Bill C-68:
A Fisheries Act for the Future -
Success will be determined by the Regulatory Outcome

Submission to the Senate
Standing Committee on Fisheries and Oceans

May 9, 2019
SUMMARY

The Fisheries Council of Canada is the national voice for Canada's commercial fisheries. Member companies are processors who process the majority of Canada's fish and seafood production. Our members include small, medium and larger-sized companies along with Indigenous enterprises that harvest fish in Canada's three oceans.

The most significant key policy issue facing the sector is a concern of stability of access to the fishing resource. This unfortunate situation has eroded the sector’s confidence to invest and could undermine conservation efforts. It also creates a lens through which the sector views Bill C-68 and the pending regulations under new authorities provided by the Bill.

This current context is even more unfortunate given that the fisheries sector needs to accelerate investment to extract more value from what it harvests and processes. A recent study has indicated that the sector is missing out on $600 million annually in additional revenue. Much of this will only be realized by investments in new technology and practices. This, and other growth opportunities, won’t be achieved in the absence of a clear and stable policy framework. This is currently lacking in Canadian fisheries.

Given the enabling nature of the Bill, the Council reserves judgment on the Bill pending development of the some 15 regulations authorized by the Bill, which could take up to 3 years or more to be completed.

This submission is formatted in two sections – the first pertaining to the legislation and the second pertaining to the pending regulations authorized by the Bill. But for the purposes of this summary, there are three key messages for the Committee’s consideration.

Recognition of use in the Purpose clause

FCC would like a better reference to ‘use of fisheries’ as part of the purpose of the Act in S. 2.1. Participants in the fisheries sector, and their communities, rely on the economic benefits from Canada’s fish resources. But, it is paramount that such use of our resources is sustainable. Failing to do so will undermine the long term economic contribution of this industry to the Canadian economy. The use of fisheries is missing in the current wording of the Bill.

FCC submits for consideration the following:

Replace S 2.1 in clause 3 with:

Purpose of Act

2.1 The purpose of this Act is to:
   (a) ensure the sustainable use of fisheries; and
   (b) provide a framework for
       (i) the proper management and control of fisheries; and
       (ii) the conservation and protection of fish habitat, including by preventing pollution.
Interests of others in Reconciliation

Bill C-68 provides significant new authorities relating to Indigenous participation in and co-management of fisheries. The Bill is silent on how to determine the equivalency of co-management agreements authorized by the new S. 4.1, particularly as it may affect sustainability of fisheries and license holders with dependence on the resource. The Ahousaht et al case provides new direction for the Minister in who is involved in negotiations of co-management agreements – other stakeholders are not represented by DFO. The FCC believes there needs to be a clear process for involvement of other impacted stakeholders in co-management negotiations and a process in place to avoid a patchwork approach to management of a resource that would undermine overall sustainability.

Further, the Crown’s own testimony in the Ahousaht et al. case contrasts with the ‘involuntary relinquishment’ that recently occurred in the arctic surf clam fishery. The FCC strongly believes the government needs to adhere to a willing buyer/willing seller policy as it has done historically.

Regulatory elements affecting stability of access

FCC looks to how these regulatory provisions can contribute to greater stability of access and thereby instill confidence to invest and support conservation. At the same time, FCC cautions on the government’s ability to anticipate how the sector will evolve over time. Smart regulations will provide flexibility to accommodate the ongoing evolution of the sector.

FCC hopes this legislation, and its subsequent regulations, will provide a framework that will facilitate and enable the fisheries sector to be prosperous long into the future.

Open and transparent consultations are critical to a successful regulatory development process. FCC looks forward to continuing its dialogue with the government and Parliamentarians on the subsequent regulations.
Introduction

Since the Fisheries Council of Canada was established in 1915, the Council has been the national voice for Canada’s commercial fisheries. Member companies are processors who process the majority of Canada’s fish and seafood production. Our members include small, medium and larger-sized companies along with Indigenous enterprises that harvest fish in Canada’s three oceans. FCC members take pride in being key employers in their communities, providing jobs and creating an economic base for other local businesses.

Canada is a global leader in sustainable fisheries management with eighty per cent (80%) of Canadian wild seafood production by value being certified by the Marine Stewardship Council, the international gold standard for measuring fishery sustainability. This contrasts sharply with only 14% of the world’s fisheries certified.

The Canadian seafood industry creates 80,000 direct jobs, mainly in coastal and rural communities, and accounts for $7 billion in exports to over 130 countries. The largest export markets for Canadian seafood products include the United States (63% of exports), China (14%), European Union (7%), and Japan (5%). The Council is looking towards advantages created by recent free trade agreements, such as South Korea, CETA, and CPTPP. Growing global demand for protein, including fish and seafood, points to more growth in Asian markets and elsewhere.

The most significant policy issue facing the sector is a concern of stability of access to the fishing resource. Taking away long-standing licenses and quotas does not respect past investments and has eroded the sector’s confidence to invest and could undermine conservation efforts. This is important to coastal community economies. The integrated supply chain is often overlooked and underestimated. Independent fish harvesters and their local fish processor have a symbiotic relationship. Harvesters rely on the processing plants to purchase their harvests and other equipment financing. Processors often need inshore harvests to supplement offshore supply.

The current context is even more unfortunate given that the fisheries sector needs to accelerate investment to extract more value from what it harvests and processes. A 2017 study has indicated that the sector is missing out on $600 million annually in additional revenue. Much of this will only be realized by investments in new technology and practices. This, and other growth opportunities, won’t be achieved in the absence of a clear and stable policy framework. This is currently lacking in Canadian fisheries.

This concern also creates a lens through which the sector views Bill C-68 and the pending regulations under new authorities provided by the Bill.

Bill C-68 as Legislation

Given the enabling nature of the Bill, the Council reserves judgment on the Bill pending development of the some 15 regulations authorized by the Bill, which could take up to 3 years or more to be completed. Having said that, there are a few elements upon which FCC
would like to comment:

**Recognition of use in the Purpose clause**

FCC would like a better reference to use of fisheries as part of the purpose of the Act in S. 2.1. As part of the 2017 consultations we submitted the following:

>Sustainable Use’ has been the primary implied principle of the Fisheries Act since its inception, and this primacy must be maintained/strengthened in any revised Act; care must be taken that the introduction/drafting of any additional principles/purposes etc not diminish this primacy.

It is not clear this has been achieved in Bill C-68. The first element of the proposed purpose in S. 2.1(a), “the proper management and control of fisheries”, is quite broad and case law is clear that the Minister can make decisions based on a wide range of considerations.

FCC asks the Committee to consider this. Participants in the fisheries sector, and their communities, rely on the economic benefits from Canada’s fish resources. But, it is paramount that such use of our resources is sustainable. Failing to do so will only lead to economic hardship in the future and undermine the vital role this sector plays in the coastal economy in Canada. The use of fisheries is missing in the current wording of the Bill.

**FCC submits for consideration the following:**

**Replace S 2.1 in clause 3 with:**

**Purpose of Act**

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**Fisheries Management Order Powers**

FCC recognizes the utility of the new fisheries management order powers proposed under the new S. 9.1 – this should enable DFO to take a more geographically targeted and more surgical approach to varying conditions on licences, or other restrictions on fishing activity, to address emergency conservation, biodiversity, or species-at-risk issues. We look to these temporary powers to minimize marine conservation impacts on commercial fisheries, while consultations can be held on any more permanent measures that may be required.
Interests of others in Reconciliation

Bill C-68 provides significant new authorities relating to Indigenous participation in and co-management of fisheries. Co-management agreements are authorized by the new S. 4.1 if provisions are deemed equivalent to provisions in the Act. However, there is currently no legal test for equivalency in this context. Moreover, both the Act and the Bill fail to set any considerations that the Minister or Governor in Council must, or may, consider when determining equivalency. This applies in terms of equivalency in provision and its administration or enforcement. Of particular concern is the potential for different management regimes across different fisheries, which could potentially negatively impact sustainability of fisheries resources.

According to Ahousaht et al, bilateral negotiations of what the fishing right means in practice are unacceptable. DFO does not represent the interests of the other sector participants such as commercial and recreational fisheries, and these interests must be included. The FCC believes there needs to be a clear process for involvement of other impacted stakeholders in co-management negotiations and a process in place to avoid a patchwork approach to management of a resource that undermines overall sustainability.

In Ahousaht et al the Crown testified that it is willing to use the Allocation Transfer Program (ATP) and the Pacific Integrated Commercial Fisheries Initiative (PICFI) to increase Indigenous participation in fisheries. Moreover, Madam Justice Humphries stated, “Canada takes the position that access under PICFI and ATP is relevant to the access provided under the right, in particular because reconciliation is achieved through voluntary relinquishment of licences by commercial fishers. It is not necessary and is unhelpful to the principles of reconciliation to move to involuntary relinquishment of licences by the commercial sector.” [emphasis added, para 144] Unfortunately, this was not the approach taken in the arctic surf clam fishery. A lack of clear criteria and policy has created a climate of uncertainty and instability in fisheries management. The FCC strongly believes the government needs to adhere to a willing buyer/willing seller policy as it has done historically.

Pending Regulations authorized by Bill C-68

The Bill authorizes the development of regulations, of which the following are the ones that are relevant to the fisheries sector:

Regulatory elements affecting stability of access

FCC looks to how these regulatory provisions can contribute to greater stability of access and thereby instill confidence to invest and support conservation. At the same time, FCC cautions on the government’s ability to anticipate how the sector will evolve over time. Smart regulations will provide flexibility to accommodate the ongoing evolution of the sector.
The following are the regulatory provisions that the Council views as directly affecting stability of access:

- proper management and control...of fisheries, including for social, economic and cultural benefits S.43(1)(a) – FCC suggests that the resources, fisheries, and societal interests are so diverse from coast to coast to coast, and the Act is so broad in its application, that flexibility will be required to implement this provision. For example, changing demographics or changing international influences lead to changing social and economic values within a society. FCC cautions that this provision must not undermine the sustainability of fisheries.

- owner/operator S.43(1)(d.1) – FCC looks for clarity on definitions of the relevant terms and for contributions to greater stability of access

- independence of inshore fishermen S.43(1)(f) – FCC participated in consultations on this in September. FCC is concerned that the new regulations will create unintended consequences, perhaps even to the intended beneficiary. The supply chain in integrated and corporate arrangements along the supply chain can be beneficial for contracting parties. For example, contract farming in agriculture is viewed positively. FCC urged DFO to differentiate the types of arrangements it wants to prohibit.

- transferability of licences S.43(1)(g.01) – FCC looks for clarity on definitions of the relevant terms and for contributions to greater stability of access

- designation of persons and vessels within organizational licences S.43(1)(g.02) – FCC looks for clarity on definitions of the relevant terms and for contributions to greater stability of access

- Length of licences and quotas, S.7(2) – Stability and predictability of access is critical to investment and is known to improve conservation outcomes in fisheries. FCC looks to how the length of licences and quotas can instill confidence to invest and support conservation.
Other Regulatory provisions

- rebuilding of fish stocks S.43(1)(b.1) – This is driven by a desire to address criticism regarding slow development or lack of rebuilding plans for Canada’s major fish stocks that are in the critical zone. FCC has participated in consultations on this in February. While FCC supports measures that ensure the health and sustainability of fish stocks, the proposed elements of a regulation to list fish stocks and to describe rebuilding plans raise several questions that will need to be addressed through ongoing consultation and dialogue with commercial harvesters. For example, In order to fully understand the process, sequences and risks and outcomes of regulation FCC strongly encourages DFO to share its work and consult broadly in amending the PA Policy and Guidance for Rebuilding Plans.

- restoration of fish habitat S.43(1)(b.2) and habitat banking S. 42.01-.04 – FCC has participated in two pre-consultations - in September and just last week. FCC’s concern is to ensure the criteria for habitat credits fully respects commercial fisheries that might be impacted by major projects. For example, will the credits fully offset any impacts to commercial fisheries and related participants?

- disclosure of traditional knowledge of Indigenous Peoples S.43(1)(j.1) – FCC respects the government intent but this provision needs to be informed by the Ahousaht et al decision.

- limit of fishing gear or equipment S.43(1)(m) – FCC cautions against being too prescriptive that could be a barrier to innovations that improve competitiveness and/or environmental performance within the sector.

- defining and management/control of aquatic invasive species S.43(1)(o) – This is relevant for operators in commercial fisheries and perhaps the fisheries themselves.

- marine conservation and protection of marine biodiversity S.43.3 – Similar to S.9.1 FCC looks to the new regulations to provide more flexibility and targeted actions.
Concluding Remarks

The most significant policy issue facing the sector is a concern of stability of access to the fishing resource. This unfortunate situation has eroded the sector’s confidence to invest and could undermine conservation efforts. It also creates a lens through which the sector views Bill C-68 and the pending regulations under new authorities provided by the Bill.

This current context is even more unfortunate given that the fisheries sector needs to accelerate investment to extract more value from what it harvests and processes. A 2017 study has indicated that the sector is missing out on $600 million annually in additional revenue. Much of this will only be realized by investments in new technology and practices. This, and other growth opportunities, won’t be achieved in the current policy environment.

Given the enabling nature of the Bill, the Council reserves judgment on the Bill pending the development of the regulations authorized by the Bill, which could take up to 3 years or more to be completed.

While this submission included perspectives on a number of areas of the Bill and the pending regulations authorized by it, there are three key messages for the Committee’s consideration.

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FCC asks the Committee to consider this. Participants in the fisheries sector, and their communities, rely on the economic benefits from Canada’s fish resources. But, it is paramount that such use of our resources is sustainable. Failing to do so will only lead to economic hardship in the future and undermine the vital role this sector plays in the coastal economy in Canada. The use of fisheries is missing in the current wording of the Bill.

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