

"DOC/2019/02146 Decision Note / Provincial recommendations to the Department of Fisheries and Oceans for the 2019 Salmon Season / April 24 2019."

Please be advised that a decision has been made by the Deputy Minister for FLR to provide full access to the requested information. You will find a copy of responsive material attached.

Please be advised that you may appeal this decision and ask the Information and Privacy Commissioner to review the decision to provide partial access to the requested information, as set out in section 42 of the Act (a copy of this section of the Act has been enclosed for your reference). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner. Your appeal should identify your concerns with the request and why you are submitting the appeal.

The appeal may be addressed to the Information and Privacy Commissioner as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P.O. Box 13004, Stn. A
St. John’s, NL. A1B 3V8

Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the Act (a copy of this section of the Act has been enclosed for your reference).

Please be advised that this letter will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Office of Public Engagement's website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

If you have any further questions, please contact me by telephone at 709-637-2354 or by email.
Right of access

8. (1) A person who makes a request under section 11 has a right of access to a record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under this Act, but if it is reasonable to sever that information from the record, an applicant has a right of access to the remainder of the record.

(3) The right of access to a record may be subject to the payment, under section 25, of the costs of reproduction, shipping and locating a record.

Access or correction complaint

42. (1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16 (2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52 (1) or 53 (1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to
(a) a request that is disregarded under section 21;
(b) a decision respecting an extension of time under section 23;
(c) a variation of a procedure under section 24; or
(d) an estimate of costs or a decision not to waive a cost under section 26.
(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

Direct appeal to Trial Division by an applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16 (2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner’s refusal under subsection 45 (2).
Decision Note
Department of Fisheries and Land Resources

Title: Provincial recommendations to the Department of Fisheries and Oceans for the 2019 Salmon Season

Decision/Direction Required:
- What is the Government of Newfoundland and Labradors’ position pertaining to Atlantic salmon retention limits and temperature protocols for the 2019 angling season.

- It is recommended that:

1. The Department of Fisheries and Land Resources be directed to advise the Federal Government that the Government of Newfoundland and Labrador recommends increasing retention limits to two fish on all scheduled rivers. As per Premier’s support for FLC. 

2. The Department of Fisheries and Land Resources be directed to advise the Federal Government that it is recommended the Provincial government advocate for temperature protocols that not differentiate between retention and non-retention angling. Current protocols should be maintained (≥18°C). Rivers should never be closed from thirty minutes before sunrise, until 10:00 a.m., except in extreme conditions.

Background and Current Status:
- Fisheries and Oceans Canada (DFO) has announced its interim management measures for the 2019 angling season. They include a one fish retention limit and a daily catch and release limit of three fish.

- In 2018 rivers in Newfoundland and Labrador were closed to angling when water temperatures were ≥18°C on two consecutive days.

- DFO is proposing to adjust the environmental temperature protocol:
  o For Retention Rivers, increasing the closure point from 18°C to 20°C, over three consecutive days.
  o For non-retention rivers (hook and release only rivers) the 18°C closure protocol will remain.
  o Daily closures will only be partial, as fishing will still be allowed between the hours of 6:00 a.m. and 11:00 a.m. (when rivers are coolest).

- Both DFO and concerned stakeholders have requested the Province’s position and recommendations for the 2019 Atlantic salmon angling season.

Analysis:

Retention Limits
- DFO announced slight improvements in Atlantic salmon stocks were observed on many assessed rivers in 2018. However caution is still warranted:
  o In 2018, Atlantic salmon stocks were in the critical zone on 50 percent of assessed rivers in Labrador (2 of 4 rivers) and 47 percent of assessed Rivers in Newfoundland (8 of 17 rivers)
- 31 percent (5 of 16) of rivers showed declines in total returns, and three of these rivers had declines of greater than 30 percent compared to the previous 5 to 6 years.
- 75 percent (12 of 16) of rivers showed declines in large salmon abundance compared to the previous 5-6 years.

- DFO follows the cautionary principle. However, there is evidence that results in 2018 were more favorable than previous years (2016 and 2017), for example;
  - In 2018, thirteen of DFOs monitored rivers showed a positive trend when compared to 2017 returns. (Northwest River was not included due to an incomplete count)
  - For the island, five of the monitored rivers had returns that were larger than the previous generation average (2012-2017).
  - In Labrador all four rivers had returns that were larger than the previous generation average (2012-2017).
  - When compared to the long-term data (1992-2017) returns in 2018 were actually up by six percent.

- The Newfoundland and Labrador sport fishery is largely composed of retention anglers and there was strong disappointment with the 2018 retention limit of one fish.

- Advocating that retention limits should be increased to two fish (for small salmon) is not unreasonable. Salmon returns in many of the regions approached their long-term average in 2018. For example, long term averages were met or exceeded in Labrador (SFA1 and SFA2), Northeast coast (SFA 5), Southwest Coast (SFA 14) and the Northwest Coast (SFA 14A).

- A two fish retention limit in 2019 represents a precautionary approach. Slightly higher than the one fish limit set after the poor years in 2016 and 2017, but not a return to the 2/4/6 fish retention limit in place prior to recent declines.

- Consultations with stakeholders suggest a two fish limit would be generally acceptable to most anglers and serve to maintain angler activity and stewardship on rivers.

**Temperature Protocols:**

- In general the reaction to the proposed temperature protocols was inconsistent among the various groups that attended the Labrador Salmonid Advisory Committee (LSAC) and the Salmonid Advisory Committee (SAC) meetings. Some viewed it as an improvement over previous years (ASF, Salmonid Council of Newfoundland and Labrador) while others felt the protocols did little to protect salmon (e.g. Newfoundland and Labrador Outfitters Association (NLOA)).

- The outfitting industry is concerned that more liberal environmental protocols in the other Atlantic provinces gives the industry within those provinces a competitive advantage.

- In general, there was no consensus among industry and NGOs at either the LSAC or the SAC pertaining to the validity of river temperature protocols in conserving salmon.

- At the 2018 Research Advisory Process (RAP) DFO science presented a draft meta-analysis of all studies related to the catch and release of Atlantic salmon. Their findings suggest that
mortalities associated with catch and release increase dramatically as water temperatures rise above 18°C.

- All attendees at both the LSAC and SAC agreed that whatever temperature protocols were adopted by DFO, they should be the same for both retention and non-retention rivers.

- If closures were to occur, both the outfitting industry and NGOs felt the 6:00am to 11:00am open fishing time should start earlier. They believed waters were coolest in the early morning hours and many anglers enjoyed fishing at the break of day (5:00 a.m.).

- Current salmon angling regulations allow for season opening to occur 30 minutes before sunrise on the day of opening, for consistency this should be maintained for environmental protocols as well. Sunrise in June occurs at around 5:15 a.m.

- Guaranteed morning fishing, with an 18°C closure criteria for all angling (retention and hook and release) for the remainder of the day is a balanced approach to addressing conservation concerns with angler access, and economic benefits (e.g. outfitters) of the fishery.

Recommendations:

1.) Recommend to DFO that the retention limit be increased to two fish for the 2019 angling season and an in season review be conducted; and maintain the 2018 (≥18°C) temperature protocol while allowing retention fishing to occur between thirty minutes before sunrise and 10:00 a.m. even under environmental closure and utilize the new three day temperature trend protocol

Advantages:
- The majority of Newfoundland and Labrador anglers are retention anglers. This will improve their outlook and increase their presence on our rivers.
- Maintains the social contract with anglers to provide stewardship on the provinces rivers, reducing poaching risk.
- The in season review will allow for increased quotas should returns be strong, or closure should returns be very poor.
- A measured quota increase in response to improved 2018 returns.
- Stability for the outfitting industry.
- Allows for social and economic benefits for the people of the province, while not putting undue risk on salmon populations.
- Allows anglers an opportunity to fish throughout the angling season.

Disadvantages:
- NA

Prepared by: Dr. B Adams/S. Balsom/L. Companion
Ministerial Approval: Received from Honourable Gerry Byrne

April 24, 2019

[Signature]

FLR: Premier's Office: support the recommendation as described.