Standing Senate Committee on Fisheries and Oceans
Senate of Canada
Ottawa, ON K1A 0A4

Dear Honourable Senators:

Re: Dene Nation Position on Bill C-68

I. Introduction

We write to provide you with a summary of our speaking notes from our April 9, 2019 appearance as witnesses before the Senate Committee, and to emphasize the Dene Nation’s support for Bill C-68. The Dene Nation has been very active and vocal in its request for the very best legislation and regulation of our fish, fish habitat, waters, lands and integrated ecosystems. You will have had a chance to have read our submissions; most recently, one dated March 29, 2019, and another dated May 25, 2018.

The Dene Nation is located in the Denendeh, meaning “the land of the people”, which covers Northern Canada and is comprised of the Gwich’in, Sahtu, Deh Cho, Tlicho and Akaitcho regions. There are approximately 15,000 Dene in the North, who are signatories to Treaty 8 signed in 1899 and Treaty 11 signed in 1921 as well as Modern Treaty Agreements. The spirit and intent of the Treaty includes: clean air, clean and abundant water that can sustain all living things, and land that is healthy and can sustain all that live on it, including the Dene. This is what existed when our forefathers signed the treaties and this is what we fight to protect right to this very day.

We see the modernization of the Fisheries Act, as critical in meeting these Modern and historic Treaty duties. We have learned the powers of laws over the last 153 years, both good and bad. Bill C-68 can be a good law. The Dene want it to be a good law.

“Upholding and Protecting the Rights and Interests of the Dene Nation”
We wish to share three key points with the Senate Committee:

II. Indigenous legal rights

The protections for waters, habitat and the fish have a direct relationship to the legal duty to fulfill both historic and Modern Aboriginal and Treaty rights under section 35 of the Canadian Constitution. The environment cannot wait and our Treaty rights are very present living rights. The Dene’s rights to fish will be devoid of meaning if the habitat, and the water to sustain that habitat, are not legally protected. Passing Bill C-68 is right step to complying with the United Nations Declaration on the Rights of Indigenous Peoples, which recognizes the autonomy of the Dene Nation to govern the resources in our vast region and our right to the conservation and protection of the environment.¹

III. Habitat must be defined to include environmental flows

We also ask the Senate to appreciate the delicate fabric of what must be protected. We have heard the singular focus from industry on economic profits. The Dene require a better balance. The Dene have both a strong fishery for sustenance and cultural well-being and an important commercial fishery. The Dene recognize that both cultural and economic wellness depend on a fully integrated approach imbued with environmental wisdom and traditional Indigenous knowledge (“IK”).

The Dene Nation entrusts this Committee with the role of ensuring that Section 2(2) of the Bill is part of the solution. This language is an incorporation of the key aspect of environmental flow, which involves the quantity, timing and quality of water flow.

Deeming — habitat

2(2) For the purposes of this Act, the quantity, timing and quality of the water flow that are necessary to sustain the freshwater or estuarine ecosystems of a fish habitat are deemed to be a fish habitat


Article 4. Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions;

Article 18. Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision making institutions

Article 29. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination
Any opposition to the inclusion of water flow in the definition of habitat is short-sighted. Legislating water flow into the definition of fish habitat is key to protecting fisheries and promoting Indigenous rights.

There is no room to take risks with the fish and their habitat. First Nations have been subject to changing policies and inconsistent levels of funding over the years. The key requirement of water flow as part of an ecosystem must be in legislation. It is the role of Federal legislation and regulation to backstop key protections for our environment and our fisheries. The Canadian Science Advisory Secretariat, in 2012, produced a research document outlining the need to establish a federal environmental flow framework. Now seven years later, the Federal government ought to listen to evidence-based recommendations in defining the path to sustainability. Given the current climate change crisis, any remaining legislative gaps will lead to grave failures. The fish cannot wait and the Treaty rights at risk must be respected today. Industry has the technical knowledge to understand water flow and they must be required by legislation to use that technology to support ecosystems to ensure water flow. We must all stay focussed on the obvious truth that water, especially its quantity, the timing of its flow and quality, are directly linked to the fish that we all need to sustain ourselves as the People of the land. We cannot accept anything less. Our fish in the north and across Canada need good quality water and the right amount of water at the right time of the season of course; all fundamental requirements for fish feeding, spawning and rearing.

IV. Regional leadership is necessary

The protections of fish and fish habitat must be managed locally and with regional leadership. All of the biggest ills arise when non-local interests overtake decision-making. The best decisions come from early strategic engagement of the local water users, who are the local scientists and experts of the territory. The local IK of habitat, species, spawning habits, water level and quality and harvesting practices must be respected in legislation.

Dene Nation has considerable experience with collaborative drafting. As Treaty Nations we have sat with the Crown and co-drafted a new Wildlife Act. Furthermore, we have led the way in the Transboundary Water Agreement among Crowns in the Northwest Territories, British Columbia and Alberta. As a drafting suggestion in Bill C-68, we recommend that any fines should be

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dedicated to repairing the access and rights of the Dene that have been infringed in the past. This will help fund a recovery of past infringements suffered by the Dene Nation and the resources upon which they rely. We are not willing to be part of any top down approach or any consultation after-the-fact.

A Nation to Nation approach is a respectful, honour imbued approach that works together to create laws and regulations for a common good. Bill C-68 has been drafted with enough flexibility to move forward now to collaboratively create regulations and policies.

V. Conclusion

We ask this Senate Committee to recognize the need for integration of water flow, habitat and fish and to keep this protected in the legislation. There are no fish without a healthy ecosystem. Furthermore, Treaty and inherent rights will not be fulfilled if fish and their habitats are not protected. Responsible legislation combined with the Dene's regional expertise and sustainable practices will ensure that both cultural and commercial fisheries thrive.

We wish to see C-68 passed; we cannot accept a return to the old Act. We oppose any delay or attempt to filibuster. The Dene support a good law that will be passed in the life of this government. This is important to fulfill the mandate to advance Indigenous rights and Nation-to-Nation relationships. We urge the Senate be very aware of the urgency to legislate now. We ask for your tenacious and unwavering insistence to help get this Bill passed well before June.

Sincerely,

[Signature]

Norman Yakeleya
Dene National Chief
AFN Regional Chief, NWT

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