Cameco Corporation submission on Bill C-68,
An Act to Amend the Fisheries Act and other Acts in consequence
to the Senate Standing Committee on Fisheries and Oceans

Submission by:
Cameco Corporation

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Clerk of the Senate Standing Committee on Fisheries and Oceans

Submission from:

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We appreciate the opportunity to provide this submission to the Senate Standing Committee on Fisheries and Oceans (the “Standing Committee”) in connection with its review of Bill C-68 and the Fisheries Act (the “Act”).

Summary

This brief builds on our extensive experience with the Act, including the 2012 amendments, which emphasized that planning for and executing the transition to the amended legislation is critical to avoid confusion and the imposition of unwarranted costs on proponents.

Upon reviewing Bill C-68, as amended in the House of Commons, our conclusion is that the Act, as proposed, will introduce significant regulatory uncertainty without providing additional benefit to Canada’s fisheries and fish habitat.

In this regard, modifications to the Act to define water flow as “fish habitat” would represent the most significant expansion of the definition of fish habitat in the 145-year existence of the Act. The current definition draws upon decades of jurisprudence and practice that provide certainty. The proposed modification will be open to broad interpretation and cause ongoing uncertainty and delay.

As proposed, Bill C-68 will modify the definition of “fish habitat” by adding the phrase “water frequented by fish”. The definition of “fish habitat” is fundamental to the Act and the interpretation vital to its implementation. Along with the above noted amendment regarding water flow, this modification will significantly expand the scope of the Act.

To alleviate these concerns, we have made several recommendations and four specific requests to the Senate:

- Amend subsection 1(10) of Bill C-68 that replaces subsection 2(2) of the Act with a provision that deems “water flow” to be “fish habitat”. This new subsection was
added by the House of Commons without adequate review or due consideration as to the implications. As drafted, it would introduce significant regulatory uncertainty and would undermine the functionality of the fish habitat provisions of the Act.

- Amend subsection 1(5) of Bill C-68 to remove the addition of the phrase “water frequented by fish” from the definition of “fish habitat” and maintain the existing definition in subsection 2(1) of the Act.
- Amend certain text in ss. 20, 21, 22, 23 and 31 of Bill C-68 that create a new permitting scheme. As drafted, this new and unnecessary scheme would introduce significant regulatory and administrative burden while restricting the use of new tools and mechanisms designed to promote avoidance of harm to fish habitat for low-risk activities within the scope of the new permitting scheme.
- Urge the government to plan the implementation of Bill C-68 by staffing and training adequate regional staff and developing key policies, guidance and regulations allowing routine low-risk activities to proceed prior to the new Act coming into force.

**Water Flow**

The inclusion in Bill C-68 of Green Party amendment PV-1 from the Clause by Clause consideration at the House of Commons Standing Committee on Fisheries and Oceans introduced a significant obstruction to any project or development that may be proposed moving forward – one which we do not believe was fully appreciated by parliamentarians at the time.

Specifically, the new subsection 2(2) of the Act defines “water flow” as “fish habitat” and potentially represents the most significant expansion of the definition of “fish habitat” in the history of the Act. The current definition – and that initially proposed in Bill C-68 – rests on decades of jurisprudence and practice and should be left as is.

The new definition is subject to broad interpretation and expands the definition of “fish habitat” to include any moving water flow, including various industrial, agricultural and municipal water flow locations never considered to be fish habitat.

Discussions with officials from the Department of Fisheries and Oceans (DFO) have confirmed that water flow is already recognized as a **characteristic** of fish habitat under the existing Act. As such, many existing facilities have minimum flow requirements or year-round flow requirements based on existing flow characteristics.

Introducing subsection 2(2) of Bill C-68 will result in years of litigation in which the courts will be asked to interpret the new provision, thereby undermining the ability of the federal government to implement the Act, leave alone the ability of proponents or the public to understand the application of it. This could have the potential to defer or cancel projects simply due to added cost, delay and uncertainty that proponents will be unable to endure. Despite this,
the proposed amendment will not have a corresponding environmental benefit or increased protection of fish and fish habitat, beyond simply serving as an overall deterrent to development.

**Recommendation:**

- **Amend subsection 1(10) to repeal rather than replace subsection 2(2) of the Act.**

**Definition of Fish Habitat**

Bill C-68 will change the definition of “fish habitat” by adding the phrase “water frequented by fish”. The definition of “fish habitat” is fundamental to the Act and the interpretation is vital to the implementation of the Act, for both project proponents and the DFO.

The changes proposed in Bill C-68, along with the proposed definition of “harmful alteration, disruption or destruction” (HADD) of fish habitat, move away from previous practice and jurisprudence. In doing so, Bill C-68 will unnecessarily complicate the approval process, placing regulatory certainty for both the DFO and project proponents in jeopardy.

Coupled with the proposed amendments for subsection 2(2), inserting the phrase “water frequented by fish” to the definition of “fish habitat” will potentially significantly expand the scope of the Act. In doing so, locations that may only contain water for a brief period of time will be considered to be fish habitat.

As an example, any work, activity or undertaking in a location that may only contain water for several days every few years could be subject to the requirements of the Act. While fish may have the potential to frequent this area for a small period of time once every five years, the habitat is not essential for life-cycle processes.

Subjecting works, activities or undertakings in these locations will results in unnecessary administrative burdens for both the DFO and the regulated community.

**Recommendation:**

- **Remove the phrase “water frequented by fish” from the definition of “fish habitat”**.

**Designated Projects and Permitting**

Bill C-68 introduces the definition of a “designated project” as any project designated by regulations in subsection 20(2) of Bill C-68. To address works, activities or undertakings associated with these projects, a permitting scheme is created through section 21, subsection 22(4) and section 23, although there is no definition of “works, undertakings and activities” to which it applies.

Section 23 would introduce a third prohibition into subsection 35.1(1) of the Act, which would prohibit the carrying on without a permit of any work, undertaking or activity that is part of a prescribed designated project, when no permit would be required for the same work, undertaking or activity that is not part of a designated project.
The permitting scheme, therefore, treats works, undertakings and activities differently depending on the project they are associated with – rather than on the nature of the work, undertaking or activity and its potential for harming or altering fish or fish habitat.

In addition, subsection 20(3) of Bill C-68 would create a new subsection 34(3) of the Act, which would prevent the application of provisions that promote avoidance of fish habitat to works, undertakings and activities that are part of a designated project. This could include standards and Codes of Practice designed to avoid HADD. As one of the stated purposes of the Act is to conserve and protect fish and fish habitat, there is no reasonable basis that these tools, introduced into the Act to avoid the HADD of fish habitat, are not available for all works, activities or undertakings.

Discussions with DFO representatives have confirmed our interpretation of the permitting scheme contained within Bill C-68, which has caused significant concern for our company and the broader mining industry.

To illustrate the contradiction, routine culvert maintenance at a roadway that is not part of a designated project would not require a permit and could be completed immediately in accordance with Codes of Practice established by the DFO to minimize potential impacts to fish and fish habitat. In contrast, the same activity completed on a roadway for a designated project would require a permit obtained through a complex process subject to administrative and regulatory timelines, instead of through the new tools being established to minimize potential impacts to fish and fish habitat (e.g. Codes of Practice) and to accomplish the same outcomes of a permitting process in a more efficient and effective way.

The outcome is the same for both scenarios, with the potential impacts to fish and fish habitat being minimized. By subjecting all routine works, undertakings and activities associated with designated projects to a complex permitting scheme, Bill C-68 will significantly increase the administrative burden to the department and industry and diminish regulatory certainty – without a corresponding environmental benefit.

Recommendation:

- Amend Bill C-68 to remove the designated project provisions, restoring the Act to the pre-2012 prohibitions.
  - Alternatively, amend ss. 20, 21, 22, 23 and 31 of Bill C-68 to limit the prohibition and permitting requirements to defined works, undertakings and activities that are likely to harm fish habitat, and to allow all other works, undertakings and activities to comply with the Act based on provisions that address low-impact works, undertakings and activities. We propose the following amendments to the Act (strikethroughs indicate proposed deletions and underscoring indicates additions to the text of Bill C-68):

  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, including any 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 designed works, undertakings or activities pursuant to subsection 35.1(4) except paragraphs 34.4(2)(a) to (e) and (e) and 35(2)(a) to (e) and (e).

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.

Implementation
As detailed previously, Bill C-68 will expand the suite of tools for project proponents to minimize harm to fish and fish habitat for routine and low-impact projects. Operationalizing these tools will be essential, as they will be utilized for countless projects across the country.

Once operationalized, as noted above, these tools should be available for all works, undertakings or activities to ensure that potential impacts to fish and fish habitat are minimized, consistent with the goals of the Act.

Our experience with the 2012 amendments to the Act emphasize that planning for and executing the transition to the amended legislation is critical to avoid confusion and the imposition of unfair costs on project proponents. There were significant challenges with the implementation and transition of the 2012 amendments, primarily due to the lack of adequate explanatory guidance and training for both proponents and regulatory staff in interpreting and implementing the amended provisions.

Regardless of the nature of any proposed amendments, we strongly believe that all changes should be accompanied by clear and comprehensive guidance developed in consultation with the regulated community.
Recommendations:

- All amendments should be subject to a transition period to allow sufficient time for DFO to consult with the regulated community and other stakeholders.
- Operationalize a core set of compliance activities for routine, low-impact works, undertakings and activities prior to Bill C-68 coming into force.
- Complete the training of regional staff on all changes included in Bill C-68.

Summary of Recommendations

- Amend subsection 1(10) of Bill C-68 to repeal rather than replace subsection 2(2) of the Act.
- Remove the phrase “water frequented by fish” from the definition of “fish habitat”.
- Amend Bill C-68 to remove the designated project provisions, restoring the Act to the pre-2012 prohibitions.
  - Alternatively, amend ss. 20, 21, 22, 23 and 31 of Bill C-68 to limit the prohibition and permitting requirements to defined works, undertakings and activities that are likely to harm fish habitat, and to allow all other works, undertakings and activities to comply with the Act based on provisions that address low-impact works, undertakings and activities.
- All amendments should not be brought into force immediately, but rather phased in with sufficient time to allow DFO to consult with the regulated community and other stakeholders.
- Operationalize a core set of compliance activities for routine, low-impact works, undertakings and activities prior to Bill C-68 coming into force.
- Complete the training of regional staff on all changes included in Bill C-68.

Regardless of the nature of any proposed amendments, we believe they should be accompanied by clear and comprehensive guidance developed in consultation with the regulated community.

About Cameco

Headquartered in Saskatoon, Saskatchewan, Cameco is one of the world’s largest producers of uranium for nuclear energy and one of Canada’s largest industrial employers of Indigenous people. We maintain uranium mining and milling operations in northern Saskatchewan and value-added uranium processing and fuel fabrication facilities in Blind River, Port Hope, and Cobourg, Ontario.

Cameco’s uranium is used around the world in the generation of low-carbon nuclear energy. We play a major role in the energy equations of many countries – particularly here in North America, where Cameco uranium powers more than 10% of all households in Canada and roughly 5% of all households in the United States.