

November 12, 2024

Standing Senate Committee on Fisheries and Oceans
The Senate of Canada
Ottawa, Ontario
Canada, K1A 0A4
Attention: Sara Gajic, Clerk

Dear Ms. Gajic:

As the recently retired Executive Secretary of the Great Lakes Fishery Commission (Commission), I have been closely following the Senate Committee on Fisheries and Oceans (Committee) hearings regarding Commission governance in Canada. As Executive Secretary, I officially addressed commissioners at the Commission's executive meeting in July 2018 to highlight longstanding issues regarding this matter and to propose potential solutions including the transfer of oversight of the Commission's portfolio from Department of Fisheries and Oceans (DFO) to Global Affairs Canada (GAC). It is encouraging to see the Committee's ongoing attention to this matter.

I am writing today in response to the Committee's hearing dated October 22, 2024, during which senators invited officials from both DFO and GAC to appear before the Committee. More specifically, I would like to offer insights regarding several responses provided to senators' questions.

"Did you pass through 100 cents on the dollar, I think is the question, because, certainly, the correspondence that we've seen does not suggest that you — and I know you just started in 2022; I heard that — but the correspondence we've seen does not suggest — in fact, it suggests exactly the opposite — that 100 cents on the dollar arrived at DFO, but a fraction of that — a smaller amount — made it through to the Great Lakes Fishery Commission".

I was particularly intrigued by Senator Deacon's line of questioning to DFO officials as to whether or not DFO had, in the past, transferred to the Commission full funding appropriated for the Commission by Parliament. Having heard and reviewed the exchanges between Senator Deacon and DFO officials, I would like to offer the following observations.

I maintain that DFO's "black box" approach to Commission funding made it difficult, if not impossible, to know when or even if the Commission received full funding appropriated by Parliament. DFO asserts that when there were shortfalls in Canada's funding to the Commission, it was because Canadian funding was not available, and not because the Department was withholding undue amounts of Commission funds. However, with the lack of dialogue between the Commission and the Department, the Commission was never sure if the Commission's funding needs were being requested of Parliament by the Department, or if Commission's funding requirements were subservient to the multitude of funding priorities and pressures that DFO, as resource-demanding Department, struggled with annually for its own fisheries and Coast Guard programs. In fact, DFO's response to Senator Cuzner's first round of questioning speaks to this very dilemma with DFO officials having to make difficult choice annually among competing Departmental program priorities. With there being no "fencing" between Commission funding and DFO-Coast Guard program funding, and with there being little-to-no dialogue between the Commission and DFO regarding Commission funding requirements, one can easily surmise that the Commission's funding needs were not always being properly communicated to Parliament during the many years that Canada failed to meet its funding obligations under the Convention on Great Lakes Fisheries (Convention).

DFO officials have cited “Cabinet confidentiality” as the reason for not being able to share with commissioners what level of funding was requested by the DFO Minister for the Commission. As a former senior Canadian public servant, I appreciate the need for Cabinet confidentiality, however, DFO could have been much more transparent with the Canadian budget process without breaching Cabinet confidentiality had the Department been interested in and appreciative of the need for harmonious relations among DFO, the Government of Canada, and the binational Commission.

Further to Senator Deacon’s “100 cents on the dollar” passthrough question, an appropriate and complementary question for DFO officials could be – ***Does DFO consider Commission funding appropriated by Parliament to DFO as Commission funding, or is that funding part of DFO’s resource base over which the Department has discretion as it the case for DFO and Coast Guard programs?***

There are multiple examples over several decades to confirm that DFO considered Parliamentary-appropriated funding for the Commission as DFO funding. I submit that this is the root cause of the aforementioned and long-standing Canadian governance issues regarding the Commission. Please allow me to offer the following examples of some of the issues which are symptoms of the root problem to which I refer:

- November 2022: DFO refused to release Commission funding despite details released in the 2022/23 federal budget. As was alluded to in responses from DFO officials at the October 22, 2024 hearing, a key reason for delays in the 2022/23 Commission funding was DFO internal discussions on how much funding might be retained by the Department for an additional sea lamprey control station in southern Ontario. Why did DFO not collaborate with the Commission on how to address this “capacity” issue, if there was one, rather than hold all funding until DFO would - arbitrarily - determine at some point how much of the appropriation would be retained to add capacity at some future date? This decision to withhold Commission funding in 2022 was entirely consistent with the past practices when DFO would make arbitrary decisions regarding use of Commission-designated funding. As you have heard in other testimonies, the November 2022 decision caused commissioners to say, “enough is enough”. Subsequently, US commissioners notified Canadian commissioners that the Commission could not meet until such time as funding and governance issues were appropriately addressed in Canada.
- Early 2000’s: On multiple occasions while determining how to respond to budget reductions as part of Government of Canada austerity measures, DFO arbitrarily proposed decreases to Commission funding without consultation with Canadian commissioners or GAC. These proposals at senior levels of the Department once again demonstrated DFO’s position regarding “ownership” of Commission-designated funding. Fortunately, those proposals were eliminated from DFO’s austerity strategies before submissions were made to Treasury Board, however, these examples further signify how inappropriately Commission governance was administered in Canada.
- 1999-2000: A Canadian commissioner, who also served as an Assistant Deputy Minister at DFO, announced at a Commission executive meeting that the Government of Canada was defunding the Commission. To the best of our knowledge, this information was not shared with GAC or other Canadian commissioners ahead of time. The announcement created a political firestorm in Canada and the US. Several months hence, full funding (\$6 million at that time) was restored and Parliament added an additional \$2 million after a full analysis of Commission’s Canadian funding

requirements. While the outcome was favorable for Canada, the Commission and its myriad partners, stakeholders and rightsholders who rely heavily on Commission programs, the debacle was yet another example of DFO's misunderstanding of the Minister's governance role and officials' responsibilities to support the Minister in that role.

“Mr. O’Dea, you were before a House of Commons committee in 2023. You said DFO was not in a conflict of interest — I want to read the words carefully — because your agency and the commission were in alignment is what you said.”

Next, I would like to move to Senator Cordy's line of questioning regarding “conflict of interest” as per the quote above from the October 22, 2024, Committee hearing.

DFO continues to use the “alignment of interests” as its defense against assertions of conflict of interest. When pushed to explain this defence, DFO officials refer to commonalities between the department's and the Commission's freshwater fisheries programs and policies. While there have been significant policy/program misalignments between the two organizations, such as with American eel management for example, these are not the differences that are at the root of the Commission's claims of conflict of interest; rather, the area of conflict has to do with the broader matter of governance, which includes financial management.

Further to my foregoing points with reference to Senator Deacon's line of questioning - points which I submit demonstrate clear conflict of interest between DFO and the Commission, please allow me to offer another example of such conflict.

At a critical Commission executive meeting in November 2021 during which Commission staff was communicating the significant impacts of Canada's shortfall on Commission program delivery, a Canadian commissioner, who was also speaking on behalf of DFO, proclaimed that the department would not be seeking additional funding from the Canadian Government as “Canada was already meeting its obligations under the Convention”. This definitive position was asserted despite the unambiguous presentation of Commission program funding requirements, current funding from both Canada and the US, and how those funding envelopes were not consistent with the terms established under the Convention. Furthermore, and as was the case with the “1999-2000” incident cited previously, the so-called Canadian position was not previously discussed with other Canadian commissioners or GAC.

A key outcome from the November 2021 Commission meeting was a concerted outreach effort by the Commission on Parliament Hill. Parliamentarians and Senators were provided with detailed information regarding Canada's funding gap, the consequences of such a shortfall continuing, and the program outcomes that would be realized with enhanced investment to bring Canada in compliance with the Convention.

The Commission, its partners, stakeholders and rightsholders were thrilled with Canada's response in the 2022-23 federal budget when the shortfall was fully addressed with a \$19.6 million budget for the Commission.

These developments between November 2021 and March 2022 lead to interesting questions:

- Were DFO's and the Commission's interests aligned when the DFO official asserted at the November 2021 meeting that the department would not be proposing an increase in Commission funding despite evidence that the then current level of Canadian funding was neither in compliance with the Convention nor adequate for the Commission to fulfil its programs?
- Was DFO acting in Canada's interest when its representative strongly communicated "Canada's position" at the November 2021 meeting?
- Had it not been for the Commission's outreach effort with parliamentarians during the winter of 2021 and spring of 2022 and the subsequent pressure on the DFO Minister, would DFO have continued to have ignored the Commission's funding needs in order to advance the department's own interests?

I believe that the answers to these questions are NO, NO and YES respectively. Furthermore, I trust that the foregoing reveals that appropriate responses to the astute line of questioning from senators Deacon and Cordy in particular would have been far more complex and revealing of the root causes of Commission-Government of Canada governance issues under DFO ministers, than the abbreviated answers provided by officials at both the House and Senate committee hearings.

Governance transition from DFO to GAC

The October 2024 news that the Government of Canada had decided to transition the Commission portfolio from DFO to GAC allows me to close on a positive note. I compliment the Government on this decision, and I commend parliamentarians and senators who remained steadfast in working with the Government to find solutions to these long-standing governance issues. As I have maintained for the many years during which the Commission advocated for this change, GAC's sensitivities to the challenges and opportunities related to operating in dynamic international fora, which the Great Lakes Region certainly is, will better position the GAC minister and their officials to fulfil the Commission governance function in Canada.

I also commend Senators on the shrewd questions asked of GAC officials at the October 22 hearing. I was encouraged by the responses provided by GAC officials to senators' questions. Since there are considerable details to be worked out in the DFO-to-GAC transition, I will close with several considerations for the Committee as it develops its report on this matter. In making these suggestions, let me please reiterate that I am no longer employed by or represent the Commission and as such, my thoughts are as a private citizen who worked as Executive Secretary for the Commission between 2013 and 2024, and who also served as a Canadian commissioner between 2005 and 2011, several years of which were as Commission chair. My suggestions are as follows:

1. Due in large part to the intense political pressure resulting from DFO's mishandling of the Commission budget in November 2022 in particular, the Commission was able to make progress in developing a detailed memorandum of agreement (MOA) with DFO to bring greater clarity to the process for: promoting the Commission's funding needs to the Government of Canada; segregating (of fencing) Commission appropriated funds from departmental program funding, and; transferring appropriated funds to the Commission. While I expect a much more transparent process with GAC than existed with DFO, I suggest that appropriate aspects of the Commission-DFO MOA be used to develop a similar accountability agreement or contract between the Commission and GAC.
2. Assuming that Government of Canada fiscal policies and or legislation prohibits direct transfer of appropriated funds between Treasury Board and an external entity, such as the Commission, I suggest that 100% of the Commission's funding be appropriated to GAC for transfer to the Commission. There are likely to be arguments that DFO should retain funding for sea lamprey

control programs which DFO will continue to deliver in Ontario on the Commission's behalf. However, and counter to that DFO argument, I advocate for other alternatives, two of which stand out:

- i. Sea lamprey control programs funding be provided to the Commission from GAC, as with all "other, non-sea lamprey control" funding, and that the Commission reimburse DFO for contracted services rendered in accordance with the annual Commission-DFO contract for sea lamprey control (as has been the case in the US for decades), or;
 - ii. Should "i" be determined not to be feasible, an interdepartmental transfer be made between GAC and DFO for sea lamprey control services once GAC is advised on said amount each year and based on the contract amount negotiated among the Commission, DFO and GAC.
3. Selection of Canadian commissioners to represent Canada's interests in fulfillment of the Convention is critical. With that in mind, I suggest the following be included in considerations for future selection of Canadian commissioners:
- i. That the GAC Minister, in their governance role, seek advice from the Ontario Provincial Government before making commissioner recommendations to Governor in Council. This measure would recognize Ontario's critical role in managing Great Lakes fisheries in the Canadian waters of the Great Lakes.
 - ii. That, in recognition of the "norm" to have a senior government official fulfil one of the Canadian commissioner positions as an equal with other Canadian commissioners, the said position be filled from within GAC.
 - iii. That one Canadian commissioner be a researcher with sound understanding of freshwater or Great Lakes fisheries, fish habitat and Great Lakes hydrology.

Thank you so very much for considering my feedback. I have invested a considerable portion of my career working on matters related to your hearings, and I trust the additional insights and information will be helpful to you as you develop your report on this critical matter. Should your staff wish to contact me, please do not hesitate to do so at lambebob@hotmail.com.

Sincerely,

Robert Lambe

Robert (Bob) Lambe
Executive Secretary (Retired in 2024)

cc: POFO Members