

WEST COAST ENVIRONMENTAL LAW ASSOCIATION

Submission to the Standing Committee on Fisheries and Oceans Regarding Bill C-68, An Act to amend the Fisheries Act and other Acts in consequence

April 25, 2018

I. INTRODUCTION

1. West Coast Environmental Law Association (“West Coast”) commends the federal government for introducing Bill C-68, amendments to the Fisheries Act, and thanks the Committee for the opportunity to provide testimony regarding the Bill.
2. Once passed, Bill C-68 will reflect the voices of numerous Canadians that have called for a modern Act that protects all fish and all fish habitat in Canada.
3. West Coast has released a number of publications and opinions regarding the Fisheries Act, including most recently:
 - Questions & Answers about the 2018 Proposed Amendments to the Federal Fisheries Act (February 2018);
 - Top Ten Recommendations for a Renewed Fisheries Act (August 2017);
 - Habitat 2.0: a new approach to Canada’s Fisheries Act (November 2016); and
 - Scaling up the Fisheries Act: Restoring Lost Protections and Introducing Modern Safeguards (March 2016).
4. In the publications above, West Coast expresses views regarding a range of issues related to Bill C-68. In the interest of providing a submission that will best assist the Committee in its review of this Bill, we focus our submissions in this brief on the following issues:
 - i. The declining state of fish populations and their habitat in Canada, and the ineffectiveness of the former fish habitat legal regime to stem habitat loss;
 - ii. A summary of the strong support for a modern fisheries law;
 - iii. Proposed amendments to establish objective measurable standards for habitat and rebuilding fish stocks,
 - iv. Proposals to restrict the Minister’s discretion to make exemptions to the prohibition on harm to fish habitat while streamlining and modernizing application and reporting requirements; and
 - v. A proposal to strengthen appropriate public access to reporting and enforcement information under the Bill.

II. CONTINUED DECLINE OF FISH AND FISH HABITAT

Fish Population Decline

5. The state of both marine and freshwater fish populations in Canada continues to decline at alarming rates. Marine fish populations have fallen by 55% since 1970.¹ Declines in freshwater fish are also evident, and there remain significant gaps in monitoring and available information about their populations.²
6. Only a third of Canadian commercial fish stocks are classified as healthy, while 13% are in critical condition and data is missing to assess the status of over one-third of stocks.³ Many fish species are classified as being At Risk within Canada.⁴ Populations of both Atlantic and Pacific salmon, ecological and cultural keystones on Canada's east and west coasts, are fractions of their historical abundances.^{5,6}
7. An amended and strengthened Fisheries Act is needed to protect fish from further declines and rebuild depleted populations.

Fish Habitat Loss

8. Loss of fish habitat, a leading factor in the decline of Canada's fisheries resources, has occurred at an unprecedented rate through the last century.⁷
9. Fish habitat is threatened by many factors: outright destruction, pollution, climate change, flow alteration, invasive species and fragmentation. For example,, approximately 90% of the fish habitat in the lower Fraser River watershed has been lost during the 20th century.⁸
10. Another key threat, cumulative effects, when multiple small impacts to habitat accumulate over time and within geographical areas, is impeded by a lack of integrated and comprehensive monitoring of these impacts.⁹

Old Legal Regime Did Not Stop Loss of Fish Habitat - Modernization Required

11. Amendments to the Act in 2012 and 2013 were widely criticized, as detailed in our previous briefs, and appeared to result in an unenforceable habitat protection legal regime, as it appears that zero fish habitat prosecutions occurred after the revised Act came into force.
12. Unfortunately, fish habitat was not effectively protected even before the 2012 amendments to the Fisheries Act. An estimate of the extent of fish habitat loss authorized over a 6-month period in 2012 found that a net loss of nearly 3 million m² of fish habitat had been authorized.¹⁰
13. Similarly, an assessment of habitat compensation projects in the Lower Fraser estuary found that only one-third of sampled estuary marsh habitat compensation sites created between 1983 and 2010 acceptably compensated for habitat losses, in apparent violation of Fisheries and Oceans' no-net-loss policy.¹¹
14. Restoration of ecological function to habitat is difficult to achieve,¹² and creation of offsets cannot be treated as equivalent to lost habitat. A modernized Fisheries Act needs to provide stronger protection for healthy and intact fish habitat, through standards and accountability.

III. STRONG SUPPORT FOR BILL C-68

15. Bill C-68 has been over twenty years in the making. Previous reforms were attempted through the introduction of no fewer than three Bills in 1996, 2006, and 2007.
16. There has been strong, widespread support for a modern Fisheries Act in recent years as detailed in our briefs and as outlined on the website FisheriesAct.ca. For example:
 - i. The Union of B.C. Indian Chiefs the First Nations Fisheries Council in BC, and Lower Fraser Fisheries Alliance publicly supported a strong new Act.¹³
 - ii. All of Canada's eight public interest environmental law organizations endorsed a strong new Act.¹⁴
 - iii. The Union of BC Municipalities (UBCM) called on the federal government to ensure legal changes to the Act addressed municipal concerns while strengthening environmental protection for watercourses;¹⁵
 - iv. Numerous community and environmental groups throughout Canada applauded the introduction of Bill C-68.¹⁶
 - v. Academics specializing in fisheries management and legislation support the proposed changes.¹⁷
17. West Coast echoes these voices of support for a modern Fisheries Act, and in the remainder of this brief, we propose how Bill C-68 can be further strengthened.
18. This brief draws on the collaborative recommendations developed by a number of conservation groups that are in the brief submitted by FLOW Canada.

IV. LACK OF ENFORCEABLE MEASURABLE STANDARDS TO PROTECT HABITAT AND REBUILD DEPLETED STOCKS

19. In our view, the most concerning aspect of Bill C-68 is the lack of national legally binding and enforceable standards for habitat protection, monitoring and evaluation. As described in our brief [Habitat 2.0](#), the legislative history of the Act shows Parliament's intent to create national standards for the protection of fish and habitat, and courts at all levels have confirmed the wide scope of this federal power.
20. International treaty obligations further bolster the need for strong national standards to protect fish and their homes.¹⁸
21. Previous reports by the Auditor-General have identified the need for national standards to protect fisheries habitat through measurement, enforcement and accountability.¹⁹ While the Department has agreed that this would be useful, and has tried to voluntarily implement a system of indicators, recent surveys of authorizations granted under the Fisheries Act suggest that habitat declines have continued.

Standards: Environmental Flows

22. “Environmental flows” describe the quantity, timing, and quality of water flows required to sustain freshwater and estuarine ecosystems and the human livelihoods and well-being that depend on these ecosystems.²⁰
23. The preservation of fish communities and the ecosystem biodiversity and integrity of their habitats requires conserving the quantity, timing, and quality of water flows. Examples of fish species dependant on the natural flow regime include (but are not limited to) many which support, or have historically supported, high profile fisheries, including Atlantic Salmon, six species of Pacific Salmon, Atlantic and Lake Sturgeon, Arctic Char, American Eel, Shad and Gaspereau or Alewife, and Dolly Varden.²¹
24. There is no consistent legal approach to protection of environmental flows across Canada,²² despite advice from DFO’s science advisory report: “The fact that there is no existing national framework to set environmental flow standards has led to a situation where fisheries resources, fish habitat and the supporting freshwater ecosystems may not be consistently protected across Canada.”²³
25. Relying on the prohibition on HADD to ensure the implicit protection of environmental flows is ineffective without definition of conditions that constitute damage or destruction of flow. Otherwise enforcement will likely only occur after the damage has been done to a flow regime.
26. Given the decline of fish and fish habitat and widespread scientific recognition of the need to protect environmental flows, it is troubling that Bill C-68 is silent on this issue. This Act is the logical place for flow standards. Legal standards can define limits on human activities that can alter hydrological regimes. Other countries offer useful examples of national laws for flows,²⁴ including Scotland²⁵ and Australia.²⁶
27. Minister LeBlanc indicated willingness to consider amendments to include language on environmental flows in the debate on first reading of Bill C-68, stating that it was “time that [environmental flows] be incorporated into what is important environmental legislation, the Fisheries Act”.²⁷
28. Protecting environmental flows through Bill C-68 can be achieved through amendments to
 - a) define environmental flow and its components directly in the Act,
 - b) commit to establish national standards on acceptable limits of flow alteration, and
 - c) define the conditions of flow alteration that would constitute a HADD. Science advice has been generated on assessing flow requirements, and establishing flow thresholds by which potential for HADD can be assessed.²⁸
 - d) Establish monitoring requirements for authorized flow alteration²⁹
29. Another way to protect these flows is through Ministerial orders. However, “while flow orders appear to be ideally suited for environmental flow protection, in practice these orders are rarely used.”³⁰ This power is modified in Bill C-68, for example, clarifying that a flow order can be made to protect fish habitat as well as fish.
30. To overcome the barriers to making use of these orders, we recommend a provision allowing requests for flow orders to be made and requiring the requester to provide a scientific rationale for the request, with a duty on the Minister to provide reasons if s/he decides not to issue the order.

RECOMMENDED AMENDMENTS

(A) Replace the definition of fish habitat in subsection 2(1) of the Act with the following

fish habitat means water frequented by fish, the environmental flows needed to sustain fish, and any other areas on which fish depend directly or indirectly to carry out their life processes, including spawning grounds and nursery, rearing, food supply and migration areas (habitat)

(B) Add a new definition of “environmental flows” in the Act

environmental flows are the quantity, timing, and quality of water flows required to sustain freshwater and estuarine ecosystems and the human livelihoods and well-being that depend on these ecosystems.

(C) The Act is amended by adding the following to s. 34.3 (2):

S. 34.3 (2) If the Minister considers that doing so is necessary to ensure the free passage of fish or the protection of fish or fish habitat, the owner or person who has the charge, management or control of an obstruction or any other thing that is detrimental to fish or fish habitat shall, on the Minister’s order, within the period specified by him or her and in accordance with any of his or her specifications,

(f) maintain the flow of water required to permit the free passage of fish; and

(g) maintain the characteristics of the water and water flow upstream and downstream of the obstruction or thing, at all times, required for the conservation and protection of the fish and fish habitat, including

(i) the water temperature, and

(ii) the physical characteristics and chemical composition of the water flows.

(h) maintenance of environmental flows

(D) The Act is amended to include the following at s. 34.3 (7), based on similar provision in the proposed Impact Assessment Act.

Minister’s obligations – request for assessment

34.3 (7) The Minister must respond, with reasons and within the prescribed time limit, to any request that a study or an order referred to in this section be conducted. The Minister must ensure that his or her response is posted on the online registry.

(E) The Act is amended by adding the following after section 43(1) paragraph (o):

43 (1) The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and in particular, but without restricting the generality of the foregoing, may make regulations

(p) respecting national standards on environmental flows including defining the conditions of flow alteration that constitute HADD

Standards: Rebuilding Depleted Fish Stocks

31. The US Magnuson-Stevens Act (MSA) is a good example of obligations to rebuild fisheries.³¹ “The rebuilding requirements enacted into law as part of the Sustainable Fisheries Act of 1996 have been generally effective in rebuilding depleted U.S. ocean fisheries.”³² The MSA’s key success factors include a prohibition on overfishing and requirements to rebuild depleted stocks.³³
32. We endorse the suggested amendments from Oceana Canada on this issue including adding the rebuilding of fish stocks to the Act’s Purpose, creating a duty to rebuild fish stocks and consider climate change impacts, and specifying targets and guidance on time frames for rebuilding.

RECOMMENDED AMENDMENT

(F) The Act is amended to add the rebuilding of fish stocks into the Act’s Purpose; to create a duty to rebuild fish stocks and consider climate change impacts; and to specify the targets and guidance on time frames for rebuilding. For greater detail, please see the suggested amendments on rebuilding fish stocks provided by Oceana Canada.

Standards: Ecologically Significant Areas (ESA)

33. We support the proposed amendments in Bill C-68 to the Ecologically Significant Areas (ESA) provisions in s. 35.2, which will require the preparation of habitat restoration plans for designated ESAs to meet conservation and protection objectives.

To accelerate the designation of ESAs as none have been designated since their introduction into the Act in 2012, we recommend that the Bill be amended to allow citizens to propose ESAs for designation, and require the Minister to provide reasons if the designation does not proceed.

34. We recommend amendments to ensure that all federal agencies are required to consult with DFO on all proposed actions, authorizations, or funding decisions that may adversely effect ESAs, similar to requirements in the Magnuson-Stevens Act that require federal agencies to consult with the National Marine Fisheries Service (NMFS) on any proposed actions, authorized, funded or undertaken by the agency that may “adversely effect” essential fish habitat areas.

RECOMMENDED AMENDMENT

(G) The Act is amended at section 35.2 after subsection (10):

Proposals – ecologically significant area

(11) The Minister must respond, with reasons and within the prescribed time limit, to proposals from provincial and Indigenous governments to designate an area as an ecologically significant area under this section..

(H) The Act is amended to ensure that all federal agencies are required to consult with DFO on all proposed actions, authorizations, or funding decision that may adversely affect Ecologically Significant Areas.

Standards: Marine Biodiversity Areas

35. Proposed new section 43.3 allows regulations for long-term area-based restrictions to fishing activities for conservation and protection of marine biodiversity, and additional amendments are needed to ensure that these designations fulfill international standards for Other Effective Area-Based Conservation Measures (OEABCMs), such as those areas which Fisheries and Oceans Canada calls ‘marine refuges’.³⁴
36. The concept of OEABCM comes from Aichi Biodiversity Target 11, which Canada has committed to under the Convention on Biological Diversity. Guidance from the Canadian Council on Ecological Areas (CCEA)³⁵ stresses that the qualitative and quantitative elements of the Target are equally important. To qualify as an OEABCM, the management mechanism, such as a long term fisheries closure authorized by these proposed new regulations, should have the power to exclude, control, and manage all activities within the area that are likely to have impacts on biodiversity and the ability to compel the prohibition of activities incompatible with biodiversity conservation.
37. The proposed power to make regulations under s. 43.3 (1) does not include two essential elements of an OEABCM, according to the CCEA: that the mechanism is intended to endure in perpetuity, and can only be reversed with great difficulty. Accordingly we recommend that the Act be amended to clarify the length of the restrictions and describe their purpose in more detail, rather than leaving these issues to be spelled out in future regulations.
38. Long-term fisheries closures can augment protection to marine areas offered by other levels of government, such as Indigenous and provincial governments. For example, as far back as 2004, the province of BC requested imposition of federal fisheries closures for fisheries targeting benthic species in provincial ecological reserves and bottom trawling and commercial harvesting of intertidal clams in provincial marine protected areas.
39. We recommend that the Act be amended to specify that provincial and Indigenous governments may request the imposition of long-term fisheries closures, to create a duty for the Minister to respond to such requests within a specified time period, and to provide reasons for his or her decision.
40. Non-fishing activities within fisheries closure areas can also significantly impact marine biodiversity and be contrary to the objectives of a closure. In April 2018, an area offshore of Newfoundland listed as a Marine Refuge by DFO was included within available oil and gas lease areas,³⁶ undermining the stated conservation objectives for the area of protecting benthic organisms and contributing to the long-term conservation of biodiversity. Accordingly, other legislative amendments are needed to prohibit harmful activities in areas the government counts as OEABCMs, which we recognize is outside the scope of this Bill and this Committee’s review. Consequential amendments to other Acts, such as oil and gas legislation,³⁷ will help ensure that “no human activities that are incompatible with conservation of the ecological components of interest may occur or be foreseeable within the defined geographic location.”³⁸

RECOMMENDED AMENDMENT

- (I) The Act is amended at section 43.3(1) to
 - (a) Define the criteria used to identify long-term area-based restrictions to fishing activities;

- (b) Clarify the length of time of the restrictions, such as a minimum of twenty-five years; and
- (c) Describe the purpose of the restrictions in greater detail.

(J) The Act is amended to specify that provincial and Indigenous governments may request the imposition of long-term area based restriction; create a duty for the Minister to respond to such requests within a specified time period and to provide reasons for his or her decisions.

V. CONSTRAINING THE EXEMPTION PROVISIONS FOR HARM TO HABITAT

Standards – Cumulative Effects, Exemptions and Letters of Advice

41. The broad powers to exempt projects, works and undertakings from the Bill's prohibitions is not consistent with the purpose of the Bill, and we submit that the Bill C-68 amendments may not be sufficient to stem the loss of fish habitat across the country.
42. The restoration of the prohibition on habitat alteration, destruction and disturbance (HADD) within Bill C-68 is very welcome. However, the HADD prohibition in the pre-2012 Fisheries Act was not absolute, as Fisheries and Oceans Canada had the power, which was frequently used, to issue authorizations for HADD. Now Bill C-68 proposes to extend the ways that project proponents can avoid the HADD prohibition. As currently drafted the Bill's legislative prohibition will be easier to circumvent through use of these broad exemption provisions, which include the authorized exemption from s. 35 (2), as well as the provisions on codes of practice and guidelines, and "designated projects" which will require a permit. The difference between a permit and an authorization has not et been defined.
43. There is no mention in Bill C-68 of one of the chief methods DFO currently uses to exempt proponents from the duty to require a HADD authorization: the 'extra-legal' Letter of Advice.
44. The government's rationale for streamlining some authorizations is sensible and can contribute to more effective and efficient regulatory administration and implementation. Not all minor projects, works, undertakings and activities deserve the same level of scrutiny as projects with more potential to harm habitat.
45. However, as cumulative effects of even small projects remain a major cause of habitat loss (and consequently of fish decline) we recommend amendments to address three issues of concern:
 - a. The Ministerial authority to issue exemptions from HADD means that cumulative impacts are not tracked,
 - b. There is a lack of clarity regarding when codes of practice and guidelines will be used, and
 - c. Letters of Advice are unfortunately omitted from the statutory scheme.
46. We recommend that all projects, works, undertakings and activities that have the potential to result in a HADD should receive an authorization before they proceed. To address the issue of approval efficiency, an automatic approval could be issued for certain classes of projects through an online automated notification or application system which issues standard conditions in a Letter of Advice. That way, the Minister is at least able to track those smaller projects and identify cumulative effects.

47. Automatic HADD authorizations should not be allowed in habitat areas that are already highly stressed, for example in habitats used by Wild Salmon Policy Conservation Units within 'red' or 'amber' zones. Such areas should be listed in regulations, and could be designated as "Ecologically Significant Areas".
48. We recommend providing Letters of Advice with a statutory basis. The Act should define Letters of Advice, require them to be posted on the proposed public registry, preferably including a map format or with such geographic information detail that these could be evaluated in map format to facilitate assessment of cumulative effects in a watershed.
49. We support the collaborative FLOW recommendation to include language in the "obligatory" section (s.42.3(1)) that specifies a requirement to register all works, undertakings and activities, including those implemented following proposed Codes of Practice and those currently classified as "low risk projects".

RECOMMENDED AMENDMENT

(K) In order to provide a statutory basis for Letters of Advice, the Act is amended to

- (a) Define Letters of Advice;
- (b) Require that Letters of Advice be posted on the public registry;
- (c) Require that the Letters of Advice be used to assess the cumulative effects within a watershed.

(L) The Act is amended to add the following after s. 35 (1):

S. 35 (1.1) Any work, undertaking or activity that results in the harmful alteration, disruption or destruction of fish habitat is an offense unless authorized pursuant to section 35(2).

(M) Amending s. 35 (2) (a) to state that

"A person may carry on a work, undertaking or activity without contravening subsection (1) if

(a) the work, undertaking or activity is authorized as a prescribed work, undertaking or activity, or is carried on in or around prescribed Canadian fisheries waters, and the work, undertaking or activity is carried on in accordance with the prescribed conditions.

(N) Subsection 35(2) is amended by adding the following:

(h) the work, undertaking or activity is carried on in accordance with a Letter of Advice.

(O) The Act is amended to add the following after s. 35 (2.1):

S. 35(2.2) The Minister shall ensure compensation for all harmful alteration, disruption or destruction of fish habitat authorized, permitted or otherwise enabled pursuant to any provision in s. 35(2)

(P) The Act is amended to prohibit exemptions from HADD authorizations in ecologically significant areas, and other habitat for species and populations of conservation concern, designated by regulations.

VI. PUBLIC ACCESS TO INFORMATION AND REPORTING

50. We agree with the Prime Minister's direction in the Mandate Letter for Minister LeBlanc that "Government and its information should be open by default."³⁹ We submit that this direction ought to apply to the welcome reporting and enforcement provisions in Bill C-68.

Widen Scope of Records in New Public Registry

51. We strongly support the proposed new public registry which will improve the public's access to information regarding the state of fish and fish habitat, improve the federal government's monitoring and compliance, and help address these comments made by the Commissioner on Environment and Sustainable Development (CESD) in 2009:
- "... [The CESD] expected that Fisheries and Oceans Canada would be collecting and analyzing habitat data to determine whether it is achieving the Policy's objective of a net gain in habitat...Measuring aspects of habitat is a complex process. In our past audits, we recommended that Fisheries and Oceans Canada collect and analyze information to provide up-to-date assessments on habitat conditions. In this current audit, we found no significant improvement in the quantity and quality of information on fish habitat. The Department lacks information on fish stocks, quantity and quality of fish habitat, contaminants in fish, and overall water quality."⁴⁰
52. Numerous federal statutes pertaining to environmental issues provide for public disclosure of convictions and, in some cases, other information respecting administration and enforcement of the legislation, for the purposes of facilitating public access to information and encouraging compliance with the law.⁴¹ Accordingly, we also recommend that Bill C-68 enable appropriate public disclosure of convictions and information regarding administrative and enforcement actions under the Bill, where not already required, recognizing that such public disclosure would need to comply with federal legislation such as the Access to Information Act and the Privacy Act.
53. The rationale for making publication of some records mandatory, s. 42.3 (1), and some records optional, s. 42.3 (2), is unclear, and the public interest would best be served by mandatory disclosure of all records relevant to the administration and enforcement of the Act and impacts of works, undertakings and activities on fish and fish habitat.
54. We recommend that s. 42.3 (1) be amended to include all records in 42.3 (2) and that 42.3 (2) be deleted.
55. We also support the recommendation made in the collaborative FLOW brief for amendments as suggested below.

RECOMMENDED AMENDMENT

(Q) Subsection 42.3 (1), Contents of Registry, is amended by adding the following (underlined) wording:

S. 42.3 (1) The Minister Shall publish the following records in the registry:

(a) any agreements referred to in section 4.1 that are entered into by him or her and that establish the circumstances and manner referred to in paragraph 4.1(2)(h);

(b) any standards and codes of practice established by him or her under section 34.2 and notice of projects implemented following those standards or codes of practice;

(c) any orders made by him or her under sections 34.3 and 37 or responses to requests for assessments under 34.3(7);¹

(d) any authorizations given under paragraphs 34.4(2)(b) and (c) and 35(2)(b) and (c) and subsection 35.2(7) and any letters of advice issued by DFO;

(e) any permits issued by him or her under section 35.1;

(--) any regulations established by him or her under section 35, and notice of projects implemented following those regulations;

(f) any fish habitat restoration plan prepared under section 35.2(9); and,

(g) audits, investigations and fines issued under the fish and fish habitat protection and pollution prevention provisions.

(R) The Act is amended to delete s. 42.3 (2).

Expansion of Topics in Five Year Review by Fisheries Committees

56. Monitoring of compliance and effectiveness of habitat restoration has been found to be unsystematic and therefore compromises the ability to assess whether proponents are meeting required conditions.⁴² Regular reporting on the status of restoration and offsetting decisions, monitoring, and outcomes enables evaluation of whether objectives are being achieved.
57. In the United States, the National Fish Habitat Partnership, a coalition of anglers, conservation groups, scientists, industry, and state and federal agencies was formed in 2006 with the priority goals of preparing five-year comprehensive assessments of the condition of fish habitat across the US. These assessments have been produced in 2010 and 2015, and have identified key areas of degraded habitat and drivers of degradation.⁴³
58. We recommend amending section 92 which now says that a five year report to this Committee or the Senate Committee should be prepared on “the provisions and operation of this Act” to also mandate

¹ 34.3(7) is a new section with the heading “Minister’s obligations — request for assessment” proposed in this briefing note under the Environmental Flows theme.

the preparation of a systematic report on the state of fish habitat, fish habitat damage authorized by DFO, habitat compensation required by DFO, and the status of ongoing monitoring efforts across the country.

RECOMMENDED AMENDMENT

(S) The Act is amended at s. 92 to require that the review of the Act include these additional topics as part of the review by the Committees:

- (a) A systematic assessment of the state of fish and fish habitat across Canada;
- (b) A list of all authorized fish habitat damage during the relevant time period;
- (c) A list of all required habitat compensation during the relevant time period; and
- (d) Summary statistics from the public registry during the relevant time period.

VII. SOCIAL, ECONOMIC & CULTURAL FACTORS, AND CO-GOVERNANCE

- 59. We are encouraged by the provisions in Bill C-68 authorizing the making of agreements with Indigenous governing bodies based on Indigenous law, and respecting the consideration and protection of traditional knowledge of the Indigenous peoples of Canada. However, we note that there is no reference to the UN Declaration on the Rights of Indigenous Peoples.
- 60. We respectfully submit that Indigenous Nations' submissions on the provisions provide the best guide for this Committee and for Parliament on the adequacy of the sections that pertain to Indigenous rights, co-governance and Indigenous knowledge.
- 61. We agree with EcoTrust Canada's report on the proceedings of the Fisheries for Communities gathering, recommending a review of "social, economic, and cultural" objectives in decision-making be reviewed with respect to Pacific region fisheries.⁴⁴

VII. CONCLUSION

- 62. West Coast thanks the Committee for the opportunity to present our views. We look forward to seeing a strong Fisheries Act passed into law.

Linda Nowlan, Staff Counsel

Maryann Watson, Staff Scientist

Endnotes

- ¹ Oceana-Canada. 2015 Canada's Marine Fisheries Report: http://www.oceana.ca/sites/default/files/canadas_marine_fisheries_low-res_final.pdf
- ² WWF. 2017. Living Planet Report Canada: A national look at wildlife loss.
- ³ Oceana-Canada. 2017. Fishery Audit. <http://www.oceana.ca/en/publications/reports/fishery-audit-2017-unlocking-canadas-potential-abundant-oceans>
- ⁴ COSEWIC. 2017. Canadian Wildlife Species at Risk. Committee on the Status of Endangered Wildlife in Canada. Web site: http://www.registrelep.gc.ca/sar/assessment/wildlife_species_assessed_e.cfm
- ⁵ FOPO Study on Wild Atlantic Salmon in Eastern Canada. January 2017. Final Report. <http://www.ourcommons.ca/Content/Committee/421/FOPO/Reports/RP8587925/foporp05/foporp05-e.pdf>
- ⁶ Price et al. 2017. Canada's Wild Salmon Policy: an assessment of conservation progress in British Columbia. Canadian Journal of Fisheries and Aquatic Sciences. <http://www.nrcresearchpress.com/doi/pdf/10.1139/cjfas-2017-0127>
- ⁷ Quigley, Jason T., and David J. Harper. "Compliance with Canada's Fisheries Act: a field audit of habitat compensation projects." *Environmental Management* 37.3 (2006): 336-350.
- ⁸ Quigley, Jason T., and David J. Harper. "Compliance with Canada's Fisheries Act: a field audit of habitat compensation projects." *Environmental Management* 37.3 (2006): 336-350.
- ⁹ Lapointe et al. 2014 Principles for ensuring healthy and productive freshwater ecosystems that support sustainable fisheries. Canadian Journal of Fisheries and Aquatic Science. http://www.fecpl.ca/wp-content/uploads/2013/10/Lapointe-et-al-2014_Env-Reviews1.pdf
- ¹⁰ Favaro, B., Olsynski M. 2017. Authorized net losses of fish habitat demonstrate need for improved habitat protection in Canada. Canadian Journal of Fisheries and Aquatic Sciences. Published online January 8 2017. 00: 1–7 (0000) [dx.doi.org/10.1139/cjfas-2016-0480](https://doi.org/10.1139/cjfas-2016-0480)
- ¹¹ Lievesley, M.1 , D. Stewart , R. Knight , B. Mason . 2017. Marsh and Riparian Habitat Compensation in the Fraser River Estuary: A Guide for Managers and Practitioners. 42pp + vii
- ¹² Quigley J.T., Harper D.J. 2006. Effectiveness of fish habitat compensation in Canada in achieving no net loss. *Environmental Management* (37) 3: pp. 351-366
- Moreno-Mateos D., Power M.E., Comin F.A., Yockteng R. 2012. Structural and Functional Loss in Restored Wetland Ecosystems. *PLoS Biol* 10(1): e1001247. <https://doi.org/10.1371/journal.pbio.1001247>
- ¹³ Union of BC Indian Chiefs (with multiple groups), First Nations, Scientists and Conservationists Call for Swift Action by Fisheries Minister to Scale Up Fish Protection online: https://www.ubcic.bc.ca/scaleup_fishprotection. First Nations Fisheries Council Press Release Feb. 28, 2017. <http://www.fnfisheriescouncil.ca/wp-content/uploads/2015/09/Press-release-FOPO-report-on-Fisheries-Act-changes-Feb-2017.pdf>. Lower Fraser Fisheries Alliance, Brief to FOPO 11/30/2016 <https://www.ourcommons.ca/Content/Committee/421/FOPO/Brief/BR8708072/br-external/LowerFraserFisheriesAlliance1-e.pdf>
- ¹⁴ East Coast Environmental Law (ECE LAW) – Halifax, NS, Le Centre Québécois du Droit de l'Environnement (CQDE) – Montréal, QC, Canadian Environmental Law Association (CELA) – Toronto, ON, Centre for Indigenous Environmental Resources (CIER) – Winnipeg, MB, Environmental Law Centre (ELC) – Edmonton, AB, Ecojustice – Vancouver, BC, University of Victoria Environmental Law Centre (ELC UVic) – Victoria, BC, West Coast Environmental Law (WCEL) – Vancouver, BC. <https://www.wcel.org/blog/scaling-fisheries-act-act4fish>
- ¹⁵ UBCM Resolution B80, Changes to the Fisheries Act, 2012, online <http://www.ubcm.ca/assets/Resolutions~and~Policy/Resolutions/Resolutions%20Book%20Combined%202012.pdf>.
- ¹⁶ See material at FisheriesAct.ca.
- ¹⁷ M. Bailey, B. Favaro, S.P. Otto, A. Charles, R. Devillers, A. Metaxas, P. Tyedmers, N.C. Ban, T. Mason, C. Hoover, T.J. Duck, L. Fanning, C. Milley, A.M. Cisneros-Montemayor, D. Pauly, W.W.L. Cheung, S. Cullis-Suzuki, L. Teh, U.R. Sumalia. 2016. Canada at a crossroad: the imperative for realigning ocean policy with ocean science. *Mar. Policy*, 63 (2016), pp. 53-60
- ¹⁸ Habitat 2.0, at pgs 7-8.
- ¹⁹ 2009 Spring Report of the Commissioner of the Environment and Sustainable Development, Office of the Auditor-General of Canada.ss.1.70-74.
- ²⁰ Brisbane Declaration, 10th International River Symposium and International Environmental Flows Conference, 3–6 September 2007, Brisbane, Australia. The characteristics of a flow regime needed to protect ecological integrity include

magnitude, timing, frequency, duration, variability, and rate of change. N.L. Poff, J.D. Allan, M.B. Bain, J.R. Karr, K.L. Prestegard, B.D. Richter, R.E. Sparks, and J.C. Stromberg, "The natural flow regime: a paradigm for river conservation and restoration" 1997 *BioScience*, 47: 769–784.

²¹ Science Advisory Report 2013/017. Framework for Assessing the Ecological Flow Requirements to Support Fisheries in Canada. <http://waves-vagues.dfo-mpo.gc.ca/Library/348881.pdf>.

²² Section 4.1 Current Environmental Flow Guidelines in Canada, Linnansaari, T., Monk, W.A., Baird, D.J. and Curry, R.A. 2013. Review of approaches and methods to assess Environmental Flows across Canada and internationally. DFO Can. Sci. Advis. Sec. Res. Doc. 2012/039. viii + 74 p.

²³ Linnansaari, T., et al. "Review of approaches and methods to assess Environmental Flows across Canada and internationally." DFO Canadian Science Advisory Secretariat, Research Document 39 (2012): 1-74.

²⁴ Section 4.2, Environmental Flow Guidelines in Select Other Countries, Linnansaari, T., Monk, W.A., Baird, D.J. and Curry, R.A. 2013. Review of approaches and methods to assess Environmental Flows across Canada and internationally. DFO Can. Sci. Advis. Sec. Res. Doc. 2012/039. viii + 74 p. Linda Nowlan, "CPR for Canadian Rivers – Law to Conserve, Protect, and Restore Environmental Flows in Canada" *Journal of Environmental Law and Practice* Volume 23, no. 3 (2012)

²⁵ See Water Environment and Water Services (Scotland) Act 2003 ASP3 (WEWS), Water Environment (Controlled Activities) (Scotland) Regulations, 2005 (CAR 2005) No 348 Sch 3, Scotland River Basin District (Surface Water Typology, Environmental Standards, Condition Limits and Groundwater Threshold Values) Directions 2009 (SRBDD 2009), online:

²⁶ Water Act 2007, No 137, 2007 (Australia)

²⁷ House of Commons Debates. Hon. Dominic LeBlanc. March 26, 2018.

<http://www.ourcommons.ca/DocumentViewer/en/42-1/house/sitting-275/hansard#Int-10032490>

²⁸ Section 4.1 Current Environmental Flow Guidelines in Canada, Linnansaari, T., Monk, W.A., Baird, D.J. and Curry, R.A. 2013. Review of approaches and methods to assess Environmental Flows across Canada and internationally. DFO Can. Sci. Advis. Sec. Res. Doc. 2012/039. viii + 74

DFO, "Framework for Assessing the Ecological Flow Requirements to Support Fisheries in Canada", DFO Canadian Science Advisory Secretariat, Rep. 2013 / 017 at pg 10.

²⁹ The CSAS science advice document recommends that an adaptive approach be used for flow management, including long-term and follow-up monitoring and a 5-year review of scientific knowledge presented in the Science Advice

³⁰ Linda Nowlan, "CPR for Canadian Rivers – Law to Conserve, Protect, and Restore Environmental Flows in Canada" *Journal of Environmental Law and Practice* Volume 23, no. 3 (2012) at pg. 19 .

³¹ 16 U.S.C. §§ 1801 et seq. Enacted as: the "Fishery Conservation and Management Act of 1976", on April 13, 1976

³² Sewell, Brad, et al. "Bringing back the fish: an evaluation of US fisheries rebuilding under the Magnuson-Stevens Fishery Conservation and Management Act." Washington: Natural Resource Defense Council Report R (2013): 13-01.

³³ Margaret Spring, former senior counsel to US Senate (1999-2007). Presentation to "Best Practice in World Fisheries Conference: Lessons for Brexit". Blue Marine Foundation, Report of A Conference at Fishmongers' Hall, London November 2017.

³⁴ DFO. Other effective area-based conservation measures. <http://www.dfo-mpo.gc.ca/oceans/oeabcm-amcepz/index-eng.html>

³⁵ MacKinnon, D., et al. "Canada and Aichi Biodiversity Target 11: understanding 'other effective area-based conservation measures' in the context of the broader target." *Biodiversity and conservation* 24.14 (2015): 3559-3581.

³⁶ CBC News. 2018. 'Protected' marine area open to oil, gas exploration. <http://www.cbc.ca/news/canada/newfoundland-labrador/cnlobp-oil-exploration-wwf-ffaw-1.4608502>

³⁷ See Appendix 3, Oil and Gas Activities, "Inconsistent Legal Regime for Oil and Gas Activities in MPAs across Canada", in West Coast Environmental Law Association Submission to the Standing Committee on Fisheries and Oceans Regarding Bill C-55, An Act to amend the Oceans Act and the Canada Petroleum Resources Act November 2017, online at <https://www.wcel.org/sites/default/files/publications/2017-11-wcela-brief-fopo-c-55-final.pdf>.

³⁸ Government of Canada. 2017. Other effective area-based conservation measures: Creating marine refuges in Canada. https://www.canada.ca/en/fisheries-oceans/news/2017/06/other_effective_area-basedconservationmeasurescreatingmarinerefu.html

³⁹ Office of the Prime Minister, “Minister of Fisheries and Oceans Mandate Letter” (November 2015), online: <https://pm.gc.ca/eng/minister-fisheries-oceans-and-canadian-coast-guard-mandate-letter>

⁴⁰ Chapter 1 “Protecting Fish Habitat” in 2009 Spring Report of the Commissioner of the Environment and Sustainable Development, online http://www.oag-bvg.gc.ca/internet/English/parl_cesd_200905_01_e_32511.html#hd5l

⁴⁰ See e.g. Canadian Environmental Protection Act, 1999, SC 1999, c 33, ss 12-13, 294.2; Migratory Birds Convention Act, 1994, SC 1994, c 22, s 18.21; International Boundary Waters Treaty Act, RSC 1985, c I-17, s 40; Species at Risk Act, SC 2002, c 29, ss 120-121; International River Improvements Act, RSC 1985, c I-20, s 50; Canada National Marine Conservation Areas Act, SC 2002, c 18, s 28.3; etc.

⁴¹ See e.g. Canadian Environmental Protection Act, 1999, SC 1999, c 33, ss 12-13, 294.2; Migratory Birds Convention Act, 1994, SC 1994, c 22, s 18.21; International Boundary Waters Treaty Act, RSC 1985, c I-17, s 40; Species at Risk Act, SC 2002, c 29, ss 120-121; International River Improvements Act, RSC 1985, c I-20, s 50; Canada National Marine Conservation Areas Act, SC 2002, c 18, s 28.3; etc.

⁴² Chapter 1 “Protecting Fish Habitat” in 2009 Spring Report of the Commissioner of the Environment and Sustainable Development, online http://www.oag-bvg.gc.ca/internet/English/parl_cesd_200905_01_e_32511.html#hd5l

⁴³ Crawford, S., Whelan, G., Infante, D.M., Blackhart, K., Daniel, W.M., Fuller, P.L., Birdsong, T., Wieferich, D.J., McClees-Funinan, R., Stedman, S.M., Herreman, K., and Ruhl, P. 2016. Through a Fish's Eye: The Status of Fish Habitats in the United States 2015. National Fish Habitat Partnership. accessed on April 2018, at url <http://assessment.fishhabitat.org/>.

⁴⁴ EcoTrust Canada. 2018. Fisheries for Communities Gathering Proceedings Report. http://ecotrust.ca/wp-content/uploads/2018/04/FisheriesForCommunities_April19.pdf