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Chantel Cardinal
Clerk of the Senate Standing Committee on Fisheries and Oceans
E-mail: pofo@sen.parl.gc.ca

Canadian Nuclear Association submission on Bill C-68 to the Senate Standing Committee on Fisheries and Oceans

The Canadian Nuclear Association (CNA) appreciates the opportunity to make a submission to the Senate Standing Committee on Fisheries and Oceans.

The CNA has approximately 100 members representing over 60,000 Canadians employed directly, or indirectly, in uranium mining and exploration, fuel processing, electricity generation, and the production and advancement of nuclear medicine. Many of our members carry out projects and activities in and near fish habitat and as such have considerable experience in the subject matter and interest in the proposed legislation.

Benefits of Nuclear Energy

Today, nuclear energy produces approximately 20% of Canada's non-emitting electricity, including 63% of Ontario's and approximately 30% of New Brunswick's power. We applaud the Ontario government's province-wide coal generation phase out, which was enabled through the refurbishment of 6 reactors and supported by the Canadian nuclear industry.

Looking to the future, nuclear energy will play an increasingly important role in Canada's overall clean energy portfolio. If Canada, and indeed the world, is serious about achieving the Paris Accord climate targets, then the route is through greater electrification using clean energy technologies. Nuclear and hydro are the only two large baseload sources of non-emitting generation that can enable us to achieve that goal.

The CNA is pleased to see the increased support for nuclear energy from Natural Resources Canada (NRCAN) and would encourage this Committee to support the initiatives of NRCAN.



The Canadian nuclear industry is also Research & Development intensive, which furthers our national manufacturing and engineering capabilities. Nuclear technology is central to almost every technical field, including advanced electronics and material development, aerospace and automotive, environmental technology, food processing and, of course, nuclear medicine.

Thanks to nuclear science and technology, Canada meets nine of the seventeen United Nations Sustainable Development Goals.

Canada's nuclear industry is the originator of nuclear medicine and is a global leader in this vital health sector. Canada is the world's top supplier of Cobalt-60, a key asset for the sterilization of medical equipment and in the diagnosis and treatment of various diseases.

Canada's nuclear industry also works closely with Indigenous peoples and communities to enable proactive engagement and create mutually beneficial opportunities. For example, Cameco has demonstrated the power of partnerships in improving the economic and social well-being for communities and the benefits of working together to bring about real change. Cameco has engaged with Indigenous communities in northern Saskatchewan for decades on environmental stewardship, community investment, employment, education and training and contracting opportunities. Many of our member organizations can share similar success stories on collaborating with Indigenous communities.

With respect to Bill C-68, the CNA would highlight that the concept of 'cumulative impact' is not only a key issue with respect to the environment, but also with respect to sustained investment in Canadian energy projects. Large resource projects, whether a nuclear plant, a mine or a pipeline, require large amounts of capital. Capital is fluid and investors do not like uncertainty.

Right now, investment in Canada is facing significant challenges – including uncertainty caused by a suite of changes to federal and provincial regulatory policies, trade restrictions, corporate and individual tax rates and, in fairness, such things as commodity prices that are out of Canada's control.

The CNA believes it is important to keep in mind the impact on investment when considering all legislation and policies. Our review of Bill C-68's proposed amendments to the *Fisheries Act* (the Act) has flagged several areas where the proposed legislation has the potential of creating greater uncertainty for CNA members, thus further weakening Canada's investment climate.

With this in mind, the CNA would like to offer the following comments and amendments for consideration on Bill C-68.

Water Flow

The CNA has significant concerns with the addition of Section 1 (10), which replaces section 2 (2) to the act by the Parliamentary Committee. These changes expand the definition of “fish habitat” to include any moving water, including various agricultural, industrial and municipal water flow locations that have never been considered “fish habitat” and should not be considered “fish habitat”.

The current definition – and that originally proposed by Bill C-68 – is based on years of jurisprudence and no cogent rationale was provided to support a need to change the definition. Regulation of water flow is provided in other provisions of the *Fisheries Act* and no additional protections would be achieved by adding water flow to the definition of “fish habitat”.

It is the view of the CNA and many other industry associations that the proposed new definition is subject to broad interpretation and would result in numerous court challenges to clarify its meaning. This would limit the ability of DFO to act and would create significant challenges for proponents to determine the right path of action. This, in turn, is likely to result in decisions to delay, suspend or cancel projects due to added cost, delay and uncertainty.

Recommendation:

- **Repeal Section 1 (10) as amended by the House of Commons**

Prohibition of HADD

The proposed Act reintroduces the prohibition of any work, undertaking or activity that results in the harmful alteration, disruption or destruction (HADD) of fish habitat.

The definition of “fish habitat” has been modified to mean “water frequented by fish” while retaining the “directly or indirectly” terminology. This has the potential to include “waters” not designed to support fish (e.g. tailings ponds or drainage ditches) or waters not intended to be fish habitat, or where no fish are present at any time of the year (drainages upstream of a natural barrier with no fish above the barrier). The definition of “fish habitat” should be revised to exclude such structures. Fish salvage and relocation from said waters, and the addition of barriers to prevent future access into these structures should be exempted from the relevant sections of the Act.

As an example, any work or activity in a location that may contain water for a short period of time during the year could be interpreted as “fish habitat” and be subject to the Act. While fish may potentially frequent the area, it would not be essential to their life-cycle process and should not be subject to the Act.

Recommendations:

- **Revise the definition of “fish habitat” by removing the phrase “water frequented by fish”**
- **Amend the purpose statement in the Act to the following:**
2.1 The purpose of the Act is to provide a framework for the proper management control of fisheries with due consideration for the conservation and protection of fish and fish habitat, including by preventing pollution.

Prohibition on death of fish

The proposed legislation prohibits any work, undertaking or activity other than fishing that results in the death of fish without authorization.

The CNA has concerns with the potential interpretation and application of this prohibition. The interpretation of “fish” is critical. The proposal focuses on individual fish as opposed to a fisheries population-based approach. The amendments suggest that any incidental death of fish (potentially a single fish) would require an Authorization, or otherwise could be construed as an offence under the Act and trigger the duty to notify as identified in the proposed amendments to section 38(4).

If this is the government’s intent, then it must develop an improved and timelier process for the issuing of Letters of Advice and authorizations. CNA members have experienced numerous delays in obtaining authorizations for existing operations let alone new projects. DFO is also likely to be burdened with a multitude of low risk projects which would tap existing resources and increase the likelihood of regulatory delays.

At a minimum the death of fish should exclude incidental mortality for all forms of projects receiving DFO approvals and from implementing standard mitigation measures (e.g. fish salvage). The government could further address this concern a clearly drafted regulation, standard or code of practice allowing for a prescribed level of fish mortality that supports population-based protection of fish.

Recommendation:

- **Government clarify wording in the Act or establish a Regulation that prescribes reasonable mortality thresholds and focuses on the protection of fish at a population of ecosystem level.**

Habitat Banking

The CNA supports the inclusion of proponent-led fish habitat banking and believe that this element of the proposed legislation will contribute to improved fisheries management and outcomes for individual fish populations, or species. However, the success of habitat banking and conservation projects will depend upon clear guidance and consistent interpretation of residual impacts and benefits. We propose that the terms “offsets” and offset plan are retained, as this terminology is distinct from “conservation projects” which is used extensively outside of the Act. If DFO clarifies for proponents how offsets are planned, benefits are defined, and credits are calculated and implements such programs in advance of authorized activities, then habitat banks and offsets will increase and will accelerate gains in fish habitat and production.

The CNA is concerned that limiting proponent-led initiatives to the same watershed as an authorized activity, like for like replacements, or deterring qualified third-party offset banks in the same watershed from which a proponent can draw on may limit opportunities for viable and worthwhile offset initiatives that provide improvements against valid fisheries management objectives.

Another area of concern is the lack of recognition for offset programs that existing facilities have voluntarily funded and supported for years. This will likely lead to the diversion of resources from these established programs to projects that are eligible for offsets without regard to project effectiveness or value. While this is understandable for a new project, it is inconsistent with the purpose of the Act to disrupt existing projects and to discourage initiatives that support the purpose of the Act.

Recommendation:

- **Retain the term offsetting in favour of conservation project. Clarify the eligibility, calculation of benefits, and habitat bank transactions. Allow the use of creditable third-party offsets. Give credit for existing voluntarily undertaken offset projects**

Designated Projects and Permitting

Bill C-68 introduces the definition of “designated project” as any project designated by regulations in subsection 20 (2). However, DFO has given no indication of what types of works, undertakings or activities are likely to be designated projects and would require a permit as created by section 21 subsection 22(4) and section 23 rather than an authorization.

In addition, subsection 20(3) would create a new subsection 34 (3) which would prevent the application of provisions that promote the avoidance of fish habitat to works, undertakings and activities that are part of the designated project.

When taken together, it is the CNA’s view that these provisions would result in all works, undertakings and activities that are part of a designated project requiring a permit regardless of whether they avoid harming fish habitat, while identical works, undertakings and activities in non-designated projects would not require a permit. Treating works, undertakings and activities differently based on the project they are associated with is inconsistent with the purpose of the Act and is not science or risk-based. Furthermore, standards and codes of practice designed to avoid the harmful alteration, disruption or destruction of fish habitat will not be available for designated projects.

The prohibition on any work, undertaking or activity that is part of a designated project to proceed without a permit introduces a complex permitting process that requires significant interpretation and therefore reduces regulatory certainty and increases administrative burden without furthering the protection of fish and fish habitat.

Recommendations:

- **34 (1) designated project means a project that is designated by regulations made under paragraph 43(1)(i.5) or that belongs to a class of projects that is designated by those regulations and that consists of prescribed works, undertakings or activities or works, undertakings or activities that the Minister designates to be associated with the project;**
 - **Application – Designated project**
- (3) Any provision of this Act that applies to prescribed works, undertakings or activities also applies to the works, undertakings or activities of a designated project that are not designated works, undertakings or activities pursuant to subsection 35.1(4)**

Designated project

- **35.1 (1) No person shall carry on any work, undertaking or activity that is designated by the Minister to be associated with the designated project except in accordance with a permit issued under subsection (2).**
 - **Issuance of permit**
- (2) The Minister may issue a permit to carry on any work, undertaking or activity designated pursuant to subsection (4) that is part of a designated project and attach any conditions to it.**
- **Alternatively, amend Bill C-68 to remove the designated project provisions, restoring the Act to the pre-2012 prohibitions.**

Supporting Regulations, Policy, Guidance and Training

One of the CNA's major concerns is the need for clear guidance and the Department of Fisheries and Oceans (DFO) interpretation of the key elements of the Act which is lacking for the current legislation.

There were significant challenges with the implementation and transition to the 2012 amendments, primarily due to the magnitude of changes to the Act and the lack of timely and adequate regulations, policy, guidance and training. These limitations and the uncertainty in technical requirements and the inadequate consultation process around those regulations increased the application time to multiple years, in some cases.

Our members have been in discussions with Fisheries and Oceans Canada about the implementation of Bill C68 and the CNA is concerned that similar challenges and delays preventing timely permitting processes specific to the Act will occur with the implementation of this legislation.

The CNA believes that with improved guidance and greater training for both proponents and regulators, a more consistent and clear process can be developed. This should result in a more efficient and effective way to protect fisheries while enabling critical and environmentally responsible projects to move ahead.

Recommendation:

- **Amendments to the Act be accompanied by adequate resourcing and planning and include a full implementation plan with adequate guidance and training to be fully in place prior to the coming into force of these amendments. This requires an approved implementation plan, with adequate resourcing, from the Government. The CNA recommends a transitional period of at least one year to ensure the development of adequate regulations, standards and codes with adequate consultation on these.**

The Canadian Nuclear Association would like to thank the Senate Standing Committee for the opportunity to provide our comments on Bill C-68. For further information, please contact Steve Coupland, Director, Regulatory and Environmental Affairs, Canadian Nuclear Association at couplands@cna.ca.

Sincerely,



Steve Coupland
Director, Regulatory and Environmental Affairs
Canadian Nuclear Association