April 26, 2019

Clerk of the Senate Standing Committee on Fisheries and Oceans
(Via e-mail: pofo@sen.parl.gc.ca)

RE: CAPP 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.

Dear Committee Members,

Introduction
The Canadian Association of Petroleum Producers (CAPP), and its members, appreciate the opportunity to provide input on the review of Bill C-68. CAPP represents companies, large and small, that explore for, develop and produce natural gas and oil throughout Canada. CAPP’s member companies produce about 80 per cent of Canada’s natural gas and oil. CAPP’s associate members provide a wide range of services that support the upstream oil and natural gas industry. Together CAPP’s members and associate members are an important part of a national industry with revenues from oil and natural gas production of about $101 billion a year. CAPP’s mission, on behalf of the Canadian upstream oil and natural gas industry, is to advocate for and enable economic competitiveness and safe, environmentally and socially responsible performance.

CAPP welcomes the opportunity to provide the following proposed amendments and recommendations to the Fisheries Act under Bill C-68.

1) Amend Subclause 1(10) of Bill C-68 which would create a new subsection 2(2) that deems “water flow” to be “fish habitat”. The new subclause was added by the House of Commons without adequate review of consideration of potential legal and/or operational implications. As currently written this subsection would result in an increased level of regulatory uncertainty and would also undermine the functionality of the fish habitat provisions of the Act.

2) Amend text in Clauses 20, 21, 22, 23, and 31 that creates new permitting requirements. As proposed, these new permitting requirements would restrict the potential for improved process and effectiveness by not allowing other tools or mechanisms to be utilized for low risk activities. As proposed there would be a significant increase in regulatory and administrative burden with minimal, if any, improvement in protection of fish habitat.
3) Government will need a complete implementation and transition plan prior to royal assent of Bill C-68. Training of regional staff and the development of key policies, guidance, tools and regulations related to all changes brought by Bill C-68 will be required prior to coming into force.

**Water Flow**
The definition and interpretation of fish habitat is fundamental to the workable implementation of the Act for all parties. The focus of the Act should be to promote avoidance of harm to fish habitat and not to introduce further confusion and administrative barriers.

CAPP notes that amendment PV-1 that was accepted by the House of Commons in the new subsection 2(2) of the Fisheries Act added “water flow” into the definition of “fish habitat”. This change was proposed without a full understanding of legal and/or operational implications and would drastically increase the scope of what might be considered “fish habitat”, increasing the level of uncertainty for both DFO and proponents.

Water flow is already recognized as a characteristic of fish habitat under the Act - but defining the characteristics of water flow as fish habitat will lead to challenges of interpretation and an expansion of scope of what can be defined as a fish habitat. This type of change will set aside years of jurisprudence and introduce years of potential litigation.

**CAPP recommends**

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

**Designated Projects and Permitting**
The permitting system being proposed in the Act through Clause 21, subclause 22(4) and Clause 23 introduces complexity and does not provide a definition of “works, undertakings and activities” to which it applies.

In addition, Clause 23 of Bill C-68 introduces a third prohibition in subsection 35(1). The new prohibition would prohibit the carrying on of “any work, undertaking or activity that is part of a designated project except in accordance with a permit issued under subsection (2).”

The designated project provisions would result in all works, undertakings and activities that are a part of a designated project to require a permit regardless of whether they avoid harming fish habitat. Identical works, undertakings and activities would not require a permit if it is not a part of a designated project. If the desired focus of this process is on a science and risk-based approach to improving the protection of fish habitat, this approach does not make sense. As currently proposed, all routine, low-risk works, undertakings and activities associated with designated projects will be subject to a complex permitting requirement instead of allowing the use of well-established regulatory/compliance tools. As proposed, Bill C-68 will significantly increase the administrative burden to both DFO and industry, and diminish regulatory certainty – without a corresponding environmental benefit that would increase the protection of fish or fish habitat.
CAPP recommends
Amend Clauses 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 allow all other works, undertakings and activities to comply with the Act based on provisions that address low-impact works, undertakings and activities.

CAPP encourages the use of the full range of regulatory/compliance tools appropriate for all works, undertakings and activities, including those that are part of designated projects with Bill C-68.

Implementation
CAPP cautions the government to not rush the coming into force of the Act before essential guidance and new tools are operationalized. For example, DFO can build on the Operational Statements it developed in the past, as well as codes of practice and standards developed by provinces, professional and standards organizations and industry.

We urge the government to complete implementation and transition planning prior to royal assent of Bill C-68. Training of regional staff and the development of key policies, guidance, and regulations on all changes brought by Bill C-68 will be required prior to coming into force.

CAPP recommends that prior to the Bill coming into Force

Government develop an implementation and transition plan including clear guidance, and required training on all changes.

Government operationalize a core set of regulatory/compliance tools for routine, low-impact works, undertakings and activities.

All regulations under the Fisheries Act requiring amendments following royal assent of Bill C-68 should be posted to Canada Gazette 1 for fulsome public consultation.

Conclusion

Without some important changes, Bill C-68 will increase uncertainty for industry and increase administrative and regulatory burden. Industry needs a clear framework for regulatory permitting under the Fisheries Act. For our industry to thrive in Canada, the regulatory reviews must be completed in a fair, timely and efficient manner. The degree of regulatory review and oversight required should be commensurate with risk, and the processes must be clear to the public, stakeholders, Indigenous people and proponents.
CAPP urges the Committee to fully consider the proposed changes to the Bill. Should you have any questions or require further clarification regarding this submission, please contact Patrick McDonald at (403) 267-1136.

Sincerely,

Patrick McDonald, P. Eng.
Director, Climate and Innovation