

**The Inshore Adjacent Owner-Operator Fleet response
to the
St. Anns Bank Marine Protected Area
Proposed Regulations**

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To: Christie Chute, Manager, Marine Conservation Program
From: Cape Breton Fish Harvesters Association (formerly LFA27 Management Board)
Re: Canada Gazette Part I, Vol. 150, No. 51 — December 17, 2016
St. Anns Bank Marine Protected Area Proposed Regulations

Dear Ms. Chute,

The Cape Breton Fish Harvesters Association represents inshore owner-operator fish harvesters in Eastern Cape Breton many of whom are fishing or have historically fished in the area covered by the St. Anns Bank proposed Marine Protected Area. Association members are heavily affected by the proposed MPA, which covers over 15 per cent of their fishing grounds (4Vn) and yet, they were not properly consulted during the development period of the MPA.

The Association fully supports the Government of Canada's effort to protect our marine and coastal waters through MPAs. We see this as an advantage for the inshore, sustainable fishery using low-impact fishing methods as most MPAs around the world favour our industry by excluding industrialized fishing and other environmentally destructive developments. However, the proposed regulations for the St. Anns Bank MPA fall short of that ideal.

The Proposed Regulations designate over 81% of the protected area as an exclusive no-fishing zone. The members of the Association use sustainable, low-impact fishing methods and need not be excluded from operating in much of the proposed MPA.

The attached brief therefore suggests two changes to the proposed regulations:

- The management zones where our sustainable, low impact fisheries would be allowed, should be increased in size, and
- the pelagic fisheries (targeting tuna and swordfish) should be re-assessed and they should be allowed within the entire MPA, just as seal fishing is.

Detailed support for our position is contained in the attached brief.

Respectfully yours,

David Ferguson, President
Cape Breton Fish Harvesters Association

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Introduction

The Cape Breton Fish Harvesters Association, which represents the inshore owner-operator fleet in Eastern Cape Breton, has serious concerns with regards to the Canada Gazette Part 1, Vol. 150, No. 51 published on December 17, 2016, namely: the St. Anns Bank Marine Protected Area Proposed Regulations. We accept that protecting our marine environment is important to all Canadians as it is to our industry, our concerns were not adequately addressed during the consultation period of the Ocean and Coastal Management Division of the Department of Fisheries and Oceans (DFO). We respect the intent to designate St. Anns Bank as a Marine Protected Area (MPA), however we object to the proposed regulations that restrict our inshore and adjacent owner-operator fleet to an unacceptable level.

As Canada enters into a short period (3 years) of intense and rapid MPA implementation, we need to have the assurance from the Government of Canada that Canada's fish harvesters who are owner-operator and use sustainable, low impact gear are PROPERLY consulted and provided with the resources to assist the government in designing a network of MPAs that, in addition to the government's MPA objectives, also promote our sustainable fishing methods and consider our future objectives of a healthy and vibrant multi-species inshore fishing industry. We feel the 2 objectives, together, will provide Canadians with an MPA network that is sustainable, vibrant, prosperous and easy to regulate.

The Mandate of the Minister is to increase the proportion of Canada's marine and coastal areas that are protected to 10% by 2020. Part of this goal, the St. Anns Bank marine protected area covers a total of 4,364 square kilometers: 15.2% of the area of 4Vn – our local fishing grounds (28,684 sq.km.). At over 15%, Eastern Cape Breton is protecting a larger share of the marine area proportional to its fishing area. And please note, of this area, 3,550 km² are under no-take zone regulations (just over 81% of the proposed MPA and over 12% of the area of 4Vn).

The independent inshore fleet is continuously facing challenges that are beyond our control. DFO cut-backs, decreasing TACs, increasing control of processor and/or industrialized fleets, lack of bait, and overload of regulations are all squeezing us out of the business. We embrace the MPA model that is prevalent in other areas where industrialized, destructive fishing methods, oil & gas exploration and development, and other major developments are excluded in favour of small scale fishing fleets that are owner/operator and use non-destructive, low impact gear. We are also in favour of the closures of certain areas that we can agree on.

Consultation History with Inshore and Adjacent Fishing Industry

Inshore fish harvesters met in good faith with the DFO to hear plan updates for the St. Anns Bank Area of Interest from 2011 to 2013. They met as members of St Anns Bank (MPA Area of Interest) Fishing Industry Working Group whose description was: *To “provide a forum for DFO and the fishing industry to share information related to St Anns Bank area. Regular meetings will provide an opportunity to provide feedback to DFO throughout the MPA establishment process, with a focus on the potential impacts on*

*the fishing industry including the proposed regulations to designate the site.*¹ Over those years, 5 meetings were held where fish harvesters were informed of DFO's studies and developments in developing the proposed MPA. At all of the meetings, fish harvesters reiterated their concern over the design of the MPA and what type of zoning and how restrictive it would be. Responses from DFO were vague and non-committal.

In December 2014, the Working group were sent a copy of "SUMMARY: PROPOSED ST. ANNS BANK MARINE PROTECTED AREA REGULATORY INTENT STATEMENT". This was presented by teleconference to the Lobster Fishing Area 27 (LFA 27) Advisory Committee at the Pre-Season Meeting on 31 March 2015 to lobster fishery port representatives who, at the time, expressed their concerns and objections to the plan. Subsequent to the discussion, a DFO official "strongly suggested that the Ocean and Coastal Management Division folks arrange an in-person meeting in the fall to discuss some of the concerns fishermen have regarding the MPA boundaries and the activities that will or will not be permitted moving forward."² The proposal was presented on 2 other occasions to adjacent crab harvesters at the Crab Fishing Area 20-22 (on March 3 2015) and the CFA 23 (on March 4 2015) meetings³ with clear opposition from members of both committees.

After these 3 meetings clearly indicated there were serious issues and flaws in the consultation methodology, it remains a mystery why the Department delayed meeting with the Fishing Industry Working Group for another year. That meeting only occurred on February 4, 2016 where fish harvesters, once again, clearly expressed their objections and opposition to the details of the plan. The No-take zone was much larger than expected and the list of fisheries allowed in the management zones was limited. The Fishing Industry Working Group, frustrated by the lack of response to all objectives from DFO, agreed to meet and discuss a plan to move forward.

Thus in March, 2016, the Cape Breton Fish Harvesters Association (then the LFA27 Management Board) invited members of 4Vn Groundfish Management Board, North of Smokey Fishermen's Association, MFU Local 6 and Unama'ki Institute of Natural Resources to discuss the map proposed by the DFO. Representing over 500 independent license holders and First Nations licenses, these groups represent the Sustainable, Inshore, Owner-Operator Fleet that uses low impact gear. Consensus was that the areas allowed for fishing were too small and the list of allowable fisheries was confusing (some were listed as gear types, some as species) and limited. The DFO had looked at a 20 year fishing history, ignoring environmental changes that have occurred over the last century resulting in ecosystem changes. A proposal to amend the MPA design was presented to Morley Knight, Regional Director General of the Maritimes Region, on March 28, 2016. His response⁴ was that the consultation period was concluded in 2013 and that the result took into consideration all the input received and that our only avenue was to comment on the proposal once it was published in the Canada Gazette. He also said the "St. Anns Bank

¹ One page description of working group.doc – DFO document.

² Minutes of the LFA27 Lobster Advisory Committee, 31 March 2015.

³ Minutes of the Snow Crab Fishing Area 20-22 (CFA 20-22) Advisory Committee Pre-Season Meeting, 3 March 2015; Minutes of the Snow Crab Fishing Area 23 (CFA 23) Advisory Committee Pre-Season Meeting, 4 March 2015.

⁴ Letter from Morley Knight to David Ferguson. Re: St. Anns Bank Proposed MPA Map. May 4, 2016.

MPA regulations would have a 'future/additional fisheries' provision wherein fisheries not currently fished... could be considered following a DFO review". This provision does not appear in the Canada Gazette.

Furthermore, the Association is concerned about the MPA network planning process, as more areas have been identified within our fishing areas – both in the Gulf and the Maritime regions. The Association which also represents fish harvesters in the Gulf, has not been consulted with regards to any plans in our Gulf fishing area.

Considering the combined wealth of knowledge and extended fishing history, the following comments and recommendations to improve on the proposed area are worth considering. As Canada is preparing to develop a network of such MPA throughout its waters, the inshore and adjacent fisheries should not be ignored and should be CONSULTED in honest and open fashion.

First and foremost: Please note that the St. Anns Bank area is not a known spawning or nursery ground. Therefore the increased protection will not result in increased reproduction from the area but simply by protection from fishing as long as the species stay in the MPA. In addition, during cold winters, the Bank can be entirely under ice cover for 3 or 4 months at which time, the groundfish move away from the Bank into 4Vsb thus these fish would not benefit from the protection.

Adaptive management zones

The proposed Regulations would establish four management zones, including a core protection zone of minimal human activity and three adaptive management zones where current low-impact activities would be permitted. The core protection zone encompasses 81% of the proposed MPA, or 12% of 4Vn management zone. Our recommendation would be to increase the Zones 2, 3 and 4 by a factor of 1.8 – not even a doubling of the area – and thus enlarging the area from 814 sq.km. to approximately 1502 sq.km. This would leave about 10% of the 4Vn fishing grounds under high protection. This is a reasonable request as we are proposing to put under high protection 10% of our total fishing area and under MPA management, we accept to protect 15.2% of our fishing area.

Zone 2 is located 5 to 6 miles away from Scatarie Island, a major seal colony whose inhabitants interact with fishing gear. Longline hooked fish are easy prey for seals and fish harvesters have been forced to move their gear away from the island. Scatarie Bank was traditionally an important fishing ground for the inshore fleet. We propose to widen Zone 2 to include the edge of Scatarie Bank thus providing some fishing ground for halibut harvesting without interference by seals from Scatarie Island.

Zone 3 is only large enough to allow for 2 boats to set their gear without crossing over longline gear. We propose an extension which would allow for 4 to 6 boats to set their gear without conflict. Once again this area flanks the Scatarie Bank, and so important to our fishing history, that the edge of it should be allowable fishing grounds. Interest among fish harvesters in the halibut long line fishery has been on the increase in recent years with over 200 license holders having registered for halibut conditions in 2016.

With the demise of the groundfish, halibut provides long line fish harvesters with additional income and time at sea.

Zone 4 for the same reasons as Zone 3, should be enlarged as well. As it only allows 2 to 3 longline gear users to set their gear, our expanded area would allow for 4 to 6 boats.

In each of Zones 3 and 4, please also consider that the snow crab fishery, whose season overlaps with that of groundfish, would further crowd those fishing zones. Enlarging both areas would allow different gear to co-fish in the same area without conflict.

The map in Appendix A accompanying this text notes the area expansions in red.

Fisheries Allowed within the MPA

The Canada Gazette and the CSAS publication (Conservation Priorities, Objectives, and Ecosystem Assessment Approach for The St. Anns Bank Area Of Interest (Aoi)⁵ are not clear as to how fisheries were assessed and why some were omitted. In the CSAS document the following fisheries were listed in the Assessment Approach:

- Snow crab pot
- Lobster pot
- Otter trawl (e.g., for redfish and potentially cod)
- Redfish midwater trawl
- Groundfish seine
- Halibut longline
- Herring or mackerel gillnet

Published in the Canada Gazette, the following fisheries' risk assessments were summarized:

- redfish bottom and midwater trawl,
- Bottom trawl,
- snow crab fishery
- whelk pot fishery
- lobster pot fishery
- gillnet fisheries for herring roe and bait
- halibut longline fishery
- seal harvest (which was determined to pose low risks to all conservation priorities).

However, in the Gazette I Proposed Regulations, the following fishing gear are cited as acceptable in the Marine Protected Area:

- a. fishing, other than commercial fishing, that is authorized under the Aboriginal Communal Fishing Licences Regulations;

⁵ http://www.dfo-mpo.gc.ca/csas-sccs/Publications/SAR-AS/2012/2012_034-eng.pdf

- b. fishing for seals and any related activity that is authorized under the Marine Mammal Regulations or the Aboriginal Communal Fishing Licences Regulations ;
- c. in Zone 2, commercial or recreational fishing by means of a pot, trap, rod and reel, harpoon, bottom longline, handline, gill net or by diving;
- d. in Zones 3 and 4, commercial or recreational fishing by means of a pot, trap, rod and reel, harpoon, bottom longline or handline.

It is clear that harpoon and rod and reel were a later addition and were not properly assessed through the process. We would like to have the Harpoon (for swordfish) and rod and reel (for Tuna) assessed for impact. Our industry would assess harpoon and rod and reel in the same group with fishing for seals, posing low risks to all conservation priorities and should be allowed throughout the MPA – zone 1 included.

Both harpoon and rod and reel specifically target swordfish and tuna, respectively. There is no by-catch, no incidental catch and the gear does not come into contact with the ocean bottom. Thus these fisheries have no impact on the ecosystem of St. Anns Bank other than extracting the target species.

The Swordfish Harpoon Fishery

Swordfish Harpoon fishery was an important fishery from 1903 right up to the 1970s. “These giants appeared every summer and supported a commercial harpoon fishery for hundreds of boats.”⁶ From Louisbourg to Dingwall, the fishery flourished with even “100 to 400 boats in Louisbourg” at any one time”.⁷ W.R. MacAskill, whose photographs of harbours and boats are held at the NS Archives, immortalized this view of the swordfish fleet in Glace Bay in 1948.

⁶ <https://caperfrasers.wordpress.com/2010/08/05/tuna-swordfish-rod-and-reel/>

⁷ <http://www.capebretonpost.com/opinion/columnists/2013/1/22/mighty-broadbill-swordfish-were-common-o-3161957.html>



This inshore fleet fished within 20 miles offshore and each boat caught from 5 or 6 fish to 120 fish per season with smaller boats catching 30 to 35 fish per season. By early 1960s, smaller boats were catching 2 fish per season and catches continued to decline until 1970. Although they increased again in early 1980s, at 6 to 12 fish per season, they eventually dropped substantially⁸.

The harpoon fishery is very simple and, in fact, uses the simplest fishing tool – a spear. On sighting the notorious fin, a fisherman steams towards it and aims the harpoon at the animal. The fin of juvenile swordfish are very different from the adult's, thus the harpoon fishery targets adult swordfish only⁹. He either misses or gets his harpoon in the back of the swordfish. The spear is attached to a long length of rope attached to a series of very visible large floats. What follows is a patient chasing game to tire out the fish and haul it on board. The fish may continue swimming anywhere from one to 8 hours and swim for quite a distance. We have asked DFO how can we designate lines to such a fishery – how can one prove that a fish hauled aboard the boat in Zone 1 was in fact harpooned in Zone 2 or even outside the Park perimeter? We did not get a clear answer other than (from Mr. Knight's letter): "The department will address this through standard procedures under conditions of license ... undertake enforcement actions that are guided by evidence of due diligence by fishers...". In other ambiguous subjects such as

⁸ <https://ecologyaction.ca/files/images-documents/file/Decline%20of%20the%20Cape%20Breton%20Swordfish%20Fishery%20Part%201.pdf>

⁹ <https://ecologyaction.ca/files/images-documents/file/Decline%20of%20the%20Cape%20Breton%20Swordfish%20Fishery%20Part%201.pdf>

these, DFO bases decision on “the officer’s discretion”: rather too subjective and relying on the good nature of the officer on duty. Allowing those gear in the whole MPA is indeed a simpler solution.

Should the swordfish population increase in the future, the harpoon fishery should benefit as the only sustainable fishing gear for that species. Those lines on the chart very clearly define where you can chase fish and where you have to stop and let it swim away, but they are certainly not as clearly marked on the ocean when all eyes on deck are on the fish.

Rather than leave the issue ambiguous, we recommend that no lines be drawn on those fisheries as well as Seal fishing. Or, at the very least, these fisheries should undergo a science-based risk assessment just like the other fisheries. At the moment these fisheries are at very low levels, but should they increase to feasible levels, we would like our fleet to profit from such a resource.

Tuna Angling (or Rod and Reel)

Tuna rod and reel fishery was also a prominent fishery in the past with many license holders in the area. As the industry developed and the Japanese market emerged, most of our licenses were bought and transferred to South West Nova Scotia where the market was better developed. Tuna were not landed in 4Vn simply because there was no buyer in the area prepared to take them. Thus existing license holders began to land in the Gulf or in SW Nova to avoid the added cost and effort of shipping the fish to market.

Tuna are first sighted by eye or by sounder before trolling or drifting the line. At times, bait is thrown overboard to attract the animals – referred to as chumming. There is no by-catch as there are no other pelagic fish of that size able to take the hook and bait. And, as in the swordfish harpoon fishery, the key is to allow the fish to tire itself which can take many hours and up to 7 nautical miles of travel. The only method to avoid this is if the fish harvester “could get it near the boat, he’d hit it with a harpoon — guaranteeing capture, but instantly dropping the price at market, where buyers are willing to pay up to pay thousands of dollars for the perfect fish, and frown at any puncture holes”¹⁰.

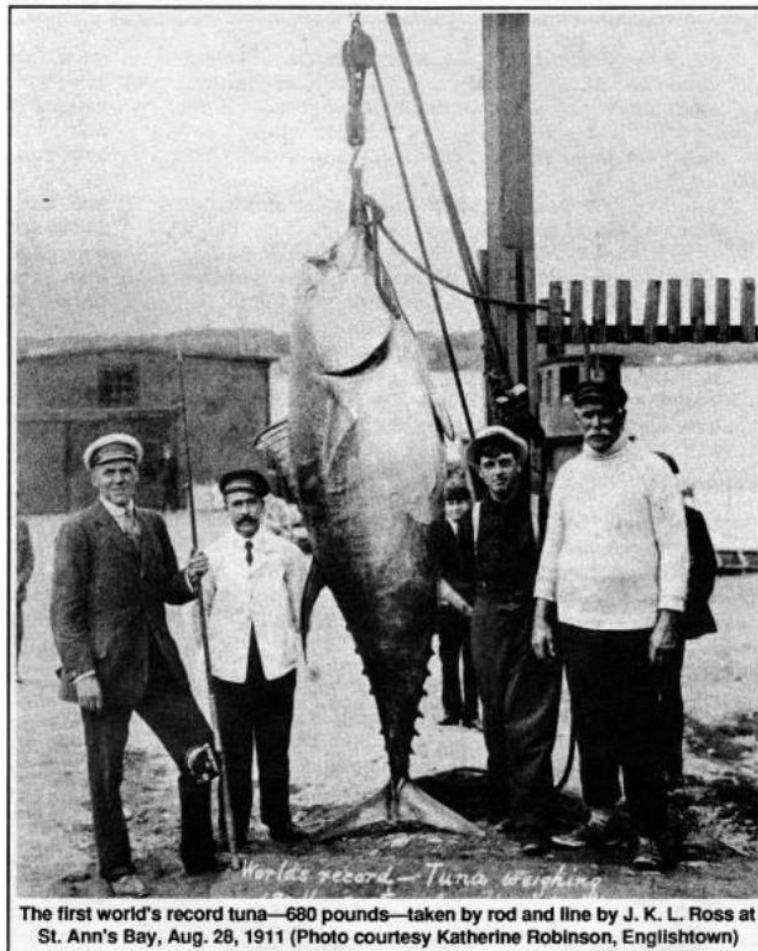
As of 2016, there are 2 tuna license holders in 4Vn where there was only one, thereby increasing the possibility of attracting a local buyer. In fact one Tuna was landed in November 2016 in Port Morien and trucked at considerable cost to the mainland of NS.

With the added attraction of sport fishing for Tuna, we see the potential of expanding on this industry. “In 2013, Sport Fishing Magazine named Nova Scotia as one of the top 10 places in the world to catch giant tuna. It’s no wonder why avid sport fishers from around the globe travel here year after year to battle with these creatures – some that weight more than 1,000 lbs.”¹¹ In fact, the first world’s record tuna (at 680 lbs) was taken by rod and line by J.K.L. Ross on August 28, 1911 while his son-in-law,

¹⁰ <http://news.nationalpost.com/news/canada/the-hunt-for-the-majestic-bluefin-tuna-a-cape-breton-fishermans-fight-with-the-biggest-catch-of-his-life>

¹¹ <http://www.novascotia.com/see-do/outdoor-activities/tuna-sportfishing>

Commander Hodgson caught another world record in 1950 weighing in at 977 lbs, both caught in St. Ann's Bay just north of the St. Anns Bank. Cape Bretons Magazine's article captures those records and cites many instances when Comdr. Hodgson's boat was dragged for hours while he held on to his rod till the fish expired¹². The current world record bluefin tuna, weighing in at 1,496 pounds, was also caught off Cape Breton on October 26, 1979 by Mr. Ken Fraser¹³.



We will not repeat the arguments for opening up all the zones to Tuna fishing, as they were well described in the Swordfish section: restricting both those fisheries to the small zones is unrealistic and will create problems we would rather avoid.

Summation

In conclusion, we plead with you to consider (or reconsider) our requests:

¹² Tuna Fishing in St. Ann's Bay : From a talk with Commander Duncan M. Hogson. Cape Breton's Magazine Number 56. <http://capebretonsmagazine.com/modules/publisher/item.php?itemid=3706>

¹³ <http://www.capebretonpost.com/opinion/columnists/2013/1/15/prized-bluefin-tuna-lured-international-3157515.html>

- Zoning Request: Please consider enlarging the areas available to our sustainable fisheries using low impact gear with low risk to the St. Anns Bank ecosystem. Although an overestimation of our request, a doubling of the available zones would mean 10% of 4Vn fishing grounds are under strict protection, while over 15% will be protected from destructive fishing gear and other anthropogenic activities which pose a high risk to the ecosystem of St. Anns Bank.
- Gear Request: Please consider Rod and Reel and harpoon in Zone 1, the exclusion zone, as they pose low risk to the ecosystem and their fishing methodology make it difficult to regulate and to verify whether the fish was caught or simply landed on the boat within the correct zone.

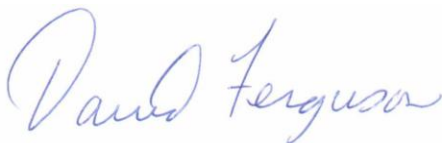
A group of researchers in Europe have studied 25 MPAs in Europe through various lenses and showed that “fish stocks are healthier, fishermen incomes are higher and the social acceptance of management practices is fostered if five attributes are present (i.e. high MPA enforcement, presence of a management plan, fishermen engagement in MPA management, fishermen representative in the MPA board, and promotion of sustainable fishing).”¹⁴ We are suggesting that by:

1. accepting (or even negotiating with us about) our proposal to make the above changes to the St. Anns MPA,
2. promoting sustainable fishing, and
3. working with our sustainable fleet to develop its management plan,

the DFO would indeed produce a successful MPA where: *fish stocks are healthier, fishermen incomes are higher and the social acceptance of management practices is fostered.*

Once again, we reiterate: The Cape Breton Fish Harvesters Association supports the Government of Canada in its effort to protect our marine and coastal waters through Marine Protected Area legislation. In response to the Governments request for comments on the Gazette I, we request that the size of the management zones within the MPA, where our sustainable, low impact gears will be allowed, be increased as we find that size of the proposed MPA which covers 15.2% of our fishing grounds, is a sacrifice our owner-operator inshore fleet cannot afford. We also request the Government to reassess our pelagic fisheries (targeting tuna and swordfish) and allow them within the entire MPA as these fisheries deserve the same designation as seal fishing.

Thank you for your consideration,



David Ferguson, President
Cape Breton Fish Harvesters Association

¹⁴ Di Franco, A. et al. Five key attributes can increase marine protected areas performance for small-scale fisheries management. Sci. Rep. 6, 38135; doi: 10.1038/srep38135 (2016).

Appendix A. St. Anns Bank MPA with changes proposed by LFA27/4Vn traditional and aboriginal fleets

