Report on Consultations on Cost Recovery Review and Boundaries of the Sea

Disposal at Sea Program

Marine Environment Branch
Toxics Pollution Prevention Directorate
Environmental Protection Service
Environment Canada

August 2003

Acknowledgments

This document was compiled by David Taillefer of the Marine Environment Branch with the assistance of Linda Porebski. The author wishes to thank the members of the Boundaries of the Sea Committee, and other Environment Canada staff, who helped with the public meetings and reviewing this document including Carol Brady, Dixie Sullivan, Sean Standing, Al Colodey, Mark Dahl, Donald St-Laurent, Francine Perron, Victor Li, Adrian MacDonald, Lindiwe MacDonald, Rick Wadman and Brian Power. Also of assistance in reviewing the paper were Marie Gauthier and Jim Osborne. Finally we wish to thank all those who took the time to attend a consultation meeting or provide written responses to the various discussion papers.

Summary

This document summarizes both the results of public meetings and written responses received during recent public consultations conducted by Environment Canada. The consultations focused on two issues. First was a three year review of the disposal site monitoring fees charged for disposal at sea permits for dredged material and excavated till. The second was Environment Canada's proposal for a method to determine the landward boundaries of application of the disposal at sea provisions of the *Canadian Environmental Protection Act 1999*.

Written responses were received from 23 respondents and the majority of public meetings were well attended. Most respondents were happy with Environment Canada's recommendation to leave the monitoring fees at current levels. The main opposition to this was from several clients who would like to see regionally specific fees, or changes to the program that would entail a reduction in the fees paid. On the boundaries issue the majority of consulted stakeholders favoured the salinity approach to setting boundaries. A number of clients preferred approaches that would move the boundaries farther out and reduce their requirements to apply for permits. Useful discussions were also held with the Province of New Brunswick over issues related to jurisdiction and better communications.

Given the overall opinions expressed in the consultations and the lack of enough years of data to establish use patterns, Environment Canada will not change the monitoring fees at this time. We will continue to work with major clients to address their concerns over the fees. Separate meetings were held with the Fraser River Port Authority following consultations and Environment Canada is continuing to evaluate their specific recommendations with respect to the monitoring fee over the longer term. Environment Canada will also begin the process of setting lines in the Fraser River, Mackenzie River, Miramichi River, and Bras D'Or Lakes based on the maximum extent of salt-water in those water bodies. This will require regulatory impact assessment and will be subject to a further 60-day public comment period under CEPA before the lines are regulated. We will also continue to monitor activity in other areas and set lines using this method as the need arises.

Table of Contents

1. Introduction

Environment Canada administers a permit system for disposal at sea under Part 7, Division 3 of the *Canadian Environmental Protection Act* 1999 (CEPA). The largest volume of material disposed of under the program is dredged material from shipping channels and berth maintenance. Other materials include excavation waste, fish processing waste, organic matter of natural origin, and vessels. The permitting system ensures that wastes do not pose undue risks to human health and the environment and that disposal at sea is the environmentally preferable and practicable option.

Environment Canada operates a disposal site monitoring program in order to ensure continued access to these disposal sites and to verify that decisions made during permit review were correct and sufficient to protect the environment. Cost recovery for this monitoring program was instituted in 1999 by regulation under the *Financial Administration Act*. The fees were calculated to reflect the fair market value of the right and privilege of allowing access to suitable disposal sites.

The current set of consultations has addressed two issues. First is a review of the monitoring fees charged for dredged material and inert, inorganic geologic matter (excavated till). This review was promised when the fees were introduced in 1999. Environment Canada currently charges $470 per 1000 cubic metres for the disposal of these materials in order to offset the costs of the disposal site monitoring program.

The second issue under consultations is determining where to begin the application of the disposal at sea provisions of CEPA in river estuaries and other areas of transition from fresh to salt water. CEPA defines the area for application of its disposal at sea provisions as "the internal waters of Canada, excluding all the rivers, lakes and other freshwater in Canada …". Boundaries between freshwater and marine water are open to interpretation with the exception of the boundary in the St. Lawrence River at Anticosti Island defined in CEPA. As it is set in CEPA, the line in the St. Lawrence is not part of the review undertaken in this document. One of the desired outcomes of this consultation is a process that can be used to set boundary lines between freshwater and the sea for the purposes of the Disposal at Sea Program.

1.1 Consultation Process

This set of consultations began in the summer of 2002 with the distribution of a preliminary discussion paper on boundaries of the sea to other government bodies and regulators with an interest in disposal at sea issues or with a potential role in jurisdictional issues in the areas discussed. Comments on this document were used in drafting the public consultation paper on the boundary issue. The public consultation document was sent, in December 2002, to a wider audience including governmental organizations, clients, NGOs, aboriginal groups, consultants, and others. A second document, outlining the review of the disposal at sea monitoring fees, was also distributed to the broader group in December 2002. This paper included the results of a

survey sent in July 2002 to all current clients aimed at determining the financial impact of the fees. A list of organizations which responded to the three documents can be found in Appendix B.

The discussion papers were followed by a series of public meetings in January and February of 2003. Meetings were held in Vancouver, Calgary, Inuvik, Quebec City, Halifax, St. John's, Sydney, Miramichi, Moncton, and Ottawa. A complete list of the meetings and the attendees can be found in Appendices A and B. Subsequent to the January /February meetings, Environment Canada received additional meeting requests from Pacific &Yukon region, Quebec region and Atlantic region. The distribution of this document was slightly delayed to enable us to include feedback from those consultations as well. Some discussions with clients and regulators are ongoing.

1.2 Distribution

This paper summarizes the responses received during the consultation process and outlines the decisions and next steps resulting from the consultations. The document is being distributed to the original list of consultees as well as those who attended the public meetings. This document will also be available on the web on Environment Canada's Green Lane (www.ec.gc.ca/seadisposal).

2. Phase I Consultations

The first phase of consultations on the Boundaries of the Sea was initiated in June 2002. An informal paper entitled "Discussion Paper on Boundaries of the Sea for the Ocean Disposal Program" was sent to approximately 50 regulatory agencies with an interest in ocean disposal issues or jurisdiction over waters affected by the proposals. Written responses were received from 9 of the recipients (Appendix B).

This section outlines the comments received in the first phase of consultations. In the Discussion Paper a number of specific questions were asked in order to stimulate discussion of the issue. The first section lists general responses to these questions. The second section lists some of the more specific comments and our responses to questions raised by the written responses. Note that many of the comments received were instrumental in the writing of the final Public Consultation document.

2.1 Responses to specific questions posed in the preliminary consultation document

The discussion document outlined five specific questions presented to foster discussion on broad issues surrounding the proposed methods of developing boundary lines. The questions, the general tone of the responses, along with some of the specific comments, are presented below.

Do any of the proposed approaches match lines that you are currently using for other purposes?

In general there were few respondents that said the proposed lines matched with lines in other jurisdictions. The proposed approaches did not, however, conflict with existing lines in other jurisdictions and programs. Excerpts from the responses received are listed below:

"The proposed approaches do not currently match lines that are currently being used for other purposes."

"Generally speaking, the upstream extent of salinity in a river also corresponds to the extent of Provincial submerged crown lands ownership."

It was also pointed out in responses from the New Brunswick government that they have a definition of estuarine limits in the *Water Classification Regulation* under the *New Brunswick Clean Water Act*. This definition is based in part on salinity, but also includes the biotic community.

Would any of the proposed lines, if adopted in regulation for disposal at sea, cause conflict or confusion within your management areas?

In general, respondents felt that the lines developed by Environment Canada would be specific to the Disposal at Sea program and not cause conflict with other programs or lines. Later in the process, however, New Brunswick requested a meeting to discuss jurisdictional issues raised by our proposal. This meeting was held in May 2003.

"The proposed lines, if adopted in regulation for disposal at sea, would not cause conflict or confusion within the Newfoundland region"

"New boundary lines would not necessarily cause any further confusion; there are already hundreds of other boundary lines drawn in relation to various fisheries and fleets, but there appears to be relatively little overlap of mandate or clientele."

Would any of the proposed lines assist you in managing your areas of authority?

Several respondents stated that the salinity method proposed in the document might be beneficial in developing boundaries in other legislation and programs while others felt that lines developed by Environment Canada would be specific to our program and be of relatively little purpose in other programs. .

"The distinction between freshwater and the sea would not normally impact the NEB's regulatory responsibilities"

"As the Oceans Act does not define "estuary" in any detail, a clear definition of an estuary by Environment Canada may be of value to DFO"

Is the data presented for your area of authority balanced and complete?

The only area where several respondents felt our information was incomplete or unbalanced was in the area of provincial claims over the beds and water columns of waters within the boundaries of the province. This is a much larger constitutional issue and outside of the scope of this exercise. It should be noted that a Supreme Court of Canada decision in the case of Crown Zellerbach has established that the Disposal at Sea provisions of CEPA in salt waters transcend provincial jurisdiction.

From your perspective, has Environment Canada correctly short-listed its best options?

In general the majority of other regulatory bodies favoured the use of salinity in the establishment of boundary lines.

"…concur that the preferred option of "Maximum Extent of Salinity" would serve as a suitable delineation for setting boundaries between the sea and fresh water for the purposes of ocean dumping"

"The maximum salinity approach is viewed as beneficial by DAFA as it provides maximum protection of estuaries."

The exception was clients who favoured approaches that move the line farther out to sea.

" I would recommend that the mouth of the river be considered as the boundary, rather than the freshwater limit or the point of widening into a delta or estuary."

.. in your view are there further opportunities for our programs to share data and tools with a view to providing better integrated management for the aquatic environment?

There was general consensus amongst the respondents that opportunities exist for sharing of data and tools and better integrated management. Clients in the Pacific and Yukon Region have made trips to Ottawa to discuss these issues and the Province of New Brunswick has invited further discussion on the boundaries issue.

2.2 Specific Comments and Environment Canada Responses

"Sections 4 through 8 of the Oceans Act should be reviewed; this section of the Act defines the territorial sea, including the coastal baselines."

The 1996 Protocol to the London Convention requires contracting parties to "either apply the provisions of this Protocol or adopt other effective permitting and regulatory measures to control the deliberate disposal of wastes or other matter in marine internal waters". As well CEPA defines the area for application of its ocean disposal provisions as "the internal waters of Canada, excluding all the rivers, lakes and other fresh water in Canada …". As such it is the extent of waters on the inside of the baselines of the territorial sea that Environment Canada is trying to determine.

It should also be noted that the baselines of the territorial sea are drawn as far out to sea as possible in order to maximize Canada's Territorial Seas and Exclusive Economic Zones. If these lines were used for the purposes of the ocean disposal program, the entire area of the sea between Vancouver Island and mainland British Columbia, as well as the entire Gulf of St. Lawrence and the Northern Archipelago would be excluded from Ocean Disposal control under CEPA.

"In section 6.2, it is recommended that a boundary line should be set by "using the first easily recognizable landmark downstream of the line indicated by salinity data." Based on the logic flow of the document, and the ecology of estuaries in general, it may be more appropriate to set the boundary line using the first recognizable landmark upstream of the line indicated by salinity data."

"*Using the precautionary approach, the preferred option would use the first easily recognizable boundary <u>upstream</u> of the boundary line determined by salinity data."*

The precautionary principle is in fact a foundation of CEPA and of the 1996 Protocol to the London Convention. The suggested change of using the closest upstream landmark was incorporated in the public consultation document.

"The Port Authority feels river disposal is within the Fraser River Port Authority jurisdiction, therefore, the Port should manage the disposal activities as a CEAA process, which would be available to Environment Canada to audit."

Environment Canada is mandated under CEPA to control the disposal at sea of dredged material and to conduct disposal site monitoring. The main disposal site used by this client is bisected by the Port boundary and is clearly within an area of marine waters. Environment Canada must continue in its obligation to regulate the use of this site and to conduct monitoring of the site. The Fraser River Port Authority and their contractors have made several specific

recommendations, including a cap on fees and a sharing of responsibilities with the Ports that Environment Canada will carefully evaluate in the next few months

"The document is not clear regarding the application of this process with respect to the St. Lawrence River. Section 2.3 of the document states that the boundary, as prescribed in CEPA, for the St. Lawrence River will not change as a result of the current freshwater/sea boundary discussion. However, comments later in the document raise the possibility of altering the current boundary in this river."

"It is important to redefine the freshwater/sea boundary for the St. Lawrence during the current exercise, since the St. Lawrence should receive the same level of environmental protection as the other river systems being reviewed."

The information provided on the St. Lawrence River was provided primarily for reference. The St. Lawrence is possibly the best-studied river in Canada and information was therefore presented for comparative purposes.

Although this document discussed the setting of a consistent method to be used across the country, the fact that the St. Lawrence line is defined in CEPA precludes altering this boundary at this time. During consultations however, some parties recommended that Environment Canada examine the rationale of the line in the St. Lawrence when CEPA is next reviewed.

"It should be noted that although ocean dumping legislation may be extended to upper reaches of estuaries and rivers as a result of this change, it is likely that too many other environmental restrictions and resources will make ocean dumping impractical in these environments."

Several respondents misinterpreted Environment Canada's intentions in extending our jurisdiction farther into the estuaries of certain rivers. In no way will moving the boundaries upstream result in an increase in ocean disposal activities in the newly included areas. All existing restrictive factors will remain. If anything, moving boundaries upstream would provide additional controls in some jurisdictions.

Respondents from the governments of New Brunswick and British Columbia, as well as DFO had concerns based on the provincial claim on ownership of submerged lands within the respective province. A Supreme Court of Canada decision, *Regina vs. Crown Zellerbach*, has established that control of marine pollution is a matter that goes beyond local or provincial interests and that, by limiting its scope to marine and brackish waters, CEPA 1999 has imposed reasonable limits to its impact on provincial jurisdiction[1].

[1] This is based, with minor modification, upon Whittaker, R. and R. Paisley. 1988. Case Comment, Her Majesty the Queen v. Crown Zellerbach Canada Limited and the Attorney General of Quebec and the Attorney General of British Columbia (1988) SC file #18526.

3. Phase II Consultations

In December 2002 and January 2003 two public consultation papers were released, *Review of the Monitoring Fee for the Disposal at Sea Program* and *Public Consultation Paper on Boundaries of the Sea for the Ocean Disposal Program*. The document on boundaries of the sea was a major, condensed revision of the original document. These documents were sent to a broad audience including other regulators and government bodies, current and potential disposal at sea clients, non-governmental organizations, and other interested parties. Respondents are listed in Appendix B. Response to the documents was somewhat limited, likely due to the fact that Environment Canada had already responded to input on the first boundaries paper. The following sections outline the replies to the documents and Environment Canada's response.

3.1 Cost Recovery

3.1.1 Cost increase

In general, most respondents were satisfied with the analysis provided by Environment Canada and the recommendation to leave the fees at current levels for the time being. One client did suggest that Environment Canada should have provided more specific information about the additional "hidden" costs of the proponent associated with assessment and monitoring. For reasons of maintaining client confidentiality however that costing remained as generalized percentages. The major opposition to the fees came from the program's major client on the west coast who disposes of roughly 500,000 to 1,500,000 cubic metres per year. This client is continuing talks with Environment Canada on the cost recovery issue.

Several clients also indicated that stability of the fees was paramount to their business forecasting and planning. As such they were looking for a guarantee that Environment Canada will either leave the fees at stable levels or provide ample advanced notice prior to changing the fees. Environment Canada understands the need for planning, and will provide an adequate period of consultation and lead time prior to any proposed future changes to the fees or fee structure.

3.1.2 Regional Fees

One port authority came out clearly supporting the development of regional fees, rather than a single national fee. Another of the port authorities sent a response stating that they are not in favour of a regionalized fee. Small Craft Harbours (both Quebec region and National) was also opposed to the creation of regional fees and expressed the opinion that fees need to be spent based on national need, not where the fees are collected. The fact that the fees are collected based on the use of a right and privilege, and not as a service fee continues to be the primary rationale for the maintenance of a national fee.

3.1.3 General Comments on Fees

One client was of the opinion that testing of sediments is not required and that fees should not be paid for simply moving materials around. Most clients expressed a desire that fees not increase. One client also wanted to see monitoring plans, budgets and results shared with the regulated community. Environment Canada has shared this information through regular meetings with clients and through its annual reporting. There was also a suggestion that clients should be given a chance to comment on research needs. Directed research and standard development are not part of the cost recovery program but Environment Canada agrees that client views on which tools and support are needed to better assess and monitor disposal at sea would be valuable.

One client also suggested that we consider outsourcing the monitoring program in order to ensure that costs are minimized. Environment Canada seeks to ensure that the monitoring program is delivered in the most cost effective manner possible. To date, the costs of the program have been kept low through the in-kind support of other government departments. We will however continue to explore more cost effective methods of program delivery, and will consider proposals from the client community. There was also a suggestion that clients should be able to contribute funds towards specific sites that they feel warrant further monitoring attention.

3.1.4 Fee Cap

One port authority has requested its fees be capped at $94,000 per year. Environment Canada is continuing discussions with this client with respect to addressing its concerns over the apparent financial burden the monitoring fee places on its large maintenance dredging program.

3.2 Boundaries of the Sea

Only a few written replies were received in response to the second consultation document on boundaries of the sea. Of these responses, one favoured using the maximum extent of salinity method, one preferred the mouth of the river option, while the third proposed the use of port boundaries and the exclusion of areas of port authority jurisdiction from CEPA. The use of port authority boundaries presents several problems for use in defining national methods for definition of areas of the sea. Most notably there are Ports or Harbour Authorities in only a few of the areas where this method will be applied and using port authority boundaries would exclude areas that are clearly part of the sea. Another response, from the Department of National Defence did not comment on a preferred method, but supported the creation of precisely defined lines in order to allow for planning and ensuring regulatory compliance.

Small Craft Harbours in Quebec Region were concerned over the discussion of the St. Lawrence River in the initial discussion paper and commented on it again in their response to the public consultation paper. They feel that they are already subject to CEAA assessments in the St. Lawrence River and that Application of Disposal at Sea to the river would not add to environmental protection in the river. Environment Canada does note, however, the request from the other regions and from certain respondents within the Quebec region to look at the line

in the St Lawrence with respect to whether there is a "level playing field" with this line and how sediment disposal management in the whole estuary can best be achieved, when CEPA is next opened for review.

3.3 Other Issues

There was some concern expressed over the requirement to publish amendments to existing permits in the Canada Gazette and wait for the 30-day comment period prior to the amendment coming into effect. This can cause difficult delays for permittees on projects that have already been assessed and approved. The Disposal at Sea Program will look at the need for this requirement and the need for the original 30 days when CEPA is next reviewed.

4. Results of Public Meetings

The public meetings were an excellent opportunity for Environment Canada to engage in dialogue with other regulators, clients, potential clients, NGOs and representatives of aboriginal organizations. The discussions at the meetings took on a different focus from meeting to meeting.

Generally, meeting participants were amenable to the proposal to maintain monitoring fees at the current levels and the two options proposed in the boundaries document. In many cases, however, a position was not presented by individual groups, as information from the meeting had to be presented to others within their organizations. In these cases, written responses were to follow the meetings.

Some of the specific questions related to the consultation topics discussed at the meetings are outlined below along with Environment Canada's responses.

What will changing the boundaries mean?

In general there was some confusion as to what effect including new areas under the disposal at sea provisions of CEPA would have upon a body of water. Some participants were concerned that this would open up areas for disposal at sea that had previously not seen these activities. Under no circumstances would this occur. Moving boundaries to include new areas would add to existing controls, and in some jurisdictions, add control where none previously existed. New areas would also become subject to Environment Canada's assessment framework as well as the permitting system. Regulatory impact assessment will be done prior to bringing any new areas under CEPA control.

Why were the port boundaries not looked at as boundaries for the disposal at sea program?

Port authorities do not exist in all areas where the chosen method will be applied to create boundaries for the disposal at sea program. As a result, port boundaries cannot be used to

develop a nationally consistent method. Using outer port boundaries would also exclude areas from disposal at sea control that are clearly part of the sea as defined in CEPA.

Will Environment Canada re-assess the need for monitoring if after several years of monitoring no adverse effects are found?

Environment Canada may, when deemed necessary due to the results of the monitoring program, re-assess the number of sites examined or the frequencies recommended in the monitoring guidelines. The recommendation by one client to continue to assess the "value" of the monitoring through the sharing of results and the discussion of the needs and objectives each year was a good one, which Environment Canada does follow and will strive to improve on.

What determines whether a permit is required, the loading site or the disposal site? Clients should be able to request that monitoring funds be applied to the load site as well, if Environment Canada deems load site monitoring is needed, or at least that the proponent be allowed to comment on the plan.

A permit is required under CEPA only if the *disposal site* is in an area of the sea. Where short term load site monitoring is needed as part of the permit requirement, during the actual loading activity, this is not covered by the disposal site monitoring funds and is the responsibility of the proponent. There is normally, dialogue between the client and Environment Canada which makes clear the environmental need for the monitoring. The suggestion of equivalent alternatives is welcomed by the Program.

Environment Canada needs to look at sediment dispersal as a result of the movement or placement of marine structures.

EC is concerned with dispersal with respect to ocean disposal permits and disposal site monitoring. Placement for a purpose other than disposal, does not fall under the current scope of the Disposal at Sea Program, but Environment Canada often advises on construction activities under the *Canadian Environmental Assessment Act*.

Why not contract out the monitoring to ensure that our costs are competitive.

Environment Canada is always looking for ways to deliver its programs in the most cost effective manner. Significant cost savings are achieved through the utilization of in-house experience and expertise and through research partnerships and in-kind support, such as vessel time, from other government departments. Contracting out of monitoring needs does happen where it is cost effective to do so, or where external expertise or capacity adds value to the project.

Will fees change if we take on disposal in the St. Lawrence?

We do not intend to change the boundary at Anticosti Island in the St. Lawrence at this time as the line is defined in CEPA. Hypothetically, we could anticipate that the addition of new areas would have little effect on current clients as monitoring payments in new areas would offset the cost of increased monitoring requirements.

The monitoring program would be better funded out of general revenue rather than cost recovery in order to avoid the vagaries of the business cycle.

Environment Canada was instructed under the cost recovery policy of Treasury Board to seek cost recovery as there was a client receiving a clear benefit (suitable access to ocean disposal sites). Returning the Program to general revenue would require substantial demonstration that either the cost recovery program is not feasible or that it has been applied contrary to TB policy. Barring this, some form of cost recovery will be maintained. We are aware that there will be variations in the need for dredging and disposal each year. Being a national program, differences between the need in each region balances out the cost recovery to some degree

If the fees are not changing now, when will they change? We need significant advance notice in order to plan financially for changes in fees.

Environment Canada will continue to work with clients to develop the financial data required to further assess the monitoring fees. We feel that the decision to maintain the fees at current levels is financially sound and do not think changes will be required in the foreseeable future. Continuing to monitor the dredging cycle and further implement the monitoring guidelines will help us to determine if and when a further formal review of the fees is warranted. Through keeping the dialogue open, clients will have ample advance notice if conditions develop that warrant changing the fees.

4.1 General Discussions

There were a number of more general discussions at the consultation meetings that focused on broader marine environmental issues. A recurring theme was the need for a more holistic, integrated management of environmental issues. Several participants, particularly from NGO's and aboriginal groups, were concerned over the lack of communication and coordination between various levels of government. Environment Canada shares these concerns and is moving towards integrated environmental management. We feel that this consultation process has been a start towards dialogue between different levels of government as responses were received from several provincial departments and representatives of the provinces attended several of the meetings. The separate consultation meeting with three departments of the province of New Brunswick was also a good step in this direction, as were the follow-up meetings in Quebec and with clients in the Pacific and Yukon region.

5. Conclusions from the Consultations

5.1 Cost Recovery

The *Review of the Monitoring Fee for the Disposal at Sea Program* recommended keeping the monitoring fee at its current level of $470 per thousand cubic metres of dredged or excavated material. The feedback obtained during the consultation process largely supports this recommendation.

Environment Canada has only three years of data upon which to evaluate the monitoring fees and their ability to fund the monitoring program. Revenues have just reached the expected levels in the third year of the program and Environment Canada has begun to phase in its full monitoring program. The quantity of material disposed and number of permits are approaching pre-cost recovery levels, suggesting that the effects on client business are small on a national basis.

Environment Canada will continue to work with clients in order to determine, plan for, and mitigate the effects on business of the normal variability in the dredging business cycle. This information will further strengthen the financial support for the monitoring program and assist in determining whether changes to the fees, either increases or decreases, are required in the future.

Environment Canada will also work with clients on the west coast to address concerns over a larger than average fees to project cost ratio for certain clients. We feel that there was a very constructive dialogue during the consultation process and that progress can be made towards ensuring that both environmental monitoring and navigational safety can be maintained. Dialogue and discussions with these clients will continue. The Annacis Channel Marina Owners Association has offered to provide additional comments and information on impacts. We remain open to those comments.

5.2 Boundaries of the Sea

The *Public Consultation Paper on Boundaries of the Sea for the Ocean Disposal Program* contained two short listed recommendations, one based on the geographical mouth of the river, and the other based on salinity. Although there was not consensus, the majority of respondents felt that the salinity based approach made most sense given the objectives outlined in the discussion papers.

The chosen method is to determine the maximum extent of intrusion of salt water into an estuary under conditions of high tide and low river flow. The cut-off salinity level would be 0.5 parts per thousand, a generally accepted criterion for distinguishing between fresh and brackish water. This method has several advantages that make it suitable for use by Environment Canada. This method best matches the definition of the sea currently included in CEPA. It provides the best protection for the entire estuary, and maintains current controls in areas where disposal at sea is

now practiced. Data is available to implement this method in the four areas of the country examined. Finally, this method provides a clear answer as to whether the disposal at sea provisions of CEPA should be applied in areas of brackish water.

The adoption of this method and the resulting lines will have little impact on current clients. In the Fraser River, the lines will remain at Annacis Island in the Main Arm and at Mitchell Island in the North Arm. In the Mackenzie River the lines will be very close to the mouth of the river channels at the end of the delta, and will help bring clarity to the planning process of future clients involved in oil and gas exploration. In the Miramichi River there will be little effect as there is believed to be only minor disposal at sea activity in the part of the estuary to be included under CEPA. There may be impacts in the future if dredging of the shipping channel is required. As there is some dredging currently happening in the Bras d'Or Lakes, there may be cost and analysis implications for those engaged in, or commissioning this activity in the future. A regulatory impact analysis on all the lines will be required prior to drafting regulations to ensure that all potential impacts are considered.

6. Next Steps

Given the overall opinions expressed in the consultations and the lack of enough years of data to establish use patterns, Environment Canada will not change the monitoring fees at this time. We will continue to work with major clients to address their concerns over the fees. Separate meetings were held with the Fraser River Port Authority following consultations and Environment Canada is continuing to evaluate their specific recommendations with respect to the monitoring fee over the longer term. Environment Canada will also begin the process of setting lines in the Fraser River, Mackenzie River, Miramichi River, and Bras D'Or Lakes based on the maximum extent of salt-water in those water bodies. This will require regulatory impact assessment and will be subject to a further 60-day public comment period under CEPA before the lines are regulated. We will also continue to monitor activity in other areas and set lines using this method as the need arises.

Appendix A - Public Consultation Meetings

The following were the locations and dates of public consultation meetings.

Vancouver - January 27, 2003
1:00 - 3:00 p.m. and 7:00 - 9:00 p.m.
Simon Fraser University at Harbour Centre
515 West Hastings Street
Vancouver, British Columbia

Calgary - January 28, 2003
2:00 - 4:00 p.m.
National Energy Board
444 7th Ave. S.W.
Calgary, Alberta

Inuvik - January 30, 2003
1:30 - 3:30 p.m.
Finto Inn
288 Mackenzie Rd.
Inuvik, North West Territories

Quebec City - February 4, 2003
2:00 - 4:00 p.m.
Hôtel Clarion
3125, boulevard Hochelaga
Sainte-Foy, Québec

Halifax - February 10, 2003
1:30 - 3:30 p.m.
Delta Barrington
1875 Barrington St.
Halifax, Nova Scotia

St. John's - February 11, 2003
1:00 - 3:00 p.m.
Environment Canada
6 Bruce St.
Mount Pearl, Newfoundland

Cape Breton - February 12, 2003
1:00 - 3:00 p.m.
Unama'ki Institute of Natural Resources
Facility
4123 Shore Road
Eskasoni, Nova Scotia

Miramichi - February 13, 2003
1:00 - 3:00 p.m.
Northern Star Lodge
Eel Ground Reserve, New Brunswick

Moncton - February 14, 2003
1:30 - 3:30 p.m.
Delta Beausejour
750 Main St.
Moncton, New Brunswick

Ottawa - February 17, 2003
1:30 - 3:30 p.m.
Environment Canada
Place Vincent Massey
351 St. Joseph Blvd.
Gatineau, Quebec

Appendix B - List of Respondents and Participants

Respondents in Phase I Consultations

Department of Fisheries and Oceans – Consolidated Response
- DFO - Ottawa
- DFO – Newfoundland Region
- DFO – Quebec Region
- DFO – Pacific Region
- Canadian Coast Guard – Quebec Region

DFO – Atlantic (Habitat)
Fraser River Port Authority
New Brunswick Department of Natural Resources and Energy
New Brunswick Department of Agriculture, Fisheries and Aquaculture
New Brunswick Department of the Environment and Local Government
R and R Sawmills Ltd., Surrey, British Columbia
British Columbia Ministry of Water, Land and Air Protection
Public Works and Government Services

List of Respondents in Phase II Consultations

Small Craft Harbours and Real Property Services, Quebec Region, DFO
Department of Fisheries and Oceans, Quebec Region
Canadian Coast Guard, Quebec Region
Fraser River Port Authority
Annacis Channel Marina Owners Association
New Brunswick Department of Natural Resources and Energy
Fraser River Pile and Dredge
Forillon National Park
R. Hamelin & Associés
Commission de la qualité de l'environnement Kativik

Consultation Meeting Participants

Fraser River Port Authority	Vancouver, B.C.
Fraser River Pile and Dredge	Vancouver
Public Works and Government Services	Vancouver
West Coast Environmental Law Association	Vancouver
Inuvialuit Renewable Resource Council, Joint Secretariat	Inuvik, N.W.T.
National Energy Board	Calgary, Alberta
Devon Canada Corp.	Calgary

BP Canada	Inuvik
Department of Fisheries and Oceans	Inuvik
Kavik - Axys	Inuvik
North West Territories Department of Transport	Inuvik
INAC - Water Resources	Inuvik
Public Works and Government Services	Quebec City, Quebec
Nova Scotia Department of Agriculture and Fisheries	Halifax, Nova Scotia
Formation Construction Engineering	Halifax
Harbour Development	Halifax
Environment Canada, Atlantic Region	Halifax
Blue Atlantic	Halifax
EnCana	Halifax
Public Works and Government Services	Halifax
Nova Scotia Department of Environment and Labour	Halifax
Deveau Consulting Ltd.	Halifax
	St. John's
Nova Scotia Department of Environment and Labour	Sydney, Nova Scotia
Eskasoni Fish and Wildlife Commission	Sydney
ACAP Cape Breton	Sydney
Little Narrows Gypsum Company	Sydney
Eskasoni First Nation	Sydney
S.O.S Baie de Lamèque	Eel Ground, New Brunswick
Metepenagiag First Nation	Eel Ground